UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (BRL) SIPA LIQUIDATION (Substantively Consolidated)
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Ltd., Pacific West Health Medical Center Inc. Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company (SICO) Bahrain, Dawson Bypass Trust, St. Stephen's School, Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko della Schiava, Harold Greisman, Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya, Defendants.	12 Civ. 9408 (VM) Adv. Pro. No. 12-02047 (BRL)

NOTICE OF FILING

PLEASE TAKE NOTICE THAT, pursuant to this Court's Order, dated February 8, 2013, ECF No. 31, Irving H. Picard, as trustee for the substantively consolidated liquidation of the estate of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.*, and the estate of Bernard L. Madoff, individually, by and through his undersigned counsel, files herewith as Exhibits A–D the following documents, which were each originally filed in *Picard v. Fairfield Greenwich Limited, et. al.*, No. 12-02047 (BRL) in the Bankruptcy Court for the Southern District of New York on November 29, 2011:

Exhibit A: Complaint [ECF No. 1];

Exhibit B: Notice of Application for Enforcement of Automatic Stay and Issuance of Preliminary Injunction and Exhibit A attached thereto, [Proposed] Order Enforcing Automatic Stay and Issuing Preliminary Injunction [ECF No. 2];

Exhibit C: Memorandum of Law in Support of Trustee's Application for Enforcement of Automatic Stay and Related Stay Orders and Issuance of Preliminary Injunction [ECF No. 3];

Exhibit D: Declaration of Jessie Morgan Gabriel in Support of Trustee's Application for Enforcement of Automatic Stay and Related Stay Orders and Issuance of Preliminary Injunction and Exhibits 1–32 attached thereto [ECF No. 4].

Date: February 19, 2013

/s/Mark A. Kornfeld

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
Mark A. Kornfeld
Email: mkornfeld@bakerlaw.com

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

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 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

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (BRL) 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. Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Ltd., Pacific West Health Medical Center Inc. Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company (SICO) Bahrain, Dawson Bypass Trust, St. Stephen's School, Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko della Schiava, Harold	Adv. Pro. No. _____ **COMPLAINT**

Greisman, Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya,

Defendants.

Irving H. Picard, as trustee (the "Trustee") for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA"), and the estate of Bernard L. Madoff, individually ("Madoff"), by and through the Trustee's undersigned counsel, as and for his Complaint, alleges as follows:

NATURE OF THE ACTION

1. The Trustee commences this action to prevent the Defendants captioned above (the "Injunction Defendants") from undermining this Court's continuing jurisdiction over the estate of BLMIS.

2. Fairfield Sentry Limited ("Sentry"), Fairfield Sigma Limited ("Sigma"), Fairfield Lambda Limited ("Lambda"), Greenwich Sentry, L.P. ("GS"), and Greenwich Sentry Partners, L.P. ("GSP") (collectively, the "FGG Funds") were investment funds or limited partnerships founded by Walter Noel, Jeffrey Tucker, and Andres Piedrahita (the "Founders"), and managed by the Founders and a group of individuals and entities associated with Fairfield Greenwich Group ("FGG"). FGG served as one of Madoff's largest marketing and investor relations arms, significantly helping to grow and sustain the Ponzi scheme. Collectively, the FGG Funds and individuals and entities related to the FGG Funds withdrew more than $3.2 billion from BLMIS during the six years prior to the Filing Date of December 11, 2008. On May 18, 2009, the Trustee sued the FGG Funds for the return of this money in the Trustee's Action, *Picard v. Fairfield Sentry Limited*, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009), and later filed an

amended complaint adding as defendants various FGG-related entities and individuals (the "Trustee's FGG Defendants")[1] which managed the FGG Funds ("Amended Complaint").

3. In July 2011, the Trustee finalized a settlement of his claims against Sentry, Sigma, and Lambda and later, in a separate agreement, finalized the settlement of his claims against GS and GSP. Notably, however, the vast majority of the money transferred by BLMIS to the FGG Funds was no longer in their possession. They had transferred large sums of that money in the form of payments of fees and redemptions to FGG related entities and individuals which managed and marketed the FGG Funds. The Trustee's Action accordingly continues against the Trustee's FGG Defendants that remain, including the principals and entities responsible for managing the FGG Funds.

4. In addition, as part of the Trustee's settlements, the FGG Funds assigned to the Trustee all of their claims against the FGG management entities and principals. As part of the settlements, the Trustee and the FGG Funds entered into sharing agreements with respect to different types of claims, including against the FGG management entities and individuals, and subsequent transferees. Under the sharing agreements, the Trustee is entitled to the first $200 million recovered from the FGG management entities and individuals. In addition, as part of the Trustee's settlements with the FGG Funds, Sentry, GS, and GSP have allowed BLMIS customer

[1] The Trustee's FGG Defendants are: Fairfield Sentry Limited, Greenwich Sentry, L.P., Greenwich Sentry Partners, L.P., Fairfield Sigma Limited, Fairfield Lambda Limited, Chester Global Strategy Fund Limited, Chester Global Strategy Fund, Irongate Global Strategy Fund Limited, Fairfield Greenwich Fund (Luxembourg), Fairfield Investment Fund Limited, Fairfield Investors (Euro) Limited, Fairfield Investors (Swiss Franc) Limited, Fairfield Investors (Yen) Limited, Fairfield Investment Trust, FIF Advanced, Ltd., Sentry Select Limited, Stable Fund, Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda), Ltd., Fairfield Greenwich Advisors LLC, Fairfield Greenwich GP, LLC, Fairfield Greenwich Partners, LLC, Fairfield Heathcliff Capital LLC, Fairfield International Managers, Inc., Fairfield Greenwich (UK) Limited, Greenwich Bermuda Limited, Chester Management Cayman Limited, Walter Noel, Jeffrey Tucker, Andrés Piedrahita, Mark McKeefry, Daniel Lipton, Amit Vijayvergiya, Gordon McKenzie, Richard Landsberger, Philip Toub, Charles Murphy, Robert Blum, Andrew Smith, Harold Greisman, Gregory Bowes, Corina Noel Piedrahita, Lourdes Barreneche, Cornelis Boele, Santiago Reyes, and Jacqueline Harary (the individuals herein are later defined as the "FG Individual Defendants").

claims totaling nearly $270 million. With those allowed customer claims, the Trustee has already distributed approximately $100 million to Sentry, GS and GSP and will share in the Trustee's recoveries in ongoing litigations, *including* specifically claims against the Trustee's FGG Defendants.

5. Former investors in certain FGG Funds brought putative class actions against a number of FGG entities and principals, which were consolidated in a single putative class action (the "Anwar Action"). *Anwar v. Fairfield Greenwich Ltd*., No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (as subsequently consolidated). On November 6, 2012, the "Representative Plaintiffs" in the Anwar Action[2] filed a motion to approve the Settlement with Fairfield Greenwich Limited and Fairfield Greenwich (Bermuda) Ltd.,[3] for themselves and on behalf of a proposed "Settlement Class." The "Settlement Class" is defined in the settlement agreement entered into by the FGG Settling Defendants, with various exclusions, as "all Persons who were Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 … and who suffered a Net Loss of principal invested in the Funds…." The Settlement contemplates an initial settlement amount of more than $50 million—money that appears to come from the same limited pool of funds sought by the Trustee in his action and which was largely obtained from initial and subsequent transfers from BLMIS.

[2] The Representative Plaintiffs are the following "Injunction Defendants" herein: Pacific West Health Medical Center Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company (SICO) Bahrain, Dawson Bypass Trust, and St. Stephen's School.

[3] Under the Settlement, the settling defendants are defined only as Fairfield Greenwich (Bermuda) Ltd. and Fairfield Greenwich Limited (hereinafter the "Settling Defendants"). Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko della Schiava, Harold Greisman, Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya are defined in the Settlement as FG Individual Defendants (hereinafter the "FG Individual Defendants"). The FG Individual Defendants are funding the Settlement and with the FGG Settling Defendants are receiving full releases (collectively hereinafter, the FG Individual Defendants and FGG Settling Defendants, hereinafter the "Anwar Released Defendants").

6. Indeed, the Settlement documents themselves expressly and repeatedly refer to the limited resources of the Anwar Released Defendants, strongly suggesting that any money paid to the proposed Settlement Class—consisting of investors in the FGG Funds, not BLMIS customers—will substantially deplete the amount of money available to the Trustee for distribution to customers.

7. In addition, the Trustee holds not only the claims of the BLMIS estate and its customers and other creditors, and all claims that are duplicative and derivative of those claims, but also holds as an assignee, the FGG Funds' direct claims against the "Anwar Released Defendants," all of whom are Injunction Defendants here, including for duties owed only to the FGG Funds. As such, not only does the Trustee have standing to bring these claims, the interest in these specific claims was part of the bargained-for exchange in the settlements approved by this Court, as well as the court in the British Virgin Islands overseeing the liquidation of Sentry, Sigma, and Lambda (the "BVI Court"). If allowed to proceed, the proposed Settlement will reduce the value of the Trustee's settlements, substantially deplete the limited assets of the Anwar Released Defendants, and thwart the Trustee's efforts to recover funds for equitable distribution to the victims of the Ponzi scheme.

8. The Representative Plaintiffs and the proposed Settlement Class members, who already stand to benefit from the nearly $270 million in allowed claims stemming from Trustee's settlements with the FGG Funds as well as the proceeds to be shared from litigation claims as provided for in the Trustee's settlement with the FGG Funds, will be permitted to recover outside of the claims process to the detriment of other BLMIS customers, as well as diminish the value of the court-approved settlements with the FGG Funds. Simply put, the Representative Plaintiffs, for themselves and on behalf of the proposed Settlement Class, are attempting to skim

the remaining assets from the pool of funds which are the subject of the Trustee's litigations, while simultaneously obtaining the benefit of the FGG Funds' allowed claims and recoveries from the shared litigation claims. They know full well that their Settlement may be subject to the automatic stay and related injunction, having agreed that the Trustee could so move.

9. Finally, the proposed Settlement as submitted in the Anwar Action appears to set aside a limited amount of funds for the Trustee's and other claims. But such limited funds do not come close to the amount the Trustee seeks to recover. At the same time, the Settlement purports to enjoin *any* person from bringing any claims related to the claims in the Anwar Action against the Anwar Released Defendants. The Proposed Order thus would purport to enjoin the Trustee's Action against the Anwar Released Defendants. Such interference with this Court's jurisdiction and its administration of the distribution of BLMIS assets cannot be countenanced by this Court.

10. The Settlement is scheduled to be heard for preliminary approval on November 30, 2012, with a proposed mailing of notice deadline of December 18, 2012, and a final hearing on March 20, 2013, or thereafter.

THE DEFENDANTS

11. Defendant Fairfield Greenwich Limited is a Cayman Islands limited liability company registered to do business in the state of New York. Fairfield Greenwich Limited served as the investment manager to Sentry from 1999 to 2003, and general partner for GS from 1999 to 2003 and for GSP for half of 2003. For its role as investment manager to Sentry and general partner to GS and GSP, Fairfield Greenwich Limited received fees in excess of $435 million. On information and belief, in order to pay these fees, Sentry, GS, and GSP withdrew funds from their BLMIS accounts and then transferred the funds to Fairfield Greenwich Limited.

12. Defendant Fairfield Greenwich (Bermuda) Ltd. is an SEC-registered, exempted corporation organized under the laws of Bermuda. From 2003 until December 11, 2008, Fairfield Greenwich (Bermuda) Ltd. served as the investment manager to Sentry, Sigma, and Lambda. Until 2007, Fairfield Greenwich (Bermuda) Ltd. was a wholly-owned subsidiary of Fairfield Greenwich Limited. In 2007, ownership was transferred to Fairfield Greenwich Limited's shareholders, of which the Founders held an almost 65% interest. For its role as investment manager to Sentry, Sigma, and Lambda, Fairfield Greenwich (Bermuda) Ltd. received fees in excess of $750 million. On information and belief, in order to pay these fees, Sentry withdrew funds from its BLMIS accounts and then transferred the funds to Fairfield Greenwich (Bermuda) Ltd.

13. Defendant Pacific West Health Medical Center Inc. Employees Retirement Trust, located in Los Angeles, California, was an investor in Sentry.

14. Defendant Harel Insurance Company, Ltd. is an Israeli company that invested in Sentry.

15. Defendant Martin and Shirley Bach Family Trust is an Arizona family trust that was a limited partner of GS.

16. Defendant Natalia Hatgis is an individual residing in New York who was a limited partner of GSP.

17. Defendant Securities & Investment Company (SICO) Bahrain is a Bahraini institution that invested in Sentry.

18. Defendant Dawson Bypass Trust is a Nevada trust that was a limited partner of GS.

19. Defendant St. Stephen's School is a co-educational, nondenominational boarding and day school incorporated in Connecticut and located in Rome, Italy that invested in Sigma.

20. Defendant Walter M. Noel, Jr. is a Founder of FGG, and a resident of Connecticut and New York. Noel sat on FGG's Board of Directors, served as a director of Sentry and Sigma, was an indirect shareholder and director of Fairfield Greenwich (Bermuda) Ltd., a general partner to GS from 1992 to 1998, and an investor in GS. Defendant Noel also filed a BLMIS customer claim.

21. Defendant Jeffrey H. Tucker is a Founder of FGG, sat on its board of directors. He served as director of Fairfield Greenwich (Bermuda) Ltd. and as a principal of Fairfield Greenwich Limited, and was an indirect shareholder of both entities. He also served as general partner of GS from 1992 to 1998. Tucker is a resident of New York, New York and filed a BLMIS customer claim.

22. Defendant Andrés Piedrahita is a Colombian citizen and a resident of New York, London, and Madrid. Piedrahita is a Founder of FGG, and is also married to Walter Noel's daughter, Defendant Corina Noel Piedrahita. Piedrahita served as a member of FGG's Board of Directors and Chairman of its Executive Committee. Additionally, he served as Director and President of Fairfield Greenwich (Bermuda) Ltd. and owned, directly or indirectly, between 10% and 25% of Fairfield Greenwich (Bermuda) Ltd.

23. Defendant Lourdes Barreneche was a partner of FGG based in its New York office. Barreneche worked in FGG's Business Development Group where she was responsible for FGG's international marketing and sales efforts in Latin America, Spain, Portugal, and Switzerland.

24. Defendant Robert Blum served as a Managing Partner at FGG and the Chief Operating Officer of Fairfield Greenwich (Bermuda) Ltd. and Fairfield Greenwich Advisors. He was based in FGG's New York office prior to his resignation in 2005. Because his partnership had vested, Blum continued receiving partnership distributions through 2010. Defendant Blum also filed a BLMIS customer claim.

25. Defendant Cornelis Boele was a partner of FGG based in its New York office. Boele worked for FGG's Business Development Group, where he was responsible for international marketing and sales efforts in Belgium, the Netherlands, Luxembourg, and through Europe.

26. Defendant Gregory Bowes was a partner in FGG's New York office and served on FGG's Executive Committee. Bowes resigned from his FGG position in 2003, but because his partnership had already vested, he continued to receive distributions through at least 2008.

27. Defendant Vianney d'Hendecourt was a partner in FGG. D'Hendecourt is based in FGG's London office.

28. Defendant Yanko della Schiava was a partner in FGG and is Noel's son-in-law.

29. Defendant Harold Greisman was a partner in FGG. He served as FGG's Chief Investment Officer and sat on the Executive Committee. He was based in FGG's New York and London offices.

30. Defendant Jacqueline Harary was a partner in FGG. She was involved in FGG's marketing efforts, focusing on Latin America.

31. Defendant David Horn was a partner in FGG and was based in the New York office.

32. Defendant Richard Landsberger was a partner in FGG's and a member of its Executive Committee. Landsberger was based in FGG's London office.

33. Defendant Daniel E. Lipton served FGG's Chief Financial Officer and was a partner. He is based in FGG's New York office and is a resident of New York City.

34. Defendant Julia Luongo was a partner in FGG and was based in the New York office.

35. Defendant Mark McKeefry is a partner in FGG and served on its Executive Committee. He is also FGG's Chief Legal Officer.

36. Defendant Charles Murphy was an FGG partner and worked out of the New York office. He was a member of the Executive Committee and was responsible for strategy and capital markets business.

37. Defendant Corina Noel Piedrahita served as a partner in FGG, as well as Head of Client Services and Investor Relations. She is Noel's daughter and is married to Andrés Piedrahita.

38. Defendant Maria Teresa Pulido Mendoza was a partner in FGG and served as Head of Global Sales.

39. Defendant Santiago Reyes was a partner in FGG. He headed FGG's Miami office and marketed FGG's offshore funds worldwide.

40. Defendant Andrew Smith was a partner in FGG and a member of the Executive Committee. He worked in the Investment Group, but left FGG in 2009.

41. Defendant Philip Toub was an FGG partner and member of the Executive Committee. He is also Noel's son-in-law.

42. Defendant Amit Vijayvergiya was a partner in FGG and served as the FGG's Chief Risk Officer. Vijayvergiya resides in Bermuda and New York City, and worked primarily out of FGG's Bermuda office.

JURISDICTION AND VENUE

43. This is an adversary proceeding brought in this Court—the Court in which the main underlying SIPA proceeding, No. 08-01789 (BRL) (substantively consolidated), is pending. The SIPA proceeding is a combined proceeding with the Securities and Exchange Commission (the "SEC") and was originally brought in the United States District Court for the Southern District of New York as *Securities Exchange Commission v. Bernard L. Madoff Investment Securities LLC et al*., No. 08 CV 10791, (S.D.N.Y. filed Dec. 11, 2008) ("District Court Action") prior to its removal to this Court. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and sections 78eee(b)(2)(A) and (b)(4) of SIPA.

44. An action for a declaratory and injunctive relief is properly commenced as an adversary proceeding pursuant to Rules 7001(2), 7001(7), and 7001(9) of the Federal Rules of Bankruptcy Procedure.

45. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

46. Venue in this district is proper under 28 U.S.C. § 1409.

47. This Court has personal jurisdiction over the Defendants pursuant to Federal Rule of Bankruptcy Procedure 7004(f).

BACKGROUND, THE TRUSTEE, AND STANDING

48. On December 11, 2008 (the "Filing Date"), Madoff was arrested by federal agents and criminally charged with a multi-billion dollar securities fraud scheme in violation of 15 U.S.C. §§ 78j(b), 78ff, and 17 C.F.R. 240.10b-5 in the district court, captioned *United States v. Madoff*, No. 08-2735. Contemporaneously, the SEC filed a complaint in the district court

against, among others, Madoff and BLMIS. (District Court Action, ECF No. 1.) The SEC complaint alleged that Madoff and BLMIS engaged in fraud through the investment advisor activities of BLMIS. On March 10, 2009, the criminal case was transferred to Judge Denny Chin in the district court and was assigned a new docket number, No. 09 CR 213 (DC).

49. 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"). (District Court Action, ECF No. 5.) Contemporaneously, pursuant to section 78eee(a)(4)(B) 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 protections afforded by SIPA. (*Id.*)

50. Also on December 15, 2008, the district court granted the SIPC application and entered an order, which was consented to by BLMIS (the "December 15, 2008 Stay Order"). (District Court Action, ECF No. 4.) This order, in part: (i) appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA; (ii) appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and (iii) removed the case to this Court pursuant to section 78eee(b)(4) of SIPA.

51. The December 15, 2008 Stay Order also declared that "all persons and entities are stayed, enjoined and restrained from directly or indirectly . . . interfering with any assets or property owned, controlled or in the possession of [BLMIS]." (*Id.* ¶ IV (reinforcing automatic stay); *see also* Order on Consent Imposing Preliminary Injunction, Freezing Assets and Granting Other Relief Against Defendants, Dec. 18, 2008, District Court Action, ECF No. 8 ¶ IX ("no creditor or claimant against [BLMIS], or any person acting on behalf of such creditor or claimant, shall take any action to interfere with the control, possession or management of the

assets subject to the receivership."); Partial Judgment on Consent Imposing Permanent Injunction and Continuing Other Relief, Feb. 9, 2009, District Court Action, ECF No. 18 ¶ IV (incorporating and making the December 18, 2008 Stay Order permanent).) (These orders are collectively referred to as the "Stay Orders.")

52. By orders dated December 23, 2008 and February 4, 2009, respectively, this Court approved the Trustee's bond and found that the Trustee was a disinterested person. (*Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 08-01789 (BRL), (Bankr. S.D.N.Y.) ECF Nos. 11, 69.) Accordingly, the Trustee is duly qualified to serve and act on behalf of the estate of BLMIS.

53. On March 12, 2009, Madoff pled guilty to an 11-count criminal information. At the Plea Hearing, Madoff admitted that he "operated a Ponzi scheme through the investment advisory side of [BLMIS]." (Plea Hr'g Tr. at 23:14–17, *United States v. Madoff*, No. 09 CR 213 (DC) (S.D.N.Y. Mar. 12, 2009) (the "Criminal Action"), ECF No. 57.)

54. On April 13, 2009, an involuntary bankruptcy petition was filed against Madoff in this Court, *In re Bernard L. Madoff*, 09-11893 (BRL) (Bankr. S.D.N.Y. filed Apr. 13, 2009) (the "Involuntary Proceeding"), and on June 9, 2009, this Court entered an order substantively consolidating the Chapter 7 estate of Madoff into the SIPA Proceeding. (Involuntary Proceeding, ECF No. 28.)

55. Appointed under SIPA, the Trustee is charged with recovering and distributing customer property to BLMIS's customers, assessing claims, and liquidating any other assets of the firm for the benefit of the estate and its creditors. Consistent with his duties, the Trustee is marshalling BLMIS's assets, and is well underway in that process.

56. The assets recovered, however, will not be sufficient to reimburse the customers of BLMIS for the billions of dollars that they invested with BLMIS over the years. Consequently, the Trustee must use his authority under SIPA and the Bankruptcy Code to pursue recovery from, among others, those who enabled the Ponzi scheme to operate. Absent these recovery actions, the Trustee will be unable to satisfy the claims described in subparagraphs (A) through (D) of 15 U.S.C. § 78fff-2(c)(1).

57. Pursuant to section 78fff-1(a) of SIPA, the Trustee has the general powers of a bankruptcy trustee in a case under the Bankruptcy Code. Chapters 1, 3, 5, and subchapters I and II of chapter 7 of the Bankruptcy Code are applicable to this case, to the extent consistent with SIPA.

58. In addition to the powers of bankruptcy trustee, the Trustee has broader powers granted by SIPA pursuant to 15 U.S.C. §§ 78aaa *et seq*.

59. The Trustee is a real party in interest and has standing to bring these claims pursuant to 15 U.S.C. § 78fff-1 and the Bankruptcy Code, including sections 323(b) and 704(a)(1), because, among other reasons:

a. The FGG Settlement seeks the same funds as the Trustee, which will diminish the amount of recovery for BLMIS customers, and affects the distribution of customer property and the orderly administration of the estate.

b. Customers with allowed customer claims will be injured in the absence of the Trustee's filing of this Complaint.

c. The Trustee will not be able to fully satisfy all claims.

THE COURT-ORDERED CLAIMS ADMINISTRATION PROCESS

60. The Bankruptcy Court entered a Claims Procedures Order to implement a customer claims process under SIPA, which required, *inter alia*, that certain notices be given.

(Order dated December 23, 2008, Adv. Pro. No. 08-1789 (Bankr. S.D.N.Y. Dec. 23, 2008), ECF No. 12.) More than 16,000 potential customer, general creditor, and broker-dealer claimants, including Sentry, GS, and GSP, were included in the mailing of the notice. The Trustee published the notice in all editions of *The New York Times*, *The Wall Street Journal*, *The Financial Times*, *USA Today*, *Jerusalem Post*, and *Ye-diot Achronot* and posted claim forms and claims filing instructions on the Trustee's website ("Trustee Website"), and the website of SIPC.

61. Under the Claims Procedure Order, claimants were directed to mail their claims to the Trustee. All customers and creditors were notified of the mandatory statutory bar date for the filing of claims under section 78fff-2(a)(3) of SIPA, which was July 2, 2009 (the "Bar Date"). The Trustee also provided several reminder notices. By the Bar Date, the Trustee had received 16,239 customer claims.

62. Claims were filed by each of the FGG Funds, as well as a number of entities and individuals that are defendants in both the Trustee's Action and the Anwar Action, including Fairfield Greenwich (Bermuda) Ltd., Walter Noel, Jeffrey Tucker, Robert Blum, and Jacqueline Harary.

63. On June 28, 2011, the Court held that indirect investors in BLMIS, who had invested in investment funds such as the FGG Funds, were not "customers" of BLMIS entitled to SIPA protection. *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff)*, 454 B.R. 285 (Bankr. S.D.N.Y. 2011) (the "Customers Decision"). The Court recognized that SIPA § 78*lll*(2) limits the definition of "customers" to parties directly holding an investment account with BLMIS. *Id*. at 294–95. The District Court affirmed this Court's decision, *see Aozora Bank Ltd. v. Securities Investor Protection Corp. (In re Aozora Bank Ltd.)*, 480 B.R. 117 (S.D.N.Y. 2012) (J. Cote), and the district court's decision is currently on appeal to the Second Circuit. The

Trustee has issued notices of denial of the SIPA Claims filed by Sigma, Lambda, Fairfield Greenwich (Bermuda) Ltd., Walter Noel, Jeffrey Tucker, Robert Blum, and Jacqueline Harary on the basis that they are not customers of BLMIS within the meaning of 15 U.S.C. § 78*lll*(2).

64. As part of the settlement between Sentry and the Trustee, Sentry received an allowed claim of $230,000,000. Additionally, under the Trustee's settlement agreements with GS and GSP, GS has an allowed claim of $35,000,000, and GSP has an allowed customer claim in the amount of $2,011,304.

THE NET EQUITY DECISION

65. In a SIPA liquidation, customers share *pro rata* in customer property to the extent of their net equity, as defined in section 78*lll*(11) of SIPA. SIPC advances funds to the trustee for a customer with a valid net equity claim, up to the amount of their net equity, if their ratable share of customer property is insufficient to make them whole. Such advances are capped at $500,000 per customer.

66. The Trustee determined each customer's "net equity" by crediting the amount of cash deposited by the customer into their BLMIS account, less any amounts withdrawn from their BLMIS customer account, otherwise known as the "Net Investment Method." After certain claimants objected to the Trustee's interpretation of net equity, the Trustee moved for a briefing schedule and hearing on the matter. On March 1, 2010, this Court issued its decision on the net equity issue, approving the Trustee's method of determining net equity (the "Net Equity Decision").

67. On March 8, 2010, the Court issued an order approving the Trustee's Net Equity calculation ("Net Equity Order") and certified an appeal of the Net Equity Order directly to the United States Court of Appeals for the Second Circuit.

68. On August 16, 2011, the Second Circuit affirmed the Net Equity Decision. *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229 (2d Cir. 2011). On June 25, 2012, the United States Supreme Court denied *certiorari* review of the Second Circuit's affirmance of the Net Equity Decision. *Velvel v. Picard*, 133 S. Ct. 25 (U.S. 2012); *Ryan v. Picard*, 133 S. Ct. 24 (U.S. 2012).

THE TRUSTEE'S ACTION

69. On May 18, 2009, the Trustee commenced the Trustee's Action against Sentry, GS, and GSP. *Picard v. Fairfield Sentry Limited*, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009). On July 20, 2010, the Trustee filed the Amended Complaint and added as defendants Sigma, Lambda, certain FGG principals, and numerous FGG entities affiliated with the funds. Through the Amended Complaint, the Trustee seeks to recover, for equitable distribution to BLMIS customers with allowed claims, property of the BLMIS estate in excess of $3.2 billion. This figure includes claims against Fairfield Greenwich (Bermuda) Ltd. ("FGB") for over $950 million, against Fairfield Greenwich Limited ("FGL") for over $500 million, and claims against the Founders for over $500 million.

Claims Against the Trustee's FGG Defendants

70. The Trustee's FGG Defendants served as one of Madoff's "largest marketing and investor relations arms" and actively participated in and "substantially aided, enabled and helped sustain" the Ponzi scheme. As asserted in the Trustee's Action, the Trustee's FGG Defendants "had actual or constructive knowledge of Madoff's fraud," and reaped hundreds of millions of dollars in as a result of that relationship. Further, the Trustee asserts all of the money purportedly "earned" as management and performance fees based on the fictitious returns of the FGG Funds is stolen money which must be returned to the Trustee for equitable distribution.

71. The Trustee is still in the process of investigating the transactions between the Trustee's FGG Defendants and BLMIS. However, based on his investigation to date, the Trustee has alleged that a significant portion, if not all, of the distributions and other payments made to the Trustee's FGG Defendants were made with funds originally withdrawn from Sentry's, GS's, and GSP's accounts at BLMIS and, therefore, constitute property of the estate.

72. By December 11, 2008, the Founders (who are among those individuals funding the Settlement) had only a few million dollars still invested with Madoff—the defendants retained all other money they had unjustly collected and have kept millions of dollars in stolen property that belongs to the estate.

73. The Trustee is seeking from the Trustee's FGG Defendants the return of BLMIS estate property under SIPA §§ 78fff(b) and 78fff-2(c)(3), sections 105(a), 502(d), 542, 544, 548(a), 550(a), and 551 of the Bankruptcy Code, the New York Fraudulent Conveyance Act (N.Y. Debt. & Cred. § 270 *et seq*.), and other applicable law. The Trustee's Action raises claims for turnover, accounting, preferences, fraudulent conveyances, unjust enrichment, conversion, money had and received, aiding and abetting fraud, aiding and abetting breach of fiduciary duty, consequential and punitive damages, and objection to customer claims filed by certain defendants. The Trustee intends to drop his claim for turnover when he seeks leave to amend his complaint against the Trustee's FGG Defendants.

The Trustee's Settlement with the FGG Funds

74. The Trustee reached a partial resolution of the Trustee's Action through settlements of his claims against each of the FGG Funds. On May 9, 2011, the Trustee moved this Court to approve a settlement with Sentry, Sigma, and Lambda, followed by a motion seeking a similar order with regard to a settlement with GS and GSP on May 18, 2011.

75. In general, these settlements consisted of: (i) cash payments to the Trustee; (ii) allowed claims in the BLMIS liquidation proceeding for Sentry, GS, and GSP; (iii) an assignment to the Trustee of Sentry's, GS's and GSP's claims against the FGG management entities and principals; and (iv) a sharing agreement for the division of future recoveries by the Trustee and/or Sentry, GS, and GSP resulting from actions against subsequent transferees, the funds' service providers, as well as the assigned claims against the FGG management entities and principals.

76. In particular, the Sentry, Sigma, and Lambda settlement approved by this Court provides that the Trustee shall be entitled to the first $200 million of any recoveries against the FGG management individuals and entities. Any recovery in excess of $200 million is shared with the Sentry liquidator for the benefit of the Sentry shareholders on an 85% - 15% basis. Similarly, the Sentry liquidator is entitled to the first $300 million of any recoveries against the FGG Funds' administrators and/or auditors, with any excess shared with the Trustee on an 85% - 15% basis. The GS and GSP settlements approved by this Court also used a threshold of the first $200 million of recoveries from claims against the FGG management entities and individuals.

77. Consequently, if the proposed Settlement Class members, who are the ultimate beneficiaries of the Trustee's settlement with Sentry, GS and GSP, are permitted to proceed with the Settlement, they will be able to keep their benefits from the Trustee's settlement but, at the same time, in view of the Anwar Released Defendants' limited assets—lessen the consideration paid to the Trustee in the Sentry, GS and GSP settlement by preventing him from recovering the first $200 million in recoveries from the FGG management entities and individuals.

78. The Trustee's settlements with the FGG Funds account for only a fraction of the $3.2 billion the Trustee is seeking in his adversary proceeding. Thus, a material part of the

consideration paid to the Trustee in settlement of his claims against the FGG Funds was the assignment of all the FGG Funds' claims against the FGG management entities and individuals. (All of the Trustee's FGG Defendants are also defendants in the Anwar Action, with two exceptions—Fairfield Investment Managers, Inc. and Brian Francouer, who are not defendants in the Anwar Action.)

79. Like the claims in the Anwar Action, the assigned claims seek to reclaim the fees and profits earned by certain of the Trustee's FGG Defendants as a result of their relationship with BLMIS. They include causes of action for, *inter alia*, breach of fiduciary duty, unjust enrichment, constructive trust, and mutual mistake—all of which are also claims in the Anwar Action. As a result, the Trustee now holds claims that mirror the claims brought in the Anwar Action.

80. This Court entered an order approving the settlement with Sentry, Sigma, and Lambda and overruling the few objections filed by entities not related to these proceedings on June 7, 2011. The BVI Court overseeing the Sentry, Sigma, and Lambda liquidation proceedings then approved the settlements.

81. Thereafter, on July 8, 2011, this Court entered an order approving the settlement agreement between the Trustee and GS and GSP. The order acknowledged that objections filed by eight Anwar Action plaintiffs, including three of the Representative Plaintiffs, were withdrawn after an amendment to the settlement agreement that addressed their concern regarding the prosecution of claims owned by the debtor funds. The final, approved settlement agreements with GS and GSP state explicitly that the settlements are:

> without prejudice to the right of the Trustee to seek an injunction against prosecution by [the fund's] present and former limited partners and holders of any limited partner interest in [the fund] of Direct LP Claims against Management in connection with any future settlement of claims against Management and without

> prejudice to the right of such [fund] limited partners to oppose any such injunction that may be sought by the Trustee.

82. The orders approving the settlements contain similar language and indicates that the Bankruptcy Court "retain[s] jurisdiction to hear and determine all matters arising from or related to this Order."

83. As a result of the settlements, Sentry has an allowed claim for $230 million, GS has an allowed claim for $35 million, and GSP has an allowed claim for $2 million. In connection with these allowed claims, the FGG Funds have already participated in and received distributions totaling approximately $100 million from the Trustee in the SIPA Proceeding. As this Court noted in approving the settlements, the investors in the Trustee's FGG Funds are the beneficiaries of these distributions. The Trustee is continuing with his litigation against the remaining Trustee's FGG Defendants to recover property for equitable distribution in accordance with SIPA.

84. On April 2, 2012, certain of the remaining non-settling defendants moved to withdraw the reference to the bankruptcy court. The district court partially granted the motions only as they related to certain legal issues common to a majority of adversary proceedings commenced by the Trustee. *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. Inc. (In re Bernard L. Madoff Inv. Sec. Inc.)*, No. 12-0115 (S.D.N.Y. filed Apr. 13, 2012). Those common issues are still pending before Judge Rakoff. The rest of the case remains before this Court. Under the current schedule, the remaining FGG Defendants' deadline to respond to the complaint in Bankruptcy Court is January 18, 2013, and the pretrial conference is set for February 26, 2013.

THE ANWAR ACTION AND SETTLEMENT

85. Shortly before the Trustee's action was initiated, former investors in the FGG Funds brought actions against the Anwar Released Defendants, as well as other third parties that provided services to the FGG Funds. With a few exceptions, the Anwar Released Defendants are the same defendants as in the Trustee's Action. The only Anwar Released Defendants that are *not* also Trustee's FGG Defendants are: Fairfield Greenwich Group (a non-entity trade name), Fairfield Risk Services Ltd., Vianney d'Hendecourt, Yanko della Schiava, David Horn, Julia Luongo, and Maria Teresa Pulido Mendoza.

86. The Anwar Released Defendants have recently reached the Settlement with the Representative Plaintiffs. However, the Anwar court has not certified any class, nor has it approved the Settlement. Under the Representative Plaintiffs' motion, a preliminary approval hearing is set for November 30, 2012 and class notice's to be issued by December 18, 2012, with a final fairness hearing set for March 20, 2013.

Allegations and Procedural History

87. On April 29, 2009, the Anwar Named Plaintiffs filed the first Consolidated Amended Complaint, followed by a Second Consolidated Amended Complaint (the "SCAC") on September 29, 2009. (The Anwar Named Plaintiffs are set forth in the SCAC.) The allegations in the SCAC mirror those in the Trustee's Amended Complaint. The Anwar Named Plaintiffs allege that the Anwar Released Defendants and the other named defendants knew or should have known of Madoff's fraud and are, therefore, responsible for investor's losses.

88. As against the Anwar Released Defendants, the Anwar Named Plaintiffs allege fraud, violations of section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"); and Securities and Exchange Commission ("SEC") Rule 10b-5, 17 C.F.R., § 240, 10b-5; and

Section 20(a) of the Exchange Act; negligent misrepresentation, gross negligence, breach of fiduciary duty, third-party beneficiary breach of contract, mutual mistake, and unjust enrichment.

89. Among other relief, the Anwar Named Plaintiffs seek the imposition of a constructive trust, damages, disgorgement and restitution of all earnings, profits, compensation and benefits.

90. The defendants in the Anwar Action filed motions to dismiss the SCAC on or about December 22, 2009. On July 29, 2010, the District Court issued its first decision related to the motions to dismiss, which it referred to as "*Anwar I*," and rejected the Anwar defendants' argument that all of the Anwar Named Plaintiffs' common law claims, except fraud, were preempted by New York State's Martin Act. *Anwar v. Fairfield Greenwich Ltd.*, 728 F.Supp.2d 354, 371 (S.D.N.Y. 2010). On August 18, 2010, the District Court issued an opinion, entitled "*Anwar II*," granting in part and denying in part the Anwar defendants' remaining arguments to dismiss the SCAC. *Anwar v. Fairfield Greenwich Ltd.*, 728 F.Supp.2d 372, 462 (S.D.N.Y. 2010).

91. Following the court's decision, on or about October 1, 2010, the Anwar defendants answered the SCAC. The Representative Plaintiffs then moved the court on January 11, 2012, to certify a class pursuant to Rule 23. The motion to certify remains pending.

The Settlement

92. On November 6, 2012, the Representative Plaintiffs filed a motion to approve the Settlement. The Settlement seeks to resolve all claims by the proposed Settlement Class in exchange for a payment to the Anwar Released Plaintiffs of up to $80,250,000.

93. In particular, the Settlement provides that two FGG management entities—FGL and FGB—will pay an initial settlement amount of $50,250,000 using funds provided to them by FG Individual Defendants. FGL and FGB will place an additional $30,000,000 in escrow.

94. The escrow amount will also be paid to the class less any amounts the Anwar Released Defendants pay in settlement of other claims against them. Any net funds from the Settlement payment and the remaining amount will be distributed to class members in proportion to the amount of their net loss from investing in Sentry, Sigma, GS, and GSP.

95. The Settlement funds, which should otherwise be available to satisfy the Trustee's claims, are also being used to pay the administrative costs of the Settlement and fees and expenses of the Representative Plaintiffs' counsel up to 25% of the total Settlement amount.

96. The Trustee believes that the monies used by the FG Individual Defendants to fund the Settlements are coming from the same limited pool of funds that would be used to pay the Trustee—funds which largely, if not solely, originated from BLMIS. As the Representative Plaintiffs admits, the Anwar Released Defendants "lack assets to fund a judgment in excess of the Settlement—indeed, they essentially are out-of-business and could not be a source of substantial recovery by judgment or settlement."

97. In addition, the FG Individual Defendants "have limited financial resources and are being sued by other parties with respect to the same or similar claims as those asserted in this Action; they are incurring substantial legal expenses to defend the Action and such other proceedings; and they could well be unable to pay a substantially greater judgment or settlement to the putative class at a later time."

98. The Anwar Released Defendants have also admitted that certain of them have "transferred assets to trusts and retirement accounts," and, for this reason, it may be difficult to enforce judgments against them. Furthermore, in an unrelated hearing before Judge Rakoff, counsel for some of the Anwar Released Defendants acknowledged there are only limited funds remaining.

99. In essence, in direct violation of the settlements approved by this Court, the Representative Plaintiffs seek to improperly advance class members' position in the creditors' line, at the expense of those BLMIS customers and creditors who have priority under the settlements.

100. Moreover, the Settlement as filed with the district court purports to enjoin any person from bringing any claims against the Anwar Released Defendants. The proposed order states that any person that seeks any funds from the escrow fund is enjoined from bringing any claims related to the claims in the Anwar Action against the Anwar Released Defendants.

101. While on the one hand it would appear that the escrow fund will be used to settle claims that are pending against the Anwar Released Defendants in other actions, which would include the Trustee's action, the proposed order, if entered, would purportedly enjoin the Trustee's adversary proceeding against the Trustee's FGG Settling Defendants. In any event, the proposed escrow amount is insufficient to satisfy the Trustee's claims.

102. Specifically, the Proposed Order states, "To the fullest extent permitted by law, all Persons, including without limitation the Non-Dismissed Defendants, shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any claims, actions, or causes of action for contribution, indemnity or otherwise against any of the Released Parties seeking as damages or otherwise the recovery of all or any part of any liability, judgment or settlement which they pay or are obligated to pay or agree to pay to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning such Persons' participation in any acts, facts, statements or omissions that were or could have been alleged in the Action, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-party claims or otherwise, in the Court or any other federal, state, or foreign

court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum."

COUNT ONE
DECLARATORY RELIEF

103. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully realleged herein.

104. This is a claim for declaratory relief under 28 U.S.C. §§ 2201, *et seq*.

105. The Trustee seeks a declaration that the Settlement and the Anwar Action violate the automatic stay provision under 11 U.S.C. § 362(a), 15 U.S.C. § 78eee(b)(2)(B), and at least one of the Stay Orders and is void *ab initio*. This declaratory relief is warranted, without limitation, for the following reasons:

a. By seeking to recover damages from the Trustee's FGG Defendants, the Settlement and Anwar Action improperly contravene the claims administration process in the SIPA proceeding and side-steps the Trustee's exclusive right to seek recovery of fraudulently transferred property in direct violation of 11 U.S.C. § 362(a)(1) and (6).

b. In addition, the Settlement and Anwar Action improperly seek to recover on claims against the BLMIS estate in violation of 11 U.S.C. § 362(a)(1) and (a)(6) and seeks to obtain possession of or control over property of BLMIS and/or Madoff in direct violation of 11 U.S.C. § 362(a)(3), 15 U.S.C. § 78eee(b)(2)(B) and the Stay Orders.

106. The Court has authority pursuant to sections 105(a) and 362(a) of the Bankruptcy Code to issue declaratory and injunctive relief because this controversy is actual and justiciable, and the Court has jurisdiction over matters affecting BLMIS property and the effective and equitable administration of the BLMIS estate.

COUNT TWO
PRELIMINARY INJUNCTION

107. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully realleged herein.

108. The Trustee seeks injunctive relief by way of an order that any actions towards effectuating the terms of the Settlement, any further prosecution of the Anwar Action, and any distribution of assets by the defendants in the Trustee's Action in connection with the Settlement and the Anwar Action or any other actions brought against the defendants in the Trustee's Action as a result of the BLMIS fraud, should be enjoined pursuant to section 105(a) of the Bankruptcy Code, made applicable to these proceedings by section 78fff(b) of SIPA. Specifically, the Trustee requests that this Court enjoin the Defendants from effectuating the Settlement (or prosecuting the Anwar Action), for, without limitation, the following reasons:

a. The Anwar Action and Settlement improperly infringe on the jurisdiction of this Court. Any funds recovered in the Settlement or the Anwar Action have a strong likelihood of consisting of estate property, recoverable by the Trustee. As such, further effectuation of the Settlement or prosecution of the Anwar Action could ultimately result in another court determining how potential customer property is distributed among certain BLMIS customers and creditors.

b. To the extent that Defendants successfully effectuate the Settlement or prevail in the Anwar Action, section 78fff-2(c)(1)—which provides for the ratable distribution of customer property to customers—would be violated because investors in the FGG Funds would receive more than their proportionate share of customer property to the detriment of BLMIS customers with allowed claims.

c. The claims asserted in the Anwar Action are so inextricably intertwined and related to the underlying SIPA proceeding and the Trustee's Action that continued efforts to fulfill the terms of the Settlement or prosecute the Anwar Action will impair this Court's jurisdiction over this proceeding and the Trustee's ability to marshal assets on behalf of the estate.

d. There is an inadequate remedy at law to protect and preserve the assets that constitute customer property. The Settlement and *Anwar* Action threaten the administration of the liquidation, and an injunction is necessary to preserve and protect estate property and the Trustee's efforts to gather and collect estate property for the benefit of the customers who have allowed claims.

e. An injunction will prevent the substantial confusion of other investors and potential plaintiffs with respect to whether they must file separate actions to protect their interests.

f. An injunction will avoid the possibility of inconsistent decisions and will ensure preservation of uniformity of decision.

g. The injunction will not harm the public interest, and, in fact, is in the best interests of BLMIS customers and will allow for the orderly administration of the claims administration process.

109. The injunction requested herein is necessary and appropriate to carry out the Trustee's duties in accordance with the provisions of SIPA and the Bankruptcy Code. The Settlement and further prosecution of the Anwar Action would seriously impair and potentially defeat this Court's jurisdiction and the Court's ability to administer the BLMIS proceedings.

110. The Trustee also seeks to preliminarily enjoin the Defendants and their officers, agents, servants, employees, attorneys, assigns and those acting in concert or participation with them, from executing any judgments, making or receiving any settlement payments, or otherwise distributing assets in connection with the Settlement or the Anwar Actions or any other actions brought against the Trustee's FGG Defendants as a result of the BLMIS fraud, until the completion of the Trustee's Action, including the satisfaction by the Trustee's FGG Defendants of any settlement or judgment obtained by the Trustee.

WHEREFORE, the Trustee respectfully requests that this Court enter judgment in favor of the Trustee and against the Defendants:

(i) declaring that the Anwar Action is void *ab initio* as against the Trustee's FGG Defendants, as violative of the automatic stay provisions of Bankruptcy Code § 362(a), SIPA § 78eee(b)(2)(B)(i), and at least one of the Stay Orders, and that the Settlement is thus void;

(ii) preliminarily enjoining, pursuant to section 105(a) of the Bankruptcy Code, the Defendants, their officers, agents, servants, employees, attorneys, and all those acting in concert or participation with them, or acting on their behalf, from consummating the Settlement, including transferring any money or property in connection with the Settlement, executing any judgments, making or receiving any settlement payments, or otherwise distributing assets in connection with the Settlement or the Anwar Action or any other action brought against the Trustee's FGG Defendants as a result of or relating to the BLMIS fraud; and litigating the Anwar Action or any other action brought against the Trustee's FGG Defendants as a result of or relating to the BLMIS fraud, until the completion of the Trustee's Action, including the satisfaction by the Trustee's FGG Defendants of any settlement or judgment obtained by the Trustee;

(iii) granting the Trustee such other relief as the Court deems just and proper.

Dated: New York, New York
November 29, 2012

/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
Email: dsheehan@bakerlaw.com
Thomas L. Long
Email: tlong@bakerlaw.com
Mark A. Kornfeld
Email: mkornfeld@bakerlaw.com

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 B

Hearing Date and Time: December 13, 2012 at 10:00 a.m.
Objection Deadline: December 7, 2012

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 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

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (BRL) 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. Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Ltd., Pacific West Health Medical Center Inc. Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company (SICO) Bahrain, Dawson Bypass Trust, St. Stephen's School, Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes,	Adv. Pro. No. _____ **NOTICE OF APPLICATION FOR ENFORCEMENT OF AUTOMATIC STAY AND ISSUANCE OF PRELIMINARY INJUNCTION**

Vianney d'Hendecourt, Yanko della Schiava, Harold Greisman, Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya,

Defendants.

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law, dated November 29, 2012; the Complaint, dated November 29, 2012; the Declaration of Jessie Morgan Gabriel, dated November 29, 2012; and the Affidavit of Matthew Cohen, sworn to on November 29, 2012; and upon all prior pleadings and proceedings herein; the undersigned, counsel to plaintiff Irving H. Picard, as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq*. ("SIPA"), and the estate of Bernard L. Madoff, individually, will move before the Honorable Burton R. Lifland on **December 13, 2012, at 10:00 a.m.** on the Trustee's application (the "Application") for an order substantially in the form annexed hereto as Exhibit A: (i) declaring the matter of *Anwar v. Fairfield Greenwich Ltd*., No. 09-00118 (S.D.N.Y. filed Jan. 7 2009) (as subsequently consolidated) (the "Anwar Action") void *ab initio* as against the defendants in the Trustee's action (the "Trustee's Action") against various Fairfield Greenwich Group ("FGG") entities and individuals (the "Trustee's FGG Defendants") and that the settlement of those claims in the Anwar Action (the "Settlement") is thus void; and (ii) preliminarily enjoining the Defendants captioned above from consummating the Settlement, including transferring any money or property in connection with the Settlement, executing any judgments, making or receiving any settlement payments, or otherwise distributing assets in connection with the Settlement or the Anwar Action or any other action brought against the Trustee's FGG Defendants as a result of or relating to the BLMIS fraud or litigating any action as against any of the Trustee's FGG Defendants brought as a result of or relating to the BLMIS fraud, until the completion of the Trustee's Action, including the satisfaction by the Trustee's FGG Defendants of any settlement or judgment obtained by the Trustee.

PLEASE TAKE FURTHER NOTICE that written objections to the Application must be filed with the Clerk of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004 by no later than **December 7, 2012** (with a courtesy copy delivered to the Chambers of the Honorable Burton R. Lifland) and must be served upon (a) Baker & Hostetler LLP, counsel for the Trustee, 45 Rockefeller Plaza, New York, New York 10111, Attn: David J. Sheehan, Esq., and (b) the Securities Investor Protection Corporation, 805 Fifteenth Street, NW, Suite 800, Washington, DC 20005, 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 Application.

PLEASE TAKE FURTHER NOTICE that replies to objections, if any, must be filed with the Clerk of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004 by no later than **December 11, 2012** (with a courtesy copy delivered to the Chambers of the Honorable Burton R. Lifland).

Dated: New York, New York
November 29, 2012

/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
Email: dsheehan@bakerlaw.com
Thomas L. Long
Email: tlong@bakerlaw.com
Mark A. Kornfeld
Email: mkornfeld@bakerlaw.com
Deborah H. Renner
Email: drenner@bakerlaw.com
Tracy L. Cole
Email: tcole@bakerlaw.com
Keith R. Murphy
Email: kmurphy@bakerlaw.com
Amy E. Vanderwal
Email: avanderwal@bakerlaw.com
Jessie M. Gabriel
Email: jgabriel@bakerlaw.com
Matthew J. Moody
Email: mmoody@bakerlaw.com
Ferve E. Ozturk
Email: fozturk@bakerlaw.com

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

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 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

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (BRL) 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. Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Ltd., Pacific West Health Medical Center Inc. Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company (SICO) Bahrain, Dawson Bypass Trust, St. Stephen's School, Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko della Schiava, Harold Greisman,	Adv. Pro. No. _____ **[PROPOSED] ORDER ENFORCING AUTOMATIC STAY AND ISSUING PRELIMINARY INJUNCTION**

Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya,

Defendants.

Upon consideration of the Application for Enforcement of the Automatic Stay and Issuance of a Preliminary Injunction (the "Application")[1] in the above-captioned adversary proceeding by Irving H. Picard, trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA") and the estate of Bernard L. Madoff, individually; and upon the accompanying Memorandum of Law dated November 29, 2012; the Complaint dated November 29, 2012; the Declaration of Jessie Morgan Gabriel, dated November 29, 2012; the Affidavit of Matthew Cohen, sworn to on November 29, 2012; and the Notice of the Application; and upon all of the pleadings and prior proceedings in this and related actions; and upon the hearing held on _____, 2012:

IT IS HEREBY ORDERED:

A. The Application is granted.

B. The matter of *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (as subsequently consolidated) (the "Anwar Action") is void *ab initio* as against the defendants in the Trustee's action (the "Trustee's Action") against various Fairfield Greenwich Group ("FGG") entities and individuals (the "Trustee's FGG Defendants") as violative of the automatic stay provisions of Bankruptcy Code § 362(a), SIPA § 78eee(b)(2)(B)(i) and at least one of the related orders entered by the United States District Court for the Southern District of New York dated December 15, 2008, December 18, 2008, and February 9, 2009, and that the settlement of those claims in the Anwar Action (the "Settlement") is thus void.

[1] All terms not otherwise defined herein will be given the meaning ascribed to them in the Application.

C. Pursuant to section 105(a) of the Bankruptcy Code, the Defendants captioned above (the "Injunction Defendants"), their officers, agents, servants, employees, attorneys, and all those acting in concert or participation with them, or acting on their behalf, and all parties having notice of this Order, are hereby preliminarily enjoined from consummating the Settlement, including transferring any money or property in connection with the Settlement, executing any judgments, making or receiving any settlement payments, or otherwise distributing assets in connection with the Settlement or the Anwar Actions or any other actions brought against the Trustee's FGG Defendants as a result of or relating to the BLMIS fraud; and litigating the Anwar Action or any other actions as against any of the Trustee's FGG Defendants brought as a result of or relating to the BLMIS fraud, until the completion of the Trustee's Action, including the satisfaction by the Trustee's FGG Defendants of any settlement or judgment obtained by the Trustee.

D. This Court shall retain exclusive jurisdiction over the implementation and interpretation of this Order.

Dated: New York, New York
_____, 2012

HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 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

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (BRL) 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. Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Ltd., Pacific West Health Medical Center Inc. Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company (SICO) Bahrain, Dawson Bypass Trust, St. Stephen's School, Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko della Schiava, Harold Greisman,	Adv. Pro. No. _____

Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF TRUSTEE'S APPLICATION FOR ENFORCEMENT OF AUTOMATIC STAY AND RELATED STAY ORDERS AND ISSUANCE OF PRELIMINARY INJUNCTION

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES

TABLE OF AUTHORITIES
(continued)

Page(s)

RULES

OTHER AUTHORITIES

Irving H. Picard, as trustee (the "Trustee") for the substantively consolidated liquidation of the estate of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA"), and the estate of Bernard L. Madoff, individually ("Madoff"), by and through his undersigned counsel, respectfully submits this memorandum of law in support of his application ("Application") pursuant to sections 362(a) and 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") and SIPA §§ 78eee(a)(3) and 78eee(b)(2)(A) and (B), to: (i) enforce the automatic stay of the Bankruptcy Code, SIPA §§ 78eee(b)(2)(A) and (B), and the related orders of the United States District Court for the Southern District of New York, dated December 15, 2008, December 18, 2008, and February 9, 2009 (the "Stay Orders"); (ii) declare the matter of *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7 2009) (as subsequently consolidated, the "Anwar Action") void *ab initio* as against the defendants in the Trustee's action (the "Trustee's Action") against various Fairfield Greenwich Group ("FGG") entities and individuals (the "Trustee's FGG Defendants")[1] and that the settlement of those claims in the Anwar Action (the "Settlement") is thus void; and (iii) preliminarily enjoin the defendants captioned above (the "Injunction Defendants") from consummating the Settlement, including transferring any money or property in connection with the Settlement, executing any judgments,

[1] The Trustee's FGG Defendants are: Fairfield Sentry Limited, Greenwich Sentry, L.P., Greenwich Sentry Partners, L.P., Fairfield Sigma Limited, Fairfield Lambda Limited, Chester Global Strategy Fund Limited, Chester Global Strategy Fund, Irongate Global Strategy Fund Limited, Fairfield Greenwich Fund (Luxembourg), Fairfield Investment Fund Limited, Fairfield Investors (Euro) Limited, Fairfield Investors (Swiss Franc) Limited, Fairfield Investors (Yen) Limited, Fairfield Investment Trust, FIF Advanced, Ltd., Sentry Select Limited, Stable Fund, Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda), Ltd., Fairfield Greenwich Advisors LLC, Fairfield Greenwich GP, LLC, Fairfield Greenwich Partners, LLC, Fairfield Heathcliff Capital LLC, Fairfield International Managers, Inc., Fairfield Greenwich (UK) Limited, Greenwich Bermuda Limited, Chester Management Cayman Limited, Walter Noel, Jeffrey Tucker, Andrés Piedrahita, Mark McKeefry, Daniel Lipton, Amit Vijayvergiya, Gordon McKenzie, Richard Landsberger, Philip Toub, Charles Murphy, Robert Blum, Andrew Smith, Harold Greisman, Gregory Bowes, Corina Noel Piedrahita, Lourdes Barreneche, Cornelis Boele, Santiago Reyes, and Jacqueline Harary (the individuals herein are later defined as the "FG Individual Defendants").

making or receiving any settlement payments, or otherwise distributing assets in connection with the Settlement or the Anwar Action or any other action brought against the Trustee's FGG Defendants as a result of or relating to the BLMIS fraud, or litigating any action as against any of the Trustee's FGG Defendants brought as a result of or relating to the BLMIS fraud, until the completion of the Trustee's Action, including the satisfaction by the Trustee's FGG Defendants of any settlement or judgment obtained by the Trustee.

PRELIMINARY STATEMENT

Fairfield Sentry Limited ("Sentry"), Fairfield Sigma Limited ("Sigma"), Fairfield Lambda Limited ("Lambda"), Greenwich Sentry, L.P. ("GS"), and Greenwich Sentry Partners, L.P. ("GSP") (collectively, the "FGG Funds") were investment funds or limited partnerships founded by Walter Noel, Jeffrey Tucker, and Andres Piedrahita (the "Founders"), and managed by the Founders and a group of individuals and entities associated with FGG. FGG served as one of Madoff's largest marketing and investor relations arms, significantly helping to grow and sustain the Ponzi scheme. Collectively, the FGG Funds and individuals and entities related to the FGG Funds withdrew more than $3.2 billion from BLMIS during the six years prior to the Filing Date of December 11, 2008. On May 18, 2009, the Trustee sued the FGG Funds for the return of this money in the Trustee's Action, *Picard v. Fairfield Sentry Limited*, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009), and later filed an amended complaint adding as defendants various FGG-related entities and individuals that managed the FGG Funds ("Amended Complaint").[2] Certain of the Trustee's FGG Defendants filed claims against the BLMIS estate.

[2] A copy of the Amended Complaint is annexed to the Declaration of Jessie Morgan Gabriel, dated November 29, 2012 (the "Gabriel Dec.") as Ex. 1.

In July 2011, the Trustee finalized a settlement of his claims against Sentry, Sigma, and Lambda and later, in a separate agreement, finalized the settlement of his claims against GS and GSP. (Gabriel Dec., Exs. 2-4.) Notably, however, the vast majority of the money transferred by BLMIS to the FGG Funds was no longer in their possession. They had transferred large sums of that money in the form of payments of fees and redemptions to FGG related entities and individuals which managed and marketed the FGG Funds. (Gabriel Dec., Ex. 1 ¶¶ 23, 326-32.) The Trustee's Action accordingly continues against the Trustee's FGG Defendants that remain, including the principals and entities responsible for managing the FGG Funds.

As part of the Trustee's settlements, the FGG Funds assigned to the Trustee all of their claims against the FGG management entities and principals. (Gabriel Dec., Ex. 2 at 6-7.) In addition, the Trustee and the FGG Funds entered into sharing agreements with respect to different types of claims, including claims against the FGG management entities and individuals, and subsequent transferees. Under the sharing agreements, the Trustee is entitled to the first $200 million recovered from the FGG management entities and individuals. In addition, as part of the Trustee's settlements with the FGG Funds, Sentry, GS, and GSP have allowed BLMIS Customer claims totaling nearly $270 million. (Gabriel Dec., Ex. 2 at 4, Ex. 3 at 6, Ex. 4 at 6.) With those allowed customer claims, the Trustee has already distributed approximately $100 million to Sentry, GS, and GSP (Affidavit of Matthew Cohen, sworn to November 29, 2012 ("Cohen Aff.") ¶ 6) and will share in the Trustee's recoveries in ongoing litigations, *including* specifically claims against the Trustee's FGG Defendants. (Gabriel Dec., Ex. 2 at 6-7.)

Former investors in certain FGG Funds brought putative class actions against a number of FGG entities and principals, which were consolidated in a single putative class action. *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (as subsequently

consolidated). On November 6, 2012, the "Representative Plaintiffs" in the Anwar Action[3] filed a motion to approve the Settlement with Fairfield Greenwich Limited and Fairfield Greenwich (Bermuda) Ltd.,[4] for themselves and on behalf of a proposed "Settlement Class."[5] The Settlement contemplates an initial settlement amount of more than $50 million—money that comes from the same limited pool of funds sought by the Trustee in his action and which was largely obtained from initial and subsequent transfers from BLMIS. (Gabriel Dec., Ex. 6 ¶ 3.) Indeed, the Settlement documents themselves expressly and repeatedly refer to the limited resources of the Anwar Released Defendants, strongly suggesting that any money paid to the proposed Settlement Class—consisting of investors in the FGG Funds, not BLMIS customers—will substantially deplete the amount of money available to the Trustee for distribution to customers. (Gabriel Dec., Ex. 7 at 9.)

In addition, the Trustee holds not only the claims of the BLMIS estate and its customers and other creditors, and all claims that are duplicative and derivative of those claims, but also holds, as an assignee, the FGG Funds' direct claims against the Anwar Released Defendants, including for duties owed only to the FGG Funds. As such, not only does the Trustee have

[3] The Representative Plaintiffs are the following Injunction Defendants herein: Pacific West Health Medical Center Inc. Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company (SICO) Bahrain, Dawson Bypass Trust, and St. Stephen's School.

[4] Under the Settlement, the settling defendants are defined only as Fairfield Greenwich (Bermuda) Ltd. and Fairfield Greenwich Limited (hereinafter the "Settling Defendants"). Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko della Schiava, Harold Greisman, Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya are defined in the Settlement as FG Individual Defendants (hereinafter the "FG Individual Defendants"). The FG Individual Defendants are funding the Settlement and with the FGG Settling Defendants are receiving full releases (collectively hereinafter, the FG Individual Defendants and FGG Settling Defendants, the "Anwar Released Defendants").

[5] The "Settlement Class" is defined in the settlement agreement entered into by the FGG Settling Defendants, with various exclusions, as "all Persons who were Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 . . . and who suffered a Net Loss of principal invested in the Funds . . . ." (Gabriel Dec., Ex. 5, at 18, definition "ss").

standing to bring these claims, the interest in these specific claims was part of the bargained-for exchange in the settlements approved by this Court, as well as the court in the British Virgin Islands overseeing the liquidation of Sentry, Sigma, and Lambda (the "BVI Court"). If allowed to proceed, the proposed Settlement will reduce the value of the Trustee's settlements, substantially deplete the limited assets of the Anwar Released Defendants, and thwart the Trustee's efforts to recover funds for equitable distribution to the victims of the Ponzi scheme.

The Representative Plaintiffs and the proposed Settlement Class members, who already stand to benefit from the nearly $270 million in allowed claims stemming from the Trustee's settlements with the FGG Funds as well as the proceeds to be shared from litigation claims as provided for in the Trustee's settlement with the FGG Funds, thus would be permitted to recover outside of the claims process to the detriment of other BLMIS customers, as well as diminish the value of the court-approved settlements with the FGG Funds. Simply put, the Representative Plaintiffs, for themselves and on behalf of the proposed Settlement Class, are attempting to skim the remaining assets from the pool of funds which are the subject of the Trustee's litigations, while simultaneously obtaining the benefit of the FGG Funds' allowed claims and recoveries from the shared litigation claims. They know full well that their Settlement may be subject to the automatic stay and related injunction, having agreed that the Trustee could so move. (Gabriel Dec., Ex. 21.)

Finally, the proposed Settlement as submitted in the Anwar Action appears to set aside a limited amount of funds for the Trustee's and other claims. But such limited funds do not come close to the amount the Trustee seeks to recover. At the same time, the Settlement purports to enjoin *any* person from bringing any claims related to the claims in the Anwar Action against the Anwar Released Defendants. (Gabriel Dec., Ex. 6 at Ex. B ¶ 17.) The Proposed Order thus

would purport to enjoin the Trustee's Action against the Anwar Released Defendants. Such interference with this Court's jurisdiction and its administration of the distribution of BLMIS assets cannot be countenanced by this Court.

The Settlement is scheduled to be heard for preliminary approval on November 30, 2012, with a proposed mailing of notice deadline of December 18, 2012, and a final hearing on March 20, 2013, or thereafter. The Trustee respectfully requests that his Application be granted.

STATEMENT OF FACTS

The facts and procedural history relevant to the Madoff Ponzi scheme have been set forth numerous times and need not be repeated here. *See Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff Inv. Sec. LLC)*, 424 B.R. 122, 125-33 (Bankr. S.D.N.Y. 2010); *Picard v. Fox*, 429 B.R. 423, 426 (Bankr. S.D.N.Y. 2010). Set forth below is a brief summary of the facts pertinent to this motion.

A. The Stay Orders

The Stay Orders were entered by the district court shortly after the commencement of the liquidation. Specifically, in an order entered on December 15, 2008, the district court, on SIPC's Application pursuant to § 78eee(b)(2)(B), declared that "all persons and entities are stayed, enjoined and restrained from directly or indirectly . . . interfering with any assets or property owned, controlled or in the possession of [BLMIS]." (Gabriel Dec., Ex. 8 ¶ IV (reinforcing automatic stay); Ex. 9 ¶ IX ("[N]o creditor or claimant against [BLMIS], or any person acting on behalf of such creditor or claimant, shall take any action to interfere with the control, possession or management of the assets subject to the receivership."); Ex. 10 ¶ IV (incorporating and making the December 18, 2008 stay order permanent)).

B. The Court-Ordered Claims Administration Process[6]

The Trustee sought and obtained approval from this Court to implement a customer claims process in accordance with SIPA (the "Claims Procedure Order"), which required, *inter alia*, that certain notices be given.[7] More than 16,000 potential customer, general creditor, and broker-dealer claimants, including Sentry, GS, and GSP, were included in the mailing of the notice. The Trustee published the notice in all editions of *The New York Times*, *The Wall Street Journal, The Financial Times, USA Today, Jerusalem Post,* and *Ye-diot Achronot* and posted claim forms and claims filing instructions on the Trustee's website, and the website of SIPC.

Under the Claims Procedure Order, claimants were directed to mail their claims to the Trustee. All customers and creditors were notified of the mandatory statutory bar date for the filing of claims under section 78fff-2(a)(3) of SIPA, which was July 2, 2009 (the "Bar Date"). The Trustee also provided several reminder notices. By the Bar Date, the Trustee had received 16,239 customer claims.

Claims were filed by each of the FGG Funds, as well as a number of entities and individuals that are defendants in both the Trustee's action and the Anwar Action, including Fairfield Greenwich (Bermuda) Ltd., Walter Noel, Jeffrey Tucker, Robert Blum, and Jacqueline Harary. (Cohen Aff. ¶¶ 3, 5.)

On June 28, 2011, the Court held that indirect investors in BLMIS, who had invested in investment funds such as the FGG Funds, were not "customers" of BLMIS entitled to SIPA

---

[6] The facts in this section are drawn from the Trustee's Third Interim Report. (Gabriel Dec., Ex. 11.)

[7] Pursuant to an application of the Trustee dated December 21, 2008 (Gabriel Dec., Ex 12), this Court entered the Claims Procedure Order (Gabriel Dec., Ex. 13), which directed, among other things, that on or before January 9, 2009: (a) a notice of the commencement of this SIPA proceeding be published; (b) notice of the liquidation proceeding and claims procedure be given to persons who appear to have been customers of BLMIS; and (c) notice of the liquidation proceeding and a claim form be mailed to all known general creditors of the debtors.

protection. *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff)*, 454 B.R. 285 (Bankr. S.D.N.Y. 2011) (the "Customers Decision"). The Court recognized that SIPA § 78*lll*(2) limits the definition of "customers" to parties directly holding an investment account with BLMIS. *Id*. at 294–95. The District Court affirmed this Court's decision, *see Aozora Bank Ltd. v. Securities Investor Protection Corp. (In re Aozora Bank Ltd.)*, 480 B.R. 117 (S.D.N.Y. 2012) (J. Cote), and the district court's decision is currently on appeal to the Second Circuit. (*See, e.g.*, Gabriel Dec., Ex. 14.) The Trustee has issued notices of denial of the SIPA Claims filed by Sigma, Lambda, Fairfield Greenwich (Bermuda) Ltd., Walter Noel, Jeffrey Tucker, Robert Blum, and Jacqueline Harary on the basis that they are not customers of BLMIS within the meaning of 15 U.S.C. § 78*lll*(2). (Cohen Aff. ¶ 6.)

As part of the settlement between Sentry and the Trustee, Sentry received an allowed claim of $230,000,000. (*Id.*, Ex. 2 at 4.) Additionally, under the Trustee's settlement agreements with GS and GSP, GS has an allowed claim of $35,000,000, and GSP has an allowed customer claim in the amount of $2,011,304. (*Id.*, Ex. 3 at 6; Ex. 4 at 6.)

C. The Net Equity Decision

In a SIPA liquidation, customers share *pro rata* in customer property to the extent of their net equity, as defined in section 78*lll*(11) of SIPA. SIPC advances funds to the trustee for a customer with a valid net equity claim, up to the amount of their net equity, if their ratable share of customer property is insufficient to make them whole. Such advances are capped at $500,000 per customer.

The Trustee determined each customer's "net equity" by crediting the amount of cash deposited by the customer into their BLMIS account, less any amounts withdrawn from their BLMIS customer account, otherwise known as the "Net Investment Method." After certain claimants objected to the Trustee's interpretation of net equity, the Trustee moved for a briefing

schedule and hearing on the matter. On March 1, 2010, this Court issued its decision on the net equity issue, approving the Trustee's method of determining net equity (the "Net Equity Decision").

On March 8, 2010, the Court issued an order approving the Trustee's Net Equity calculation ("Net Equity Order") and certified an appeal of the Net Equity Order directly to the United States Court of Appeals for the Second Circuit. (Gabriel Dec., Exs. 15, 16.)

On August 16, 2011, the Second Circuit affirmed the Net Equity Decision. *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229 (2d Cir. 2011). On June 25, 2012, the United States Supreme Court denied *certiorari* review of the Second Circuit's affirmance of the Net Equity Decision. *Velvel v. Picard*, 133 S. Ct. 25 (U.S. 2012); *Ryan v. Picard*, 133 S. Ct. 24 (U.S. 2012).

D. The Trustee's Action

On May 18, 2009, the Trustee commenced the Trustee's Action against Sentry, GS, and GSP. *Picard v. Fairfield Sentry Limited*, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009). On July 20, 2010, the Trustee filed the Amended Complaint and added as defendants Sigma, Lambda, certain FGG principals, and numerous FGG entities affiliated with the funds. (Gabriel Dec., Ex. 1.) Through the Amended Complaint, the Trustee seeks to recover, for equitable distribution to BLMIS customers with allowed claims, property of the BLMIS estate in excess of $3.6 billion. This figure includes claims against Fairfield Greenwich (Bermuda) Ltd. ("FGB") for over $950 million, against Fairfield Greenwich Limited ("FGL") for over $500 million, and claims against the Founders for over $500 million. (*Id.* ¶¶ 121-47, 198-201, 207-08, 215-16.)

1. Claims Against the Trustee's FGG Defendants

The Trustee's FGG Defendants served as one of Madoff's "largest marketing and investor relations arms" and actively participated in and "substantially aided, enabled and helped sustain" the Ponzi scheme. (*Id.* ¶ 2.) As asserted in the Trustee's Action, the Trustee's FGG

Defendants "had actual or constructive knowledge of Madoff's fraud," (*Id.* ¶ 3), and reaped hundreds of millions of dollars in as a result of that relationship. Further, the Trustee asserts all of the money purportedly "earned" as management and performance fees based on the fictitious returns of the FGG Funds is stolen money which must be returned to the Trustee for equitable distribution. (*Id.* ¶ 2.)

The Trustee is still in the process of investigating the transactions between the Trustee's FGG Defendants and BLMIS. However, based on his investigation to date, the Trustee has alleged that a significant portion, if not all, of the distributions and other payments made to the Trustee's FGG Defendants were made with funds originally withdrawn from Sentry's, GS's, and GSP's accounts at BLMIS and, therefore, constitute property of the estate.[8] (*See, e.g., id.* ¶¶ 200, 209, 217, 223, 229, 235, 241, 246, 252, 258, 264, 270, 276.)

The Trustee is seeking from the Trustee's FGG Defendants the return of BLMIS estate property under SIPA §§ 78fff(b) and 78fff-2(c)(3), sections 105(a), 502(d), 542, 544, 548(a), 550(a), and 551 of the Bankruptcy Code, the New York Fraudulent Conveyance Act (N.Y. Debt. & Cred. § 270 *et seq*.), and other applicable law. (*Id.* ¶¶ 557–798.) The Trustee's Action raises claims for turnover,[9] accounting, preferences, fraudulent conveyances, unjust enrichment, conversion, money had and received, aiding and abetting fraud, aiding and abetting breach of fiduciary duty, consequential and punitive damages, and objection to customer claims filed by certain defendants.

[8] By December 11, 2008, the Founders (who are among those individuals funding the Settlement) had only a few million dollars still invested with Madoff—the defendants retained all other money they had unjustly collected and have kept millions of dollars in stolen property that belongs to the estate. (*Id.* ¶ 491.)

[9] The Trustee intends to drop his claim for turnover when he seeks leave to amend his complaint against the Trustee's FGG Defendants. *See Picard v. Merkin (In re Bernard L. Madoff Inv. Sec., LLC)*, 440 B.R. 243, 271-73 (Bankr. S.D.N.Y. 2010).

2. The Trustee's Settlement with the FGG Funds

The Trustee reached a partial resolution of the Trustee's Action through settlements of his claims against each of the FGG Funds. On May 9, 2011, the Trustee moved this Court to approve a settlement with Sentry, Sigma, and Lambda (Gabriel Dec., Ex. 17), followed by a motion seeking a similar order with regard to a settlement with GS and GSP on May 18, 2011. (*Id.*, Ex. 18).

In general, these settlements consisted of: (i) cash payments to the Trustee; (ii) allowed claims in the BLMIS liquidation proceeding for Sentry, GS, and GSP; (iii) an assignment to the Trustee of Sentry's, GS's and GSP's claims against the FGG management entities and principals; and (iv) a sharing agreement for the division of future recoveries by the Trustee and/or Sentry, GS, and GSP resulting from actions against subsequent transferees, the funds' service providers, as well as the assigned claims against the FGG management entities and principals.

In particular, the Sentry, Sigma, and Lambda settlement approved by this Court provides that the Trustee shall be entitled to the first $200 million of any recoveries against the FGG management individuals and entities. (*Id.*, Ex. 2 at 7.) Any recovery in excess of $200 million is shared with the Sentry liquidator for the benefit of the Sentry shareholders on an 85% - 15% basis. (*Id.*) Similarly, the Sentry liquidator is entitled to the first $300 million of any recoveries against the FGG Funds' administrators and/or auditors, with any excess shared with the Trustee on an 85% - 15% basis. (*Id.*) The GS and GSP settlements approved by this Court also used a threshold of the first $200 million of recoveries from claims against the FGG management entities and individuals. (*Id.*, Ex. 3 at 4, Ex. 4 at 4.)

Consequently, if the proposed Settlement Class members, who are the ultimate beneficiaries of the Trustee's settlement with Sentry, GS, and GSP, are permitted to proceed with the Settlement, they will be able to keep their benefits from the Trustee's settlement but, at the

same time, in view of the Anwar Released Defendants' limited assets—decrease the consideration paid to the Trustee in the Sentry, GS, and GSP settlement by preventing him from recovering the first $200 million in recoveries from the FGG management entities and individuals.

The Trustee's settlements with the FGG Funds account for only a fraction of the $3.6 billion the Trustee is seeking in his adversary proceeding. Thus, a material part of the consideration paid to the Trustee in settlement of his claims against the FGG Funds was the assignment of all the FGG Funds' claims against the FGG management entities and individuals.[10] Like the claims in the Anwar Action, the assigned claims seek to reclaim the fees and profits earned by certain of the Trustee's FGG Defendants as a result of their relationship with BLMIS. They include causes of action for, *inter alia*, breach of fiduciary duty, unjust enrichment, constructive trust, and mutual mistake—all of which are also claims in the Anwar Action. As a result, the Trustee now holds claims that mirror the claims brought in the Anwar Action.

This Court entered an order approving the settlement with Sentry, Sigma, and Lambda and overruling the few objections filed by entities not related to these proceedings on June 7, 2011. (Gabriel Dec., Ex. 19.) The BVI Court overseeing the Sentry, Sigma, and Lambda liquidation proceedings then approved the settlements. (*Id.*, Ex. 20.)

Thereafter, on July 8, 2011, this Court entered an order approving the settlement agreement between the Trustee and GS and GSP. (*Id.*, Ex. 21.) The order acknowledged that objections filed by eight Anwar Action plaintiffs, including three of the Representative Plaintiffs,

[10] All of the Defendants in the Trustee's Action are also defendants in the Anwar Action, with two exceptions—Fairfield Investment Managers, Inc. and Brian Francouer, who are not defendants in the Anwar Action.

were withdrawn after an amendment to the settlement agreement that addressed their concern regarding the prosecution of claims owned by the debtor funds. (*Id.*) The final, approved settlement agreements with GS and GSP state explicitly that the settlements are:

> without prejudice to the right of the Trustee to seek an injunction against prosecution by [the fund's] present and former limited partners and holders of any limited partner interest in [the fund] of Direct LP Claims against Management in connection with any future settlement of claims against Management and without prejudice to the right of such [fund] limited partners to oppose any such injunction that may be sought by the Trustee.

(*Id.*, Ex. 3 at 10, Ex. 4 at 9-10.) The orders approving the settlements contain similar language and indicates that the Bankruptcy Court "retain[s] jurisdiction to hear and determine all matters arising from or related to this Order." (*Id.*, Ex. 21.)

As a result of the settlements, Sentry has an allowed claim for $230 million, GS has an allowed claim for $35 million, and GSP has an allowed claim for $2 million. (*Id.*, Ex. 2 at 4, Ex. 3 at 6, Ex. 4 at 6.) In connection with these allowed claims, the FGG Funds have already participated in and received distributions totaling approximately $100 million from the Trustee in the SIPA Proceeding. (Cohen Aff. ¶ 6.) As this Court noted in approving the settlements, the investors in the Trustee's FGG Funds are the beneficiaries of these distributions. The Trustee is continuing with his litigation against the remaining Trustee's FGG Defendants to recover property for equitable distribution in accordance with SIPA.[11]

[11] On April 2, 2012, certain of the remaining non-settling defendants moved to withdraw the reference to the bankruptcy court. (Gabriel Dec., Exs. 22, 23.) Judge Rakoff partially granted the motions only as they related to certain legal issues common to a majority of adversary proceedings commenced by the Trustee. *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. Inc. (In re Bernard L. Madoff Inv. Sec. Inc.)*, No. 12-0115 (S.D.N.Y. filed Apr. 13, 2012). Those common issues are still pending before Judge Rakoff. The rest of the case remains before this Court. Under the current schedule, the remaining FGG Defendants' deadline to respond to the complaint in Bankruptcy Court is January 18, 2013, and the pretrial conference is set for February 26, 2013.

E. The Anwar Action and Settlement

Shortly before the Trustee's action was initiated, former investors in the FGG Funds brought actions against the Anwar Released Defendants, as well as other third parties that provided services to the FGG Funds. With a few exceptions, the Anwar Released Defendants are the same defendants as in the Trustee's Action.[12] The Anwar Released Defendants have recently reached the Settlement with the Representative Plaintiffs. However, the Anwar court has not certified any class, nor has it approved the Settlement. Under the Representative Plaintiffs' motion, a preliminary approval hearing is set for November 30, 2012 (Gabriel Dec., Ex. 24) and class notice's to be issued by December 18, 2012, with a final fairness hearing set for March 20, 2013. (*Id.*, Ex. 7 at 25.)

1. Allegations and Procedural History

On April 29, 2009, the Anwar Named Plaintiffs[13] filed the first Consolidated Amended Complaint, followed by a Second Consolidated Amended Complaint (the "SCAC") on September 29, 2009. (Gabriel Dec, Ex. 26.) The allegations in the SCAC mirror those in the Trustee's Amended Complaint. The Anwar Named Plaintiffs allege that the Anwar Released Defendants and the other named defendants knew or should have known of Madoff's fraud and are, therefore, responsible for investor's losses. (SCAC ¶¶ 182-83, 192-93, 398-400, 408-09.)

As against the Anwar Released Defendants, the Anwar Named Plaintiffs allege fraud, violations of section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"); and Securities and Exchange Commission ("SEC") Rule 10b-5, 17 C.F.R., § 240, 10b-5; and Section

[12] The only Anwar Released Defendants that are *not* also Trustee's FGG Defendants are: Fairfield Greenwich Group (a non-entity trade name), Fairfield Risk Services Ltd., Vianney d'Hendecourt, Yanko della Schiava, David Horn, Julia Luongo, and Maria Teresa Pulido Mendoza.

[13] The Anwar Named Plaintiffs are set forth in the SCAC. (Gabriel Dec., Ex. 26, ¶ 1-116.)

20(a) of the Exchange Act; negligent misrepresentation, gross negligence, breach of fiduciary duty, third-party beneficiary breach of contract, mutual mistake, and unjust enrichment. (*Id.*, ¶¶ 354-425, 558-572.) Among other relief, the Anwar Named Plaintiffs seek the imposition of a constructive trust, damages, disgorgement and restitution of all earnings, profits, compensation and benefits. (*Id.* at Prayer for Relief.)

The defendants in the Anwar Action filed motions to dismiss the SCAC on or about December 22, 2009. (*See, e.g.*, Gabriel Dec., Exs. 27-29.) On July 29, 2010, the District Court issued its first decision related to the motions to dismiss, which it referred to as "*Anwar I*," and rejected the Anwar defendants' argument that all of the Anwar Named Plaintiffs' common law claims, except fraud, were preempted by New York State's Martin Act. *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 354, 371 (S.D.N.Y. 2010). On August 18, 2010, the District Court issued an opinion, entitled "*Anwar II*," granting in part and denying in part the Anwar defendants' remaining arguments to dismiss the SCAC. *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372, 462 (S.D.N.Y. 2010). Following the court's decision, on or about October 1, 2010, the Anwar defendants answered the SCAC. (*See, e.g.*, Gabriel Dec., Ex. 30.) The Representative Plaintiffs then moved the court on January 11, 2012, to certify a class pursuant to Rule 23. (*Id.*, Ex. 31.) The motion to certify remains pending.

2. The Settlement

On November 6, 2012, the Representative Plaintiffs filed a motion to approve the Settlement. (Gabriel Dec., Ex. 5.) The Settlement seeks to resolve all claims by the proposed Settlement Class in exchange for a payment to the Anwar Released Plaintiffs of up to $80,250,000. (*Id.*, Ex. 6 ¶¶ 3-8.)

In particular, the Settlement provides that two FGG management entities—FGL and FGB—will pay an initial settlement amount of $50,250,000 using funds provided to them by FG

Individual Defendants. (*Id.* ¶ 3.) FGL and FGB will place an additional $30,000,000 in escrow. (*Id.* ¶ 5.) The escrow amount will also be paid to the class less any amounts the Anwar Released Defendants pay in settlement of other claims against them. (*Id.* ¶ 1.ii.) Any net funds from the Settlement payment and the remaining amount will be distributed to class members in proportion to the amount of their net loss from investing in Sentry, Sigma, GS, and GSP. (*Id.* ¶¶ 28–33.) The Settlement funds, which should otherwise be available to satisfy the Trustee's claims, are also being used to pay the administrative costs of the Settlement and fees and expenses of the Representative Plaintiffs' counsel up to 25% of the total Settlement amount. (*Id.*, Ex. 6 at Ex. A-1, p. 10.)

The Trustee believes that the monies used by the FG Individual Defendants to fund the Settlements are coming from the same limited pool of funds that would be used to pay the Trustee—funds which largely, if not solely, originated from BLMIS. (*Id.*, Ex. 7 at 9.)[14] As the Representative Plaintiffs admits, the Anwar Released Defendants "lack assets to fund a judgment in excess of the Settlement—indeed, they essentially are out-of-business and could not be a source of substantial recovery by judgment or settlement." (*Id.*) In addition, the FG Individual Defendants "have limited financial resources and are being sued by other parties with respect to the same or similar claims as those asserted in this Action; they are incurring substantial legal expenses to defend the Action and such other proceedings; and they could well be unable to pay a substantially greater judgment or settlement to the putative class at a later time." (*Id.*) The Anwar Released Defendants have also admitted that certain of them have "transferred assets to trusts and retirement accounts," and, for this reason, it may be difficult to enforce judgments

[14] To the extent the Anwar Released Defendants herein contest these or other facts, the Trustee reserves his right to seek expedited discovery herein.

against them. (*Id.*) Furthermore, in an unrelated hearing before Judge Rakoff, counsel for some of the Anwar Released Defendants acknowledged there are only limited funds remaining. (Gabriel Dec., Ex. 32 at 3:6-19, 4:13-25.)

In essence, in direct violation of the settlements approved by this Court, the Representative Plaintiffs seek to improperly advance class members' position in the creditors' line, at the expense of those BLMIS customers and creditors who have priority under the settlements.

Moreover, the Settlement as filed with the district court purports to enjoin any person from bringing any claims against the Anwar Released Defendants. The proposed order states that any person that seeks any funds from the escrow fund is enjoined from bringing any claims related to the claims in the Anwar Action against the Anwar Released Defendants: (Gabriel Dec., Ex. 6 at Ex. B ¶ 17.)

Specifically, the Proposed Order states: While on the one hand it would appear that the escrow fund will be used to settle claims that are pending against the Anwar Released Defendants in other actions, which would include the Trustee's action (*Id.*, Ex. 7 at 3), the proposed order, if entered, would purportedly enjoin the Trustee's adversary proceeding against the Trustee's FGG Settling Defendants. In any event, the proposed escrow amount is insufficient to satisfy the Trustee's claims.

> "To the fullest extent permitted by law, all Persons, including without limitation the Non-Dismissed Defendants, shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any claims, actions, or causes of action for contribution, indemnity or otherwise against any of the Released Parties seeking as damages or otherwise the recovery of all or any part of any liability, judgment or settlement which they pay or are obligated to pay or agree to pay to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning such Persons' participation in any acts, facts, statements or omissions that were or could have been alleged in the Action, whether arising under state, federal or foreign law as claims, cross-claims,

counterclaims, third-party claims or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum."

(Gabriel Dec., Ex. 6 at Ex. B.)

ARGUMENT

THE AUTOMATIC STAY AND STAY ORDERS SHOULD BE ENFORCED AND THIS COURT SHOULD ISSUE A PRELIMINARY INJUNCTION

Through the Settlement, the Representative Plaintiffs, on behalf of the proposed Settlement class, seek to: (1) obtain the FGG Settling Defendants' assets to the detriment of the BLMIS estate; (2) which are fraudulently transferred assets consisting of other people's money; (3) for distribution to select investors; (3) to the detriment of all other BLMIS customers; and (4) outside the jurisdiction of this Court. The Settlement offends this Court's jurisdiction over the BLMIS estate and the equitable distribution scheme put into place by this Court and affirmed by the Second Circuit in the Net Equity Decision.

I. THIS COURT HAS SUBJECT MATTER AND PERSONAL JURISDICTION

The district court has three times, in decisions by three different judges, affirmed decisions by this Court holding that conduct similar to that of the Representative Plaintiffs violated the automatic stay and was properly enjoined under section 105(a). *See In re Bernard L. Madoff Inv. Sec. LLC*, No. 11 Civ. 2135, 2011 WL 7981599 (S.D.N.Y. Dec. 5, 2011); *Fox v. Picard (In re Madoff)*, 848 F. Supp. 2d 469 (S.D.N.Y. 2012); *Picard v. Maxam Absolute Return Fund L.P. (In re Bernard L. Madoff Inv. Sec. LLC)*, 474 B.R. 76 (S.D.N.Y. 2012). As in those cases, this Court has subject matter jurisdiction to enjoin the Settlement and the Anwar Action pursuant to 28 U.S.C. §§ 1334(b), 157(a), 157(b), and the Amended Standing Order of Reference of the United States District Court for the Southern District of New York, dated January 31, 2012 (Preska, C.J.) ("Amended Standing Order"). *See Gowan v. HSBC Mortg. Corp. (USA) (In re*

Dreier LLP), No. 08-15051, 2012 WL 4867376, at *2 (Bankr. S.D.N.Y. Oct. 12, 2012) (district court has referred its bankruptcy jurisdiction under 28 U.S.C. § 157(a) pursuant to the Amended Standing Order).

Pursuant to 28 U.S.C. § 1334(b), district courts (and hence bankruptcy courts) have original jurisdiction of civil proceedings "arising under" and "arising in" and "related to" cases under Title 11. *See Adelphia Commc'ns Corp. v. Am. Channel, LLC (In re Adelphia Commc'ns Corp.)*, No. 06-01528, 2006 WL 1529357, at *6 (Bankr. S.D.N.Y. June 5, 2006). Furthermore, bankruptcy courts have jurisdiction to "hear and determine . . . all core proceedings arising under Title 11, or arising in a case under Title 11 . . . ." 28 U.S.C. § 157(b)(1). *See also* SIPA § 78eee(b)(4). Title 28 U.S.C. §§ 157(b)(2)(A) and (B) provide that core proceedings include, but are not limited to, "matters concerning the administration of the estate . . ." and the "allowance or disallowance of claims against the estate."

Because the Settlement undermines the orderly administration of the liquidation of BLMIS and the Trustee's efforts to recover the same limited funds as the settling parties, this Court has "arising under," "arising in," and "related to" jurisdiction. *See, e.g.*, *Picard v. Stahl*, 443 B.R. 295 (Bankr. S.D.N.Y. 2011) (bankruptcy court had jurisdiction to enjoin third party claims that "would be satisfied from the finite pool of funds sought by the Trustee, threatening the Trustee's ability to recover large potential judgments at the expense of the BLMIS estate."); *see also AP Indus., Inc. v. SN Phelps & Co. (In re AP Indus., Inc.)*, 117 B.R. 789, 798 (Bankr. S.D.N.Y. 1990) (an adversary proceeding involving matters impacting both the administration and property of the estate is a core proceeding); *Pfizer Inc. v. Law Offices of Peter G. Angelos (In re Quigley Co.)*, 676 F.3d 45, 57–58 (2d Cir. 2012) (bankruptcy court has jurisdiction over

third party claims that "pose[] the specter of direct impact on the *res* of the bankruptcy estate," even if such claims allege liability not derivative of the debtor's conduct).

This Court likewise has personal jurisdiction over the Injunction Defendants. First, to the extent that the Injunction Defendants have, in commencing the Anwar Action and finalizing the Settlement, availed themselves of the courts in New York, this is sufficient to establish personal jurisdiction. *In re Sayeh R.*, 693 N.E.2d 724, 727–28 (N.Y. 1997) ("[u]se of the New York courts is a traditional justification for the exercise of personal jurisdiction over a nonresident.") Second, the bankruptcy court has personal jurisdiction over the Injunction Defendants to the extent necessary to protect its own jurisdiction over the property of the estate and to enforce the automatic stay. *See* 11 U.S.C. § 362(a) ("[A]n application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 [. . .] operates as a stay, *applicable to all entities* . . . " (emphasis added)); § 101(15) ("The term 'entity' includes person, estate, trust, governmental unit, and United States trustee."). Finally, certain of the Injunction Defendants, including Fairfield Greenwich (Bermuda) Ltd., Walter Noel, Jeffrey Tucker, Robert Blum and Jacqueline Harary, filed customer claims in the BLMIS liquidation, thereby providing personal jurisdiction over those entities and individuals as well. (*See* Cohen Aff. ¶ 5.) *Stahl*, 443 B.R. at 310 (*citing Langenkamp v. Culp*, 498 U.S. 42, 44 (1990)); *Keller v. Blinder (In re Blinder Robinson & Co.)*, 135 B.R. 892, 896–97 (D. Col. 1991).

II. THE SETTLEMENT VIOLATES THE AUTOMATIC STAY, THE STAY ORDERS, AND SIPA

A. The Automatic Stay, SIPA, and the Stay Orders Apply

Section 362(a)(3) of the Bankruptcy Code provides that the filing of an application for the entry of a protective decree under section 5(a)(3) of SIPA (15 U.S.C. § 78eee(a)(3)) operates as a stay, applicable to all persons and entities of, *inter alia*, any act to exercise control over

property of the estate. *See* 11 U.S.C. § 362(a)(3). Similarly, section 362(a)(1) bars "the commencement or continuation . . . of a judicial . . . or other action or proceeding against the debtor . . . or to recover a claim against the debtor . . . ." 11 U.S.C. § 362(a)(1). A "claim against the debtor" encompasses claims against third parties, such as claims for fraudulently transferred funds, that are tantamount to claims against the debtor. *See FDIC v. Hirsch (In re Colonial Realty Co.)*, 980 F.2d 125, 132 (2d Cir. 1992). Finally, section 362(a)(6) bars "any act to collect, assess or recover a claim against the debtor that arose before the commencement of the case." 11 U.S.C. § 362(a)(6). Because the Settlement seeks recovery of (or recovery from) the same limited funds sought by the Trustee, the Settlement seeks to collect on (or out of) the Trustee's fraudulent transfer claims and is in violation of the automatic stay.

In addition to the automatic stay, the December 15 Stay Order, which implements SIPA § 78eee(b)(2)(A) and (B), is applicable here. SIPA § 78eee(b)(2)(A) gives exclusive jurisdiction to this Court over the debtor's property wherever located and SIPA § 78eee(b)(2)(B) provides for stay protection as to, *inter alia*, any suit against the debtor's property. To the extent the Anwar Action seeks to assert disguised fraudulent transfer claims by attempting to recover funds received by the Anwar Released Defendants in connection with their involvement with BLMIS, it violates these sections of SIPA. The December 15 Stay Order thus serves to stop the Anwar Named Plaintiffs from interfering with potential estate assets. *See Fox*, 429 B.R. at 433; *Stahl*, 443 B.R. at 315; *Maxam*, 474 B.R. at 87.

Each of the provisions of section 362(a) is designed to prevent the dismemberment of the bankruptcy estate through interference, either directly or indirectly, with the trustee's control over estate property. *See*, *e.g.*, *AP Indus., Inc. v. SN Phelps & Co. (In re AP Indus., Inc.)*, 117 B.R. 789, 798 (S.D.N.Y. 1990); *Liberty Mut. Ins. Co. v. Off. Unsecured Creditors' Comm. of*

Spaulding Composites Co. (In re Spaulding Composites Co.), 207 B.R. 899, 908 (B.A.P. 9th Cir. 1997); *In re Burgess*, 234 B.R. 793, 799 (D. Nev. 1999); *In re HSM Kennewick, L.P.*, 347 B.R. 569, 572 (Bankr. N.D. Tex. 2006). The Settlement and the underlying Anwar Action are derivative of the Trustee's claims, and the claims assigned to the Trustee by Sentry, GS, and GSP, to the extent they are based on the same facts, seek the same funds from the same defendants, for example, through the imposition of a constructive trust, and are inextricably intertwined with the Trustee's claims. Even to the extent certain of the claims in the Anwar Action are not derivative of the Trustee's claims, "[a] suit against a third party alleging liability not derivative of the debtor's conduct but that nevertheless poses the specter of direct impact on the *res* of the bankrupt estate may just as surely impair the bankruptcy court's ability to make a fair distribution of the bankrupt's assets as a third-party suit alleging derivative liability." *Quigley*, 676 F.3d at 58. Here, where the limited assets of the Anwar Released Defendants means that any assets used to fund the Settlement will reduce the Trustee's potential recovery, the impact on the *res* is direct and significant.

"The automatic stay is one of the most fundamental bankruptcy protections . . . ." *Fox*, 429 B.R. at 430. The stay provision is broad, and "prevents creditors from reaching the assets of the debtor's estate piecemeal and preserves the debtor's estate so that all creditors and their claims can be assembled in the bankruptcy court for a single organized proceeding." *In re AP Indus., Inc.*, 117 B.R. at 798 (citations omitted). Similarly, in this SIPA action, the automatic stay "protects customers of BLMIS by fostering fair, uniform, and efficient distribution of customer property." *Fox*, 429 B.R. at 430. The automatic stay is intended precisely to prevent those creditors who are able to act first from obtaining payment "in preference to and to the detriment of other creditors." *See In re AP Indus., Inc.*, 117 B.R. at 799 (quoting H.R. Rep. No.

95-595, at 340 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296–97; S. Rep. No. 95-989, at 49 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5835); *Keene Corp. v. Coleman (In re Keene Corp.)*, 164 B.R. 844, 849 (Bankr. S.D.N.Y. 1994); *Fox v. Picard*, 848 F. Supp. 2d 469, 478 (S.D.N.Y. 2012). This would be the exact result if settlement funds were paid in the Anwar Action before the conclusion of the Trustee's Action.

B. The Settlement Seeks to Recover Fraudulently Transferred Funds in Violation of Section 362(a)(1)

The Settlement (as well as the litigation that underlies it) seeks to recover the same funds from the Anwar Released Defendants that are sought by the Trustee in his Action as well as in the claims assigned to the Trustee. To the extent the underlying Anwar Action asserts claims for unjust enrichment and seeks a constructive trust over "benefits derived" by the Anwar Released Defendants in connection with their "unjust enrichment and inequitable conduct," the actions are—on their face—for the same fraudulent transfers received from BLMIS. (Gabriel Dec., Ex. 26 ¶¶ 571–72.) Moreover, the Anwar Action seeks the recovery of fees paid to certain of the Trustee's FGG Defendants. (*Id.* ¶¶ 4, 236–49.) As the Trustee has alleged, these fees and commissions were paid to these Anwar Released Defendants through transfers from BLMIS—the same transfers sought by the Trustee in his subsequent transferee claims against certain of the Anwar Released Defendants. (Gabriel Dec., Ex. 1, ¶¶ 23-26, 543, 557-727.)

The automatic stay, reinforced by the Stay Orders, prohibits third parties from seeking to recover fraudulently transferred funds: "a third-party action to recover fraudulently transferred property is properly regarded as undertaken 'to recover a claim against the debtor' and subject to the automatic stay pursuant to § 362(a)(1)." *In re Colonial Realty Co.*, 980 F.2d at 131–32; *Fox*, 848 F. Supp. 2d at 478; *see also In re Keene Corp.*, 164 B.R. at 850 ("Where a [debtor's] creditor seeks to recover his or her claim from a transferee of [the debtor's] property, the

creditor's action is stayed by Section 362(a)(1)."); *Crysen/Montenay Energy Co. v. Esselen Assocs., Inc. (In re Crysen/Montenay Energy Co.)*, 902 F.2d 1098, 1103 (2d Cir. 1990) (unsecured creditor should not be able to obtain priority over other unsecured creditors, and action by such creditor to recover its claim against third party defendant found to be in violation of stay).

C. The Settlement Seeks to Collect or Recover on the Trustee's Claims in Violation of Section 362(a)(6)

In any event, no matter how they characterize their damages, in the Settlement and underlying action, the Representative Plaintiffs seek to recover for the loss of funds ultimately invested in BLMIS and the damages sought consist of funds wrongly transferred from BLMIS. They, therefore, additionally violate section 362(a)(6), which prohibits acts to collect or recover a claim against the debtor.

The transfers that Sentry, GS, and GSP received in connection with BLMIS included, as the Trustee has alleged in his Amended Complaint, more than $3.2 billion of customer funds. (Gabriel Dec., Ex. 1, ¶ 536.) The FGG Funds were either entirely, or almost entirely, invested in BLMIS. Hundreds of millions of the dollars redeemed by the FGG Funds were transferred to related FGG entities in the form of fees and redemptions, and to the FG Individual Defendants who received salaries and distributions of profit (Gabriel Dec., Ex. 1, ¶¶ 23-26, 543; *see also id.* ¶¶ 127, 133, 139, 150-55, 170, 185, 200, 209, 217, 223, 229, 235, 241, 246, 252, 258, 264, 270, 276, 281, 287, 292, 297, 303, 311.) The FG Individual Defendants are now funding the Settlement. (Gabriel Dec., Ex. 7.) The Representative Plaintiffs, after conducting due diligence, determined that the FG Individual Defendants "have limited financial resources and are being sued by other parties with respect to the same or similar claims as those asserted in this Action; they are incurring substantial legal expenses to defend the Action and such other proceedings;

and they could well be unable to pay a substantially greater judgment or settlement." The Representative Plaintiffs' concern regarding the limited assets available to the FG Individual Defendants are reflected in the fact that the Settlement provides for the revocation of releases should the FG Individual Defendants' net worth exceed amounts disclosed to the Anwar Plaintiffs. (Gabriel Dec., Ex. 6 ¶ 12.) Specifically, the Settlement provides:

> Plaintiff's Lead Counsel acknowledge that they received certain confidential information regarding each of the FG Individual Defendants' finances prior to executing this Stipulation. If, prior to the earlier of the Effective Date of July 1, 2013 it is determined that any FG individual Defendant's net worth was materially greater than disclosed to Plaintiffs' Lead Counsel as of the applicable date of such representations, then the Representative Plaintiffs may, at their sole and absolute discretion, revoke the release provided for in ¶¶ 24 and 26 of this Stipulation (the "Net Worth Option") with respect to any such FG Individual Defendant (the "Excluded Defendant").

By seeking recovery of (or recovery out of) the same transfers sought by the Trustee, the Settlement and the Anwar Action seek to collect on the Trustee's claims, thus prejudicing the Trustee's ability to pursue his claims. *See Sosne v. Reinert & Duree, P.C. (In re Just Brakes Corporate Sys., Inc.)*, 108 F.3d 881, 884 (8th Cir. 1997) (creditor's collection on a pre-petition judgment out of property that the Trustee was pursuing in his fraudulent transfer claim violated § 362(a)(6) because it "prejudiced the Trustee's ability to litigate a competing avoidance claim on behalf of all creditors and was therefore inconsistent with the basic purpose of the automatic stay"); *see also In re Bernard L. Madoff Inv. Sec. LLC*, No. 11-2392, 2011 WL 7975167, at *14 (S.D.N.Y. Dec. 15, 2011)(hereafter, the "*Stahl* Ruling") (citing *Just Brakes* 108 F.3d at 884); 3 COLLIER ON BANKRUPTCY ¶ 362.03[8][c] (16th ed. 2010) ("The stay does apply, however, to an attempt to collect a prepetition claim out of property that was fraudulently transferred by the debtor before the commencement of the case;" although the property is not itself property of the estate, "[t]he fraudulent transfer action belongs to the estate, and a creditor's attempt to recover out of fraudulently conveyed property is stayed").

The Representative Plaintiffs' attempt to recover on those claims to the exclusion of the Trustee is an additional interference with his claims. The Representative Plaintiffs' efforts through the Settlement to recover, or recover from, the proceeds of fraudulent transfers received by the Anwar Released Defendants is an improper attempt to collect on the Trustee's claims against these defendants and is thus precluded by section 362(a)(6).

D. The Representative Plaintiffs Seek to Exercise Control Over Property of the Estate and Implicate BLMIS' Property Interests in Violation of Section 362(a)(3)

Section 362(a)(3) applies the automatic stay to any act to exercise control over property of the estate or customer property. "Indeed, every *conceivable* interest of the debtor, future, nonpossessory, *contingent*, speculative, and derivative, is within the reach of the term 'property of the estate.'" *Fox*, 848 F. Supp. 2d at 478 (emphasis added). Actions that have the effect of exercising control over property of the estate or customer property, or where the actions "necessarily implicate" a debtor's property interests, violate Bankruptcy Code § 362(a)(3), regardless of whether the debtor is named in the action. *Adelphia*, 2006 WL 1529357, at *3 (granting TRO because third party suit threatened to interfere with debtor's realization of value of its assets and its reorganization); *In re MCEG Prods., Inc.*, 133 B.R. 232, 235 (Bankr. C.D. Cal. 1991) (third party suit to enjoin sale by debtor violated automatic stay because it affected debtor's rights in sale agreement). Section 362(a)(3) protects the *in rem* jurisdiction of the Court, and prohibits interference with the disposition of the assets that are under the Court's wing, whether or not the debtor is named as a defendant as part of that effort. And this is so regardless of the form the interference takes. *See Adelphia*, 2006 WL 1529357, at *3. Critically, courts look to the substance and not the form of the purported action. *See 48th St. Steakhouse, Inc. v. Rockefeller Grp., Inc. (In re 48th St. Steakhouse, Inc.)*, 835 F.2d 427, 431 (2d Cir. 1987)

("If action taken against the non-bankrupt party would inevitably have an adverse impact on property of the bankrupt estate, then such action should be barred by the automatic stay.").

The Settlement and the Anwar Action seek to recover from the Anwar Released Defendants for claims arising out of the BLMIS fraud and based on substantially the same operative facts as those alleged by the Trustee. By settling the Anwar Action, the Representative Plaintiffs are attempting to exercise control over causes of action that belong to the Trustee, which are property of the estate. *See Jackson v. Novak (In re Jackson)*, 593 F.3d 171, 176 (2d Cir. 2010). Moreover, the Representative Plaintiffs seek to recover from property that was improperly transferred to the Anwar Released Defendants—funds that the Trustee seeks to recover in connection with the Trustee's Action. The Settlement will "inevitably have an adverse impact on the property of the estate," *see 48th St. Steakhouse*, 835 F.2d at 431, and constitutes a clear violation of the automatic stay. *See Quigley*, 676 F.3d at 57–58 (bankruptcy court has jurisdiction over third party claims that even "pose[] the specter of direct impact on the *res* of the bankrupt estate . . .").

III. THE INJUNCTION DEFENDANTS SHOULD BE PRELIMINARILY ENJOINED PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE TO ALLOW FOR THE FAIR AND EQUITABLE ADMINISTRATION OF THE BLMIS ESTATE

The automatic stay should be extended and the Injunction Defendants should be enjoined under section 105(a) of the Bankruptcy Code from effectuating the Settlement given, among other things, the adverse economic impact on the estate if the Settlement and underlying action are allowed to go forward. *See, e.g.*, *Quigley*, 676 F. 3d at 53; *Fox*, 429 B.R. at 434–37; *Stahl*, 443 B.R. at 315–16. As the Trustee set forth in his Amended Complaint, the Trustee's FGG Defendants possess fraudulently transferred BLMIS estate property that must be marshaled and

equitably distributed by the Trustee. (Gabriel Dec., Ex. 1 ¶¶ 51-312, 543-48.) The Settlement would deplete assets that ultimately belong to the estate.

The Representative Plaintiffs also apparently seek to enjoin the Trustee from prosecuting his Action. The Representative Plaintiffs' proposed order filed with the district court seems to provides that any person seeking funds from the escrow fund (established as part of the Settlement to settle claims against the Anwar Released Defendants, including those of the Trustee) is enjoined from bringing any claims related to the claims asserted in the Anwar Action against the Anwar Released Defendants. (Gabriel Dec., Ex. 6 at Ex. B ¶ 17.) This interference with the Trustee's ability to pursue his claims for the benefit of defrauded BLMIS customers surely would impair this Court's jurisdiction and threatens the administration of the BLMIS estate.

A. Standard for a Section 105(a) Injunction

Section 105(a) of the Bankruptcy Code, applicable here pursuant to section 78fff(b) of SIPA, grants bankruptcy courts broad discretion to "issue any order 'necessary or appropriate to carry out the provisions of [the Bankruptcy Code]' . . . ." 11 U.S.C. § 105(a); *see also U.S. Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n, Inc. (In re U.S. Lines, Inc.)*, 197 F.3d 631, 640 (2d Cir. 1999). Courts in this Circuit have held that section 105(a) authorizes bankruptcy courts to issue injunctions, and because the injunctions are authorized by statute, the standard for Rule 7065 injunctions is inapplicable. *See Fox*, 429 B.R. at 436 ("Because injunctions under section 105(a) are authorized by statute, they need not comply with traditional requirements of Rule 65"); *LaMonica v. N. of Eng. Protecting & Indemn. Ass'n (In re Probulk Inc.)*, 407 B.R. 56, 63 (Bankr. S.D.N.Y. 2009). The Court may enjoin suits if: (i) a third party suit would impair the court's jurisdiction with respect to a case before it, or (ii) the third party suits threaten to thwart or frustrate the debtor's reorganization efforts and the stay is necessary to

preserve or protect the debtor's estate.[15] *See Fox*, 429 B.R. at 436; *Stahl,* 443 B.R. at 318; *Calpine Corp. v. Nev. Power Co. (In re Calpine Corp.)*, 354 B.R. 45, 58 (Bankr. S.D.N.Y. 2006) *aff'd*, 365 B.R. 401 (S.D.N.Y. 2007); *Fisher v. Apostolou*, 155 F.3d 876, 882 (7th Cir. 1998).[16]

Courts have routinely used section 105(a) to extend section 362 to third party actions against non-debtor entities "when a claim against the non-debtor will have an immediate adverse economic consequence for the debtor's estate." *Fox*, 429 B.R. at 434 (quoting *Queenie, Ltd. v. Nygard Int'l*, 321 F.3d 282, 287 (2d Cir. 2003). For example, the district court, in affirming a bankruptcy court decision enjoining certain third party litigation, held that an injunction was properly granted pursuant to section 105(a) and the court accordingly did not need to consider whether section 362 was also applicable. *Nev. Power Co. v. Calpine Corp. (In re Calpine Corp.)*, 365 B.R. 401, 409 n.20 (S.D.N.Y. 2007); *see also Kagan v. Saint Vincents Catholic Med. Ctrs. of N.Y. (In re Saint Vincents Catholic Med. Ctrs. of N.Y.)*, 449 B.R. 209, 217 (S.D.N.Y. 2011) (the bankruptcy court has authority under section 105 broader than the automatic stay provisions of section 362); *In re Lyondell Chem. Co.*, 402 B.R. at 587 n.33) (court, in granting a limited injunction to stay non-debtor litigation, noted that section 105(a) could be used to enjoin acts against non-debtor entities even when section 362 protection was not available); *In re Wingspread Corp*., 92 B.R. at 94 ("The basic purpose of [section 105(a)] is to enable the court to

[15] Notwithstanding that the Rule 7065 standard need not be satisfied here, it easily is. There is no question that an infringement on this Court's jurisdiction constitutes "irreparable harm." *Adelphia,* 2006 WL 1529357, at *5. Moreover, the Trustee is likely to succeed on the merits of his Amended Complaint and demonstrate that the Injunction Defendants have violated the automatic stay, as demonstrated herein. *See id.* at *4–5; *see Fox*, 429 B.R. at 436 n.14; *Stahl*, 443 B.R. at 318 n.24.

[16] *See also In re Adelphia Commc'ns Corp*., 298 B.R. 49, 54 (S.D.N.Y. 2003); *Lyondell Chem. Co. v. CenterPoint Energy Gas Servs. Inc. (In re Lyondell Chem. Co.)*, 402 B.R. 571, 588 n.37 (Bankr. S.D.N.Y. 2009); *Keene Corp. v. Acstar Ins. Co. (In re Keene Corp.)*, 162 B.R. 935, 944 (Bankr. S.D.N.Y. 1994); *E. Air Lines, Inc. v. Rolleston (In re Ionosphere Clubs, Inc.)*, 111 B.R. 423, 431 (Bankr. S.D.N.Y. 1990), *aff'd in part*, 124 B.R. 635 (S.D.N.Y. 1991); *Garrity v. Leffler (In re Neuman)*, 71 B.R. 567, 571–72 (S.D.N.Y. 1987); *C & J Clark Am., Inc. v. Carol Ruth, Inc. (In re Wingspread Corp.)*, 92 B.R. 87, 92 (Bankr. S.D.N.Y. 1988); *LTV Steel Co. v. Bd. of Educ. (In re Chateaugay Corp.)*, 93 B.R. 26, 29 (S.D.N.Y. 1988).

do whatever is necessary to aid its jurisdiction . . . ."); *In re Neuman*, 71 B.R. at 571 (under section 105 the bankruptcy court has broad powers to issue injunctions notwithstanding the inapplicability of the automatic stay provisions).

B. The Settlement and Underlying Action Threaten This Court's Jurisdiction and the Administration of the Estate and an Injunction Is Necessary to Preserve and Protect the Estate

As described above, the Settlement purports to resolve claims that are inextricably intertwined with the Trustee's claims, and threatens to allow certain indirect investors of BLMIS to recover estate property. Such an outcome would compromise the equitable distribution of customer property under SIPA and circumvent the orders entered by this and other Courts related to the claims process and the calculation of net equity. *See, e.g.,* Net Equity Decision, 424 B.R. 122. Further, such a result would run afoul of the general principle that stakeholders of a bankruptcy estate should not be permitted to race to the courthouse to recover preferentially to the detriment of other stakeholders. *See, e.g., In re Keene Corp.*, 164 B.R. at 849–54; *In re AP Indus., Inc*. 117 B.R. at 799; *Johns-Manville Corp. v. Colo. Ins. Guar. Ass'n (In re Johns-Manville Corp.)*, 91 B.R. 225, 228–29 (Bankr. S.D.N.Y. 1988); *McHale v. Alvarez (In re 1031 Tax Grp., LLC)*, 397 B.R. 670, 686 (Bankr. S.D.N.Y. 2008). It would also frustrate the goals of SIPA, pursuant to which customers with allowed claims who held investment accounts with BLMIS have preferential claims to the BLMIS customer property fund. *See* SIPA § 78*lll*(2). The Injunction Defendants' conduct is just the sort of behavior that courts in this and other jurisdictions have prohibited time after time. *See, e.g., In re Keene Corp.*, 164 B.R. at 849, 854; *In re AP Indus., Inc*., 117 B.R. at 801–02; *In re Johns-Manville Corp*., 91 B.R. at 228; *In re 1031 Tax Grp., LLC*, 397 B.R. at 684–85; *Singer Co. B.V. v. Groz Beckert KG (In re Singer Co. N.V.)*, No. 99–10578, 2000 WL 33716976, at *5–7 (Bankr. S.D.N.Y. Nov. 3, 2000); *Apostolou*, 155 F.3d 876.

In addition, if permitted to be consummated, the Settlement would unfairly devalue the Trustee's settlements with the FGG Funds. Under those court-approved FGG Fund settlements, in view of the FGG Funds' limited cash assets, the Trustee received limited payments from the FGG Funds but also was assigned the FGG Funds' claims against the FGG management entities and principals. As part of the settlements, the Trustee agreed to share with the FGG Funds any recoveries after certain thresholds were met. Of course, any of the shared recoveries paid to the FGG Funds would ultimately be for the benefit of the FGG Funds' shareholders or limited partners which comprise the proposed class in the Anwar Action.

By attempting to jump ahead of the Trustee, the Representative Plaintiffs and proposed Settlement Class are attempting to abrogate the value of the FGG Funds settlements by collecting from the FG Individual Defendants their limited assets before the threshold has been met and without sharing with the Trustee. The Representative Plaintiffs and their counsel were fully aware of the FGG Funds' settlement terms through their active participation in the Sentry, Sigma and Lambda liquidation proceedings in the British Virgin Islands as well as the GS and GSP proceedings in this Court. In none of those proceedings did any of the Representative Plaintiffs, other proposed Settlement Class members or their counsel maintain objections to the Trustee's settlements with the FGG Funds. They should not be permitted to rewrite the Trustee's settlements by making an end run of the assets of the Trustee's FGG Defendants.

The district court already has three times affirmed this Court's decision that a section 105(a) injunction was necessary to protect the court's jurisdiction and the administration of the liquidation. In *Fox*, *Stahl*, and *Maxam*, this Court enjoined the defendants therein from prosecuting actions against parties being sued by the Trustee. In addition to finding that the defendants in those actions had usurped causes of actions belonging to the Trustee, the Court

found that the third party actions at issue in those cases would have "an immediate adverse economic consequence for the debtor's estate." *Stahl,* 443 B.R. at 316 (quoting *Queenie*, 321 F.3d at 287). Further, as the district court held in affirming *Fox*, a section 105(a) injunction is warranted even if the claims asserted are not property of the estate, where, as here, the overlap between the claims asserted in the Trustee's Action and the Anwar Action are "so closely related that allowing the Injunction Defendants to convert the bankruptcy proceedings into a race to the courthouse would derail the bankruptcy proceedings." *See Fox*, 848 F. Supp. 2d at 487 (quoting *Apostolou*, 155 F.3d at 883); *Maxam*, 474 B.R. at 87 (action against Trustee in Cayman Islands threatened Bankruptcy Court's exclusive *in rem* jurisdiction over estate, and enforcement of automatic stay and injunction under section 105 was warranted).

In affirming the *Stahl* decision, the district court held that the third party actions at issue there "substantially interfere[d] with the ability of the trustee to move in his cases to recover assets for the estate as a whole," and had an adverse impact on property of the estate because the money recovered by the third party plaintiffs in any judgment "would inevitably be the money that the trustee sought to recover." *See Stahl* Ruling, 2011 WL 7975167, at *12, *15. Like the third party actions in *Stahl*, the Settlement will necessarily interfere with the Trustee's ability to recover in the Trustee's Action, particularly against the FGG principals, and should likewise be enjoined pursuant to section 105(a).

While the Representative Plaintiffs may argue that they possess some independent claims against the Trustee's FGG Defendants, when seeking to recover from the same limited pool of funds for claims arising out of the same common nucleus of operative facts, the Trustee must be able to effectively prosecute his action. As the district court held in another Madoff-related stay action:

> rather than have a profusion of claims, **it's the rationale behind Section 362 and Section 105 to favor the trustee**. It doesn't have to be for all time, but it has to allow the trustee the ability to pursue his actions and obtain rulings and finality on those rulings because the trustee is acting for the benefit of all creditors and not just a few.

Stahl Ruling, 2011 WL 7975167, at *13 (emphasis added); *see also Apostolou*, 155 F.3d at 881.

As this Court discussed in *Fox* and *Stahl*, and as the district court recognized in affirming *Fox* and *Stahl*, the Seventh Circuit, faced with a similar scenario, also found the use of a section 105(a) injunction appropriate. *Fox*, 429 B.R. at 434–35; *Stahl*, 443 B.R. at 316–17; *see also Stahl* Ruling, 2011 WL 7975167, at *14 (finding *Apostolou* "instructive"); *Fox*, 848 F. Supp. 2d at 487. In *Apostolou*, which was a liquidation proceeding, the Seventh Circuit upheld the bankruptcy court's issuance of an injunction under section 105(a) to protect the trustee's ability to marshal assets on behalf of the debtor's estate, even when the enjoined action did not directly seek property of the estate. 155 F.3d at 877–88. The bankruptcy court issued an injunction pursuant to section 105(a), which the district court reversed. The Seventh Circuit reversed the district court's determination that the bankruptcy court had exceeded its authority in issuing the injunction, stating that:

> While the [investor plaintiffs'] claims are not "property of" the Lakes States estate, it is difficult to imagine how those claims could be more closely "related to" it. They are claims to the same limited pool of money, in the possession of the same defendants, as a result of the same acts, performed by the same individuals, as part of the same conspiracy. We can think of no hypothetical change to this case which would bring it closer to a "property of" case without converting it into one. Even if the "related to" jurisdiction is not as broad under Chapter 7 cases as it is in Chapter 11 cases, it reaches at least this far, for to conclude that the "related to" jurisdiction under Chapter 7 does not extend to the circumstances of this case would be to amend the Bankruptcy Code to eliminate § 105 from Chapter 7 proceedings.

Id. at 882 (internal citations omitted).

Notably, some of the plaintiffs in *Apostolou* may have had claims against the defendants based on a "separate and distinct injury" to the individual plaintiff that could not be fully

measured by the debts owed to the estate. *Id*. at 881. The court nevertheless held that the investors who were the plaintiffs in those actions "must wait their turn behind the trustee, who has the responsibility to recover assets for the estate on behalf of the creditors as a whole . . . ." *Id.* Accordingly, the court stayed the underlying actions pending the outcome of the bankruptcy proceeding: "At that point, the degree to which the Apostolou Plaintiffs have been compensated for their injuries through their share of the assets in the debtors' estates will be settled, and it will be possible for the district court to proceed with this action against the nondebtor defendants for whatever individualized damages may be proper." *Id.* at 883.

Similarly, in *In re AP Industries, Inc.*, this Court stated that a bankruptcy court has "authority under § 105 broader than the automatic stay provisions of § 362 and may use its equitable powers to assure the orderly conduct of the reorganization proceedings." 117 B.R. at 801 (citations omitted). There, the debtor sought to stay or enjoin actions commenced by a creditor against the debtor's directors and other third parties that were brought because the creditor objected to a transaction entered into by the debtor. The court found that it was appropriate to use section 105(a) to enjoin the creditor's action, stating:

> this Court finds that it is also appropriate to issue an injunction pursuant to § 105 of the Code to stay the [creditor's] Actions in order to preserve and protect the Debtor's estate and reorganization prospects. Not only may the outcome of the [creditors'] Actions affect the administration of this case, but the possibility of inconsistent judgments warrants the issuance of an injunction . . . .

Id. at 802; *see also In re Singer Co. N.V.*, 2000 WL 33716976, at *7.

Akin to the claims the debtor's investors asserted in *Fox*, *Stahl*, *Apostolou*, and *AP Industries*, the claims at issue in the Settlement are so inextricably intertwined and related to the underlying SIPA proceeding and the Trustee's Action that it is clear that the Settlement will impair this Court's jurisdiction over this proceeding and the Trustee's ability to marshal assets on behalf of the estate. As in the foregoing cases, the Settlement will result in a "greater

distribution on a first come, first serve basis from assets which the trustee has standing to recover." *In re Keene Corp.*, 164 B.R. at 854. The investors in the FGG Funds must "wait their turn behind the trustee." *Apostolou*, 155 F.3d at 881.

Moreover, allowing the Settlement to go forward could create confusion among other BLMIS investors and creditors who may feel compelled to initiate their own self-help proceedings and which could create a more widespread "race to the courthouse" environment, threatening the orderly administration of the estate. The statutory schemes created by SIPA and the Bankruptcy Code are specifically aimed at avoiding such a result. *See Sec. Investor Prot. Corp. v. Blinder, Robinson & Co.*, 962 F.2d 960, 965 (10th Cir. 1992) (SIPA "establishes procedures for the prompt and orderly liquidation of SIPC members") (internal citations and quotations omitted); *see also In re Shea & Gould*, 214 B.R. 739, 750 (Bankr. S.D.N.Y. 1993) (Bankruptcy Code seeks to prevent "race to the courthouse"); *In re Rubin*, 160 B.R. 269, 281 (Bankr. S.D.N.Y. 1993) (same); *Gross v. Russo (In re Russo)*, 18 B.R. 257, 265 (Bankr. E.D.N.Y. 1982) (same). The proposed Settlement appears to set aside a limited amount of funds for claims asserted by the Trustee and others. However, these limited funds are not ready sufficient to satisfy the Trustee's claims. At the same time, the proposed settlement seems to seek to enjoin the Trustee from bringing any claims related to the claims asserted in the Anwar Action against the Anwar Released Defendants. (Gabriel Dec., Ex. 6 at Ex. B ¶ 17.)

In such circumstances, where there is a clear, "immediate adverse economic consequence for the debtor's estate," section 105(a) should be used to enjoin litigants to the settlement and protect potential estate property. *Fox*, 429 B.R. at 434 (quoting *Queenie*, 321 F.3d at 287). To allow otherwise would not only disrupt the Trustee's efforts to maximize recovery for the estate

but would also threaten this Court's jurisdiction over the Trustee's Action and the *res* of the BLMIS estate.

C. The Settlement Threatens to Undermine the Claims Administration Process and This Court's Jurisdiction Under SIPA and the Bankruptcy Code

This Court already has approved a claims process and determined how customers' and other creditors' claims are to be valued and administered. The Settlement creates a parallel claims process as it involves the payment of funds to investors in the FGG Funds in proportion to the investors' net loss from investing in the FGG Funds. (Gabriel Dec., Ex. 6 ¶¶ 28-33.) Unlike the BLMIS claims process approved by this Court, amounts will be deducted from the Settlement to pay administrative costs, including the cost of providing notice of the Settlement, and fees and expenses of the Representative Plaintiffs' counsel, which, per the terms of the Settlement, can be up to 25% of the total settlement amount. (*Id.*, ¶¶ 29, 34, 35; Ex. A-1 at 10.)

The duplicative process contemplated by the Settlement circumvents the claims determination and allowance process authorized by this Court, in which all of the beneficiaries of the Settlement are direct or indirect participants. The beneficiaries of the Settlement would thus leapfrog over customers and take for themselves funds that otherwise would be recoverable by the Trustee and distributed to customers and creditors of BLMIS in accordance with this Court's Net Equity Decision and Customers Decision. Net Equity Decision, 424 B.R. 122; Customers Decision, 454 B.R. 285. In this regard, the Settlement would accomplish indirectly what is directly prohibited—indirect investors who are not customers will recover on their claims stemming from their investments with the FGG Funds out of property fraudulently transferred from BLMIS to the Anwar Released Defendants, all to the exclusion of judicially recognized customers and claimants. Both this Court and the district court have, in granting and affirming the injunction at issue in *Fox*, stated that the potential for distributions outside of "the plan that

was determined by the Net Equity Decision" is "particularly alarming." *See Fox*, 848 F. Supp. 2d at 486–87; *Fox*, 429 B.R. at 437.

The FGG Funds, FGB, Walter Noel, Jeffrey Tucker, Robert Blum, and Jacqueline Harary have all filed claims in the liquidation. (*See* Cohen Aff. ¶ 5.) As part of the Settlement with Sentry, GS and GSP, the Trustee has allowed BLMIS customer claims for the funds. The claims filed by the FGG Funds have been allowed and Sentry, GS and GSP have received distributions totaling approximately $100 million. (*Id.* ¶ 6.) Nevertheless, the Settlement purports, among other things, to provide a recovery for the losses of investors in the FGG Funds, indirect investors in BLMIS. By seeking to tap into the same pool of money as the Trustee before the conclusion of the Trustee's Action, the Settlement and the Anwar Action threaten the administration of the BLMIS estate and should be enjoined.

CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Court enforce the automatic stay, SIPA, and Stay Orders of the District Court, otherwise preliminarily enjoin the Injunction Defendants from substantially depleting the assets of the Trustee's FGG Defendants pending the completion of the Trustee's Action, by issuing an order in the form submitted simultaneously herewith.

Date: New York, New York
November 29, 2012

/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
Email: dsheehan@bakerlaw.com
Thomas L. Long
Email: tlong@bakerlaw.com
Mark A. Kornfeld
Email: mkornfeld@bakerlaw.com
Deborah H. Renner
Email: drenner@bakerlaw.com
Tracy L. Cole
Email: tcole@bakerlaw.com
Keith R. Murphy
Email: kmurphy@bakerlaw.com
Amy E. Vanderwal
Email: avanderwal@bakerlaw.com
Jessie M. Gabriel
Email: jgabriel@bakerlaw.com
Ferve E. Ozturk
Email: fozturk@bakerlaw.com
Matthew J. Moody
Email: mmoody@bakerlaw.com

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 D

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

Attorneys for Irving H. Picard, Esq., 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, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (BRL) 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. Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda), Pacific West Medical Center Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities and Investment Company Bahrain, Dawson Bypass Trust, St. Stephen's School, Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko della Schiava, Harold Greisman, Jacqueline Harary, David Horn,	Adv. Pro. No. _____ **DECLARATION OF JESSIE MORGAN GABRIEL IN SUPPORT OF TRUSTEE'S APPLICATION FOR ENFORCEMENT OF AUTOMATIC STAY AND RELATED STAY ORDERS AND ISSUANCE OF PRELIMINARY INJUNCTION**

Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya,

Defendants.

JESSIE MORGAN GABRIEL, under penalty of perjury, declares:

1. I am a member of the Bar of this Court and an associate at the firm of Baker & Hostetler LLP, counsel for Irving H. Picard, Trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS")[1] under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* ("SIPA"), and the estate of Bernard L. Madoff ("Madoff"), individually.

2. I am fully familiar with the facts set forth herein. I make this declaration to transmit to this Court true and correct copies of documents and provide information in connection with the Trustee's Application for enforcement of the automatic stay and related stay orders and issuance of a preliminary injunction (the "Application").

3. Prior to filing the Application, counsel for the Trustee advised counsel for the *Anwar* Plaintiffs and the Settling Defendants that the Trustee was to be filing this Application. The parties were unable to reach a resolution.

4. True and correct copies of the following documents are attached:

Exhibit 1: Amended Complaint, *Picard v. Fairfield Sentry Limited*, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009) (ECF No. 23)

Exhibit 2: Settlement Agreement Between Irving Picard, Fairfield Sentry Limited, Fairfield Sigma Limited, and Fairfield Lambda Limited, *Picard v. Fairfield Sentry Limited*, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009) (ECF No. 69-2)

Exhibit 3: Amended Settlement Agreement Between Irving Picard and Greenwich Sentry, L.P., *Picard v. Fairfield Sentry Limited*, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009) (ECF No. 107-1)

Exhibit 4: Amended Settlement Agreement Between Irving Picard and Greenwich Sentry Partners, L.P., *Picard v. Fairfield Sentry*

[1] Unless otherwise defined herein, defined terms will have the meaning given to them in the Application.

Limited, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009) (ECF No. 107-2)

Exhibit 5: Motion to Approve Preliminarily the Partial Settlement, *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (ECF No. 997)

Exhibit 6: Stipulation of Settlement, *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (ECF No. 996)

Exhibit 7: Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of the Partial Settlement, *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (ECF No. 998)

Exhibit 8: Order, *SEC v. Bernard L. Madoff*, No. 08-10791 (S.D.N.Y. filed Dec. 11, 2008) (ECF No. 4)

Exhibit 9: Order on Consent Imposing Preliminary Injunction Freezing Assets and Granting Other Relief Against Defendants, *SEC v. Bernard L. Madoff*, No. 08-10791 (S.D.N.Y. filed Dec. 11, 2008) (ECF No. 8)

Exhibit 10: Partial Judgment on Consent Imposing Permanent Injunction and Continuing Other Relief, *SEC v. Bernard L. Madoff*, No. 08-10791 (S.D.N.Y. filed Dec. 11, 2008) (ECF No. 18)

Exhibit 11: Trustee's Amended Third Interim Report, *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 08-01789 (Bankr. S.D.N.Y. filed Dec. 11, 2008) (ECF No. 2207)

Exhibit 12: Application of the Trustee for a Claims Procedure Order, *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 08-01789 (Bankr. S.D.N.Y. filed Dec. 11, 2008) (ECF No. 8)

Exhibit 13: Claims Procedure Order, *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 08-01789 (Bankr. S.D.N.Y. filed Dec. 11, 2008) (ECF No. 12)

Exhibit 14: Notice of Appeal, *Bricklayers and Allied Craftsman Local 2 Annuity Fund v. Sec. Investor Prot. Corp.*, No. 11-06355 (S.D.N.Y. filed Sept. 12, 2011) (ECF No. 13)

Exhibit 15: Net Equity Order, *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 08-01789 (Bankr. S.D.N.Y. filed Dec. 11, 2008) (ECF No. 2020)

Exhibit 16: Certification of Net Equity Order, *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 08-01789 (Bankr. S.D.N.Y. filed Dec. 11, 2008) (ECF No. 2022)

Exhibit 17: Motion to Approve the Settlement Agreement Between Irving Picard, Fairfield Sentry Limited, Fairfield Sigma Limited, and Fairfield Lambda Limited, *Picard v. Fairfield Sentry Limited*, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009) (ECF No. 69)

Exhibit 18: Motion to Approve the Settlement Agreements Between Irving Picard, Greenwich Sentry, L.P., and Greenwich Sentry Partners, L.P., *Picard v. Fairfield Sentry Limited*, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009) (ECF No. 71)

Exhibit 19: Order Approving Settlement Agreements Between Irving Picard, Fairfield Sentry Ltd., Fairfield Sigma Ltd., and Fairfield Lambda Ltd., *In re Fairfield Sentry Ltd.*, No. 09-01239 (Bankr. S.D.N.Y. filed May 19, 2009) (ECF No. 95)

Exhibit 20: Notice of Entry of Order by the BVI Court Approving the Settlement Between Irving Picard, Fairfield Sentry Limited, Fairfield Sigma Limited, and Fairfield Lambda Limited, *In re Fairfield Sentry Ltd.*, No. 10-13164 (Bankr. S.D.N.Y. filed June 14, 2010) (ECF No. 452)

Exhibit 21: Order Approving the Settlement Agreements Between Irving Picard, Greenwich Sentry, L.P., and Greenwich Sentry Partners, L.P., *Picard v. Fairfield Sentry Limited*, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009) (ECF No. 107)

Exhibit 22: Motion to Withdraw the Reference, *Picard v. Fairfield Sentry Limited*, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009) (ECF No. 117)

Exhibit 23: Joint Motion to Withdraw the Reference, *Picard v. Fairfield Sentry Limited*, No. 09-01239 (Bankr. S.D.N.Y. filed May 18, 2009) (ECF No. 120)

Exhibit 24: Endorsed Letter, *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (ECF No. 1006)

Exhibit 25: Notice of Removal, *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (ECF No. 1)

Exhibit 26: Second Consolidated Amended Complaint, *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (ECF No. 273)

Exhibit 27: Motion to Dismiss the Second Consolidated Amended Complaint, *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (ECF No. 316)

Exhibit 28: Motion to Dismiss the Second Consolidated Amended Complaint, *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (ECF No. 318)

Exhibit 29: Motion to Dismiss the Second Consolidated Amended Complaint, *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (ECF No. 321)

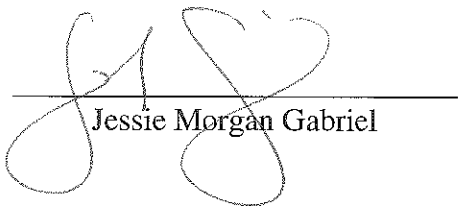
Exhibit 30: Answer, *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (ECF No. 533)

Exhibit 31: Motion to Certify Class, *Anwar v. Fairfield Greenwich Ltd.*, No. 09-00118 (S.D.N.Y. filed Jan. 7, 2009) (ECF No. 775)

Exhibit 32: Unofficial Transcript of Oral Argument, *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 12-MC-115 (S.D.N.Y. filed Apr. 13, 2012) (ECF No. 404)

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

Executed on November 29, 2012
New York, New York



Jessie Morgan Gabriel

EXHIBIT 1

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
E-mail: dsheehan@bakerlaw.com
Marc E. Hirschfield
E-mail: mhirschfield@bakerlaw.com
Mark A. Kornfeld
E-mail: mkornfeld@bakerlaw.com

Attorneys for Irving H. Picard, Esq., Trustee
for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and 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.	Adv. Pro. No. 08-01789 (BRL) SIPA Liquidation (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	**AMENDED COMPLAINT**
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FAIRFIELD SENTRY LIMITED,	Adv. Pro. No. 09-01239 (BRL)

GREENWICH SENTRY, L.P., GREENWICH SENTRY PARTNERS, L.P., FAIRFIELD SIGMA LIMITED, FAIRFIELD LAMBDA LIMITED, CHESTER GLOBAL STRATEGY FUND LIMITED, CHESTER GLOBAL STRATEGY FUND, IRONGATE GLOBAL STRATEGY FUND LIMITED, FAIRFIELD GREENWICH FUND (LUXEMBOURG), FAIRFIELD INVESTMENT FUND LIMITED, FAIRFIELD INVESTORS (EURO) LIMITED, FAIRFIELD INVESTORS (SWISS FRANC) LIMITED, FAIRFIELD INVESTORS (YEN) LIMITED, FAIRFIELD INVESTMENT TRUST, FIF ADVANCED, LTD., SENTRY SELECT LIMITED, STABLE FUND, FAIRFIELD GREENWICH LIMITED, FAIRFIELD GREENWICH (BERMUDA), LTD., FAIRFIELD GREENWICH ADVISORS LLC, FAIRFIELD GREENWICH GP, LLC, FAIRFIELD GREENWICH PARTNERS, LLC, FAIRFIELD HEATHCLIFF CAPITAL LLC, FAIRFIELD INTERNATIONAL MANAGERS, INC., FAIRFIELD GREENWICH (UK) LIMITED, GREENWICH BERMUDA LIMITED, CHESTER MANAGEMENT CAYMAN LIMITED, WALTER NOEL, JEFFREY TUCKER, ANDRÉS PIEDRAHITA, MARK MCKEEFRY, DANIEL LIPTON, AMIT VIJAYVERGIYA, GORDON MCKENZIE, RICHARD LANDSBERGER, PHILIP TOUB, CHARLES MURPHY, ROBERT BLUM, ANDREW SMITH, HAROLD GREISMAN, GREGORY BOWES, CORINA NOEL PIEDRAHITA, LOURDES BARRENECHE, CORNELIS BOELE, SANTIAGO REYES, JACQUELINE HARARY

Defendants.

1. Irving H. Picard, Esq. (the "Trustee"), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff ("Madoff"), under the Securities Investor Protection Act §§ 78aaa *et seq.*, by and through his undersigned counsel, for this Amended Complaint, states as follows:

I. NATURE OF THE ACTION

2. The Defendants named in this Amended Complaint worked in conjunction with BLMIS and Madoff to commit, and exponentially expand, the single largest financial fraud in history. Serving as one of Madoff's largest marketing and investor relations arms, the Defendants were active participants in, and substantially aided, enabled, and helped sustain Madoff's Ponzi scheme. Every dollar the Defendants purportedly "earned," and every dollar they kept to unjustly enrich themselves, was *stolen money*. Every asset the Defendants own that originated from the purported management and performance fees drawn from fictitious returns is in fact *Customer Property*, as defined by statute,[1] and must be returned to the Trustee for equitable distribution to BLMIS customers.

3. This is a case in which sophisticated hedge fund investment advisers and promoters engaged in a systematic, purposeful enterprise with Madoff to maintain and profit from a fraud and wrongly enrich themselves. The Defendants had actual and constructive knowledge of Madoff's fraud and cannot deny their knowledge of many "red flags" indicating the likelihood of that fraud. This case goes well beyond "red flags."

[1] SIPA § 78*lll*(4) defines "Customer Property" as "cash and securities . . . at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted."

4. The Defendants did not properly, independently, and reasonably perform due diligence into the many red flags strongly indicating Madoff was a fraud. The Defendants did exactly the opposite. The Defendants misled regulators, investors, and potential investors and generally looked the other way, focusing only on self-interest and profit. Among many other things, the Defendants:

a. failed to perform as independent investment advisers and fiduciaries, serving by their own admission as an extension of BLMIS's marketing and customer relations operation;

b. knowingly and explicitly conspired with Madoff to deceive the Securities Exchange Commission (the "SEC") by misrepresenting the true nature of their respective investment advisory roles and by intentionally misstating Madoff's role;

c. ascribed inconsistent roles to Madoff depending on the circumstances. Sometimes the Defendants claimed Madoff was merely a broker-dealer executing the Defendants' own investment strategy. At other times, the Defendants said Madoff was an investment adviser acting as an agent. And still at other times, the Defendants claimed BLMIS was acting as a principal in performing investment adviser functions;

d. provided false security to their investors through false marketing materials, and shielded Madoff from direct inquiries. The Defendants discouraged customers, potential customers, and others from performing direct due diligence on Madoff, intentionally removed references to him from their offering memoranda and marketing materials, and in all respects served as a "gatekeeper" in order to prevent unwanted inquiries;

e. performed no real due diligence on Madoff's one-person auditing firm before or even after one of their investors likened BLMIS to another Ponzi scheme. Some of the individual Defendants not only ignored the fact that Madoff's auditing firm lied to them, but perpetrated their own fraud by knowingly misleading investors and potential investors about the auditing firm's size, reputation, and capabilities;

f. ignored basic, standard industry statistical analyses of Madoff's consistent returns over nearly two decades that should have led them to reasonably conclude the returns were manufactured. The lack of any volatility ever, even in often volatile markets, was an obvious sign of fraud. The Defendants utilized the consistent lack of volatility as a banner to promote the success of their own funds;

g. regularly received Madoff's trade confirmations reflecting implausible equities trading volumes and percentages, as well as options trading volumes that were impossible, as they greatly exceeded the entire volume of reported options trading on the relevant exchanges. The Defendants never questioned how trading at such massive volumes could not leave a "footprint" in the market or otherwise impact pricing;

h. represented that the massive options trading that was part of Madoff's purported strategy was made through over-the-counter trades with individual counterparties, even though the trade confirmations the Defendants received from BLMIS reflected exchange traded options, not over-the-counter trades. The Defendants never knew the identity of a single options trade counterparty, nor did they investigate the counterparties' ability to perform their obligations under the trade agreements;

i. willingly entered into an investment relationship with Madoff that prevented all of the traditional, independent checks and balances seen in the investment advisory business. Madoff served as investment adviser, prime broker, valuation agent, sub-custodian, as well as executing broker, and all compliance and supervisory functions at BLMIS were performed by Madoff's family. This structure was tailor-made for perpetrating fraud – Madoff could readily misappropriate assets without any independent oversight – but the Defendants never questioned it;

j. despite representing Madoff's investment strategy as their own for nearly two decades, the Defendants' internal communications indicate they never understood the strategy;

k. knew for many years that their investors, market experts, due diligence experts, and even their own consultant (hired to review BLMIS transactions) had grave suspicions Madoff and the investment strategy were a sham;

l. touted and marketed their due diligence process as being the best, as well as the "value added" service that justified fees greater than those of many of their competitors, when, in fact, the Defendants failed to perform even a modicum of reasonable due diligence;

m. turned a blind eye to Madoff's fraudulent activities for the simple reason that the Defendants' continued prosperity and very existence was directly and exclusively tied to Madoff – if he was exposed as a fraud, their vast empire would collapse; and

n. acted as Madoff's *de facto* partners by failing to act as fiduciaries and by lending their resources, marketing, reputation, protection, and undying allegiance to Madoff. The Defendants, along with many others,

knowingly and actively aided Madoff, causing a catastrophic growth of the fraud and deepening of BLMIS's insolvency, the result of which was billions in damages to thousands of customers.

5. Through this Amended Complaint the Trustee seeks the return of all Customer Property belonging to the BLMIS estate, in the form of redemptions, fees, compensation, and assets; as well as all damages, including but not limited to compensatory and punitive damages, caused by the Defendants' misconduct; and the disgorgement of all funds and properties by which the Defendants were unjustly enriched at the expense of BLMIS's customers.

II. JURISDICTION AND VENUE

6. The Trustee brings this adversary proceeding pursuant to his statutory authority under SIPA §§ 78fff(b) and 78fff-2(c)(3), sections 105(a), 502(d), 542, 544, 547, 548(a), 550(a), and 551 of 11 U.S.C. §§ 101 (the "Bankruptcy Code"), the New York Fraudulent Conveyance Act (N.Y. Debt. & Cred. § 270 (McKinney 2001)), New York Civil Practice Law and Rules (McKinney 2001), and other applicable law, for turnover, accounting, preferences, fraudulent conveyances, unjust enrichment, conversion, money had and received, aiding and abetting fraud, aiding and abetting breach of fiduciary duty, consequential and punitive damages, and objection to the customer claims filed by some of the Defendants. The Trustee seeks, among other things, to set aside all avoidable transfers, collect damages caused by the Defendants, preserve the stolen Customer Property for the benefit of BLMIS customers, and recover *all* stolen Customer Property from the Defendants, in whatever form it may now or in the future exist.

7. This is an adversary proceeding brought in the Court in which the main underlying SIPA proceeding, No. 08-01789 (BRL) (the "SIPA Proceeding") is pending. The Securities Investor Protection Corporation ("SIPC") originally brought the SIPA Proceeding in the United States District Court for the Southern District of New York as *Securities Exchange*

Commission v. Bernard L. Madoff Investment Securities LLC et al., No. 08 CV 10791 (the "District Court Proceeding"). This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and SIPA §§ 78eee(b)(2)(A), (b)(4).

8. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (C), (E), (F), (H), and (O).

9. Venue in this district is proper under 28 U.S.C. § 1409.

III. BACKGROUND

10. On December 11, 2008 (the "Filing Date"), Madoff was arrested by federal agents for violations of the criminal securities laws, including, *inter alia*, securities fraud, investment adviser fraud, and mail and wire fraud. Contemporaneously, the SEC filed the District Court Proceeding against Madoff, which remains pending. The SEC complaint alleges that Madoff and BLMIS engaged in fraud through the BLMIS Investment Advisory business (the "BLMIS IA Business").

11. On December 12, 2008, The Honorable Louis L. Stanton entered an order appointing Lee S. Richards, Esq. as receiver for the assets of BLMIS (the "Receiver").

12. On December 15, 2008, pursuant to SIPA § 78eee(a)(4)(B), SIPC filed an application in the District Court alleging, *inter alia*, 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 that same date, pursuant to SIPA § 78eee(a)(4)(A), the SEC consented to a combination of its own action with SIPC's application.

13. Also on December 15, 2008, Judge Stanton granted SIPC's application and entered an order pursuant to SIPA (the "Protective Decree"), which, in pertinent part:

a. Appointed the Trustee for the liquidation of the business of BLMIS pursuant to SIPA § 78eee(b)(3);

b. Appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to SIPA § 78eee(b)(3);

c. Removed the case to this Bankruptcy Court pursuant to SIPA § 78eee(b)(4); and

d. Removed the Receiver for BLMIS.

14. Pursuant to SIPA § 78*lll*(7)(B), the Filing Date is deemed to be the date of the filing of the petition within the meaning of sections 547 and 548 of the Bankruptcy Code and the date of the commencement of the case within the meaning of section 544 of the Bankruptcy Code.

15. By orders dated December 23, 2008 and February 4, 2009, respectively, the Bankruptcy Court approved the Trustee's bond and found the Trustee was a disinterested person. Accordingly, the Trustee is duly qualified to serve and act on behalf of the estate of BLMIS.

16. By virtue of his appointment under SIPA, the Trustee has the responsibility to recover and pay out Customer Property to BLMIS customers, assess claims, and liquidate any other assets of BLMIS for the benefit of the estate and its creditors. The Trustee is in the process of marshalling BLMIS's assets, but such assets will not be sufficient to fully reimburse BLMIS customers for the billions of dollars they invested through BLMIS. Consequently, the Trustee

must use his broad authority as expressed and intended by both SIPA and the Bankruptcy Code to pursue recovery for BLMIS accountholders.

17. Based upon the Trustee's ongoing investigation, it now appears there were more than 8,000 customer accounts at BLMIS over the life of the scheme. In early December 2008, BLMIS generated account statements for its approximately 4,900 open customer accounts. When added together, these statements purportedly showed that BLMIS customers had approximately $65 billion invested through BLMIS. In reality, BLMIS had assets on hand worth a fraction of that amount. Customer accounts had not accrued any real profits because no investments were ever made. By the time the Ponzi scheme came to light on December 11, 2008, investors had already lost approximately $20 billion in principal.

18. As Madoff admitted at his Plea Hearing, he never purchased any of the securities, options, or Treasurys for the BLMIS IA Business and the returns he reported to customers were entirely fictitious. Based on the Trustee's investigation to date, there is no record of BLMIS having cleared a single purchase or sale of securities on any exchange in connection with the SSC Strategy.[2]

19. For years, prior to his arrest, Madoff repeatedly represented that he conducted his options trading on the over-the-counter ("OTC") market rather than through any listed exchange. Based on the Trustee's investigation to date, there is no evidence that the BLMIS IA Business ever entered into any OTC options trades on behalf of BLMIS account holders.

[2] Madoff did a *de minimus* amount of securities trading outside of the SSC Strategy – such trading is not at issue in the Trustee's allegations here.

20. In connection with his efforts to recoup billions of dollars of stolen Customer Property, on May 18, 2009, the Trustee filed the Complaint in this action against the three Fairfield Greenwich Group ("FGG") entities that maintained accounts with BLMIS: Fairfield Sentry Limited ("Fairfield Sentry"), Greenwich Sentry, L.P. ("GS"), and Greenwich Sentry Partners, L.P. ("GSP") (collectively, the "Feeder Funds"). Each of the Feeder Funds maintained one or more customer accounts at BLMIS, were collectively among Madoff's largest sources of investor principal. The Feeder Funds withdrew billions of dollars from the BLMIS accounts. The Trustee initially filed suit against the Feeder Funds in order to recover all avoidable transfers BLMIS made to them.

21. FGG is a trade name used to refer to a number of affiliated entities, including both domestic and foreign corporations, general partnerships, limited partnerships, trusts, and limited liability companies. Internally, those formal business structures were ignored. According to FGG's own documents, the profits earned by the myriad of FGG entities were distributed to individuals and entities based upon their "partnership" percentages in FGG.

22. Fairfield Sentry is currently in liquidation. On July 21, 2009, the Eastern Caribbean Supreme Court in the High Court of Justice of the British Virgin Islands appointed Kenneth Krys and Christopher Stride as Joint Official Liquidators of Defendant Fairfield Sentry. Defendant Fairfield Sigma Limited ("Sigma") and Defendant Fairfield Lambda Limited ("Lambda") are two other FGG funds whose sole purpose was to invest all of their respective funds in Fairfield Sentry. Like Fairfield Sentry, both Sigma and Lambda are subject to liquidation proceedings in the British Virgin Islands. Mr. Krys and Mr. Stride were appointed by the Eastern Caribbean Supreme Court as Joint Official Liquidators of Sigma on the same day

they were appointed as liquidators of Fairfield Sentry. On April 23, 2009, the Eastern Caribbean Supreme Court appointed Mr. Stride as the Official Liquidator of Lambda.

23. This Amended Complaint includes new allegations and causes of action against the Feeder Funds, as well as claims against additional Defendants. The Feeder Funds are no longer directly in possession of the majority of the billions of dollars in transfers they received from BLMIS. They have transferred over one billion dollars to other FGG entities as payments for purported management, performance, and administrative fees. Those FGG entities then used hundreds of millions of those dollars to pay percentage distributions to each of FGG's partners. In addition, the Feeder Funds have transferred funds to their investors, which include other FGG entities, which redeemed shares or limited partnership interests in the Feeder Funds.

24. The newly named Defendants include additional FGG affiliated hedge funds that invested in the Feeder Funds to benefit from their investments with Madoff, and the investment managers and related affiliates that received over a billion dollars of management and performance fees for supposedly monitoring the funds' investments with BLMIS (the "FGG Affiliates"). Three of the FGG Affiliates, Fairfield Greenwich (Bermuda), Ltd. ("FGB"), Fairfield Greenwich Limited ("FGL"), and Greenwich Bermuda Limited ("GBL"), served as general partners to GS and GSP and are liable for all avoidable transfers received by GS and GSP during the periods in which FGB, FGL, and GBL served as general partners.

25. The Amended Complaint also names as Defendants individual partners and principal wrongdoers within the FGG organization who received hundreds of millions of dollars for orchestrating FGG's extraordinary role in the scheme. These individuals fall into two categories: those in management positions (the "Management Defendants") and those involved

in marketing the funds (the "Sales Defendants") (collectively the "FGG Individuals"). The Feeder Funds, the FGG Affiliates, the Management Defendants, and the Sales Defendants are referred to, collectively, as the "Defendants."

26. The Trustee brings this action against the Defendants to, among other things, recover all funds received, directly or indirectly, from the BLMIS IA Business.

27. BLMIS was insolvent at all times relevant to this proceeding. BLMIS's liabilities were billions of dollars greater than its assets. Because BLMIS could not meet its obligations as they came due, BLMIS was insolvent at the time it made each of the transfers.

28. This Amended Complaint and similar complaints are being filed to recapture stolen monies as well as damages caused to customers through wrongful acts, and to require the Defendants to disgorge the illegal profits by which they were unjustly enriched at the expense of the customers. All Customer Property recovered by the BLMIS estate shall first be distributed pro rata among BLMIS customers in accordance with SIPA § 78fff-2(c)(1).

IV. TRUSTEE'S POWERS AND STANDING

29. Pursuant to SIPA § 78fff-1(a), the Trustee has the general powers of a bankruptcy trustee in a case under the Bankruptcy Code. Chapters 1, 3, 5, and subchapters I and II of chapter 7 of the Bankruptcy Code are applicable to this case to the extent consistent with SIPA §§ 8fff(b).

30. In addition to the powers of a bankruptcy trustee, the Trustee has broader powers granted by SIPA.

31. The Trustee is a real party in interest and has standing to bring these claims pursuant to SIPA § 78fff-1 and the Bankruptcy Code, including sections 323(b) and 704(a)(1), because, among other reasons:

a. the Defendants received "Customer Property" as defined in SIPA § 78*lll*(4);

b. BLMIS incurred losses as a result of the conduct set forth herein;

c. BLMIS customers were injured as a result of the conduct detailed herein;

d. SIPC cannot by statute advance funds to the Trustee to fully reimburse all customers for all of their losses;

e. the Trustee will not be able to fully satisfy all claims;

f. the Trustee, as bailee of Customer Property, can sue on behalf of the customer-bailors;

g. as of this date, the Trustee has received multiple, express assignments of certain claims of the applicable accountholders, which they could have asserted. As assignee, the Trustee stands in the shoes of persons who have suffered injury-in-fact, and a distinct and palpable loss for which the Trustee is entitled to reimbursement in the form of monetary damages;

h. SIPC is the subrogee of claims paid, and to be paid, to customers of BLMIS who have filed claims in the liquidation proceeding. SIPC has expressly conferred upon

the Trustee enforcement of its rights of subrogation with respect to payments it has made and is making to customers of BLMIS from SIPC funds; and

i. the Trustee has the power and authority to avoid and recover transfers pursuant to sections 544, 547, 548, 550(a), and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3).

V. DEFENDANTS

A. *The Feeder Funds*

32. **Fairfield Sentry**: Defendant Fairfield Sentry is a hedge fund, currently in liquidation, that is part of the FGG organization, and which maintained accounts at BLMIS. The fund is organized as an international business company under the laws of the British Virgin Islands. Its registered agent is Codan Trust Company (B.V.I.) Ltd., Romasco Place, Wickhams Cay 1, P.O. Box 3140, Road Town, Tortola, B.V.I.

33. Fairfield Sentry opened its first account at BLMIS in November 1990 (Account No. 1FN012) and a second account in October 1992 (Account No. 1FN045). The fund also opened corresponding options accounts (Account Nos. 1FN069 and 1FN070). (A true and accurate copy of exemplar account agreements for Fairfield Sentry is attached hereto as Ex. 1.)[3] All accounts were still open when Madoff was arrested on December 11, 2008. Prior to Madoff's arrest, Fairfield Sentry deposited almost $4.3 billion and withdrew approximately $3.3 billion from those accounts. (A summary chart of Fairfield Sentry's withdrawals from its BLMIS accounts is attached hereto as Ex. 2.)

[3] All references to exhibits attached to this Amended Complaint will be indicated as "Ex. ___."

34. Fairfield Sentry is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York and entered into agreements in New York, New York including agreements relating to its BLMIS accounts, which it delivered to BLMIS headquarters in New York, New York.

35. At all relevant times, Fairfield Sentry was a customer of BLMIS, which operated its principal place of business in New York, New York and maintained Fairfield Sentry's account in New York, New York. At least one of Fairfield Sentry's account agreements contained a choice of law provision indicating the agreement was made in New York and would be construed pursuant to New York law. (*See* Ex. 1.) Fairfield Sentry utilized New York banks when it redeemed funds distributed to it by BLMIS and when it invested additional funds with BLMIS. Specifically, Fairfield Sentry wired funds to BLMIS's account at JPMorgan Chase Account # 000000140081703 (the "703 Account"), in New York, New York, for application to its accounts and for the conducting of trading activities. (Prior to 2008, the 703 Account's complete account number was 140-081703.)

36. On May 12, 2009, FGG issued a press release stating that FGG professionals actively monitored FGG's investments through Madoff and conducted due diligence both in Bermuda and New York. (A true and accurate copy of the May 12, 2009 press release is attached hereto as Ex. 3.)

37. In addition, Fairfield Sentry filed customer claims seeking to recover funds it allegedly lost on its investments through BLMIS. By filing its customer claims, Fairfield Sentry submitted to the jurisdiction of this Court.

38. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Fairfield Sentry based on the fund's contacts with the U.S.

39. **GS**: Defendant GS is a hedge fund that is part of the FGG organization and that maintained an account at BLMIS. GS is a limited partnership organized under the laws of the State of Delaware. Its registered agent is Corporation Service Company, 2711 Centreville Road, Suite 400, Wilmington, Delaware 19808.

40. GS opened its account at BLMIS in November 1992 (Account No. 1G0092). This account was still open when Madoff was arrested on December 11, 2008. (A true and accurate copy of exemplar account agreements for GS is attached hereto as Ex. 4.) Prior to Madoff's arrest, GS deposited approximately $420.6 million into this account and withdrew $281.1 million from this account. (A summary chart of GS's withdrawals from its BLMIS account is attached hereto as Ex. 5.)

41. GS is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York and entered into agreements in New York, New York, which it delivered to BLMIS headquarters in New York, New York. At all relevant times, GS was a customer of BLMIS, which operated its principal place of business in New York, New York. GS utilized New York banks when it redeemed funds distributed to it by BLMIS and when it invested additional funds with BLMIS. Specifically, GS wired funds to the 703 Account in New York, New York, for application to its account and for the conducting of trading activities.

42. As previously noted, on May 12, 2009, FGG issued a press release stating FGG professionals actively monitored FGG's investments through BLMIS and conducted due diligence both in Bermuda and New York City. (*See* Ex. 3.)

43. In addition, GS filed a customer claim seeking to recover funds it allegedly lost on its investments through BLMIS, whereby it submitted to the jurisdiction of this Court.

44. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over GS based on the fund's contacts with the U.S.

45. **GSP**: Defendant GSP is a hedge fund that is part of the FGG organization, and which maintained an account at BLMIS. GSP is a limited partnership organized under the laws of the State of Delaware. Its registered agent is Corporation Service Company, 2711 Centreville Road, Suite 400, Wilmington, Delaware 19808.

46. GSP opened its account at BLMIS in May 2006 (Account No. 1G0371). (A true and accurate copy of exemplar account agreements for GSP is attached hereto as Ex. 6.) This account was still open when Madoff was arrested on December 11, 2008. Prior to Madoff's arrest, GSP deposited nearly $9.5 million into this account and withdrew almost $6.0 million from this account. (A summary chart of GSP's withdrawals from its BLMIS account is attached hereto as Ex. 7.)

47. GSP is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, and entered into agreements in New York, New

York, which it delivered to BLMIS headquarters in New York, New York. At all relevant times, GSP was a customer of BLMIS, which operated its principal place of business in New York, New York. GSP utilized New York banks when it redeemed funds distributed to it by BLMIS and when it invested additional funds with BLMIS. Specifically, GSP wired funds to the 703 Account in New York, New York, for application to its account and for the conducting of trading activities.

48. As previously noted, on May 12, 2009, FGG issued a press release stating FGG professionals actively monitored FGG's investment through BLMIS and conducted due diligence both in Bermuda and New York. (*See* Ex. 3.)

49. In addition, GSP filed a customer claim seeking to recover funds it allegedly lost on its investments through BLMIS, whereby it submitted to the jurisdiction of this Court.

50. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over GSP based on the fund's contacts with the U.S.

B. *FGG Affiliates*

1. Other FGG Funds

51. **Sigma**: Defendant Sigma is an FGG fund wholly invested in Fairfield Sentry. The fund was organized on November 20, 1990 under the British Virgin Islands' International Business Companies Act, and began operations in 1997. Its registered office is c/o Codan Trust Company (B.V.I.) Ltd., Romasco Place, Wickhams Cay 1, P.O. Box 3140, Road Town, Tortola, B.V.I.

52. Sigma accepted investments in Euros, which it converted to U.S. Dollars and invested in Fairfield Sentry. Fairfield Sentry then invested at least 95% of its assets in BLMIS. Through its investment in Fairfield Sentry, Sigma was an indirect investor through BLMIS.

53. Between 2003 and 2008, Sigma redeemed approximately $752.3 million from Fairfield Sentry. (A true and accurate copy of Sigma's redemption confirmations is attached hereto as Ex. 8.) Upon information and belief, in order to pay these redemptions, Fairfield Sentry withdrew funds from its BLMIS accounts. As such, Sigma's redemptions constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

54. Sigma is subject to personal jurisdiction in this judicial district because Sigma filed a customer claim to recover funds it allegedly lost on its investments in Sentry, whereby it submitted to the jurisdiction of this Court.

55. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Sigma based on the fund's contacts with the U.S.

56. **Lambda**: Defendant Lambda is an FGG fund wholly invested in Fairfield Sentry. The fund was organized on December 7, 1990 under the British Virgin Islands' International Business Companies Act, and began operations in 1999. Its registered office is c/o Codan Trust Company (B.V.I.) Ltd., Romasco Place, Wickhams Cay 1, P.O. Box 3140, Road Town, Tortola, B.V.I.

57. Lambda accepted investments in Swiss francs, which it converted to U.S. Dollars and invested in Fairfield Sentry. Fairfield Sentry then invested at least 95% of its assets in BLMIS. Through its investment in Fairfield Sentry, Lambda was an indirect investor through BLMIS.

58. Between 2003 and 2008, Lambda redeemed over $52.9 million from Fairfield Sentry. (A true and accurate copy of Lambda's redemption confirmations are attached hereto as Ex. 9.) Upon information and belief, in order to pay these redemptions, Fairfield Sentry withdrew funds from its BLMIS accounts. As such, Lambda's redemptions constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

59. Lambda is subject to personal jurisdiction in this judicial district because Lambda filed a customer claim to recover funds it allegedly lost on its investments in Sentry, whereby it submitted to the jurisdiction of this Court.

60. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Lambda based on the fund's contacts with the U.S.

61. **Chester Global Strategy Fund Limited ("Chester")**: Defendant Chester is an FGG fund partially invested in Fairfield Sentry. Chester was created as a fund of funds, and placed its investors' money with other hedge funds. The fund is organized as a limited liability company under the laws of the Cayman Islands and began operations on March 1, 2003. Defendant Andrés Piedrahita ("Piedrahita") is one of the fund's directors.

62. Union Bancaire Privée ("UBP") acted as the fund's investment adviser and custodian. Chester borrowed 30–40% of the net asset value of the fund from UBP for the purpose of making leveraged investments.

63. Between 2005 and 2007, Chester redeemed over $71.7 million from Fairfield Sentry. Chester liquidated its remaining position in Fairfield Sentry on July 19, 2007 by redeeming over $10.6 million. (A true and accurate copy of Chester's redemption confirmations is attached hereto as Ex. 10.) Upon information and belief, in order to pay these redemptions, Fairfield Sentry withdrew funds from its BLMIS accounts. As such, Chester's redemptions are Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

64. Chester is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activity in New York, New York, and derived significant revenue from New York, New York. Specifically, Chester was managed out of FGG's New York City office.

65. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Chester based on the fund's contacts with the U.S.

66. **Chester Global Strategy Fund, LP ("Chester LP")**: Defendant Chester LP is an FGG fund partially invested in GS. Chester LP was created as a fund of funds, and placed its

investors' money with other hedge funds. The fund is organized as a Delaware limited partnership and maintained its principal place of business in New York, New York.

67. In November 2008, Chester LP redeemed over $853,000 from GS. (A true and accurate copy of Chester LP's redemption confirmation is attached hereto as Ex. 11.) Upon information and belief, in order to pay this redemption, GS withdrew funds from its BLMIS account. As such, Chester LP's redemption is Customer Property subject to turnover to the Trustee and/or an avoidable subsequent transfer from BLMIS recoverable by the Trustee.

68. Chester LP is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activity in New York, New York, and derived significant revenue from New York, New York. Specifically, Chester LP was managed out of FGG's New York City office.

69. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Chester LP based on the fund's contacts with the U.S.

70. **Irongate Global Strategy Fund Limited ("Irongate")**: Defendant Irongate is an FGG fund partially invested in Fairfield Sentry. Irongate was created as a fund of funds, and placed its investors' money with other hedge funds. It was created as a limited liability company under the laws of the Cayman Islands and began operations on July 1, 2004. The fund's registered office is c/o Citco Fund Services (Cayman Islands) Limited, Corporate Centre, West

Bay Road, P.O. Box 31106SMB, George Town, Cayman Islands. Piedrahita is one of the fund's directors.

71. In 2007, Irongate redeemed over $36.3 million from Fairfield Sentry. Irongate liquidated its remaining position in Fairfield Sentry on July 19, 2007 by redeeming over $31.3 million. (A true and accurate copy of Irongate's redemption confirmations is attached hereto as Ex. 12.) Upon information and belief, in order to pay these redemptions, Fairfield Sentry withdrew funds from its BLMIS accounts. As such, Irongate's redemptions constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

72. Irongate is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, Irongate was managed out of FGG's New York City office.

73. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Irongate based on the fund's contacts with the U.S.

74. **Fairfield Greenwich Fund (Luxembourg) ("FGF")**: Defendant FGF is an FGG fund partially invested in Fairfield Sentry. The fund was incorporated as a Société d'Investissement à Capital Variable in Luxembourg on October 22, 2002. Its registered office is

located at 28 Avenue Monterey, L-2163 Luxembourg. Defendant Walter Noel ("Noel") serves as Chairman of the Board of Directors.

75. FGF was created as an umbrella fund that would provide investors with a choice of investment in several sub-funds. As of December 31, 2005, FGF had only one sub-fund, Fairfield Guardian Fund ("Fairfield Guardian"). FGF was invested in Fairfield Sentry both directly and through Fairfield Guardian.

76. Between 2004 and 2006, FGF redeemed approximately $2.8 million from Fairfield Sentry. (A true and accurate copy of FGF's redemption confirmations is attached hereto as Ex. 13.) In addition, Fairfield Guardian redeemed from Fairfield Sentry throughout 2005. (A true and accurate copy of an internal FGG chart showing Fairfield Guardian's redemptions from Fairfield Sentry is attached hereto as Ex. 14.) Upon information and belief, in order to pay these redemptions, Fairfield Sentry withdrew funds from its BLMIS accounts. As such, FGF's and Fairfield Guardian's redemptions constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

77. FGF is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, FGF was managed out of FGG's New York City office.

78. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal

jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FGF based on the fund's contacts with the U.S.

79. **Fairfield Investment Fund Limited ("FIFL")**: Defendant FIFL is an FGG fund partially invested in Fairfield Sentry and GS. FIFL was created as a fund of funds which invested in other funds. It was created as a British Virgin Islands International Business Company on July 27, 2000, and began operations on July 1, 2004. Its registered office is c/o Codan Trust Company (B.V.I.) Ltd., Romasco Place, Wickhams Cay 1, P.O. Box 3140, Road Town, Tortola, B.V.I. Noel and Defendant Jeffrey Tucker ("Tucker") serve on the fund's Board of Directors.

80. Between 2003 and 2008, FIFL redeemed approximately $288.1 million from Fairfield Sentry. FIFL redeemed approximately $9.0 million in October 2008, which constituted a liquidation of FIFL's entire remaining position in Fairfield Sentry. (A true and accurate copy of FIFL's redemption confirmations is attached hereto as Ex. 15.) Upon information and belief, in order to pay these redemptions, Fairfield Sentry withdrew funds from its BLMIS accounts. As such, FIFL's redemptions constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

81. FIFL is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activities in New York, New York, and derived significant revenue from New York. Specifically, FIFL was managed out of FGG's New York City office.

82. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FIFL based on the fund's contacts with the U.S.

83. **Fairfield Investors (Euro) Limited ("FIL-Euro")**: Defendant FIL-Euro is an FGG fund created as an international business company under the laws of the British Virgin Islands. Its principal business office is c/o Codan Trust Company (B.V.I.) Ltd., Romasco Place, Wickhams Cay 1, Road Town, Tortola, B.V.I. Defendant Cornelis Boele ("Boele") serves on the fund's Board of Directors.

84. FIL-Euro was created to invest in and trade both securities and other financial instruments. The fund allocated its assets principally to the purchase of shares of FIFL. As explained above, FIFL invested assets in Fairfield Sentry and GS.

85. FIFL, the fund through which FIL-Euro invested in Fairfield Sentry and GS, redeemed approximately $288.1 million from Fairfield Sentry between 2003 and 2008. (*See* Ex. 15.) Upon information and belief, in order to pay FIFL's redemptions, Fairfield Sentry withdrew funds from its BLMIS accounts. FIFL then transferred the funds to FIL-Euro when FIL-Euro redeemed its shares of FIFL. As such, FIL-Euro's redemptions from FIFL constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

86. FIL-Euro is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived

significant revenue from New York, New York. Specifically, FIL-Euro was managed out of FGG's New York City office.

87. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FIL-Euro based on the fund's contacts with the U.S.

88. **Fairfield Investors (Swiss Franc) Limited ("FIL-Swiss")**: Defendant FIL-Swiss is an FGG fund incorporated as an international business company under the laws of the British Virgin Islands on June 6, 1996. Its registered office is located at Codan Trust Company (B.V.I.) Ltd., P.O. Box 3140, Romasco Place, Wickhams Cay 1, Road Town, Tortola, B.V.I. Boele serves on the fund's Board of Directors.

89. FIL-Swiss was created to allocate its assets principally to the purchase of shares of FIFL. As explained above, FIFL invested funds in Fairfield Sentry and GS.

90. FIFL, the fund through which FIL-Swiss invested in Fairfield Sentry and GS, redeemed approximately $288.1 million from Fairfield Sentry between 2003 and 2008. (*See* Ex. 15.) Upon information and belief, to pay FIFL's redemptions, Fairfield Sentry withdrew funds from BLMIS. FIFL then transferred the funds to FIL-Swiss when FIL-Swiss redeemed its shares of FIFL. As such, FIL-Swiss's redemptions from FIFL constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

91. FIL-Swiss is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, FIL-Swiss was managed out of FGG's New York City office, and the fund's investment manager, Fairfield Greenwich Advisors LLC (*see infra* ¶¶148-157), is located in New York, New York.

92. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FIL-Swiss based on the fund's contacts with the U.S.

93. **Fairfield Investors (Yen) Limited ("FIL-Yen")**: Defendant FIL-Yen is an FGG fund incorporated as an international business company under the laws of the British Virgin Islands on January 1, 2004. Its registered office is located at Codan Trust Company (B.V.I.) Ltd., P.O. Box 3140, Romasco Place, Wickhams Cay 1, Road Town, Tortola, B.V.I. Tucker serves on the fund's Board of Directors.

94. FIL-Yen was created to allocate its assets principally to the purchase of shares of FIFL. As explained above, FIFL invested funds in Fairfield Sentry and GS.

95. FIFL, the fund through which FIL-Yen invested in Fairfield Sentry and GS, redeemed approximately $288.1 million from Fairfield Sentry between 2003 and 2008. (*See* Ex. 15.) Upon information and belief, to pay FIFL's redemptions, Fairfield Sentry withdrew funds from its BLMIS accounts. FIFL then transferred the funds to FIL-Yen when FIL-Yen redeemed its shares of FIFL. As such, FIL-Yen's redemptions from FIFL constitute Customer Property

subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

96. FIL-Yen is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, and purposely availed itself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, FIL-Yen was managed out of FGG's New York City office, and the fund's investment manager, FGA, is located in New York, New York.

97. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FIL-Yen based on the fund's contacts with the U.S.

98. **Fairfield Investment Trust ("FIT")**: Defendant FIT is a multi-series unit trust established under the Trusts Law of the Cayman Islands on December 12, 2001. Citco Trustees (Cayman) Limited acts as FIT's trustee, and the trust's registered office is located at Corporate Center, Windward One, West Bay Road, P.O. Box 31106 SMB, Grand Cayman, Cayman Islands, B.W.I.

99. FIT has established at least two series trusts: Fairfield GCI (USD) Fund and Fairfield GCI (JPY) Fund (the "FIT Funds"). The FIT Funds were created as funds of funds, and placed their investors' money with other hedge funds. One of the hedge funds the FIT Funds invested in was Fairfield Sentry.

100. Through Fairfield GCI (USD), FIT redeemed over $5.2 million from Fairfield Sentry between 2003 and 2008. (A true and accurate copy of Fairfield GCI (USD)'s redemption confirmations is attached hereto as Ex. 16.) Through Fairfield GCI (JPY), FIT redeemed approximately $5.2 million from Fairfield Sentry between 2003 and 2007. (A true and accurate copy of Fairfield GCI (JPY)'s redemption confirmations is attached hereto as Ex. 17.) Upon information and belief, in order to pay these redemptions, Fairfield Sentry withdrew funds from its BLMIS accounts. As such, Fairfield GCI's redemptions constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

101. FIT is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, FIT was managed out of FGG's New York City office.

102. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FIT based on the trust's contacts with the U.S.

103. **FIF Advanced, Ltd. ("FIFA")**: Defendant FIFA is an FGG fund partially invested in Fairfield Sentry. FIFA was created as a fund of funds, and placed its investors' money with other hedge funds. FIFA was incorporated as an international business company under the laws of the British Virgin Islands. Its registered office is located at Romasco Place,

Wickhams Cay 1, P.O. Box 3140, Road Town, Tortola, B.V.I. Noel sits on the fund's Board of Directors.

104. Between 2004 and 2007, FIFA redeemed over $45.2 million from Fairfield Sentry. Its redemption of $4.6 million in October 2007 constituted a complete liquidation of its shares. (A true and accurate copy of FIFA's redemption confirmations is attached hereto as Ex. 18.) Upon information and belief, in order to pay these redemptions, Fairfield Sentry withdrew funds from its BLMIS accounts and then transferred the funds to FIFA. As such, FIFA's redemptions constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

105. FIFA is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, FIFA was managed out of FGG's New York City office, and the fund's investment manager, FGA, is located in New York, New York.

106. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FIFA based on the fund's contacts with the U.S.

107. **Sentry Select Limited ("SSL")**: Defendant SSL is an FGG fund partially invested in Fairfield Sentry. It was created as an international business company under the laws of the British Virgin Islands. Its principal business office is c/o Citco B.V.I. Limited, P.O. Box

662, Road Town, Tortola, B.V.I. Noel serves on the fund's Board of Directors.

108. SSL was created to allocate assets between two other FGG funds, Fairfield Sentry and Arlington International Fund ("AIF"). Eighty percent of the fund's assets were invested in Fairfield Sentry, and the remaining 20% went to AIF.

109. SSL redeemed at least $60,000 from Fairfield Sentry in 2004, and may have redeemed additional shares in other years. (A true and accurate copy of SSL's redemption request is attached hereto as Ex. 19.) Upon information and belief, in order to pay these redemptions, Fairfield Sentry withdrew funds from its BLMIS accounts and then transferred the funds to SSL. As such, SSL's redemptions constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

110. SSL is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, SSL was managed out of FGG's New York City office.

111. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over SSL based on the fund's contacts with the U.S.

112. **Stable Fund LP ("Stable Fund")**: Defendant Stable Fund was an FGG fund partially invested in GS. Stable Fund was created as a fund of funds, and placed its investors'

money with other hedge funds. Stable Fund was a Delaware limited partnership with its registered office located at Fairfield Greenwich Partners, LLC, 919 Third Avenue, 11th Floor, New York, New York 10022.

113. Upon information and belief, the only investors allowed to purchase limited partnership interests in Stable Fund were FGG partners and employees, and their respective spouses.

114. In October 2008, Stable Fund redeemed $4.4 million from GS. (A true and accurate copy of Stable Fund's redemption confirmation is attached hereto as Ex. 20.) Upon information and belief, in order to pay this redemption, GS withdrew funds from its BLMIS accounts and then transferred the funds to Stable Fund. As such, Stable Fund's redemption constitutes Customer Property subject to turnover to the Trustee and/or an avoidable subsequent transfer from BLMIS recoverable by the Trustee.

115. Stable Fund is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, Stable Fund was managed out of FGG's New York City office, and Stable Fund's general partner, Fairfield Greenwich Partners, LLC ("FGP") (*see infra* ¶¶163-167), is located in New York, New York.

116. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Stable Fund based on the fund's contacts with the U.S.

2. FGG Investment Managers and Other Administrative Entities

117. By marketing Madoff's strategy, the FGG investment managers and other FGG administrative entities received large sums of money.

118. According to FGG's records, its assets under management increased as follows:

Assets Under Management by FGG

Year	AUM
2002	$5 billion
2003	$5 billion
2004	$8 billion
2005	$9 billion
2006	$10 billion
2007	$16 billion
2008	$14 billion

119. This growth in assets under management resulted in increasing fees to the various FGG investment managers and administration entities. FGG later modified its fee structure to be among the most aggressive in the hedge fund industry.

120. The Defendants established a broad network of investment managers and administrative entities in order to maximize fee revenue derived from BLMIS. Those entities passed monies through two principal entities – FGB and FGL. The FGG entities generated fees from their relationships with BLMIS totaling in excess of one billion dollars.

121. **Fairfield Greenwich (Bermuda) Ltd. ("FGB")**: Along with FGL, Defendant FGB is one of the two principal FGG operating entities. FGB is a company incorporated in Bermuda on June 13, 2003, with its principal place of business at 131 Front Street, First Floor,

Hamilton, Bermuda, HM 11. FGB's mailing address is 12 Church Street, Suite 606, Hamilton, Bermuda, HM 11.

122. Prior to 2003, FGL served as the investment manager to Fairfield Sentry, Sigma, and Lambda. In 2003 FGL assigned these management agreements to FGB. A potential investor communicated his belief that the change in management structure was an "attempt by Madoff to avoid SEC scrutiny of his firm and market making activities. This concern seems to be prevalent in Switzerland and has been expressed by a good number of other investor or potential investors in Fairfield Sentry." (A true and accurate copy of the July 2, 2003 email to Tucker and Boele is attached hereto as Ex. 21.)

123. FGB was, until 2007, a wholly-owned subsidiary of FGL. In 2007, ownership of FGB was transferred from FGL to FGL's shareholders. The shareholders included Fairfield International Managers, Inc. ("FIM") (36.8%) − co-owned by Noel and Tucker, Safehand Investment (27.5%) – owned exclusively by Piedrahita, and many of the other Management Defendants and Sales Defendants. (A true and accurate copy of an excerpt from an FGG chart that contains the proposed shareholder register for FGL is attached hereto as Ex. 22.)

124. FGB has been registered with the SEC as an investment adviser since at least 2003. As a registered investment adviser, FGB filed Form 13Fs with the SEC. FGB's 13Fs were signed by Defendant Mark McKeefry ("McKeefry"), as FGB's general counsel, from FGG's New York offices.

125. FGB acted as the investment manager to Fairfield Sentry from July 1, 2003 to December 11, 2008. As compensation for these services, FGB received a management fee equal to 1% of the net asset value of the fund, as well as a performance fee equal to 20% of net profits

from the fund. Unlike other hedge funds that paid fees on an annual basis, to increase the fees paid to FGB, Fairfield Sentry paid the management fee monthly and the performance fee quarterly.

126. According to Fairfield Sentry's financial statements, between 2003 and the first half of 2008, FGB received the following fees from Fairfield Sentry:

Fees Earned by FGB for Serving as Investment Manager to Fairfield Sentry[4]

Year	Management Fees	Performance Fees	Total Fees
2003	$5,221,000	$80,515,000	$85,736,000
2004	$21,549,000	$81,278,000	$102,827,000
2005	$51,127,000	$87,225,000	$138,352,000
2006	$50,465,000	$107,779,000	$158,244,000
2007	$67,322,000	$116,157,000	$183,479,000
2008	$36,134,000	$46,070,000	$82,204,000
TOTAL	**$231,818,000**	**$519,024,000**	**$750,842,000**

127. Upon information and belief, in order to pay FGB's fees, Fairfield Sentry withdrew funds from BLMIS and then transferred the funds to FGB; as such, the fee payments constitute Customer Property subject to turnover to the Trustee and/or are avoidable subsequent transfers from BLMIS recoverable by the Trustee.

128. FGB acted as manager to Irongate, for which it received a 0.8% management fee and 10% performance fee. Irongate's financial statements indicate these fees totaled:

[4] All fees described herein have been rounded here to the nearest thousand.

Fees Earned by FGB While Serving as Manager to Irongate

Year	Management Fees	Performance Fees	Total Fees
2005	$2,387,000	$2,532,000	$4,918,000
2006	$7,493,000	$7,986,000	$15,479,000
2007	$14,189,000	$18,012,000	$32,201,000
TOTAL	**$24,069,000**	**$28,529,000**	**$52,599,000**

129. Upon information and belief, in order to pay FGB's fees, Irongate redeemed shares of Fairfield Sentry. In order to pay Irongate's redemptions, Fairfield Sentry withdrew funds from BLMIS and transferred the funds to Irongate, which in turn transferred the funds to FGB to pay its fees. As such, the Irongate redemptions and FGB fee payments constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

130. FGB also served as general partner to GS and GSP. In its role as general partner, FGB was responsible for directing GS's and GSP's investment and trading activities. FGB began serving as general partner to GS on June 13, 2003, and continued to serve in that capacity until 2004. GBL served as GS's general partner between 2004 and 2006. FGB then resumed as general partner in 2006. The performance fees for 2004 and 2006 were split between GBL and FGB based upon when each served as general partner. FGB has served as general partner to GSP since the fund commenced operations on May 1, 2006.

131. FGB earned management and performance fees from GS and GSP. In 2003, as general partner to GS, FGB earned a performance fee equal to 20% of capital appreciation and a management fee equal to 0.1% of assets under management. The management fee was removed in 2004, and the 0.1% fee was instead passed along to FGA for expense reimbursement. After GSP was created in 2006, FGB returned as GS's general partner and began charging an increased

management fee equal to 1% of the assets under management, in addition to the 20% performance fee, for both GS and GSP. GS's and GSP's financial statements indicate FGB earned the following fees while serving as general partner to GS and GSP:

Fees Earned by FGB While Serving as General Partner to GS

Year	Management Fees	Performance Fees	Total Fees
2003	$59,000	$2,620,000	$2,679,000
2004	N/A	$2,644,000	$2,644,000
2005	N/A	N/A	N/A
2006	$282,000	$2,929,000	$3,211,000
2007	$987,000	$3,054,000	$4,041,000
TOTAL	**$1,328,000**	**$11,247,000**	**$12,575,000**

Fees Earned by FGB While Serving as General Partner to GSP

Year	Management Fees	Performance Fees	Total Fees
2006	$16,000	$93,000	$109,000
2007	$57,000	$186,000	$243,000
TOTAL	**$73,000**	**$278,000**	**$351,000**

132. Upon information and belief, FGB received the management fees and performance fees in the form of limited partnership interests. During the years in which FGB served as general partner to GS and GSP, FGB redeemed limited partnership interests worth:

Redemptions from GS by FGB

Year	Redemptions by FGB
2003	$2,500,000
2004	$4,000,000
2005	$0
2006	$4,200,000
2007	$3,304,000
2008	$259,000
TOTAL	**$14,263,000**

Redemptions from GSP by FGB

Year	Redemptions by FGB
2006	$0
2007	$248,000
2008	$40,000
TOTAL	**$288,000**

133. Upon information and belief, in order to pay FGB's fees and redemptions, GS and GSP withdrew funds from BLMIS and transferred the funds to FGB. As such, FGB's redemptions and fee payments constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee. In addition, as the general partner to GS and GSP, FGB is liable for the repayment of GS's and GSP's debts and obligations. During the years in which FGB acted as general partner, GS withdrew more than $124.0 million from BLMIS, and GSP withdrew more than $6.0 million. FGB is directly liable for the repayment of these withdrawals which constitute Customer Property subject to turnover to the Trustee and/or avoidable transfers recoverable by the Trustee.

134. FGB is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, FGB was managed out of FGG's New York City office. In addition, FGB filed customer claims, whereby it submitted to the jurisdiction of this Court.

135. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal

jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FGB based on the entity's contacts with the U.S.

136. **Fairfield Greenwich Limited ("FGL")**: Defendant FGL was originally incorporated under the laws of Ireland in 1997 and was reorganized as a Cayman Islands limited liability company on January 1, 2002. FGL's mailing address is c/o Charles, Adams, Ritchie & Duckworth, Second Floor, Zephyr House, P.O. Box 709, George Town, Grand Cayman, Cayman Islands, B.W.I. FGL is registered to do business in the State of New York and lists its principal executive office as FGG's offices in New York, New York.

137. FGL owned 100% of FGA and, until 2007, owned 100% of FGB. FGL was also a 100% owner of Fairfield Heathcliff Capital LLC ("FHC") (*see infra* ¶¶168-172). As owner of these entities, FGL received the benefit of fees these entities earned through their association with the Feeder Funds.

138. FGL served as investment manager and placement agent to a number of FGG funds. Between 1999 and 2003, FGL acted as investment manager to Fairfield Sentry. In this capacity, FGL received a 20% performance fee. In 2002 and 2003, FGL also received a 1% management fee. In total, according to Fairfield Sentry's financial statements, FGL received the following fees:

Fees Earned by FGL While Serving as Investment Manager to Fairfield Sentry

Year	Management Fees	Performance Fees	Total Fees
1999	N/A	$68,833,000	$68,833,000
2000	N/A	$73,575,000	$73,575,000
2001	N/A	$84,664,000	$84,664,000
2002	$3,844,000	$83,591,000	$87,435,000
2003	$5,221,000	$80,515,000	$85,736,000
TOTAL	**$9,065,000**	**$391,178,000**	**$400,243,000**

139. Based upon information and belief, in order to pay FGL's fees, Fairfield Sentry withdrew funds from its BLMIS account and then transferred the funds to FGL. As such, FGL's fees constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

140. In addition, FGL served as the investment adviser to the FIT Funds, for which it received a 0.1% expense reimbursement, and as the placement agent to FIFL and FIFA, for which it received a 1% placement fee. FIFL's financial statements show FGL earned placement fees totaling:

Fees Earned by FGL While Serving as Placement Agent to FIFL

Year	Placement Fees
2005	$9,070,000
2006	$5,409,000
2007	$4,985,000
TOTAL	**$19,464,000**

141. Based upon information and belief, in order to pay FGL's fees, FIFL redeemed shares of Fairfield Sentry. In order to pay FIFL's redemptions, Fairfield Sentry withdrew funds from BLMIS and then transferred the funds to FIFL, which in turn transferred the funds to FGL.

As such, FIFL's redemptions and FGL's fees constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

142. FGL also served as general partner to GS from 1999 to 2003, for which it earned a 20% performance fee. Financial statements for GS indicate these fees totaled:

Fees Earned by FGL While Serving as General Partner to GS

Year	Performance Fees
1999	$3,406,000
2000	$3,252,000
2001	$3,144,000
2002	$2,736,000
2003	$2,620,000
TOTAL	**$15,158,000**

143. FGL and FGB each acted as general partner of GS for half of 2003. The fees paid in 2003 were split between FGL and FGB based upon when each served as general partner.

144. FGL received its performance fees in the form of limited partnership interests, of which it redeemed the following amounts:

Redemptions from GS by FGL

Year	Redemptions by FGL
1999	$1,725,000
2000	$1,850,000
2001	$12,129,000
2002	$895,000
2003	$2,500,000
TOTAL	**$19,099,000**

145. Upon information and belief, in order to pay FGL's redemptions, GS withdrew funds from BLMIS and transferred the funds to FGL. As such, FGL's redemptions constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from

BLMIS recoverable by the Trustee. In addition, as general partner to GS, FGL is directly liable for the repayment of GS's withdrawals from 1999 to 2003, totaling in excess of $58.0 million, which constitute Customer Property subject to turnover to the Trustee and/or avoidable transfers recoverable by the Trustee.

146. FGL is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, FGL was managed out of FGG's New York City office. In addition, FGL is licensed to do business in the State of New York and maintained its principal executive office in New York, New York.

147. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FGL based on the entity's contacts with the U.S.

148. **Fairfield Greenwich Advisors LLC ("FGA")**: Defendant FGA is a Delaware limited liability company and a wholly-owned subsidiary of FGL. FGA is also registered as an investment adviser with the SEC. Its offices are located in New York, New York.

149. FGA provided administrative services and back-office support to GS, GSP, Sigma, and Lambda. According to financial statements issued by those funds, FGA received the following fees:

Fees Earned by FGA for Providing Administrative Services to GS

Year	Fees
2004	$41,000
2005	$171,000
2006	$137,000
2007	$109,000
TOTAL	**$458,000**

150. Based upon information and belief, in order to pay FGA's fees, GS withdrew funds from its BLMIS account and then transferred the funds from BLMIS to FGA. As such, GS's withdrawals and FGA's fees constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

Fees Earned by FGA for Providing Administrative Services to GSP

Year	Fees
2006	$4,000
2007	$7,000
TOTAL	**$11,000**

151. Based upon information and belief, in order to pay FGA's fees, GSP withdrew funds from its BLMIS account and then transferred the funds from BLMIS to FGA. As such, FGA's fees constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

Fees Earned by FGA for Providing Administrative Services to Sigma

Year	Fees
2003	€ 247,200
2004	€ 247,000
2005	€ 459,000
2006	€ 562,000
2007	€ 960,000
TOTAL	**€ 2,273,000**

Fees Earned by FGA for Providing Administrative Services to Lambda

Year	Fees
2004	CHF 59,000
2005	CHF 72,000
2006	CHF 61,000
2007	CHF 61,000
TOTAL	**CHF 254,000**

152. Upon information and belief, in order to pay FGA's fees, Sigma and Lambda redeemed shares of Fairfield Sentry. Upon information and belief, in order to pay Sigma's and Lambda's redemptions, Fairfield Sentry withdrew funds from BLMIS and transferred the funds to Sigma and Lambda. In turn, Sigma and Lambda transferred the funds to FGA. As such, Sigma's and Lambda's redemptions and FGA's fees constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

153. FGA provided similar services to SSL, for which it received a fee equal to 0.1% of assets under management.

154. FGA also served as investment manager to a number of FGG funds. These funds included: Chester LP, for which FGA received a management fee equal to 0.8%; Stable Fund, for which FGA received a 1% management fee; FIL-Yen, for which FGA received a 0.1% expense reimbursement; FIL-Swiss, for which FGA received a 0.1% expense reimbursement; and FIFL and FIFA, for which FGA received an expense reimbursement of 0.15% and 0.1%, respectively.

155. Upon information and belief, some if not all of these fees were paid with funds originally withdrawn from the Feeder Funds' accounts at BLMIS. As such, these fees constitute

Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

156. FGA is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, FGA's principal place of business is located in New York, New York.

157. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FGA based on the entity's contacts with the U.S.

158. **Fairfield Greenwich GP, LLC ("FGGP")**: Defendant FGGP is a Delaware limited liability company. Its principal office is located at 575 Madison Avenue, New York, New York 10022. FGGP is a wholly-owned subsidiary of FGL.

159. FGGP acted as general partner to Chester LP, for which it earned a 10% performance fee in the form of limited partnership interests in Chester LP. Upon information and belief, FGGP redeemed some of the limited partner interests it received as payment from Chester LP. Chester LP was invested in Fairfield Sentry. In order to pay FGGP's redemptions, Chester LP redeemed shares of Fairfield Sentry. Upon information and belief, to pay Chester LP's redemptions Fairfield Sentry withdrew funds from BLMIS and then Chester transferred the funds to FGGP. As such, the redemptions FGGP received from Chester LP constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS

recoverable by the Trustee.

160. Because FGGP served as general partner to Chester LP, it is directly liable for all avoidable transfers from BLMIS to Chester LP.

161. FGGP is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, FGGP's principal place of business is located in New York, New York.

162. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FGGP based on the entity's contacts with the U.S.

163. **Fairfield Greenwich Partners, LLC ("FGP")**: Defendant FGP is a Delaware limited liability company organized in 2003. Its principal office is located at 575 Madison Avenue, New York, New York.

164. FGP acted as general partner to Stable Fund, for which it received a 10% performance fee in the form of limited partnership interests in Stable Fund. Upon information and belief, FGP redeemed some of the limited partnership interests it received as payment from the Stable Fund. As explained above, Stable Fund was partially invested in GS. Upon information and belief, in order to pay the Stable Fund redemptions, GS withdrew funds from BLMIS and then Stable Fund transferred the funds to FGP. As such, FGP's redemptions

constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

165. Because FGP served as general partner to Stable Fund, it is directly liable for all amounts Stable Fund redeemed from GS. Upon information and belief, some if not all of those redemptions were paid by funds withdrawn from GS's accounts at BLMIS. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

166. FGP is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, FGP was managed out of FGG's New York City office and maintained its principal place of business in New York, New York.

167. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FGP based on the entity's contacts with the U.S.

168. **Fairfield Heathcliff Capital LLC ("FHC")**: Defendant FHC is a Delaware limited liability company and a broker-dealer registered with the SEC. It is also an affiliate of FGGP.

169. FHC served as placement agent to Chester LP and oversaw the marketing of the fund's limited partnership interests. As placement agent, FHC received a fee equal to 5% of the capital contributions it solicited.

170. Upon information and belief, some if not all of these fees were paid with funds that were originally withdrawn from the Feeder Funds' accounts at BLMIS. As such, FHC's fees constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

171. FHC is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, FHC was managed out of FGG's New York City office.

172. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FHC based on the entity's contacts with the U.S.

173. **Fairfield International Managers, Inc. ("FIM")**: Defendant FIM is a Delaware corporation formed on January 4, 1988. The purpose of FIM is to act as an investment manager and to engage in all phases of the securities business.

174. The original directors of FIM were Noel, Tucker, and Kolber, who later left FIM. As of 2003, Defendants Noel and Tucker each owned 50% of the shares of FIM. FIM owns significant shares in both FGB and FGL.

175. FIM received funds from the Feeder Funds' BLMIS accounts through its direct and indirect ownership of FGB and FGL. Upon information and belief, some, if not all, of the monies paid to FIM were paid with funds that were originally withdrawn from the Feeder Funds' accounts at BLMIS. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

176. FIM is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, FIM was managed out of FGG's New York City office.

177. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over FIM based on the entity's contacts with the U.S.

178. **Fairfield Greenwich (UK) Limited ("Fairfield-UK")**: Defendant Fairfield-UK is an FGG entity incorporated in England and Wales in 1997. Its registered office is located at Fifth Floor, 32 Dover Street, London W1X 3RA, England.

179. Fairfield-UK served as investment manager to Chester, for which it received fees from Chester Management. Fairfield-UK also served as investment manager to FGF. Depending on the FGF share class Fairfield-UK received a management fee of between 0.55% and 1%, a performance fee of between 0% and 10%, and an expense reimbursement equal to 0.1%.

180. Upon information and belief, some if not all of Fairfield-UK's fees were paid with funds that were originally withdrawn from the Feeder Funds' accounts at BLMIS. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

181. Fairfield-UK is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, Fairfield-UK was managed out of FGG's New York City office.

182. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Fairfield-UK based on the entity's contacts with the U.S.

183. **Greenwich Bermuda Limited ("GBL")**: Defendant GBL is a Bermuda corporation. GBL served as the general partner of GS from December 23, 2004 to March 1, 2006. GS's financial statements indicate that, during that time, GBL earned the following performance fees:

Fees Earned by GBL While Serving as General Partner to GS

Year	Performance Fees
2004	$2,644,000
2005	$2,451,000
2006	$2,929,000
TOTAL	**$8,024,000**

184. The performance fees for 2004 and 2006 were split between GBL and FGB based upon when each served as general partner.

185. GBL received its fees in the form of limited partnership interests in GS. Upon information and belief, GBL redeemed some of its GS limited partnership interests. Upon information and belief, in order to pay GBL's redemptions, GS withdrew funds from its BLMIS account and then transferred the funds to GBL. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

186. GBL is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, GBL was managed out of FGG's New York City office.

187. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over GBL based on the entity's contacts with the U.S.

188. **Chester Management (Cayman) Limited ("Chester Management")**: Defendant Chester Management is an FGG entity incorporated in the Cayman Islands on February 12, 2003 as a limited liability company. Its registered office is located at P.O. Box 309, Ugland House, George Town, Cayman Islands, B.W.I.

189. Chester Management served as manager to Chester, for which it received a 0.8% management fee and 10% performance fee. According to Chester's financial statements, between 2003 and 2007, these fees totaled:

Fees Earned by Chester Management While Serving as Manager to Chester

Year	Management Fees	Performance Fees	Total Fees
2003	$1,322,000	$1,404,000	$2,726,000
2004	$6,017,000	$4,788,000	$10,804,000
2005	$8,292,000	$8,997,000	$17,289,000
2006	$13,442,000	$14,004,000	$27,446,000
2007	$18,400,000	$20,330,000	$38,730,000
TOTAL	**$47,472,000**	**$49,523,000**	**$96,995,000**

190. Upon information and belief, some if not all of these fees were paid with funds that were originally withdrawn from the Feeder Funds' accounts at BLMIS. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

191. Chester Management is subject to personal jurisdiction in this judicial district as it routinely conducted business in New York, New York, purposely availed itself of the laws of the State of New York by undertaking significant commercial activities in New York, New York, and derived significant revenue from New York, New York. Specifically, Chester Management was managed out of FGG's New York City office.

192. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Chester Management based on the entity's contacts with the U.S.

3. Management Defendants

193. **Walter Noel**: Defendant Noel is a founding partner of FGG and sat on its Board of Directors. He also served as a director of Fairfield Sentry, Sigma, and FGB and as a general partner to GS from 1992 to 1998. Noel is also an indirect shareholder in FGB.

194. As one of FGG's founding partners, Noel was intimately involved with its operations. Noel made day-to-day management decisions regarding the Feeder Funds and the FGG Affiliates. He was also involved in marketing the Feeder Funds, as well as the preparation and review of sales and marketing materials.

195. As further described below, Noel was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

196. Noel and his immediate and extended family became exceptionally wealthy due to FGG's *de facto* partnership with Madoff. Noel took for himself and his family hundreds of millions of dollars of Customer Property in the form of fees and profits. This unjust enrichment enabled him, and his family, to live what has been publicly described as a life of grandeur, including a mansion in Greenwich, Connecticut, a tropical retreat in Mustique, and extravagant vacation homes in Palm Beach and Southampton. (A true and accurate copy of the April 2009 Vanity Fair article entitled, "Greenwich Mean Time," is attached hereto as Ex. 23.)

197. Partners of FGG received three types of compensation. In addition to standard salaries and bonuses, they also received "partnership distributions." Each partner was assigned a specific percentage of the profits earned from all of the FGG entities. When the profits were gathered, they were then distributed to the partners based on their percentage allocation.

198. As a founding partner, Noel received some of the largest distributions. Between 2002 and 2008 alone, Noel received the following partnership distributions: $11.4 million in 2002, $10.6 million in 2003, $21.7 million in 2004, $25.4 million in 2005, $29.7 million in 2006, $28.2 million in 2007, and $12.3 million in 2008, for a total of approximately $114 million between 2002 and 2008. Upon information and belief, Noel received these distributions, as well as additional compensation in the form of salary and bonuses, during each year the Feeder Funds maintained accounts at BLMIS.

199. Upon information and belief, Noel and his family also received the benefit of redemptions from GS made by the Walter M. Noel Jr. IRA and the Noel Family, LLC. Upon information and belief, the former redeemed $2.5 million in 2006, and the latter redeemed $400,000 in 2008. In addition, as an indirect shareholder in FGL and FGB, Noel received the benefit of many payments to FGL and FGB, which were paid by funds withdrawn from the Feeder Funds' BLMIS accounts.

200. Upon information and belief, some if not all of the above-referenced payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' accounts at BLMIS. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

201. Noel is also personally responsible for repayment to the Trustee of all avoidable transfers received by GS while he was the general partner. During that time, between 1992 and 1998, GS redeemed approximately $37 million from its BLMIS account.

202. Noel is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, Noel filed customer claims, whereby he submitted to the jurisdiction of this Court. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Noel based on his contacts with the U.S.

203. **Jeffrey Tucker**: Defendant Tucker is a founding partner of FGG and sits on its Board of Directors. He served as a director of FGB and FGL, and as a principal of FGL. He also served, along with Noel, as general partner of GS from 1992 to 1998. Tucker is an indirect shareholder in FGB.

204. Tucker was intimately involved with FGG's operations, including the operation of the Feeder Funds. As a director, Tucker was involved in making day-to-day management decisions regarding the Feeder Funds and the FGG Affiliates. He also reviewed and helped prepare sales and marketing materials.

205. As further described below, Tucker was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

206. Tucker and his immediate and extended family became exceptionally wealthy due to FGG's *de facto* partnership with Madoff. Prized racehorses, private jets, and luxurious mansions were just a few of the riches amassed by Tucker from management and partnership fees received for facilitating the fraud.

207. Tucker received substantial partnership distributions, including $11.4 million in 2002, $10.6 million in 2003, $21.7 million in 2004, $25.4 million in 2005, $29.7 million in 2006, $28.2 million in 2007, and $12.3 million in 2008, for a total of approximately $114 million between 2002 and 2008. Upon information and belief, Tucker received these distributions, as well as additional compensation in the form of salaries and bonuses, during each year FGG maintained accounts with BLMIS beginning from 1990 forward.

208. In addition, as an indirect shareholder in FGL and FGB, Tucker received the benefit of many payments to FGL and FGB which were paid by funds withdrawn from the Feeder Funds' BLMIS accounts. Tucker is also personally responsible for repayment to the Trustee of any avoidable transfers received by GS while he was the general partner.

209. Upon information and belief, some if not all of the above-referenced payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' accounts at BLMIS. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

210. Tucker is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, Tucker is subject to personal jurisdiction in this judicial district as he is a resident of New York, New York, and Tucker filed a customer claim, whereby he submitted to the jurisdiction of this Court. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Tucker based on his contacts with the U.S.

211. **Andrés Piedrahita**: Defendant Piedrahita is a founding partner of FGG, a member of the Board of Directors, and Chairman of its Executive Committee. He has served on FGG's Executive Committee since its inception in 2007. He also served as Director and President of FGB and owned, directly or indirectly, between 10% and 25% of FGB. In 2007 and 2008, Piedrahita was the highest paid partner at FGG.

212. Piedrahita was intimately involved with FGG's operations, including the operations of the Feeder Funds. As a member of the Executive Committee and Chairman of the Board of Directors, Piedrahita was deeply involved in making day-to-day management decisions regarding the FGG entities.

213. As further described below, Piedrahita was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

214. Piedrahita became exorbitantly rich by serving as a Madoff globetrotting salesman. According to published reports, he lived a whirlwind lifestyle of Gulfstream jets, multi-million dollar yachts, extravagant parties, pheasant hunting with royalty, and spent tens of millions of dollars on homes around the world. (A true and accurate copy of the March 31, 2009 Wall Street Journal article entitled, "The Charming Mr. Piedrahita Finds Himself Caught in the Madoff Storm," is attached hereto as Ex. 24.) Public comments attributed to Piedrahita such as "[my job was] 'to live better than any of my clients,'" (*id.*) manifest his prevailing motivation – do nothing that might upset the Madoff relationship that made his lavish lifestyle possible. His motivation was one of limitless greed, without regard for any interest other than his own.

215. Piedrahita received substantial partnership distributions including approximately $9.4 million in 2002, $12.3 million in 2003, $21.3 million in 2004, $25.1 million in 2005, $31.6 million in 2006, $36.0 million in 2007, and $26.4 million in 2008, for a total of approximately $162 million between 2002 and 2008. Upon information and belief, Piedrahita has received these distributions, as well as additional compensation in the form of salaries and bonuses, every year since he joined FGG in 1997.

216. As a direct or indirect shareholder of FGL and FGB, Piedrahita received the benefit of many payments to FGL and FGB which were paid by funds withdrawn from the Feeder Funds' BLMIS account.

217. Upon information and belief, some if not all of the above-referenced payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

218. Piedrahita is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, Piedrahita routinely received payments from FGG's New York City office and regularly attended meetings of FGG's Executive Committee and Board of Directors in New York, New York. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Piedrahita based on his contacts with the U.S.

219. **Mark McKeefry**: Defendant McKeefry joined FGG in 2003. He became a partner in 2005 and served on FGG's Executive Committee since its inception in 2007. He also acted as FGG's Chief Compliance Officer; FGB's Chief Legal Officer ("CLO"), Assistant Secretary, and Director; FGL's Executive Director, Chief Operating Officer, President, and Vice President; FGA's President; and Director of Fairfield-UK. As FGG's CLO, McKeefry was responsible for legal and compliance issues. He was also responsible for maintaining FGG's relationship with Madoff in 2007 and 2008.

220. In his role as CLO, as well as in his numerous other roles within the FGG entities, McKeefry was responsible for approving and signing various documents on FGG's behalf. Such documents included: letters to investors; Form 13F filings with the SEC; agreements with BLMIS, including customer agreements and option-trading agreements; Form ADV Applications for Investment Adviser Registration; subscription agreements; confidentiality agreements;

distribution agreements; letters of understanding; written resolutions; delegation agreements; selling agreements; and certificates of incumbency.

221. As further described below, McKeefry was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

222. McKeefry benefited greatly from FGG's *de facto* partnership with Madoff. McKeefry received approximately $600,000 in partnership distributions in 2005, $1.6 million in 2006, $3.4 million in 2007, and $3.4 million in 2008, for a total of $9.0 million between 2005 and 2008. Upon information and belief, McKeefry also received significant salary and bonuses.

223. Upon information and belief, some if not all of the above-referenced payments and distributions were made with funds originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

224. McKeefry is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, upon information and belief, McKeefry is a resident of New York, New York. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over McKeefry based on his contacts with the U.S.

225. **Daniel Lipton ("Lipton")**: Defendant Lipton joined FGG in 2002. During his employment with FGG, he served as Chief Financial Officer ("CFO") and Assistant Secretary of FGB, and Vice President and CFO of FGA. Lipton has been a partner of FGG since 2005.

226. As CFO, Lipton was principally responsible for overseeing the annual FGG audits. Lipton also assisted in managing FGG's operations, including: authorizing and requesting wire transfers into FGG accounts; communicating with FGG investors regarding audits of FGG's financial statements; and approving and signing numerous documents on FGG's behalf. Such documents included: letters to clients regarding amendments to their agreements with FGG and their statements for various FGG funds; the Feeder Funds' customer, option, and trading authorization agreements with BLMIS; numerous loan requests on behalf of FGG; agreements establishing FGG entities as investment managers and placement agents; requests for wire transfers redeeming money from the Feeder Funds' BLMIS accounts; and letters requesting a confirmation of assets in a number of the Funds.

227. As further described below, Lipton was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

228. As a partner, Lipton was compensated handsomely due to FGG's relationship with Madoff. Lipton received partnership distributions of $200,000 in 2005, $757,000 in 2006, $1.8 million in 2007, and $1.1 million in 2008, for a total of approximately $3.8 million between 2005 and 2008. Upon information and belief, Lipton also received significant salary and bonuses.

229. Upon information and belief, some if not all of the above-referenced payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

230. Lipton is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, upon information and belief, Lipton is a resident of New York, New York. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Lipton based on his contacts with the U.S.

231. **Amit Vijayvergiya ("Vijayvergiya")**: Defendant Vijayvergiya joined FGG on June 9, 2003 as FGB's Risk Manager. He quickly became a key player at FGB, and held the title of Vice President and Head of Risk Management in 2005, where he focused primarily on hedge fund manager selection and risk management. On January 1, 2007, Vijayvergiya became a partner and Head of FGG's Risk Management Division in the Investment Group, reporting directly to the Executive Committee.

232. Vijayvergiya was responsible for conducting due diligence, initial risk modeling and ongoing risk analysis on investments, fund operations services, supervising staff, and shareholder communications. He was also charged with assessing the risk of the Feeder Fund

investments. (A true and accurate copy of Vijayvergiya's employment offer letter is attached hereto as Ex. 25.)

233. As further described below, Vijayvergiya was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

234. FGG's *de facto* partnership with Madoff proved lucrative for Vijayvergiya. After becoming a partner, Vijayvergiya received partnership distributions of $1.8 million in 2007 and $800,000 in 2008. Upon information and belief, Vijayvergiya also received significant salary and bonuses.

235. Upon information and belief, some if not all of the above-referenced payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

236. Vijayvergiya is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Vijayvergiya based on his contacts with the U.S.

237. **Gordon McKenzie ("McKenzie")**: Defendant McKenzie was a Director and Controller at FGB, and a member of the Fund Accounting Division in FGG's Operations Group. McKenzie joined FGG in 2003.

238. McKenzie was responsible for accounting and back-office operations for Fairfield Sentry, Sigma, Lambda, Chester, and Irongate. He joined FGG as a Finance Associate and was eventually elevated to Controller of FGB. McKenzie was also part of FGG's Finance Group, whose core duties included conducting mini-audits of monthly financial statements and preparing and coordinating audits. He worked closely with PricewaterhouseCoopers ("PwC") when it conducted audits of FGG's funds and reviewed the financial statements PwC prepared.

239. As further described below, McKenzie was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

240. McKenzie received significant salary and bonuses during his employment at FGB. For instance, in 2007, he received a $180,000 bonus, in 2008, McKenzie received a salary of over $150,000 and a bonus of over $200,000. He also received over $100,000 in deferred compensation. Upon information and belief, McKenzie received comparable amounts each year since he joined FGG in 2003.

241. Upon information and belief, some if not all of these payments were made with funds originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

242. McKenzie is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over McKenzie based on his contacts with the U.S.

243. **Richard Landsberger ("Landsberger")**: Defendant Landsberger joined FGG in 2001, and became an FGG partner in 2002. He was a member of FGG's Executive Committee, Director of Fairfield-UK, and Head of Sales of FIFL.

244. As further described below, Landsberger was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

245. Landsberger received substantial partner distributions, including $32,000 in 2002, $690,000 in 2003, $1.6 million in 2004, $2.7 million in 2005, $3.9 million in 2006, $5.4 million in 2007, and $4.0 million in 2008, for a total of approximately $18.3 million. Upon information and belief, Landsberger also received significant salary and bonuses.

246. Upon information and belief, these payments and distributions were paid with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

247. Landsberger is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Landsberger based on his contacts with the U.S.

248. **Philip Toub ("Toub")**: Defendant Toub, one of Noel's sons-in-law, joined FGG in 1997 in its New York office. Toub was a partner and member of FGG's Executive Committee. Throughout his employment with FGG, Toub served as a Director of FGL and as a member of FGG's Client Development Group.

249. Toub's responsibilities included developing new products and marketing FGG's offshore funds. His product development activities focused on markets in Brazil and the Middle East. These activities necessarily required Toub to establish relationships with a number of FGG investors and thereafter respond to customer inquiries related to Madoff.

250. As further described below, Toub was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

251. After becoming a partner on January 1, 2001, Toub received the following partnership distributions, totaling over $25 million: $822,000 in 2002, $892,000 in 2003, $1.5

million in 2004, $3.9 million in 2005, $7.5 million in 2006, $8.4 million in 2007, and $3.3 million in 2008. Upon information and belief, Toub also received significant salary and bonuses.

252. Upon information and belief, some if not all of the payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

253. Toub is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Toub based on his contacts with the U.S.

254. **Charles Murphy ("Murphy")**: Defendant Murphy joined FGG as a partner on April 1, 2007. Based in FGG's New York office, Murphy served on FGG's Executive Committee and focused on strategy and capital markets for FGG.

255. Murphy was heavily involved in important strategic decisions involving Madoff. Such decisions included the amount of money FGG should invest through BLMIS, which FGG funds should invest through BLMIS, and whether FGG should leverage its investor funds by borrowing cash in order to increase investments through BLMIS. Murphy also was often

involved in email correspondence about Madoff, which included discussions about important client redemptions that were requested due to client concerns about Madoff risks.

256. As further described below, Murphy was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

257. Murphy received approximately $2.4 million in partnership distributions in 2007 and $2.7 million in 2008, for a total of approximately $5.1 million. Upon information and belief, Murphy also received significant salary and bonuses.

258. Upon information and belief, some if not all of these payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

259. Murphy is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Murphy based on his contacts with the U.S.

260. **Robert Blum ("Blum")**: Defendant Blum served as a Managing Partner at FGG and the Chief Operating Officer of FGB and FGA. He started at FGG in 2000 and made partner on January 1, 2002. Blum resigned from his FGG positions in June of 2005. Because Blum's partnership interest had fully vested at the time of his departure, he will continue to receive distributions through 2010.

261. While serving as a Managing Partner of FGG, Blum oversaw or assisted in all aspects of FGG's activities. Blum was involved in making day-to-day management decisions related to the Feeder Funds and FGG Affiliates. He also reviewed FGG sales and marketing materials, including webcasts and monthly commentaries.

262. As further described below, Blum was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

263. Blum received substantial profit distributions and other compensation, including approximately $605,000 in 2002, $1.5 million in 2003, $2.8 million in 2004, $4.2 million in 2005, $3.7 million in 2006, $4.3 million in 2007, and $3.8 million in 2008, for a total of approximately $21 million. Upon information and belief, Blum also received significant salary and bonuses.

264. Upon information and belief, some if not all of these payments and distributions were paid with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

265. Blum is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, Blum filed customer claims, whereby he submitted to the jurisdiction of this Court. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Blum based on his contacts with the U.S.

266. **Andrew Smith ("Smith")**: Defendant Smith was an Executive Director and partner at FGG in the Fund of Funds Division of the Investment Group. Smith also served as a Portfolio Manager and oversaw all operations for Chester and Irongate. Smith became a partner on January 1, 2006. He left FGG in April 2009 and joined Sciens, the company now managing Chester, Chester LP, and Irongate, as a member of the Sciens Investment Committee and a Portfolio Manager.

267. As a member of FGG's Executive Committee, Smith worked closely with Piedrahita, McKeefry, Landsberger, Toub, and Murphy to make day-to-day management decisions regarding the Feeder Funds and FGG Affiliates. As the representative from FGG's Investment Group on the Executive Committee, Smith played an integral role in making decisions regarding investor and potential investor requests for information about BLMIS and Madoff.

268. As further described below, Smith was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

269. Smith received substantial compensation as a result of his partnership position at FGG, including approximately $1.1 million in partnership distributions in 2006, $3.8 million in 2007, and $785,000 in 2008, totaling approximately $5.6 million. Upon information and belief, Smith also received significant salary and bonuses.

270. Upon information and belief, some if not all of these payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

271. Smith is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Smith based on his contacts with the U.S.

272. **Harold Greisman ("Greisman")**: Defendant Greisman joined FGG in 1990 in the New York office. He served as FGG's Chief Investment Officer and was a member of the Executive Committee. Beginning on January 1, 2002, Greisman was a partner of FGG.

273. Greisman was responsible for overseeing the day-to-day investment activities of FGG. This required him to monitor the investment decision-making process, from initial manager search and selection to research and ongoing manager oversight. Greisman utilized Vijayvergiya and Smith, as well as additional FGG employees, to assist him in his duties as Chief Investment Officer. Both Vijayvergiya and Smith reported directly to Greisman.

274. As further described below, Greisman was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

275. Greisman received partnership distributions of approximately $600,000 in 2002, $900,000 in 2003, $ 1.6 million in 2004, $2.3 million in 2005, $3.7 million in 2006, $3.9 million in 2007, and $2.5 million in 2008 for a total of over $15 million. Upon information and belief, Greisman also received significant salary and bonuses.

276. Upon information and belief, some if not all of these payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

277. Greisman is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, upon information and belief, Greisman is a resident of New York, New York. Finally, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy

Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Greisman based on his contacts with the U.S.

278. **Gregory Bowes ("Bowes")**: Defendant Bowes was a partner of FGG and served on FGG's Executive Committee. He joined FGG in 2000 and became partner in 2002. Bowes resigned from his FGG position in 2003. But because his partnership interest had already vested, he continued to receive multi-million dollar partnership distributions.

279. As further described below, Bowes was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

280. While he was still at FGG, Bowes received partnership distributions of $605,000 in 2002 and $1.5 million in 2003. After leaving FGG, he received partnership distributions of $2.8 million in 2004, $4.2 million in 2005, $3.8 million in 2006, $4.3 million in 2007, and $3.8 million in 2008. Upon information and belief, Bowes also received significant salary and bonuses.

281. Upon information and belief, some if not all of these payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

282. Bowes is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State

of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Bowes based on his contacts with the U.S.

283. **Corina Noel Piedrahita ("Noel Piedrahita")**: Defendant Noel Piedrahita, daughter of Defendant Noel and wife of Defendant Piedrahita, joined FGG as a partner on January 1, 2002. Noel Piedrahita was Head of Client Services and Investor Relations and was part of FGG's Corporate Center before she retired in 2007.

284. Noel Piedrahita was intimately involved with FGG's enterprise, including the operation of its Feeder Funds. Among other things, she was responsible for approving subscriptions in and redemptions from various FGG funds, and worked closely with Tucker on a variety of issues, including how much money was to be funneled to BLMIS.

285. As further described below, Noel Piedrahita was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

286. Independent of her husband's earnings, Noel Piedrahita received approximately $300,000 in 2002, $325,000 in 2003, $800,000 in 2004, $800,000 in 2005, $1 million in 2006, $900,000 in 2007, and $1.1 million 2008, totaling over $5 million. Upon information and belief, Noel Piedrahita also received significant salary and bonuses.

287. Upon information and belief, some if not all of these payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

288. Noel Piedrahita is subject to personal jurisdiction in this judicial district as she routinely conducted business in New York, New York, purposely availed herself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Noel Piedrahita based on her contacts with the U.S.

4. Sales Defendants

289. **Lourdes Barreneche ("Barreneche")**: Defendant Barreneche joined FGG in 1997, and became an FGG partner in 2002. She was based in FGG's New York office, and worked in FGG's Business Development Group. She was an international sales specialist who coordinated FGG's sales efforts in Latin America, Spain, Portugal, and Switzerland.

290. As further described below, Barreneche was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

291. As a partner of FGG, Barreneche received substantial profit distributions including $1.0 million in 2002, $1.2 million in 2003, $1.9 million in 2004, $2.8 million in 2005,

$6.6 million in 2006, $7.8 million in 2007, and $5.6 million in 2008, or approximately $27 million. Upon information and belief, Barreneche also received significant salary and bonuses.

292. Upon information and belief, some if not all of these payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

293. Barreneche is subject to personal jurisdiction in this judicial district as she routinely conducted business in New York, New York, purposely availed herself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Barreneche based on her contacts with the U.S.

294. **Cornelis Boele**: Defendant Boele joined FGG in 1997, and became an FGG partner in 2002. Boele oversaw FGG's marketing efforts for offshore funds in Belgium, the Netherlands, Luxembourg, and throughout Europe. He was responsible for structuring and raising assets, and worked for FGG's Business Development Group.

295. As further described below, Boele was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

296. Boele received approximately $493,000 in partnership distributions in 2002, $986,000 in 2003, $2.0 million in 2004, $3.7 million in 2005, $5.4 million in 2006, $5.2 million in 2007, and $4.7 million in 2008, for a total of approximately $23.5 million. Upon information and belief, Boele also received significant salary and bonuses.

297. Upon information and belief, some if not all of these payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

298. Boele is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Boele based on his contacts with the U.S.

299. **Santiago Reyes ("Reyes")**: Defendant Reyes joined FGG in 1996, and became a partner on January 1, 2002. Reyes was the head of FGG's Miami office where he was responsible for marketing FGG's offshore funds worldwide. Reyes was in charge of business development and held a position on FGG's sales team, where he was responsible for communicating with clients and convincing them and prospective investors to invest in FGG's products, including those funds invested in BLMIS, such as Fairfield Sentry.

300. Reyes was responsible for communicating with clients and convincing them and prospective investors to invest in FGG's products, including those funds invested in BLMIS, such as Fairfield Sentry. Reyes often asked Vijayvergiya and other FGG employees for advice on how to field client questions or respond to client concerns about Madoff and Fairfield Sentry. In fact, Reyes worked closely with Vijayvergiya, requesting information on Madoff's investment strategy and Fairfield Sentry's performance.

301. As further described below, Reyes was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

302. Reyes received partnership distributions of approximately $300,000 in 2002, $550,000 in 2003, $1.2 million in 2004, $1.5 million in 2005, $2.3 million in 2006, $2.2 million in 2007, and $2.0 million in 2008, for a total of approximately $10 million. Upon information and belief, Reyes also received significant salary and bonuses.

303. Upon information and belief, some if not all of these payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' BLMIS accounts. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS recoverable by the Trustee.

304. Reyes is subject to personal jurisdiction in this judicial district as he routinely conducted business in New York, New York, purposely availed himself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of

Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Reyes based on his contacts with the U.S.

305. **Jacqueline Harary ("Harary")**: Defendant Harary was a partner at FGG who marketed the Feeder Funds worldwide, focusing on Latin America. She joined FGG in 1997 as part of FGG's merger with Littlestone Associates and became partner on January 1, 2002.

306. Harary's role combined both sales responsibilities and projects related to manager selection and project development. She also coordinated FGG's relationship with investors that were charitable, as well as non-profit organizations. Having been a member of the FGG team for over ten years, Harary was very familiar with FGG policies, procedures, and politics, especially related to Madoff.

307. Harary worked very closely with Vijayvergiya, communicating with him on a frequent basis regarding her client inquiries and concerns about Madoff and BLMIS. Vijayvergiya worked with Harary to craft responses to the due diligence inquires she received - responses designed to deflect straightforward questions about the lack of transparency and potential conflicts of interest at BLMIS.

308. Harary also fielded and responded to investor concerns after Madoff's arrest. Harary had knowledge about how much money was lost and how much damage was done to the Feeder Funds that had invested directly or indirectly in BLMIS.

309. As further described below, Harary was acutely aware of many facts and red flags, that put him on actual and/or inquiry notice that BLMIS was engaging in fraud, and yet failed to conduct any proper, independent and reasonable due diligence or follow up.

310. As an FGG partner, Harary received substantial partnership distributions, including approximately $100,000 in 2002, $200,000 in 2003, $700,000 in 2004, $1.1 million in 2005, $1.5 million in 2006, $1.6 million in 2007, and $1.1 in 2008, totaling approximately $6.3 million. Upon information and belief, Harary also received significant salary and bonuses.

311. Upon information and belief, some if not all of these payments and distributions were made with funds that were originally withdrawn from the Feeder Funds' accounts at BLMIS. As such, they constitute Customer Property subject to turnover to the Trustee and/or avoidable subsequent transfers from BLMIS and are recoverable by the Trustee.

312. Harary is subject to personal jurisdiction in this judicial district as she routinely conducted business in New York, New York, purposely availed herself of the laws of the State of New York by conducting significant commercial activities in New York, New York, and derived significant income from New York, New York. In addition, Harary filed a customer claim, whereby she submitted to the jurisdiction of this Court. In addition, where a federal statute provides for nationwide service of process, as does Rule 7004 of the Federal Rules of Bankruptcy Procedure, a federal court has personal jurisdiction over any defendant with minimum contacts with the U.S. Thus, this Court has personal jurisdiction over Harary based on her contacts with the U.S.

VI. FGG AND ITS HISTORICAL RELATIONSHIP WITH FGG

313. Prior to forming FGG, Noel worked in the management consulting and

international private banking businesses. He created the international private banking group at Chemical Bank and helped establish a network of offices around the world focused on asset management. In 1983, Noel left Chemical Bank to start his own consulting firm to advise foreign investors regarding U.S.-based alternative investments. Noel acted as a third-party marketer of investment products to wealthy individuals located around the world.

314. Tucker worked as an attorney for the SEC from 1970 to 1978, after which he entered the private practice of law as a partner at Tucker, Globermand & Feinsand. While in private practice, Tucker represented Fred Kolber ("Kolber") on securities related matters. In 1987, Tucker became a general partner of Fred Kolber & Co., a registered broker-dealer. In his position as general partner, Tucker was responsible for developing and administering the firm's private investment funds. After Tucker became a general partner, Tucker and Kolber launched a domestic hedge fund, the Greenwich Options Fund ("GOF"). Kolber handled the money management and Tucker helped administer and market the fund. During this time, Tucker and Kolber sublet their offices from Noel. Through this landlord-tenant relationship, Noel became acquainted with Tucker and Kolber.

315. In 1988, Noel, Tucker, and Kolber joined forces to create an offshore counterpart to GOF, the Fairfield Investment Fund, Ltd. Through this association, Noel and Tucker decided to become partners in what became FGG. FGG started providing marketing services for Fred Kolber & Co., and the firms merged.

316. Eventually, Noel, Tucker, and Kolber decided to outsource the management of some portion of their funds. Tucker and Kolber started the search for a fund manager.

A. *Noel and Tucker Meet Madoff and Make Their First Investments With BLMIS*

317. In 1989, Tucker's father-in-law, Norman Schneider, introduced Madoff to Noel and Tucker. Madoff explained that his returns were more modest than some competitors, such as George Soros and Julian Robertson, but that he provided low volatility. In July of that year, Noel, Tucker, and Kolber pooled $1.5 million and invested it with BLMIS on behalf of an entity called the Fairfield Strategies Ltd. The fund then invested another $1 million with BLMIS in January 1990.

318. Based on the returns from their initial investments, Noel and Tucker decided to place more money with Madoff and, in 1990, created Fairfield Sentry. Fairfield Sentry made its first deposit of $4 million into its account at BLMIS on November 29, 1990. Noel and Tucker offered shares of Fairfield Sentry to non-U.S. investors at a minimum initial investment of $100,000. Pursuant to the fund's offering memorandum, Fairfield Sentry's investment manager was required to invest no less than 95% of the fund's assets directly through BLMIS, which supposedly would manage the fund's money according to BLMIS's self-proclaimed "split-strike conversion strategy" ("SSC Strategy"), described in detail below.

319. Over the next eighteen years, as a result of additional investments by Fairfield Sentry and alleged profits produced by BLMIS, Fairfield Sentry's assets grew exponentially. According to Fairfield Sentry's account statements, between November 1990 and December 2008, the fund's assets invested through BLMIS increased from $4 million to approximately $6 billion.

B. *Noel and Tucker Expand FGG's Offerings to U.S. Investors and Piedrahita Joins the Partnership*

320. Shortly after Fairfield Sentry was established, Noel and Tucker formed Aspen/Greenwich Limited Partners ("Aspen/Greenwich"), a Delaware limited partnership, in order to provide a domestic vehicle to funnel U.S. investor monies into BLMIS. Aspen/Greenwich eventually changed its name to GS, gave its first deposit to BLMIS on November 20, 1992, and began operations in January 1993.

321. In 1997, FGG acquired Littlestone Associates ("Littlestone"), founded by Piedrahita, Noel's son-in-law. With this acquisition, Piedrahita became a partner in FGG and Littlestone's clients became clients of FGG.

322. Noel, Tucker, and Piedrahita essentially shared the responsibilities of managing and supervising the business of FGG. Tucker emphasized operations and was considered the founder and engineer of FGG's Madoff investments, and the person responsible for FGG's direct relationship with Madoff. Noel and Piedrahita traveled the world marketing and securing billions of dollars from investors to invest through BLMIS. Noel carried with him short summaries of the SSC Strategy to assist him in touting the Feeder Funds' consistent returns. (A true and accurate copy of an SSC Strategy summary sheet is attached hereto as Ex. 26.)

323. Seeking to expand the reach of its funds to foreign currency investors, FGG launched Sigma in 1997 and Lambda in 1999. These funds accepted investments in Euros and Swiss francs, respectively, and then invested those funds in Fairfield Sentry, which in turn gave the money to BLMIS.

324. Based on what FGG determined to be certain legal restrictions limiting the number of U.S. investors in GS, FGG formed a Delaware limited partnership, GSP, in 2006. GSP opened its BLMIS account with a deposit on May 1, 2006.

325. As late as December 2008, Tucker and Piedrahita were working to gather additional funds to invest through BLMIS. The so-called "Emerald Funds" were supposed to apply a higher volatility, high return strategy, and were to be marketed for BLMIS exclusively by FGG.

C. *FGG's Operations*

326. On paper, FGG appeared to be a group of discrete entities. In reality, FGG operated as one cohesive unit with Noel, Tucker, and Piedrahita at the helm. Along with a core group of other individuals at FGG, Noel, Tucker, and Piedrahita oversaw all of FGG's operations.

327. The compensation structure at FGG was similarly consolidated. The profits "earned" by all FGG entities passed through FGB and FGL, and then were distributed to the various partners. Compensation documents called "Partner Comp Worksheets 2008," contained details of partnership distributions for each Defendant that was an FGG partner. (A true and accurate copy of such worksheets is attached hereto as Ex. 27.)

328. The inter-relations among the FGG entities is clear from the multiple roles played by individuals across the entities. For instance, Tucker was a director of FGB, and general partner of GS and FGL. Tucker also sat on the Management Committee and the Board of Directors of these entities. In addition, he co-owned FIM, the legal entity through which Tucker and Noel owned between 25-50% of FGB. Likewise, Tucker was extensively involved in operations at Fairfield Sentry. He participated in countless discussions within FGG regarding the fund, responded to investors' inquiries relating to the fund, and was for many years Fairfield Sentry's principal contact with Madoff.

329. The Feeder Funds and FGG Affiliates are similarly interconnected. For example, FGL served as placement agent to Defendants Fairfield Sentry, Sigma, and Lambda; general partner to GS (from January 1, 2002 to June 30, 2003); investment manager to Fairfield Sentry (from December 31, 2001 to June 1, 2003); and investment adviser and placement agent to other FGG funds further discussed below.

330. Each FGG entity had its own roster of officers drawn from the same group of FGG employees and operations. All of the entities were run by the same group of individuals: Noel, Tucker, and Piedrahita, the FGG "Founding Partners;" McKeefry, FGG's Chief Legal Officer and Chief Operating Officer; Lipton, FGG's Chief Financial Officer; Vijayvergiya, FGG's Head of Risk Management; McKenzie, Controller for FGB; Blum, FGG's Chief Operating Officer until 2005; Greisman, FGG's Chief Investment Officer; Noel Piedrahita, FGG's Head of Client Services and Investor Relations; and the remaining members of the Executive Committee, Landsberger, Toub, Murphy, Smith, and Bowes. With the exception of Defendant McKenzie, all of the Management Defendants were partners of FGG and received partnership distributions. These individuals constitute the Management Defendants.

331. The Sales Division of FGG was responsible for marketing the Feeder Funds to potential investors and then directing that money to BLMIS. The Sales Division was headed by the following FGG partners: Barreneche, Boele, Reyes, and Harary. These individuals constitute the Sales Defendants.

332. Each of these individuals was assigned a title at a number of FGG entities, but those were distinctions in name only.

VII. THE DEFENDANTS' ROLE IN FACILITATING THE FRAUD

333. Madoff initially operated by luring in individual investors. His early success came through money deposited from individuals as well as the efforts of various feeder entities such as Avellino & Bienes, a small Fort Lauderdale-based accounting firm that sold to investors notes that were backed by BLMIS's returns.

334. For BLMIS to survive as a Ponzi scheme it needed massive, regular injections of cash to fuel the scheme. Madoff could have raised money directly from U.S. institutional investors but he knew that such an approach might have subjected BLMIS to strict regulatory scrutiny applicable to banks and pension funds. By contrast, the hedge fund arena, in which the Feeder Funds operated, was largely unregulated. This friendlier regulatory environment led Madoff to turn to "intermediaries" – hedge funds and funds of funds, like the Feeder Funds, which could, and did, deliver large amounts of cash.

335. The relationship between FGG and Madoff was a *de facto* partnership. FGG and the Defendants procured billions of dollars that Madoff stole over many years, and the alleged returns generated by the Feeder Funds' BLMIS accounts were the engine that drove FGG's success. Simply put, BLMIS needed FGG and other large investors to help it survive and FGG needed BLMIS to make the Defendants their ill-gotten fortunes.

A. *The Defendants' Investment Strategy*

336. Outwardly, Madoff attributed the consistent investment success of the BLMIS IA Business to the SSC Strategy. Madoff promised customers such as Fairfield Sentry that: (a) their funds would be invested in a basket of approximately 35 to 50 common stocks selected from the S&P 100 Index which consists of publicly listed stocks of the 100 largest companies in terms of their market capitalization traded on the New York Stock Exchange ("NYSE") and NASDAQ;

(b) the basket of stocks would closely mimic the price movements of the S&P 100; (c) the investments would be hedged by option contracts related to the S&P 100 Index, thereby limiting potential losses caused by unpredictable changes in stock prices; (d) he would opportunistically time the entry and exit from the strategy; and (e) when account funds were not invested in the basket of stocks and options described above, they would be invested in money market funds and Treasurys.

337. Beyond the purchases of equities, the other key component of the SSC Strategy was the hedge of the purchased basket of stocks with S&P 100 Index option contracts. Madoff purported to purchase out-of-the-money S&P 100 put options, and sell out-of-the-money S&P 100 call options, corresponding to the notional amount of the stocks in the basket he claimed he was buying. The put options would theoretically control the downside risk of price changes in the basket of stocks. The call options he purported to sell would likewise limit the potential upside gain in the basket, but were sold so that the premium from their sale could be used to finance the cost of purchasing the put options. Madoff represented that when he believed or sensed it was time to exit the market, he would sell the basket of stocks, close out the options positions, and invest the resulting cash in Treasurys or mutual funds holding Treasurys. BLMIS would purportedly enter and exit the market a few times a year.

338. FGG embraced the SSC Strategy as its own and went to great lengths to downplay, and, in fact, conceal Madoff's key role in its business. For nearly two decades, the Feeder Funds, with the help and complicity of the Management and Sales Defendants, raised billions of dollars for Madoff's scheme while making hundreds of millions of dollars for themselves in management and performance fees for selling a fraudulent scheme. The Defendants knew, and/or should have known, that all aspects of the strategy were a fabrication.

B. *The Defendants Facilitate the Scheme Through Marketing and Sales*

339. The Defendants repeatedly told investors and potential investors they actively monitored Madoff, his auditor, the execution of the SSC Strategy, and BLMIS's performance. The Defendants claimed to have verified that trading actually occurred and that the assets in BLMIS custody actually existed. Nothing could have been further from the truth.

340. In exchange for the hundreds of millions of dollars in fees, partnership interests, distributions, and other earnings the Defendants garnered from their *de facto* partnership with Madoff, the Defendants provided extraordinary marketing and customer relations services, as well as important cover and legitimacy to Madoff's operations.

C. *The Defendants Serve as a Gatekeeper for Madoff to Ensure Investors Would Not Find Out the Truth*

341. Madoff could not have survived, much less prospered for as long as he did without the Defendants' substantial assistance. While securing money from new investors for Madoff with one hand, with the other, the Defendants needed to prevent their investors, new and old, from communicating directly with Madoff. The reason for the Defendants' actions was simple: the more people who contacted Madoff directly, the more likely it was one of them might realize that Madoff and FGG were frauds.

342. The Defendants went to great lengths to keep their investors far away from Madoff. They determined early on that they had to keep their clients away from Madoff because requests to meet and conduct real due diligence on him were bound to "end up in a standoff." (A true and accurate copy of the May 22, 2003 email from Landsberger to Tucker is attached hereto as Ex. 28.) The Defendants told investors they were "monitoring" Madoff so as "to avoid them

feeling the need to go see Madoff" themselves. (A true and accurate copy of the July 15, 2004 email from Toub to Vijayvergiya is attached hereto as Ex. 29.)

343. Defendant Blum advised his colleagues at FGG that just because investors wanted information, did not mean that FGG had to give it to them. Giving out more detail would upset Madoff. (A true and accurate copy of the March 25, 2003 email from Blum to Tucker, Bowes, and Greisman is attached hereto as Ex. 30.) He also directed FGG personnel, "**always keep in mind the prime directive and downplay Madoff's role – never to have his name within 30 words of the word 'manage'. . . . He is extremely sensitive to this and wants to be referred to merely as our broker and custodian.**" (A true and accurate copy of the August 22, 2003 email from Blum to Vijayvergiya and Landsberger is attached hereto as Ex. 31 (emphasis added).)

344. The Defendants also misled investors by making false excuses when the investors requested meetings with Madoff. By way of example, after explaining that Madoff did not meet with clients, FGG would reassure investors, "if there is a window of opportunity in the future we shall give priority to [you]." (A true and accurate copy of the April 5, 2004 email to Tucker is attached hereto as Ex. 32.) The Defendants gave these types of assurances knowing full well that there would never be any such "window of opportunity."

345. The Defendants' refusal to allow their clients or prospective investors to contact Madoff was just one of many elements they employed to hide the inner workings of BLMIS from investors. The Defendants always knew and understood that BLMIS exercised discretion in managing their accounts, and was not simply an "executing broker."

346. In 2002, the Defendants decided that it would be best to just remove all references to BLMIS from their marketing materials. This strategy started with the deletion of all mentions of both Madoff and BLMIS from the investment adviser description on FGG's website and quickly grew into something broader. (A true and accurate copy of the June 24, 2004 email from Vijayvergiya to Lipton and McKeefry is attached hereto as Ex. 33.) The Defendants went on to remove all references to BLMIS from their offering memoranda. They also refused to provide their customers with the Feeder Funds' BLMIS Trading Authorization agreements. (A true and accurate copy of the August 7, 2004 email from Vijayvergiya to Landsberger and McKenzie is attached hereto as Ex. 34.)

347. "[I]n sensitivity to various issues regarding Bernie" the Defendants made the conscious decision to serve as a gatekeeper, declaring that "**Bernie investors do not need transparency.**" (A true and accurate copy of the January 14, 2003 email from Blum to Tucker, Bowes and Greisman is attached hereto as Ex. 35 (emphasis added).) They held strategy meetings to discuss, among other things, the need to "**haze up the details**" for investors and hold "**heavily scripted**" investor teleconferences. (A true and accurate copy of the March 25, 2003 email from Blum to Lipton and Tucker is attached hereto as Ex. 36 (emphasis added).)

348. FGG actively and repeatedly "blocked" investors wishing to obtain more information about the Funds' investments with BLMIS, as well as preventing such investors from accessing key BLMIS employees. Aware of investor concerns that Madoff was "churning the portfolio" (a true and accurate copy of the April 9, 2004 email to Boele, Vijayvergiya, Tucker, Blum, Greisman, Lipton, and Smith is attached hereto as Ex. 37), FGG ignored all such concerns and continued to aggressively market the Feeder Funds which had direct or indirect investments in BLMIS.

349. When Fairfield Sentry was told by institutional investors that FGG was mysterious, that FGG had little transparency, and that there were numerous concerns about Madoff's family, BLMIS's auditor, the lack of incentive fees for Madoff, and his self-custodying of assets, the Defendants chose not to address or investigate the concerns, instead focusing on "**how to spin**" a response. (A true and accurate copy of the March 15, 2008 email from Landsberger to Smith, Toub, della Schiava, Vijayvergiya, Tucker, and the Executive Committee is attached hereto as Ex. 38 (emphasis added).)

D. *FGG Conspires with Madoff to Hide from the SEC Madoff's True Involvement with the Feeder Funds*

350. From inception until 2006, because registration would mean greater regulatory scrutiny, Madoff did not register BLMIS with the SEC as an investment adviser even though BLMIS was required to register. The Defendants went to great lengths to attempt to cover up Madoff's actual role with the FGG funds.

351. In 2006, the SEC began an investigation into allegations that BLMIS may have been a Ponzi scheme or illegally front-running the market.[5] In connection with its investigation, the SEC contacted FGG. The SEC sought an interview regarding, among other things, the Feeder Funds' actual relationship with BLMIS, transparency as to BLMIS's actual role in the Feeder Funds' operations, as well as who was making investment decisions and implementing the SSC Strategy on behalf of the Feeder Funds.

352. Throughout 2006, the Defendants helped Madoff try to deceive the SEC. Individual Defendants McKeefry and Vijayvergiya worked directly with Madoff to script false

[5] Front-running occurs when a broker-dealer "runs in front" of customers by executing transactions for itself that are pending and unexecuted for customers, thereby unlawfully taking for itself market gain that would have accrued to

responses to the SEC to throw the investigators off the trail of the fraud. After being contacted by the SEC, Vijayvergiya and McKeefry called Madoff to inform him of the upcoming interview. They then forwarded Madoff some of FGG's marketing materials and a list of potential issues they felt they should discuss before the interview. Madoff, McKeefry, and Vijayvergiya agreed to defraud the SEC and then had a strategic conference call to work out the details. Vijayvergiya recorded the call.

353. The parties first agreed that no one was ever to know they were scripting their responses:

> Mr. Madoff: Obviously, first of all, this conversation never took place, Mark, okay?
>
> Mr. Vijayvergiya: Yes, of course.
>
> Mr. Madoff: All right. There are a couple of things that, you know, could come [up with the SEC] . . . number one . . . we never want to be looked at as the investment manager . . . .
>
> Mr. Vijayvergiya: Right.
>
> **********
>
> Mr. Madoff: So the -- you know, the less that you know about how we execute, and so on and so forth, the better you are . . . if they asked do you know . . . if Madoff has Chinese walls, and you say, yes, look -- you know, your position is say, listen, Madoff has been in business for 45 years . . . you know, he's a well known broker. You know, we make the assumption that he's -- he's doing everything properly.
>
> **********

customers had their transactions been executed first.

Mr. Madoff: [O]ur role has always been defined as the executing broker for our clients . . . .

****

Mr. Madoff: The objective of the fund is to achieve capital appreciation . . . but don't say -- consistent monthly returns.

Mr. Vijayvergiya: Okay. You can delete that, yeah.

(A true and accurate copy of the transcript of the call between McKeefry, Vijayvergiya, and Madoff is attached hereto as Ex. 39.)

354. Madoff then gave *precise instructions* on how to respond to the SEC's questions in order to mislead the SEC as to the true nature of Feeder Funds' accounts, as to whom the actual investment adviser was, and anything else that might have allowed the SEC to potentially discover that BLMIS and the Defendants were perpetrating a fraud. Madoff specifically told McKeefry and Vijayvergiya to tell the SEC he was merely "the executing broker," and all investment decisions were made by FGG. All participants to the conversation knew this to be false.

355. The Feeder Funds' account agreements explicitly characterized their BLMIS accounts as discretionary accounts. In June 2001, in a letter to investors, FGG described Fairfield Sentry's account with Madoff as a "discretionary cash account." (A true and accurate copy of the June 2001 letter to Fairfield Sentry's investors is attached hereto as Ex. 40.) Madoff had unfettered discretion as to when to trade, what to trade, with whom to trade, when to leave the market, and when to shift customer investments to Treasurys. The Defendants never knew with whom Madoff was contracting or trading purportedly on their behalf and could not, and did

not, understand the SSC Strategy. As late as August 2008, Vijayvergiya acknowledged that BLMIS's operations remained somewhat of a mystery to FGG. (A true and accurate copy of the August 2008 emails from Vijayvergiya to Murphy, Piedrahita, Landsberger, Toub, Tucker, and the Executive Committee is attached hereto as Ex. 41.)

356. The Defendants knew that the fewer people who knew about the true nature of their partnership with Madoff, especially the SEC, the better it would be for the Defendants' financial interests. The Defendants also knew that if based on FGG's responses, the SEC grasped Madoff's true discretion over FGG's accounts and inquired further, Madoff could become very angry, which could upset the Feeder Funds' preferred status.

357. The Defendants were also concerned that if the SEC knew the true nature of the relationship, the SEC would require Madoff to register, expose him to heightened regulation, and remove the secrecy that allowed the fraud to flourish for so many years. For these and other reasons, Defendants Vijayvergiya and McKeefry knowingly agreed to conspire with Madoff to deceive the SEC.

358. The day after the three spoke, the SEC interviewed Vijayvergiya and McKeefry by telephone, with Vijayvergiya providing nearly all of the responses. At the beginning of the interview, the SEC personnel requested the interview be kept confidential. Vijayvergiya dutifully fed the SEC the false information Madoff required. Two days after the interview, in order to keep their false stories straight – and despite the SEC's express request for confidentiality – someone at FGG transmitted to Madoff detailed notes of the interview. (A true and accurate copy of the notes dated December 21, 2005 found by the Trustee in BLMIS's files is attached hereto as Ex. 42.)

359. During the first half of 2006 the SEC continued a dialogue with McKeefry, Madoff, and other individuals relevant to their investigation. (A true and accurate copy of the SEC phone log is attached hereto as Ex. 43.) Like the confidential interview, FGG continued to share the information from its SEC calls directly with Madoff.

360. Ultimately, despite FGG's and Madoff's coordinated efforts in 2006, the SEC required BLMIS to register as an investment adviser. The SEC also determined FGG had to modify its Feeder Funds' marketing materials – which had previously been revised to remove all mention of both Madoff and BLMIS – to make clear that the strategy the Feeder Funds were selling was being managed and executed in all respects by Madoff. The SEC required the Feeder Funds and BLMIS to execute new customer agreements because the existing agreements did not limit Madoff to acting merely as an executing broker, as had been for years, falsely claimed by FGG.

361. The scheme to defraud the SEC succeeded insofar as, apart from these requirements, the SEC closed any further investigation of BLMIS. (A true and accurate copy of the SEC Case Closing Recommendation is attached hereto as Ex. 44.)

E. *The Defendants Deceive Their Investors by Telling Them They Were Performing Extensive and Top of the Line Due Diligence, But They Were Doing No Such Thing*

362. The Defendants deceived their investors and the investment community, in order to enhance the fraud, enrich themselves, and protect their status as a leading BLMIS feeder fund. The Defendants sold the false assurance that they conducted superior due diligence, far beyond any due diligence performed by their peers. The Defendants justified their extraordinary fees based upon this allegedly superior due diligence. The Defendants conveyed these falsehoods for

nearly 20 years throughout FGG's sales, offering, and marketing materials, as well as in direct responses to questions from their investors and prospective investors.

363. FGG claimed among other things that it had full transparency into its investments, conducted monthly quantitative analyses, and only used counterparties for the OTC options they identified on an approved list. (A true and accurate copy of FGG's October 2002 marketing brochure for Fairfield Sentry is attached hereto as Ex. 45.) All of these claims were false.

364. The Defendants never knew who any of their OTC options counterparties were. It was also impossible for the Defendants to accurately reconcile trades on a same-day basis because they did not receive paper trade confirmations until three or four days after the alleged trades supposedly had been executed, a delay which permitted back-dating – itself another red flag of possible fraud. Had the Defendants accurately reconciled Madoff's trade confirmations, they also would have discovered any number of anomalies concerning the volumes and prices at which Madoff supposedly purchased stocks and options.

365. The Defendants' sales pitch about their due diligence process, their knowledge of Madoff and his operations, conflicted with the reality of how little they actually knew. (A true and accurate copy of the December 19, 2003 email from Vijayvergiya is attached hereto as Ex. 46.) The Defendants did not know the exact amount of Madoff's assets under management, and admitted that "**there [was] no check on the amount of money he manages.**" (A true and accurate copy of the September 19, 2003 email from Blum to Tucker is attached hereto as Ex. 47 (emphasis added).)

366. FGG also emphasized to investors it confirmed the adequacy of FGG's investment managers, staff, as well as the investment manager's technological capabilities. FGG

did not know the names of Madoff's alleged traders or how many traders were responsible for executing their SSC Strategy. They also did not perform independent, reasonable due diligence or follow up on the viability or adequacy of BLMIS's technology. Had the Defendants meaningfully investigated the technological capabilities of BLMIS, they would, or should have, been suspicious because there were strong indications of fraud – the BLMIS IA Business computers lacked the ability to send real-time electronic trade confirmations to its customers.

367. The Defendants never investigated the contradiction between Madoff's market-making business, well-known for cutting-edge technology, and the more primitive back-office systems used by the BLMIS IA Business. The BLMIS IA Business could not generate electronic trade tickets, had no website where investors could view their accounts and assets in real-time, and could only deliver paper confirmations by mail days after trades were supposedly executed. These attributes were commonly recognized in the investment advisory industry to be rife with the risk of fraud, yet the Defendants ignored all of them.

368. Candid internal FGG discussions in 2003 revealed a far different due diligence picture than the "rigorous" processes the Defendants' touted:

> **[T]here is an enormous amount that we have to do to meet the higher level of diligence and documentation and fulfillment of the investment process/risk monitoring and portfolio allocation aspects that even the most lazy of institutional and family office investors require to see . . .**
>
> **This industry is moving to higher levels of perceived quality of process fast, and we are going to have to sprint to keep up. trying [*sic*] to bullshit clients will only result in our bs-ing ourselves . . . .**

(A true and accurate copy of the November 24, 2003 email from Blum to Landsberger, Greisman, Tucker, and Piedrahita is attached hereto as Ex. 48 (emphasis added).)

369. In May of 2005, as part of "sales training," Lipton and Vijayvergiya conducted a mock investor phone interview. Lipton played the role of a potential or existing Fairfield Sentry investor and Vijayvergiya acted as an FGG sales person. Lipton questioned Vijayvergiya as to the due diligence advertised by Fairfield Sentry. In particular, Lipton asked about the due diligence completed by FGG before investing in BLMIS, as well as the ongoing monitoring and diligence of its portfolio manager, Madoff.

370. In response to certain questions posed by Lipton and other audience members, Vijayvergiya made misstatements about FGG's knowledge of Madoff and his operations, including: (i) "we have a number of options counterparties;" (ii) for options-trading there is a "very well capitalized, well established series of counterparties, which number between 8 to 12"; (iii) FGG is the investment manager; (iv) from time-to-time FGG representatives visit BLMIS, verify that trades are on Depository Trust & Clearing Corporation ("DTCC"), and verify the existence of the Feeder Funds' assets; and (v) Madoff has no discretion except with respect to the price and timing of trade execution, for which he has limited discretion. (A true and accurate copy of the transcript of the training session led by Vijayvergiya is attached hereto as Ex. 49.)

371. Each one of those statements, disguised as verified due diligence, was false. The Defendants knew *nothing* about Madoff's imaginary options counterparties except for Madoff's claim they were a group of large European financial institutions – a claim which the Defendants never tried to independently verify. The Defendants never reviewed any counterparty's option agreement and there was no list of counterparties. The Defendants never called anyone at any

reputable financial institution, *or anyone at all,* to learn more, even though they stated they had done so. The Defendants also knew BLMIS was the investment adviser and that Madoff exercised all investment discretion. The Defendants never asked Madoff for permission to independently confirm their holdings with the DTCC, nor did they conduct any independent and reasonable due diligence, or follow up, to verify the actual existence of their assets.

372. In response to an audience query wondering how, over the last three years, there were times when FGG made money when to the questioner it seemed like they should not have, Vijayvergiya stated, "***I can honestly say that, hand on heart that . . .* we know what is going on**." (*Id.* (emphasis added).) This statement contradicted Vijayvergiya's admission three years later that many things at BLMIS remained a mystery to him. (*See* Ex. 41.)

373. When speaking to an investor in May 2008, Vijayvergiya and McKenzie admitted they still did not know many basic things about Madoff's operations. They expressed concerns about credit risks due to the options and option counterparty exposure, as well as the fact that "**they ultimately do not really know whether Madoff has the proper systems and controls, segregation of duties, etc.**" (A true and accurate copy of a memorandum summarizing the May 7, 2008 meeting is attached hereto as Ex. 50 (emphasis added).)

VIII. THE DEFENDANTS WERE CONSTANTLY FACED WITH EVIDENCE OF A FRAUD, BUT CHOSE NOT TO REVEAL THAT EVIDENCE

374. It did not require an extraordinary due diligence process for the Defendants to discover that Madoff was operating an illegitimate enterprise. Ordinary, independent, and reasonable due diligence by investment professionals would have, and should have, revealed the likelihood of fraud. The Defendants knew of, and were presented with significant red flags from many sources, including, but not limited to: financial and quantifiable information; performance

and trade information; market rumors; industry articles; publicly stated investor concerns; market and industry experts who expressed the possibility of fraud; FGG customers who communicated that Madoff was possibly a fraud; FGG's own internal statements and serious doubts; their years of hedge fund experience; and their own common sense.

375. The totality of the information known and available to the Defendants pointed to the strong likelihood that they were enabling a fraud. At a minimum, the Defendants knew of countless red flags which required proper, independent, and reasonable due diligence and follow up investigation. Not only did the Defendants fail to conduct the required due diligence, they willfully ignored information that was right in front of them, and then lied about it.

376. The Defendants also knew what other highly reputable institutions were saying directly about them. One representative of Credit Suisse told Fairfield Sentry that it "**would never do business with FGG as a firm" because FGG was "not going 'by the rules' and soon[er] or later . . . will wind up in jail!!**" (A true and accurate copy of the December 2, 2003 email from della Schiava to Noel, Piedrahita, Tucker, and Blum is attached hereto as Ex. 51 (emphasis added).)

A. *The Defendants Learn that BLMIS's Auditor is a Single Person in a Strip Mall Office. Instead of Treating This Red Flag as an Indicator of Fraud, They Lie to Comfort Their Investors and Sell Their Superior Diligence*

377. Madoff had false audit reports prepared by Friehling & Horowitz ("Friehling"). Those audits were filed with the SEC and copies were given to the Defendants. Friehling was a one-man firm from Rockland County, New York consisting of David Friehling, a Certified Public Accountant. The other two employees were an administrative assistant and a semi-retired accountant living in Florida.

378. On November 3, 2009, David Friehling pled guilty to seven counts of securities fraud, investment adviser fraud, obstructing or impeding the administration of Internal Revenue laws, and making false filings with the SEC, in connection with the services he performed for BLMIS.

379. By 2005 the Feeder Funds had invested billions of dollars with BLMIS. From 1990 to 2005, the Defendants accepted Friehling as a bona fide auditor without conducting any meaningful, independent due diligence or inquiry.

380. During 2005, the Defendants were confronted about Friehling when the $400 million Bayou Group hedge fund Ponzi scheme became public. In the early part of the decade, Bayou rode the rise in the stock market following the burst of the dot-com bubble. Bayou also displayed a number of major red flags similar to those exhibited by BLMIS. Both Bayou and BLMIS delivered steady annual returns with almost no volatility. Neither Bayou nor Madoff charged a management fee based on the assets under management. This fee structure was atypical of hedge fund and other alternative investment managers. Finally, both Bayou and BLMIS had obscure, non-independent auditors – Bayou an in-house accountant and BLMIS, Friehling.

381. When the Bayou fraud came to light in 2005, a Fairfield Sentry investor raised parallels between Madoff and Bayou, questioning FGG about "the risk [of] investing in Sentry" in light of "certain similarities with Bayou." The investor expressly identified the conflict of interest in Madoff acting as the self-clearing broker and receiving commission-based fees, and pointed out that BLMIS employed a small auditor rather than using one of the "big four." (A

true and accurate copy of the September 5, 2005 email from Capital Research to Castillo is attached hereto as Ex. 52.)

382. An investor relations employee for FGG, Carla Castillo ("Castillo"), forwarded information regarding Bayou to Vijayvergiya, joking "**[d]oes this 'perceived conflict of interest with the two relationships (brokerage and auditing)' sound familiar? Hehehe.**" (A true and accurate copy of the September 1, 2005 email from Castillo to Vijayvergiya is attached hereto as Ex. 53 (emphasis added).) At the same time, Castillo was telling the investor there were important differences between Fairfield Sentry and Bayou. (*See* Ex. 52.) With regard to the potential conflict of interest, Castillo responded that FGB, not BLMIS, was Fairfield Sentry's investment manager, FGB maintained an arm's-length relationship with BLMIS, and Bayou used a very small accounting firm, whereas PwC conducted audits of Fairfield Sentry. (*Id.*)

383. The investor pressed for direct answers to the questions about Madoff and BLMIS's auditor. At that point the investor's questions were escalated within FGG to Tucker, McKeefry, Lipton, and McKenzie. Tucker, despite having served as the Madoff relationship partner for fifteen years, could not answer the investor's question regarding BLMIS's auditor. He asked Lipton and McKenzie to investigate so he could respond to the investor's concerns. (A true and accurate copy of the September 12, 2005 email from Castillo to Lipton is attached hereto as Ex. 54.)

384. At the time of Tucker's request, Lipton had been FGG's CFO for over three years. Lipton was a nine-year veteran of a Big Four accounting firm, Ernst & Young. Lipton placed a call to Friehling's office. Lipton also contacted the State of New York and learned David

Friehling was licensed in New York and there were no disciplinary actions against him. Based on the short call with Friehling's office, Lipton subsequently reported to Tucker:

> Frehling [*sic*] & Horowitz, CPAs are a small to medium size financial services audit and tax firm, specializing in broker-dealers and other financial services firms. They are located in Rockland County, NY. They have [hundreds] of clients and are well respected in the local community.

(*Id.*)

385. Lipton never made any attempt to independently verify this information. While under oath before the Office of the Secretary of the Commonwealth of Massachusetts, Lipton could not remember with whom he spoke when he called the auditor. He claimed all he could remember is that he spoke with someone who "said they were a partner in the firm." (A true and accurate copy of excerpts from the transcript of Lipton's testimony is attached hereto as Ex. 55.)

386. Following Lipton's call with Friehling, the next day Tucker somehow "addressed all the clients' questions, and gave them the comfort they were seeking." (*See* Ex. 52.)

387. Later on the same day that Tucker spoke with the investor, McKenzie obtained and distributed internally a Dun & Bradstreet report on Friehling that validated the investor's concerns. The report, reflecting information provided by Friehling, showed Friehling only had one employee and annual receipts of $180,000. Tucker's response upon learning that Lipton had been lied to and that BLMIS's auditor was similar to Bayou's auditor was "thank you." (*See* Ex. 54.)

388. McKenzie then called Frank DiPascali ("DiPascali") at BLMIS to ask about Friehling. DiPascali was unable, or unwilling, to answer any questions about Friehling, and directed McKenzie to Madoff. Because DiPascali was often the principal source of information

regarding the Feeder Funds' accounts and BLMIS's operations, his inability and/or unwillingness to answer simple questions about BLMIS's auditor was a major red flag. McKenzie, knowing Madoff would not speak to him, sent an email to Tucker asking him to bring up the topic the next time Tucker spoke with Madoff. (*See id.*)

389. The Defendants did nothing to independently confirm if Friehling was equipped or capable of performing large scale domestic and international auditing services at a time when they were estimating Madoff was managing approximately $10 billion.

390. Tucker, Lipton, and McKenzie all knew that false information regarding Friehling had been communicated to the investor that had raised the concern. They did not communicate truthfully to investors or prospective investors about Madoff's auditor. They did not disclose what they learned about Madoff's auditor, or that DiPascali had been unwilling or unknowledgeable about Friehling.

391. Basic due diligence would have further revealed Madoff's auditor was a fraud. Lipton knew or should have known that all accounting firms that perform audit work must enroll in the American Institute of Certified Public Accountants' ("AICPA") peer review program. This program involves having experienced auditors assess a firm's audit quality each year. Friehling, while a member of the AICPA, had not been peer reviewed since 1993. The results of these peer reviews are on public file with the AICPA. Friehling never appeared on the public peer review list because he had notified the AICPA he did not perform audits. His absence on the list was another major red flag.

392. The Defendants were not satisfied to hide the unknown auditor red flag of fraud from investors and potential investors. The Defendants chose to **market** around the Bayou

scandal, stressing to their investors how a Bayou fraud could never happen to FGG's investors due to its impressive due diligence and risk management processes.

393. Beginning in late 2005 through 2008, FGG generated and distributed marketing materials profiling the Bayou fraud as "Due Diligence: Headlines to Avoid." The Defendants highlighted the falsehood that a Bayou-like fraud could never happen to FGG because, unlike the misguided funds that invested with Bayou, FGG would have "**question[ed] Bayou's obscure auditing firm.**" (A true and accurate copy of the November 2, 2005 FGG Investment Team Presentation is attached hereto as Ex. 56 (emphasis added).)

394. The Defendants also misled potential investors about Madoff's auditor in direct communications with them. For example, in 2006, when a consultant performing due diligence for a client considering an investment in Fairfield Sentry questioned Vijayvergiya about BLMIS's auditor, Vijayvergiya lied, stating that Friehling had twenty partners and focused on broker-dealers. (A true and accurate copy of notes taken during the meeting is attached hereto as Ex. 57.) McKenzie participated in this discussion. He remained silent when Vijayvergiya described Friehling. He did not disclose that Friehling was the same firm he had confirmed had only one employee, and not twenty partners.

395. FGG also reassured its investors by falsely suggesting that Friehling was not the only firm auditing BLMIS. PwC did not conduct a single independent audit of BLMIS.

396. FGG also represented to investors that PwC (who conducted audits of the Feeder Funds), accompanied by Lipton, performed biannual visits to BLMIS. (A true and accurate copy of the 2007 Fairfield Sentry Due Diligence Questionnaire is attached hereto as Ex. 58.) These representations were also false. PwC briefly visited BLMIS twice over the course of many

years, attending information gathering sessions at BLMIS in 2002 and 2004, in connection with its engagements for several Madoff feeder funds. After each visit, PwC summarized its findings and explained in writing that it had not conducted audits of BLMIS. After 2004, PwC did not conduct any visit, inquiry, or investigation of BLMIS in association with any Fairfield Sentry engagement. Lipton only accompanied PwC during its visit of BLMIS on one occasion, in 2002. (*See* Ex. 55.)

397. The facts about PwC's actual involvement with Madoff did not prevent FGG from falsely representing PwC's role. FGG told investors in an October 2007 Due Diligence Questionnaire for Fairfield Sentry – a document it routinely gave to prospective investors or consultants – that, "[t]he CFO has accompanied PwC's auditors on a bi-annual basis to review BLMIS's internal accounts for the Sentry fund." (*See* Ex. 58.)

398. In August 2008, in response to a detailed "HSBC Sentry Operational Due Diligence" questionnaire, Lipton confirmed the Defendants' failure to conduct proper, independent, and reasonable due diligence on BLMIS's auditor. Lipton asked Vijayvergiya: "**[d]o we know any of the other client of BLM's auditors? Or how big they are? I remember we called over there a while ago.**" (A true and accurate copy of the August 20, 2008 email from Lipton to Vijayvergiya is attached hereto as Ex. 59 (emphasis added).)

B. *The Defendants Regularly Received Information That Made It Clear Madoff Was Lying About His Alleged Trades and Performance*

399. The Defendants had access to vast amounts of information about Madoff that was not available to the public. The account statements and trade confirmations they received from Madoff showed that Madoff was likely a fraud. The Defendants knew, among other things, that Madoff's returns were so consistent they were virtually impossible; Madoff alone traded suspiciously large percentages of the total amount of securities that were reported as trading on the entire NYSE, NASDAQ and CBOE, and, did so without any impact on the prices of those securities; Madoff was supposedly executing billion-dollar options transactions on the Feeder Funds' behalf with anonymous counterparties who never asked for the Feeder Funds' identity or collateral and the Feeder Funds never asked for theirs; Madoff often provided FGG with contradictory and sometimes nonsensical explanations of his market transactions on its behalf; and quantitative information the Defendants trumpeted in their sales, offering, and other marketing materials demonstrated that Madoff's consistent returns were so improbable they appeared impossible.

1. FGG's Returns Were Too Consistent for Too Many Years

400. Both FGG and BLMIS appeared immune from any number of market catastrophes, enjoying steady rates of return at times when the rest of the market was experiencing financial crises. FGG and BLMIS maintained consistent and seemingly impossible positive rates of return during events that otherwise devastated the S&P 100 – the performance of which formed the core tenet of the Defendants' SSC Strategy. In fact, between 1996 and 2008, the Feeder Funds did not experience a single quarter of negative returns.

401. During the burst of the dotcom "bubble" in 2000, the September 11, 2001 terrorists attacks, and the recession and housing crisis of 2008, the SSC Strategy purported to

produce **positive returns, outperforming the S&P 100 by 20 to 40 percent in each instance where the S&P 100 suffered double-digit losses.**

402. FGG's own marketing materials contain the following rates of returns:

Year	Fairfield Sentry Rate of Return	S&P 100 Rate of Return
1990	2.77%	(5.74%)
1991	17.64%	24.19%
1992	13.72%	2.87%
1993	10.75%	8.28%
1994	10.57%	(0.19%)
1995	12.04%	36.69%
1996	12.08%	22.88%
1997	13.10%	27.677%
1998	12.52%	31.33%
1999	13.29%	31.26%
2000	**10.67%**	(13.42%)
2001	**9.82%**	(14.88%)
2002	**8.43%**	(23.88%)
2003	7.27%	23.84%
2004	6.44%	4.45%
2005	**7.26%**	(0.92%)
2006	9.38%	15.86%
2007	7.34%	3.82%
2008[6]	**4.50%**	(32.30%)

(A true and accurate copy of Fairfield Sentry's October 2008 marketing tear sheet is attached hereto as Ex. 60.)

403. These consistent rates of return enabled FGG to attract many more investors and dramatically expand investments into BLMIS, including by accepting investments in foreign currencies through Sigma and Lambda into Fairfield Sentry. FGG also directed that the

[6] Through October 2008.

remaining 5% of "discretionary" Sentry funds be indirectly invested back into Fairfield Sentry and other FGG funds with direct or indirect BLMIS accounts.

404. The FGG Affiliates and the Management Defendants failed to conduct proper, independent, and reasonable due diligence or follow up as to how such returns could be achieved legally, or in accordance with their SSC Strategy. The Defendants knowingly and purposefully turned a blind eye to the fact that this strategy, dependent in large part on how stocks in the S&P 100 performed, continued to yield positive returns without any correlation to the S&P 100. The Defendants simply marketed to the world FGG's extraordinary and consistent performance.

2. The Defendants' Account Statements Showed the Likelihood of Fraudulent Activity

405. The Defendants repeatedly claimed they verified that all trades were consistent with the SSC Strategy and that all trades were legitimate. The Defendants justified their large management and performance fees based, in part, on their alleged daily monitoring of trade activity.

406. The Defendants knew or should have known of multiple red flags in the trade confirmations and account statements they received. First, Madoff was known as a pioneer of electronic record-keeping in the BLMIS market-making business. For clients of the BLMIS IA Business, Madoff never sent one electronic trade confirmation, and for many years, did not provide electronic account statements. Second, the volumes of securities reported on the Feeder Funds trade confirmations, as well as the month-end account statements, so exceeded reported exchange volumes that they were a strong and recurrent indicia of fraud.

407. The Defendants understood BLMIS did not make separate trades for each of the BLMIS IA Business customer accounts. Madoff purchased large baskets of stocks and options, and proportionately allocated them to each account. For many years, Madoff did not tell the Defendants the amount of assets under his management. The Defendants estimated as early as 2003 that Madoff was managing approximately $10 billion. In August 2003, in response to a due diligence query being performed on Fairfield Sentry by a prospective investor, Vijayvergiya told the investor, who had heard Madoff was managing close to $20 billion, that FGG estimated that Madoff was managing about $8-10 billion. (A true and accurate copy of the August 6, 2003 email from Vijayvergiya is attached hereto as Ex. 61.)

408. When BLMIS was forced to register as an investment adviser in August 2006, it reported that it had $11.7 billion under management at the end of July 2006. Later filings stated that BLMIS was managing $13.2 billion at the end of 2006, and $17.1 billion at the end of 2007. At the same time, the Feeder Funds' accounts reported balances of $4.9 billion through July 2006, $5.5 billion at the end of 2006, and $7.2 billion at the end of 2007, or approximately 42% of the assets BLMIS reported it was managing. Because the Defendants knew that Madoff allocated his baskets of stocks and options proportionately, the Defendants reasonably should have calculated or estimated the amounts of stocks and options that BLMIS would have had to purchase or sell for all its IA customer accounts.

409. The Feeder Funds' account statements regularly indicated that BLMIS's trades in a particular stock for Feeder Funds' accounts alone accounted for a large percentage of that stock's trading volume on the listed markets. This meant that BLMIS's trades for all of its IA customers often approached, or exceeded the entire volume of trades on the listed markets.

410. Each time Madoff supposedly entered the market, he purportedly purchased between 35 and 50 S&P 100 stocks for the Feeder Funds' accounts. There were over 150 occasions on which the stocks Madoff purchased for Fairfield Sentry alone accounted for over 20% of the trading volume for those stocks **on the entire NYSE**. BLMIS, as a single investment adviser, was by itself purportedly trading for all of the BLMIS IA Business customers nearly 50% of all market trading in those stocks. There were also 50 instances in which Fairfield Sentry's account was responsible for over 25% of market trading in a particular stock (meaning trading for all of the BLMIS IA Business customers rising to over 60%), and 19 times when Fairfield Sentry accounted for over 30% of the trading in a particular stock (meaning the BLMIS IA Business customer trading constituting over 75% of market activity). On at least 3 occasions, **BLMIS would have had to engage in more trading than occurred on the entire exchange for a particular stock to execute the purported trades for Fairfield Sentry and the other customers of the BLMIS IA Business**.

411. Even using the OTC market, a single investment adviser could not ever reasonably be responsible for over half of the reported trading of a particular S&P 100 stock. That Madoff could be responsible for more trading than occurred on an entire trading exchange was seemingly impossible. Sophisticated hedge fund professionals such as the Defendants, seeing such extraordinary percentages in trading patterns by their investment manager – with billions of dollars under his management – were required to undertake proper, independent, and reasonable due diligence or follow up into such indicia of fraud. The Defendants chose not to investigate these trading patterns.

3. Madoff's Extraordinary Trading Volumes Never Affected the Market

412. The SSC Strategy marketed by FGG involved moving money into the market over the course of one or more days, and then selling off all of those securities over a similar time span. According to the Defendants, over the course of many years, tens of billions of dollars moved into and then out of the U.S. stock and options markets over the course of just a few days, six-to-eight times a year. The Defendants never independently investigated how these trades could be accomplished without any impact on the price of the securities bought and sold, without any market footprint, and without anyone "on the Street" knowing or even hearing about Madoff's alleged trading activity.

413. The sale of tens of billions of dollars of stocks in a short period of time would result in a decreased price of those stocks, cutting into the alleged profits from the sales of such stock. The Defendants did not conduct independent or reasonable due diligence into the non-impact of Madoff's large trading.

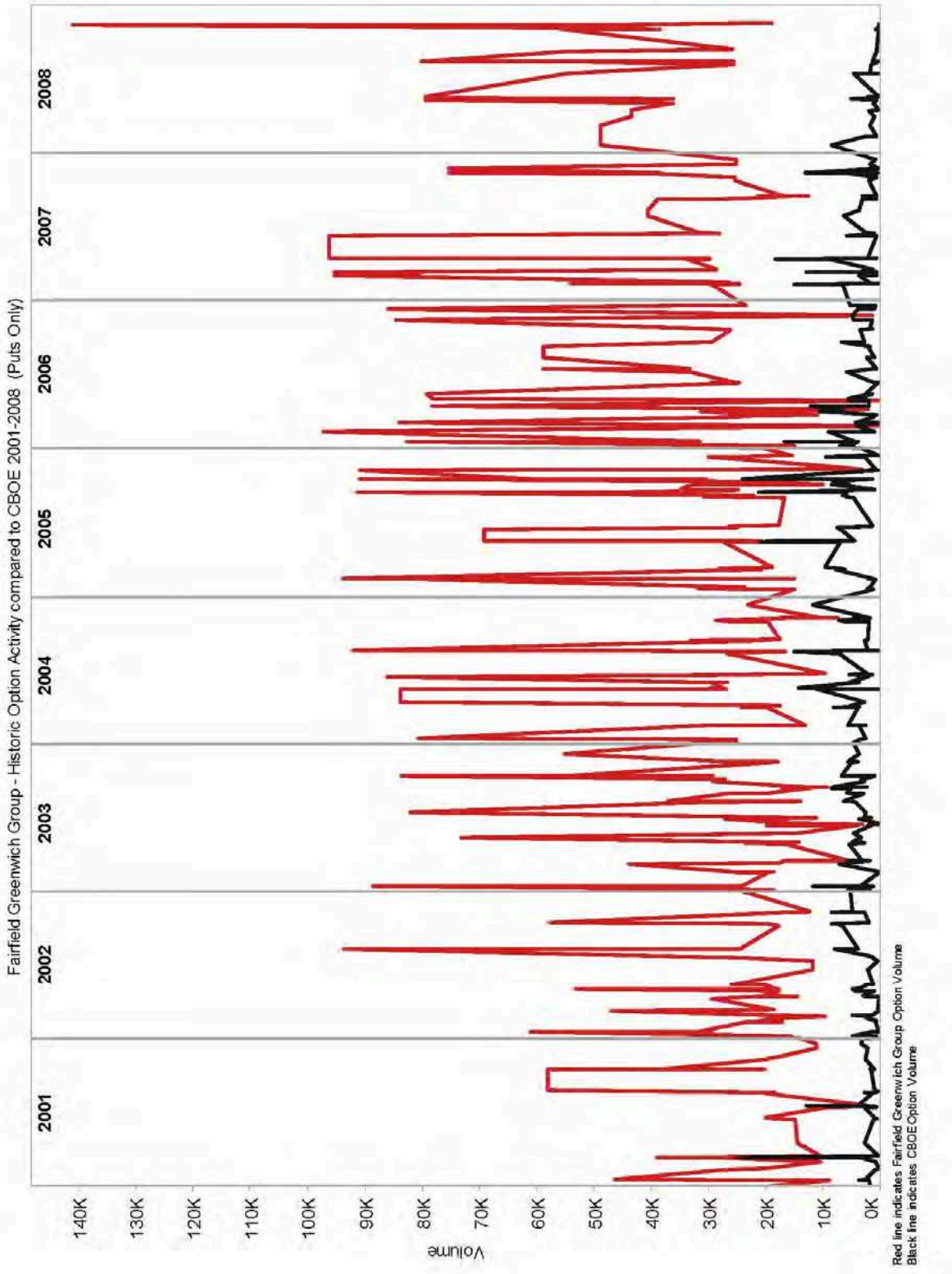
414. When Madoff exited the market, he claimed to have placed his customers' assets in Treasurys or mutual funds invested in Treasurys. The movement of tens of billions of dollars in and out of the market should have materially affected the price of Treasurys. Lipton even remarked how BLMIS had "every angle covered" and was "playing over my head" when he attempted to explain how Madoff "rolled 6-7BN of Tbills on the last day of the year" with "the cost and the market value of investments . . . the exact same" in consecutive years. (A true and accurate copy of April 2008 emails between Lipton and McKenzie is attached hereto as Ex. 62.) The Defendants did not conduct independent or reasonable due diligence into the Treasurys aspect of the SSC Strategy.

4. The Feeder Funds' Account Statements Showed That BLMIS Was Trading More Options Than Were Available on the CBOE

415. The Defendants could have applied the same calculation they used to determine the universe of BLMIS's equities trading to determine the number of options BLMIS was trading for all of its customers. S&P 100 Index options are traded on the Chicago Board of Exchange ("CBOE") under the symbol OEX100. BLMIS **nearly always** traded more OEX100 options than were traded on the entire CBOE.

416. From 2001 to 2008, when comparing the volume of OEX100 options that BLMIS was purportedly trading on behalf of the Feeder Funds, with the CBOE volume, BLMIS traded more OEX100 options than the entire volume of the CBOE **97.6% of the time**. During those eight years, BLMIS traded fewer options than were traded on the options exchange on a given day **only 18 times**.

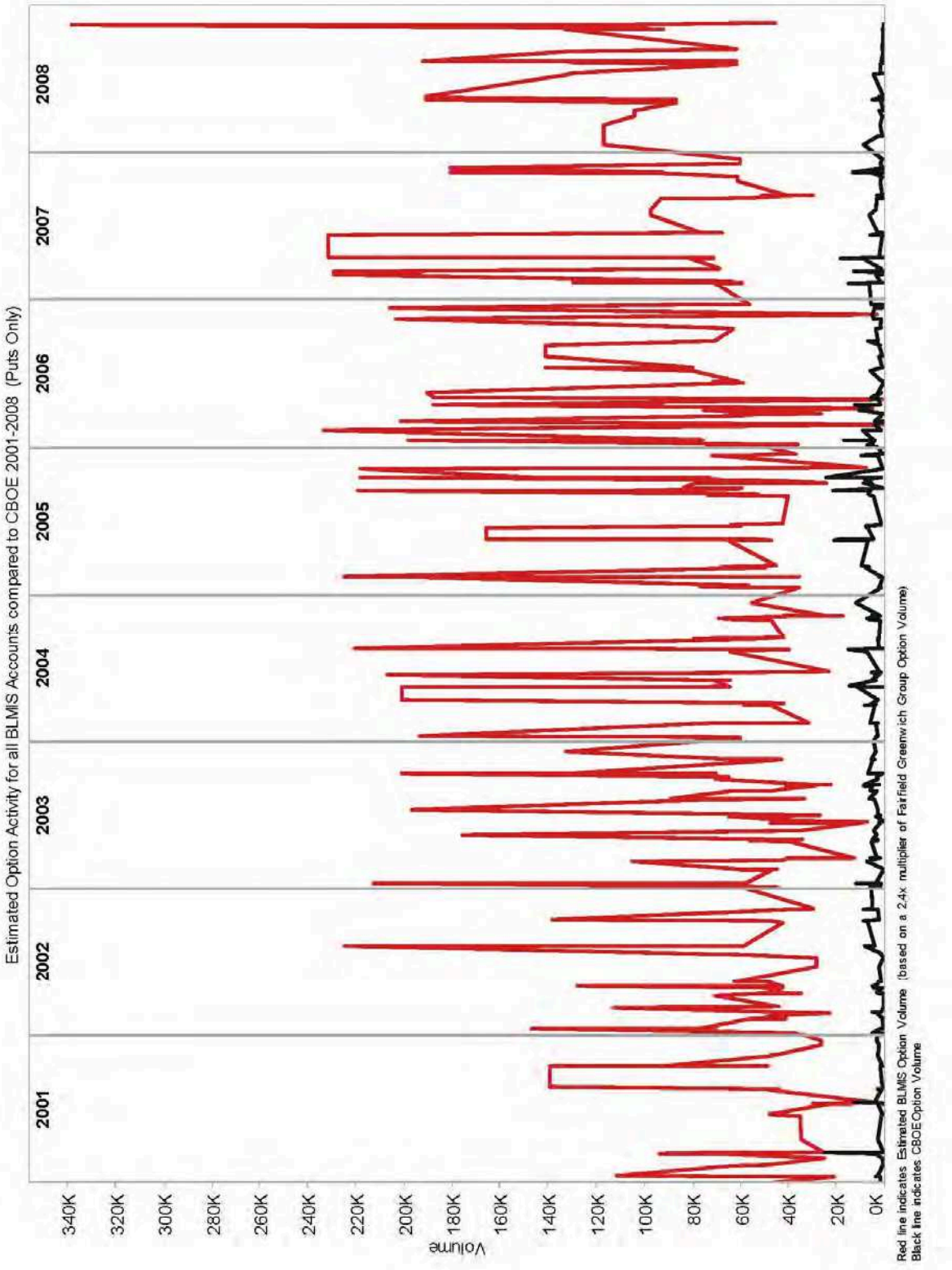
417. A comparison between the volume of OEX100 put options BLMIS traded on behalf of the Feeder Funds and the volume of those same put options traded on the entire exchange is striking, as demonstrated on the next page.


Fairfield Greenwich Group - Historic Option Activity compared to CBOE 2001-2008 (Puts Only)
2001
2002
2003
2004
2005
2006
2007
2008
Volume
140K
130K
120K
110K
100K
90K
80K
70K
60K
50K
40K
30K
20K
10K
0K
Red line indicates Fairfield Greenwich Group Option Volume
Black line indicates CBOE Option Volume

418. The volume of OEX100 put options BLMIS traded on behalf of the Feeder Funds (the red line) **completely dwarfs** the volume of OEX100 put options traded on the entire CBOE (the black line). Almost every time BLMIS entered the market to trade put options for the Feeder Funds, it traded more OEX100 put options than all trades on the CBOE **combined**.

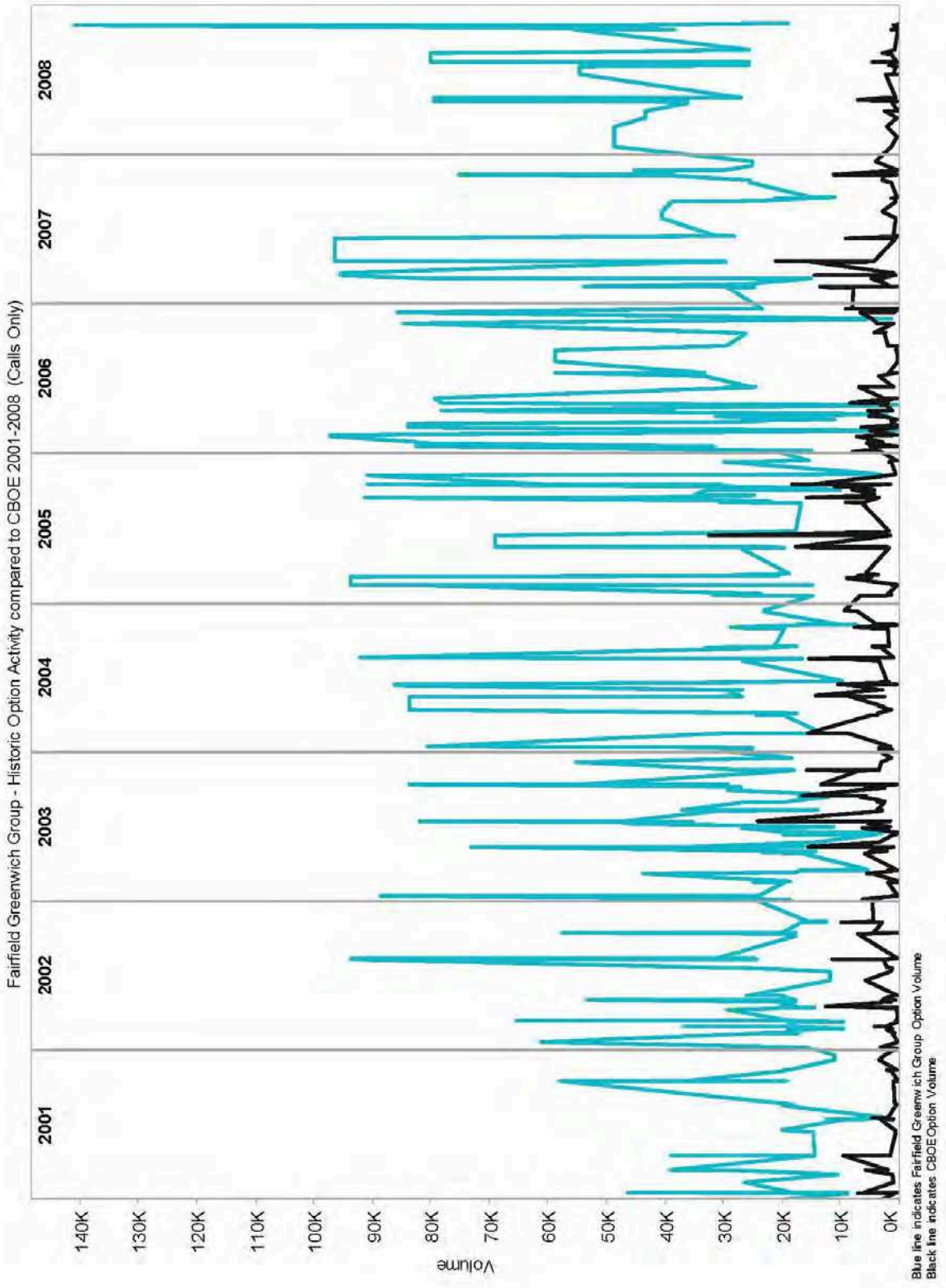
419. Based upon FGG's belief that the Feeder Funds accounted for 42% of BLMIS's trading, BLMIS would have been executing for all of its customers approximately 2.4 times as many trades as he was executing for the Feeder Funds alone. This means that FGG must have believed that, for instance, when BLMIS was trading 140,000 options for the Feeder Funds' accounts in late 2008, BLMIS was trading over 300,000 options for all of his accounts.

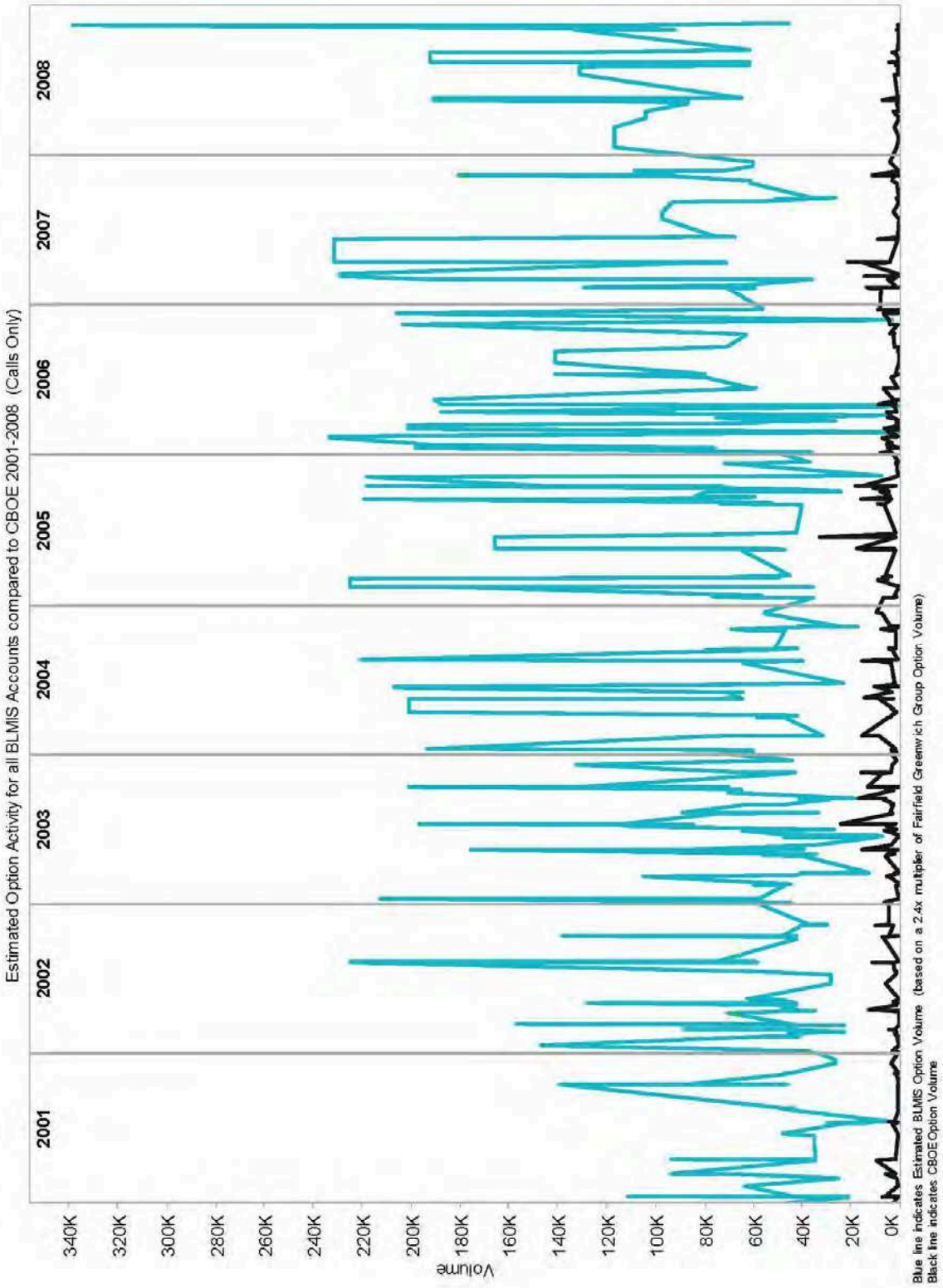
420. The amount by which BLMIS's trading overshadows the trades made by every other person who traded OEX100 put options on the CBOE is unbelievable, as shown below.


Estimated Option Activity for all BLMIS Accounts compared to CBOE 2001-2008 (Puts Only)
2001
2002
2003
2004
2005
2006
2007
2008
Volume
340K
320K
300K
280K
260K
240K
220K
200K
180K
160K
140K
120K
100K
80K
60K
40K
20K
0K
Red line indicates Estimated BLMIS Option Volume (based on a 2.4x multiplier of Fairfield Greenwich Group Option Volume)
Black line indicates CBOE Option Volume

421. The Defendants did not perform independent and reasonable due diligence or follow up concerning the put option trading BLMIS purportedly conducted on their behalf.

422. As shown below, the volume of OEX100 call options BLMIS traded on behalf of the Feeder Funds, and on behalf of all of BLMIS's customers, versus the volume of those same call options traded on the entire exchange, is equally telling. There was rarely a time when BLMIS traded **fewer** OEX100 call options than were traded on the CBOE.


Fairfield Greenwich Group - Historic Option Activity compared to CBOE 2001-2008 (Calls Only)
2001
2002
2003
2004
2005
2006
2007
2008
Volume
140K
130K
120K
110K
100K
90K
80K
70K
60K
50K
40K
30K
20K
10K
0K
Blue line indicates Fairfield Greenwich Group Option Volume
Black line indicates CBOE Option Volume


Estimated Option Activity for all BLMIS Accounts compared to CBOE 2001-2008 (Calls Only)
2001
2002
2003
2004
2005
2006
2007
2008
Volume
340K
320K
300K
280K
260K
240K
220K
200K
180K
160K
140K
120K
100K
80K
60K
40K
20K
0K
Blue line indicates Estimated BLMIS Option Volume (based on a 2.4x multiplier of Fairfield Greenwich Group Option Volume)
Black line indicates CBOE Option Volume

423. The Defendants did not perform independent and reasonable due diligence or follow up as to the trading volume for their accounts. Had the Defendants conducted proper due diligence they would have confirmed that their account statements, their strategy, and BLMIS were all a sham.

5. The Defendants Agreed to Enter into Billions of Dollars in Options Contracts With Unidentified Counterparties

424. In the OTC marketplace, where Madoff claimed to be trading, each transaction requires a private contract between the two parties. In order to allegedly perform the options trades, Madoff had the Feeder Funds execute a Master Agreement for OTC Options. (A true and accurate copy of an excerpt from BLMIS's Master Agreement for OTC Options is attached hereto as Ex. 63.) Under that agreement, Madoff served as the Feeder Funds' agent in executing any options trade. The agreement explicitly states the Feeder Funds could not look to Madoff if the counterparty failed to perform. (*See id.*) Thus, unless the counterparties were reliable, sufficiently capitalized, and liquid, the options could be rendered useless in hedging the Feeder Funds' investments. As a result, under the Master Agreement, if a counterparty failed to perform, **it was the Feeder Funds, and not Madoff, who were exposed**.

425. The Defendants did not review, comment, modify, negotiate, or reject any form of draft or final counterparty agreement or OTC transaction confirmation. Despite bearing the risk of the counterparties' failure to perform, the Defendants had no knowledge of the counterparties' identities. Madoff refused to identify the counterparties claiming he had to prevent his clients from dealing directly with the counterparties, and that the names of parties were proprietary. Madoff would eventually state that the counterparties were large European financial institutions.

426. Vijayvergiya and Tucker knew Madoff's counterparty explanations were suspicious. In response to a financial institution that told Vijayvergiya "**that his contacts at two of the largest investment firms on Wall Street had no knowledge of the options business (Citi and CSFB)**," Vijayvergiya told Tucker that the investor "seemed fine with my response re: options counterparties." He noted the investor was "**OK for now** - but I may still pose the casual question to Frank [DiPascali] at some point . . . ." (A true and accurate copy of Vijayvergiya's May 26, 2005 email to Tucker is attached hereto as Ex. 64 (emphasis added).)

427. After Bear Stearns collapsed in February 2008, inquiries regarding counterparty risk under the SSC Strategy intensified. Investors wanted to know what counterparties were trading options with Madoff, and whether those counterparties were stable and reliable. In the nearly 20 years FGG had been invested with Madoff it had never been provided the name of a single counterparty that bought options from or sold options to BLMIS. The Defendants failed to perform any proper, independent, or reasonable due diligence or follow up to understand and verify any aspect of the options counterparty component of their SSC Strategy.

428. As the stock market continued to weaken, and FGG was threatened with hundreds of millions of dollars in investor redemptions, Vijayvergiya contacted Madoff in June 2008. During the call, Vijayvergiya asked Madoff about BLMIS's counterparties. Madoff told Vijayvergiya that the options counterparties with whom BLMIS were required to post Treasurys as a performance assurance, and that no one counterparty accounted for more than 10% of the options trades. Madoff reiterated that he did not want FGG providing their investors with too much information regarding BLMIS. (A true and accurate copy of the June 4, 2008 memorandum summarizing the meeting is attached hereto as Ex. 65.)

429. The Defendants never inquired of Madoff as to why past counterparties needed to be concealed to protect operations or execution of the strategy. The Defendants also never sought to independently confirm, outside of Madoff himself, what exactly were the options "performance assurance," or where, when, or by whom the assurances were posted. The Defendants instead chose to accept Madoff's suspicious explanations.

430. Noel, Tucker, McKeefry, and Vijayvergiya met with Madoff in October 2008 and asked him to provide additional information about his options counterparties. Madoff told them his options counterparties were large institutions and that he performed credit checks on each of them. **Even though they were FGG's counterparties and not his**, Madoff again refused to provide the names of any counterparties. The Defendants continued to do nothing to independently verify any of Madoff's statements, taking Madoff solely at his word. The Defendants did not see or review a single document for these contractual relationships on their own accounts.

431. With the massive purported volume of BLMIS-related options trades, there were only a limited number of institutions that could have satisfied Madoff's and FGG's trading needs. The Defendants regularly communicated with many large European financial institutions – Madoff's alleged counterparties. Despite their regular contacts with institutions which fit Madoff's options counterparts profile, the Defendants never asked any of these institutions if they were trading options with Madoff. In fact, FGG never independently contacted any institutions to determine if they were trading S&P 100 options with Madoff.

6. The Supposed Options Trading Structure Under the SSC Strategy Was Inconsistent With Industry Practice

432. The purported BLMIS-Feeder Funds options trading was inconsistent with industry practice. Both Madoff and FGG claimed the options counterparties entered into agreements that were identical to the agreements the Feeder Funds entered into with BLMIS serving as each parties' agent. As a result, any resulting OTC trade would result in a contract between the options counterparty and the Feeder Fund.

433. FGG and Madoff claimed Madoff traded large blocks of options contracts and then allocated them proportionately to each of the BLMIS IA Business customers, like the Feeder Funds. Under normal industry practice, a block trade and allocation process requires the broker to trade as a principal and not an agent, with all transactions consisting of two trades: one between the one party and broker and then a second trade between broker and the other party. The two-trade process is required for block trade and later allocation transactions because OTC option trades are contracts between the two parties and the identity of the customer being allocated the option agreement is unknown at the time of the trade. In order that the SSC Strategy be consistent with industry practice, BLMIS would have been the principal in the two trades, one with the counterparty and the second with the BLMIS customer.

434. Other structural issues which were readily apparent included the alleged collateralization of the options trading. Madoff told the Defendants that he limited each counterparty's exposure to 10% of his overall position, and required each counterparty to post Treasurys in escrow accounts to serve as collateral to guarantee performance of the put options. When asked what collateral the counterparties required of the Feeder Funds in order to guarantee the performance of the call option sold to them, Madoff claimed none was required because his customers held the equities.

435. Madoff's explanation was facially false for several reasons: (1) the basket of the 35 to 50 equities did not perfectly match the entire S&P 100 Index – the basis of the call option; (2) Madoff was free to sell the equities, which he did on occasion, prior to the expiration of the call, leaving the counterparty with no collateral at all; and (3) Madoff stated that the option counterparty had no lien against its allocated equities which, if true, meant the counterparties had no collateral protecting their position.

436. Madoff's purported options trading structure, leaving the BLMIS IA Business customer's counterparty exposed to large credit risk without ever knowing the identity of the BLMIS IA Business customer, was irregular and inconsistent with industry practice. FGG never conducted independent or reasonable due diligence about this aspect of its own SSC Strategy, accepting instead Madoff's implausible explanations without asking any questions.

7. The Options Trade Confirmations the Defendants Received From BLMIS Did Not Comply With Industry Standards

437. The Feeder Funds' options trade confirmations contained certain abnormalities. The options trade under the SSC Strategy was supposed to be a private contract between two parties in the OTC market and the counterparty should have been expressly identified on the confirmation statement. None of Madoff's options trade confirmations identified the counterparty.

438. By contract, options traded on the CBOE have an identifier number known as a "CUSIP" (Committee on Uniform Security Identification Procedures). The CUSIP allows traders to quickly access electronic information regarding a particular option by simply inputting the CUSIP number into data terminals. Because OTC options are private transactions, the

options are not assigned any CUSIP number. Madoff's trade confirmations – reviewed by FGG – included a CUSIP indicating that they were traded on the CBOE.

439. The master options agreement stated Madoff was acting as the agent of the Feeder Funds when he entered into options trades, however each confirmation indicated BLMIS was trading as a principal. More importantly, once BLMIS was registered as an investment adviser with the SEC in 2006, SEC regulations prevented BLMIS from trading for a customer account as a principal without written authorization from the customer for each trade. The Feeder Funds never transmitted any authorizations permitting BLMIS to trade as a principal. Nevertheless, every trading confirmation the Feeder Funds received from BLMIS indicated BLMIS acted as a principal, even after he registered as an investment adviser.

440. The Defendants knew of and ignored these red flags. Simply put, the Defendants did not perform independent or reasonable due diligence into their own trading confirmations.

8. Madoff's Inconsistent Stories Were Ignored by the Defendants

441. Madoff's explanations about the SSC Strategy often changed according to circumstances, and with whom he was talking. The Defendants knew Madoff made inconsistent statements about the SSC Strategy but did nothing in response.

a. Options Trading

442. When Madoff first began trading options pursuant to the purported SSC Strategy, he claimed he traded the options contracts on the CBOE. When confronted by customers questioning whether the volume of his options trading activity was too large for the CBOE, Madoff shifted his story and claimed he had moved to OTC trades without telling his customers.

The Defendants never investigated Madoff's statements. Instead, the Defendants falsely repeated whatever Madoff told them about where he was trading options.

443. When FGG's investors expressed concern that Madoff could purchase equities but might not find counterparties from whom to purchase the put options to protect the equities purchases from a market drop, Madoff reassured FGG by claiming that he spoke to option counterparties to determine option availability before he purchased any equities. (A true and accurate copy of the Vijayvergiya's July 23, 2008 email to Barreneche is attached hereto as Ex. 66.)

444. By contrast, during the 2006 SEC investigation Madoff expressed concern that the SEC would conclude that the SSC Strategy would promote front-running. During the "scripting" call with Vijayvergiya and McKenzie, Madoff discussed the need not to say anything that might allow the SEC to conclude one party could front-run the trades. When Vijayvergiya asked Madoff whether he spoke to counterparties to assure puts were available before he purchased equities, Madoff replied that he did not contact the options counterparties ahead of time because it would be too easy for them to front-run his trades. (*See* Ex. 39.) As was customary, the Defendants did not perform independent or reasonable due diligence or follow up when Madoff made these contradictory statements.

b. Madoff's Auditor

445. The Defendants knew that Madoff told changing stories about the relationship between BLMIS and its auditor. When questioned about Friehling, Madoff sometimes told customers, including FGG, that he did not change auditors because there was a family connection to Friehling. Internal FGG communications discussed the fact that BLMIS's auditor

was a member of Madoff's family. (*See* Ex. 38.) This lack of independence between the auditor and audit client would be a conflict of interest and itself a huge red flag of fraud. The Defendants did not conduct due diligence as to this conflict of interest. Later when the so-called "family auditor" conflict of interest issue arose, Madoff claimed he had no family ties to Friehling. The Defendants conducted no due diligence into this changing story.

c. Number of People at BLMIS Executing the Strategy

446. At times, FGG repeated Madoff's claims of having dozens of PhD traders and administrative personnel involved in executing the SSC Strategy. However, in 2006, when BLMIS filed its ADV form as independent advisor, BLMIS reported it had only five employees in the BLMIS IA Business. After obtaining the ADV form, the Defendants took no action to reconcile Madoff's prior representations and the information he provided to the SEC. Instead, the Defendants simply repeated what Madoff told them about the traders in the BLMIS IA Business operation.

9. The Defendants' Own Due Diligence Procedures Should Have Uncovered Anomalies in Madoff's Trading

447. The Defendants told their investors that as part of their due diligence procedures they reconciled trade confirmations immediately. The Defendants knew or should have known of certain trading anomalies through their trade reconciliation efforts.

448. There were days when the Feeder Funds' trade confirmations indicated Madoff traded stocks at prices that were outside the daily ranges of prices for those stocks. As an example, Fairfield Sentry's account statements for October 2003 reported purchases of Intel Corporation (INTC) of 1,082,543 shares, 1,097,173 shares, and 67,837 shares. BLMIS's records

indicate these stocks were purchased on October 2, 2003 for $27.63 per share. The daily price range for Intel Corporation stock purchased and sold on October 2, 2003 in fact ranged from a low of $28.41 to a high of $28.95.

449. Fairfield Sentry's and GSP's account statements for December 2006 reported sales of Merck (MRK) of 267,035 shares, 261,266 shares, 15,386 shares, and 786 shares. BLMIS's records and the Feeder Funds' trade confirmations reflect that these stocks were sold on December 22, 2006 for $44.61. The price range for Merck stock in fact bought and sold on December 22, 2006 was between $42.78 and $43.42.

450. According to the Defendants, they created procedures and employed them every day for the specific purpose of catching such indicators of fraudulent behavior. That in fact never occurred.

10. The Quantitative Analysis the Defendants Touted to Their Own Investors Proved Madoff's Returns Were Virtually Impossible.

451. Quantitative analysis that is standard in the hedge fund industry revealed that Madoff's positive, consistent returns were, statistically, highly improbable. FGG told its investors that it performed such analysis, but refused to recognize the implications of their findings – BLMIS was a fraud.

452. FGG's marketing materials emphasized that Vijayvergiya and his risk management team performed exacting quantitative analysis of the Feeder Funds' investments. This analysis included utilizing an industry standard known as the Sharpe ratio to gauge portfolio performance. The Sharpe ratio, developed by William Sharpe, winner of the Nobel Prize in Economic Sciences, measures how well a trading strategy compensates the investor for the risk

taken. A higher Sharpe ratio indicates the strategy provides a higher return relative the associated risk. For funds with monthly net asset values ("NAV"), such as the Feeder Funds, the Sharpe ratio is calculated as follows:

$$\frac{\text{(The Fund's Average Monthly Rate of Return) – (That Month's Risk-Free Rate)}}{\text{Standard Deviation of the Fund's Monthly Returns}}$$

453. BLMIS's Sharpe ratio was remarkable. When compared to the over 800 other hedge funds that reported data to major hedge fund databases, the probability Madoff could maintain such high Sharpe ratios by providing positive returns with very little volatility, was **less than 1%**. When compared to funds that employed comparable strategies to Madoff's SSC Strategy, that probability drops to **less than 0.1%**. In selling his services to FGG, Madoff noted that other star managers might have higher returns, but he produced steady returns without the volatility of those star managers. In fact, for a 13-year period, Fairfield Sentry had a higher Sharpe ratio than Warren Buffett, George Soros, Bruce Kovner, and John Paulson in all but six of 52 quarters between 1995 and 2007. The probability of Fairfield Sentry's Sharpe ratio outperforming these star money managers in almost every quarter for nearly 13 years is approximately **1 in 200,000,000**.

454. Such an understanding and detailed analysis of the Sharpe ratio was what Defendants touted to be part of their exceptional due diligence procedures. The Feeder Funds' nearly impossible Sharpe ratio was in fact one of the factors that led quantitative analysts, such as Edward Thorp and Harry Markopolos to conclude that Madoff was operating a Ponzi scheme.

455. Independent analysts viewed the Feeder Funds' Sharpe ratio with a great deal of skepticism because the Feeder Funds' Sharpe ratio **always** remained high. The Feeder Funds' year-over-year Sharpe ratio was driven by the low volatility of the Feeder Funds' performance in

often highly volatile markets, and without any meaningful correlation between the two. The Defendants did not perform any reasonable or independent due diligence into the fact that it was nearly impossible for the Feeder Funds to have retained such a consistently high Sharpe ratio.

456. FGG claimed that Madoff had great market timing based on his "feel" for the flow of the market, premised on short-term market timing. Vijayvergiya responded to critics of Madoff's market timing abilities by claiming Madoff had unique access to market flow information through his market-making business.

457. Independent analysts rejected the Defendants' explanations about Madoff's ability to perfectly time the market for over 20 years. Many analysts viewed Madoff's perfect timing based on market flow as indicative of illegal front-running. The Defendants knew that front-running was a "[t]ypical Madoff rumor[]," but they never tried to investigate. (A true and accurate copy of the February 27, 2004 email from Vijayvergiya to FGG's Marco Musciacco is attached hereto as Ex. 67.)

458. Moreover, despite employing a market timing strategy, Madoff would artificially take his customers' cash out of the market near the end of the quarter for reasons having nothing to do with the SSC Strategy. Madoff claimed to move his customers' funds, like the Feeder Funds, in order to avoid what he understood to be the disclosure requirements of a Form 13F filing under the SEC rules requiring those who exercise discretion over accounts having more than $100 million in exchange-traded or NASDAQ securities to report their holdings.

459. The Defendants knew Madoff's desire to avoid reporting requirements was the reason for his end-of-quarter positions. The Defendants also knew that Madoff's reason for

going to cash would raise concerns among institutional investors. Vijayvergiya and other FGG sales personnel were directed to provide other reasons for the end-of-quarter cash positions.

460. After Yanko della Schiava, another Noel son-in-law, asked Vijayvergiya why Madoff moved all customer accounts out of the market at the end of the year, Vijayvergiya gave two nonsensical responses based on purported trading strategy. Della Schiava responded, "I remember Jeffrey [Tucker] once specifically mentioning about the last days of the year to be in cash so he [Madoff] did not have to fill certain tax forms . . [*sic*] or something similar." Vijayvergiya then responded, "Yes – that is a third possible reason but I have been advised not to emphasize this." Vijayvergiya went on to write, "I am told that the rule to which Jeffrey [Tucker] is referring requires that if Madoff ends the year invested on December 31, then they are required by law to report their holdings in these same positions for the next four quarters. I am further told that Madoff has been reluctant to do this . . . ." (A true and accurate copy of the December 11, 2003 email from Vijayvergiya to della Schiava is attached hereto as Ex. 68.)

461. The Defendants performed no independent or reasonable due diligence as to why a strategy based on market timing would pull itself out of the market for reasons having nothing to do with market timing and instead gave cover to Madoff's real reason he was out of the market – avoiding 13F filings that would lead sophisticated investors to conclude he was a fraud.

IX. THE DEFENDANTS WERE WILLING TO IGNORE THE RED FLAGS; THEIR INVESTORS AND CONSULTANT WERE NOT

462. The Defendants looked away when faced with red flags about BLMIS. The Feeder Funds' investors, who paid the Defendants to conduct proper, independent, and reasonable due diligence on BLMIS, and the funds' potential investors were far more concerned than the Defendants when they learned of Friehling; BLMIS's unusual fee structure; the fact that

BLMIS was the investment manager, self-clearing prime broker, and custodian; and the Defendants' own lack of transparency and limited understanding of their own investment strategy.

463. For example, in February 2005 one investment group explained that it had "decided to NOT invest in the Fairfield Sentry fund" due to the non pure independence between the true manager of the fund and the prime broker/Custodian of the fund." One of Fairfield-UK's employees told Tucker, Landsberger, and Vijayvergiya, "at least their reason was was [*sic*] a good one." (A true and accurate copy of the February 1, 2005 email to Tucker is attached hereto as Ex. 69.) Instead of investigating the issue further, Piedrahita was still saying over two years later that "there is absolutely nothing we can do about it . . . ." (A true and accurate copy of the June 21, 2007 email from Piedrahita to Landsberger, Vijavergiya, Lipton, and the Executive Committee is attached hereto as Ex. 70.)

A. *FGG Does Everything It Can to Mollify Investor Concerns as Opposed to Performing Independent Inquiry Into the Possibility of Fraud*

464. Throughout the 2000s and increasingly in the 2006–08 period, the Defendants knew that "concerns about lack of transparency" troubled the Feeder Funds' investors and potential investors, causing them to redeem from the Feeder Funds. (A true and accurate copy of the June 10, 2008 email from Vijayvergiya to McKenzie is attached hereto as Ex. 71.) The Defendants tried to stem the tide of redemptions, and tried to convince investors there was nothing about which to be concerned, rather than independently or reasonably investigate or follow up to determine whether Madoff's lack of transparency was an indicia of fraud.

465. To respond to concerns about Madoff's lack of transparency, the Feeder Funds' sales force was provided with "talking points." Vijayvergiya sent an e-mail to McKenzie and others in which he suggested that Fairfield Sentry personnel ask its customers whether redemptions from the fund were related specifically to the lack of transparency or any other concerns over BLMIS. The Feeder Funds' sales force was to try to convince investors not to redeem their interests in Fairfield Sentry by emphasizing FGG's knowledge, monitoring and insight into Madoff, his operations, the performance, and the SSC Strategy.

466. In May 2008, the Defendants received basic questions from an institutional client asking the Defendants to confirm how Fairfield Sentry's accounts were segregated at BLMIS. (A true and accurate copy of FGG's May 2008 internal notes in response to investor questions is attached hereto as Ex. 72.) The Defendants could not answer these basic questions because they had never independently confirmed that any trades were being made or that BLMIS was in fact holding their assets. Murphy recommended that, "**we confirm, but not sure we answer directly their questions on how our account is segregated and how this can be confirmed?**" (*See* Ex. 41 (emphasis added).) Murphy also admitted that he did not know whether the Defendants had copies of the audit reports for BLMIS or whether "**we get to talk with the auditors?**" (*Id.* (emphasis added).)

467. As of May 2008, FGG had invested billions of dollars into Madoff and received over a billion in fees from the Feeder Funds, yet the Defendants still did not know **whether client funds were segregated** or whether anyone knew anything about Madoff's auditor. Vijayvergiya also admitted that "**there are certain aspects of BLM'S operations that remain unclear. . . .**" (*Id.* (emphasis added).) In internal email discussions that followed the investor's

redemption, Vijayvergiya stated that the client may have heard "certain rumors," which caused it to backpedal on its Fairfield Sentry investments. (*Id.*)

468. In June 2008, FGG partner and Chief Global Strategist of FGG, David Horn, emailed Vijayvergiya about a prospective client. The email stated that the client "**has always heard about Madoff, but hears things that scare her . . . so neutralize the scare with our transparency . . . this will be a piece of cake . . . .**" (A true and accurate copy of the June 2, 2008 email from Horn to Vijayvergiya is attached hereto as Ex. 73 (emphasis added) (alteration in original).) The Defendants' stated objective was to neutralize investor or prospective investor fears. The Defendants did not conduct proper, independent, and reasonable due diligence in connection with the red flags raised by potential investors.

469. In October 2008, Fairfield Sentry sought an investment from Merrill Lynch ("ML"). ML declined, explaining that BLMIS's unwillingness "to sit down with our due diligence team and open the books and operations" kept ML from investing. The ML representative stated, "I realize the track record speaks for itself, but ML has a process and it involves a lot of due diligence and learning. So I admire you[r] track record but it does not help me do business with your fund." (A true and accurate copy of the October 21, 2008 email from ML to Barreneche is attached hereto as Ex. 74.)

B. *FGG's Consultant Tells the Defendants Madoff May Be a Fraud*

470. FGG's investors, industry experts, other fiduciaries, and money managers were not the only ones flagging indicia that Madoff was a fraud. An FGG consultant, Gil Berman ("Berman"), also told the Defendants Madoff might be a fraud. On several occasions Berman raised serious concerns regarding BLMIS and Madoff.

471. When reviewing the trade tickets and account statements, Berman noticed that Madoff was at times taking actions inconsistent with the SSC Strategy he was required to execute. The Feeder Funds' Options Agreement with BLMIS indicated that BLMIS would "only write (sell) covered calls against long stock positions, and buy stock index puts or puts on the individual stocks that the account owns." Berman noticed that Madoff was occasionally purchasing double the notional amount of put options to cover a single basket of stocks, a trade not consistent with the SSC Strategy. Doubling the put option position would actually be detrimental because BLMIS had to pay for put options, and thus was wasting money by purchasing excess puts.

472. In May of 2008, this over-hedging strategy accounted for approximately $95 million of Sentry's total earnings. (A true and accurate copy of the spreadsheet accompanying Berman's report is attached hereto as Ex. 75.) In a June 13, 2008 email to Vijayvergiya, Berman stated that "there were several unusual transactions" in May 2008 and that "[a]ll of the [options] trades produced excess profits . . . ." (A true and accurate copy of the June 13, 2008 email from Berman to Vijayvergiya is attached hereto as Ex. 76.)

473. Later that month, in a telephone call with FGG, Berman noted plainly that **even Madoff could not win 100% of the trades**. Berman expressed concern that Madoff might be backdating trade confirmations. He recommended the Defendants require same-day trading tickets, obtain information on the options counterparties, and **verify that BLMIS was actually holding all of the assets purportedly in the Feeder Funds' accounts**. (A true and accurate copy of Berman's notes from the June 25, 2008 call with FGG is attached hereto as Ex. 77.)

474. However, the Defendants did not take any of Berman's due diligence recommendations – all of which should have been done regularly for years and any one of which would have disclosed the fraud. The Defendants ignored Berman's recommendation.

475. At another point in time Berman also noticed at least one risky "naked call position," where BLMIS had sold an S&P 100 call option but did not hold the underlying stock. A naked call position occurs when the seller of the call does not own the shares underlying the call option. In Madoff's SSC Strategy this would occur if he sold a call option for the S&P 100 Index but did not own the basket of stocks correlated to the index. If the index rose, the call would be exercised by the buyer and the Feeder Funds would be exposed to significant losses because they would not have hedged the risk.

476. Berman brought these activities to Tucker's and Vijayvergiya's attention because they were inconsistent with the SSC Strategy, and, depending on how the market moved, potentially harmful to the Feeder Funds' positions. The real reason the Feeder Funds' statements showed these unusual positions was that during certain down months, it was extremely difficult, even for Madoff, to fabricate trades that could justify his returns. Madoff created fictitious options trades inconsistent with his mandate and trading authority in order to create a consistently positive returns.

477. This type of options speculation violated the terms of BLMIS's investment agreement with the Feeder Funds, where Madoff agreed to invest all of the Feeder Funds' money pursuant to the SSC Strategy.

478. Armed with Berman's analysis and recommendations, and even though their own documents showed otherwise, when Noel, Tucker, McKeefry, and Vijayvergiya met with

Madoff in October 2008, they did not question Madoff's responses when he stated the value of the options would never exceed the notional amount of the equities.

479. The Defendants did not independently or reasonably investigate or follow up on any of these indicia of fraud made known to them by Berman.

X. DESPITE YEARS OF SEEING INDICIA OF FRAUD, THE DEFENDANTS CONTINUED TO FUNNEL BILLIONS TO MADOFF

480. For years, the Defendants had overwhelming evidence that Madoff was not a legitimate investment manager. Instead of performing as fiduciaries and protecting investors from fraud, the Defendants employed a number of ways to raise capital for Madoff, in order to enrich themselves, including, *inter alia*, creating new funds that would then invest a portion of their assets back into Fairfield Sentry; forming GSP to accommodate new investors; working with JPMorgan Chase & Co. ("JPMC"), Natixis, Nomura, BBVA, and many other financial institutions to create leveraged note programs based on Feeder Funds' returns, fully expecting the financial institutions to hedge their exposure by investing directly in Feeder Funds; and finally, when massive redemptions were pushing Madoff to the brink, agreeing to serve as the exclusive marketers for a "new" BLMIS strategy.

A. *2006: GS Is Expanded and GSP Is Created*

481. The Defendants created GS to accommodate U.S. investors that wished to invest their money with BLMIS. By 2006, FGG decided it wanted to further accommodate U.S. investors and on May 1, 2006 created GSP for those investors that did not qualify to invest in GS.

B. *2007: Leveraged Note Programs*

482. More money invested with Madoff translated to more FGG fees and, in 2007, the Defendants expanded aggressively into many types of leveraged products. Madoff's commercial banker, JPMC, for example, structured about $250 million in leveraged notes based on the returns of Fairfield Sentry and Sigma. Others such as Natixis, Nomura, and BBVA did the same.

483. Purchasers of these notes would be entitled to receive returns based on a multiple of the returns of the underlying Feeder Fund. As an example, in February 2007, JPMC offered a 3x leveraged certificate on Sigma. Individual investors who purchased a note for this product would invest a specific sum (e.g., $100), and would earn returns as if they had actually invested three times that sum (e.g., $300). Each of these products was time restricted. Investors who purchased a note from JPMC in 2007 would not have been able to collect their profits until the note matured, generally sometime between five and eight years after the initial investment.

484. The benefit to the Feeder Funds of these note programs was the potential investment from the financial institutions structuring the notes. For instance, if JPMC structured a note on Sigma, and thereby guaranteed returns based on Sigma's performance, JPMC would be expected to hedge that exposure by purchasing shares of Sigma. And that is what happened. The financial institutions invested hundreds of millions of dollars in the Feeder Funds and Sigma, from which the Defendants reaped even greater fees.

C. *2008: The Emerald Funds*

485. In late 2008, the Defendants were still working with Madoff to inject additional funds into BLMIS. In November 2008, Madoff contacted the Defendants about setting up new Madoff feeder funds. In a short telephone conversation with Tucker, Madoff stated without

much specificity he had a new strategy which would be similar to the SSC Strategy, but would produce higher volatility with higher returns.

486. Madoff offered this new strategy to the Defendants, who would serve as the exclusive marketer. In order to launch the new strategy, Madoff asked that the Defendants raise $500 million, with $200 million to be raised by the end of 2008. The Defendants agreed.

487. After nothing more than a brief telephone conversation describing the new strategy and a one-page performance report purporting to show the strategy's simulated *pro forma* performance over the previous year, the Defendants began raising money for the new funds BBHF Emerald and Greenwich Emerald ("the Emerald Funds"). The Defendants tried to raise this capital even though they had not issued a private placement memoranda, offering documents, or other fund documentation, and had not received any details regarding, nor conducted any due diligence on, this new strategy.

488. On December 10, 2008, Tucker drafted a letter to Madoff outlining the steps FGG was taking to slow withdrawals from BLMIS:

> We have taken a number of steps with our other funds in order to put all of our investable capital in Sentry and the new split strike strategy which we call Emerald. While the full results of this strategy will take a few months to take effect, they will include:
>
> - investments in Sentry by existing Fairfield funds (~$100mm)
> - liquidating other Fairfield funds and transferring the assets to Sentry and Emerald (up to ~$150mm)
> - purchases by the firm of Sentry positions from clients rather than having them redeem from Sentry (~$150mm)
> - investments by individual partners of the firm in

Sentry and Emerald (~$50mm)

> We are, as would be expected, aggressively cutting fees for new subscriptions and offering significant fee-sharing incentives to our agents and finders.

(A true and accurate copy of the December 10, 2008 draft letter from Tucker to Madoff is attached hereto as Ex. 78.)

489. The Defendants and Madoff were partners until the bitter end.

XI. THE AFTERMATH

490. On December 11, 2008, the world's largest Ponzi scheme was uncovered and Madoff was arrested. The Defendants' failure to conduct proper, independent, and reasonable due diligence and follow up on Madoff, and their willful ignorance of information readily available to them for nearly two decades helped facilitate the scheme and allow billions to be lost as a result.

491. By the time Madoff was arrested, the Management Defendants had only a few million dollars invested with Madoff. Piedrahita had no investments with Madoff, Tucker had approximately $900,000 and Noel had a slight percentage of his wealth, $9 million, invested through Madoff. The Defendants retained every other cent of the fees, partnership distributions, and other monies they unjustly "earned" and had collected over nearly two decades. They have to-date kept millions of dollars of stolen Customer Property.

492. On December 12, 2008, the day after Madoff's arrest, Tucker faxed withdrawal notices to BLMIS for all of the Feeder Funds' monies. The small fraction of assets left in BLMIS's account was not sufficient to fulfill the redemptions. The result of the FGG Affiliates and Management and Sales Defendants' actions was a precipitous drop in the Net Asset Value

("NAV") of the Feeder Funds. The NAV of the Feeder Funds is defined as the value of their cash, stocks, and options, less any liabilities. When Madoff admitted he had never purchased any stocks or options with the money his customers gave him, the NAV of the Feeder Funds dropped to almost nothing. The Feeder Funds and their investors lost billions. The remaining Defendants, on the other hand, whose fees and profits were based directly on the previous, wrongly calculated NAVs, had already walked away with over a billion dollars.

493. Shortly after the Madoff scheme collapsed, the Defendants publicly claimed they were innocent and had no reason to suspect anything was amiss at BLMIS. (A true and accurate copy of the December 12, 2008 FGG press release is attached hereto as Ex. 79.) These statements were false.

494. As alleged support for their claims of innocence, certain Management Defendants proclaimed FGG had created a new feeder fund and funded it with $10 million of personal funds sent to Madoff days before his arrest. However, their statement was not the complete story.

495. These Management Defendants did not mention the Stable Fund, which was limited to the FGG partners and their spouses. In October 2008, the Stable Fund liquidated and redeemed its remaining $4.4 million in assets out of Fairfield Sentry. On December 8, 2008, the Defendants informed Madoff that it would be forwarding another major redemption. Madoff reacted to this news by suggesting that the Defendants were not a suitable partner for his investment services. When faced with Madoff's threat, through their new Emerald Funds, the Management Defendants put back the $4.4 million they had taken out of BLMIS through the Stable Fund.

496. After the scheme was revealed, Lipton immediately emailed his personal broker and asked that a new account be set up in his wife's name, where he transferred all of his municipal bonds and treasury investments. Piedrahita and his wife sold their U.S. residence and moved from country to country after Piedrahita took delivery of a $12 million yacht.

497. Even after Madoff was arrested, the Defendants continued to lie about the due diligence they purportedly had performed. As late as February 2009, FGG proclaimed that it regularly reviewed DTCC records. (A true and accurate copy of the February 5, 2009 Wall Street Journal article entitled, "Markopolos Testifies Fairfield Knew Little About Madoff," is attached hereto as Ex. 80.) The Defendants' statements were not and could not be true. If any of the Defendants had examined a DTCC record, they would have immediately discovered not a single security had ever been traded on their behalf.

XII. "PEOPLE WILL TELL: OH THIS WAS FRAUD, THERE IS NOTHING WE COULD HAVE DONE. BUT THIS IS SIMPLY NOT TRUE! YOU SHOULD HAVE DONE DUE DILIGENCE!"[7]

498. There was nothing special about the kind of due diligence that needed to be done to unearth signs that Madoff was possibly a fraud. Many fund managers, due diligence research and consulting firms, consultants, banks, and other industry professionals, with far less access to BLMIS than the Defendants, concluded many years prior to Madoff's arrest that the consistency of his returns was virtually impossible and likely the result of fraud. The FGG Affiliates, Management Defendants, and Sales Defendants knew this too. Because these Defendants were earning millions of dollars year after year based solely on their relationship with Madoff, they knowingly chose to ignore the likelihood of fraud.

[7] (A true and accurate copy of the December 14, 2008 Salus Alpha Group press release is attached hereto as Ex. 81.)

499. The claim that no one saw signs that Madoff was a fraud or that the Defendants were not on actual and/or constructive notice of fraud, is false. The Defendants saw the signs and they summarily ignored them.

A. *The Barron's and MAR/Hedge Articles Are Published in 2001*

500. During 2001, two industry analysts published articles that called into question the legitimacy of BLMIS's operations. A May 2001 MAR/Hedge newsletter entitled, "Madoff tops charts; skeptics ask how," reported on Fairfield Sentry's consistent returns stating that experts were bewildered as to how such returns could be achieved so consistently and for so long. The article observed that "others who use or have used the strategy . . . are known to have had nowhere near the same degree of success." (A true and accurate copy of the May 2001 MAR/Hedge article entitled, "Madoff tops charts; skeptics ask how," is attached hereto as Ex. 82.) The MAR/Hedge newsletter is widely read by participants in the fund of funds and hedge fund industry.

501. Barron's published a similar article on May 7, 2001. The article, entitled "Don't Ask, Don't Tell, Bernie Madoff is so secretive, he even asks investors to keep mum," noted the heavy skepticism on Wall Street surrounding Madoff, as well as the lack of transparency around the BLMIS IA Business as a result of Madoff's unwillingness to answer basic questions about his SSC Strategy. (A true and accurate copy of the May 7, 2001 Barron's article entitled, "Don't Ask, Don't Tell," is attached hereto as Ex. 83.) Noel and Tucker testified in the proceeding brought by the Commonwealth of Massachusetts against certain FGG entities that they read the articles questioning BLMIS's very legitimacy, but were not concerned. Noel testified that the author of the Barron's article had mischaracterized the strategy. He explained, "I mean, anyone who knew what he was doing, like we did, would have said that was not an accurate description,

but nothing came of it afterwards." (A true and accurate copy of excerpts from the transcript of Noel's testimony is attached hereto as Ex. 84.) Tucker described the Barron's article as "just irresponsible journalism . . . ." (A true and accurate copy of excerpts from the transcript of Tucker's testimony is attached hereto as Ex. 85.)

502. Despite having responsibility for billions under management in their Feeder Funds, the Defendants performed no meaningful, independent inquiry or due diligence in response to the dramatic assertions made in these articles. The Defendants did not call the authors to better understand the red flags being raised. The Defendants did not speak to other institutions. The Defendants did nothing to see if there were OTC counterparties. Instead, the Defendants sent a newsletter to the Feeder Funds' investors claiming the articles were wrong. (*See* Ex. 40.)

503. The Defendants simply went about their business of aggressively touting, marketing, and effectively co-opting Madoff's "fool-proof" strategy as their own. The reason was simple – without Madoff, the Defendants would not continue to reap the hundreds of millions paid to them as Madoff's *de facto* partners. The Defendants consistently did whatever they felt they needed to in order to keep their lucrative relationship with Madoff.

504. The Defendants marketed the Feeder Funds in the face of investor skepticism. For instance, after reviewing Fairfield Sentry's performance information, one analyst warned a potential Fairfield Sentry investor: "along with many other investment professionals in business, we are skeptical regarding the source and repeatability of [Fairfield Sentry's] returns . . . Therefore, by definition, we have no quantitative or qualitative rationale for believing in the persistence of this strategy." The Defendants became aware of the analyst's assessment when it

was forwarded to them. (A true and accurate copy of the May 23, 2005 email to Vijayvergiya is attached hereto as Ex. 86.)

505. FGG internally joked about red flags suggesting Madoff was a fraud. Years after the Barron's article questioned both Fairfield Sentry's and Madoff's legitimacy, FGG's Yanko della Schiava responded to an investor's inquiries by stating that the investor was "probably a reader of Barrons!" (A true and accurate copy of the September 24, 2003 email from della Schiava is attached hereto as Ex. 87.)

B. *Tightening Industry Standards*

506. During the late 1990s and early 2000s, hedge fund frauds and other financial scandals like Barings, Daiwa, Allied Irish Bank, Lipper, Manhattan Investment Fund, and Bayou, confirmed the recognized need for initial and ongoing reviews of operational risk factors among investment managers. Reasonable investment professionals knew and market events drove home the fact that a high proportion of hedge fund failures resulted from operational problems.

507. By 2002, according to a well-known industry report, approximately 50% of all hedge fund failures resulted in full or in part from poor operational controls, and 91% of these failures had one or more of the following problems in common:

- Misappropriation of funds and outright fraud by investment managers who knowingly took money for personal use or to cover trading or other losses;
- Misrepresentation of investments through false account reports, valuations and other misleading information;
- Unauthorized trading by making investments outside of stated portfolio strategies; and

- Infrastructure insufficiency and inadequate technology or personnel that are not able to accommodate or handle the types of investments and supporting activities engaged in by the investment manager.

(A true and accurate copy of the March 2003 article entitled, "Understanding and Mitigating Operational Risk in Hedge Fund Investments," is attached hereto as Ex. 88.)

508. Additional industry articles, "Valuation issues and operational risk in hedge funds" (a true and accurate copy of the 2004 article is attached hereto as Ex. 89), and "Hedge fund operational risk: meeting the demand for higher transparency and best practice" (a true and accurate copy of the 2006 article is attached hereto as Ex. 90), stressed important due diligence standards and processes. Key operational standards included: (i) robust internal controls and procedures over each stage of the trading cycle; (ii) adequate segregation of duties between those who are responsible for trading and those who are responsible for recording trade activities; and (iii) segregation of signing authority and authority over cash and securities transfers, deposits and withdrawals. Independent checks and balances throughout the trading cycle, the movement of cash, and the custody process were all seen as critical areas of inquiry for those performing independent and reasonable due diligence on investment managers.

509. FGG and the Defendants failed to adhere to these due diligence standards, or virtually any other sound industry practices, when it came to the due diligence and follow up it was required to perform on BLMIS. When it came to Madoff, the FGG Individuals simply made up their own, self-serving rules in order to maintain FGG's preferred status and its hundreds of millions of dollars in fees.

C. *It Was All Over the Street: Madoff Was Suspected of Being a Fraud*

510. The Barron's and Mar/HEDGE articles were based on publicly available information and their authors were not outliers. They were among a large group of industry experts who reviewed public information about the SSC Strategy, saw that it did not make any sense, and then advised their clients to keep their money far away from BLMIS, and far away from funds like the Feeder Funds. For many years – well before Madoff was arrested – many industry professionals spotted the likelihood of fraud.

511. Edward Thorp, "the grandfather of quantitative analysis," concluded over the course of a single day, as far back as 1991, Madoff's claimed returns were nearly impossible, and he was likely a fraud. All Thorp needed to do was check the number of listed options in the account of one BLMIS customer against the number of the same options traded on the CBOE.

512. Later, in 2001, in response to the MAR/Hedge and Barron's articles, Thorp wrote to a fund manager friend expressing serious concerns about Madoff, and about his friend's fund being invested in BLMIS:

> **Just read the Barron's article. All it does is reinforce my previous suspicions. Do you have access to the "actual" trades done in any one account? If so, can you establish that they could be real? That means checking to see if they are reported on a timely basis, rather than substantially delayed, that they are on listed options, that those options could have traded at those prices and in the volumes reported on the exchanges where the confirms said the trades occurred, and ditto with the stocks.**
>
> **What if you scale up your representative account to 7bn$. Could the volume of imputed trading in the options markets, in the "universe" traded, actually have been done?**
>
> **Hope you don't have a major position, or that you are trading**

on "profits".

(A true and accurate copy of the May 11, 2001 email from Thorp is attached hereto as Ex. 91 (emphasis added).)

513. Thorp laid out simple, independent, and reasonable due diligence queries that the Defendants could have, and should have, undertaken. The Defendants did no such due diligence, asked no such questions, and instead defended Madoff.

514. As early as 1998, Cambridge Associates recommended that clients stay away from Madoff and Madoff-related feeders due to lack of transparency, a fear of front-running the market, and a general inability to understand how the strategy could produce cash-like, bond-like consistency of returns, in an equity strategy. In 2004, Cambridge was more pointed in its discomfort, stating: "**it 'felt illegal' and that Madoff gave no transparency**," suggesting that "**[i]t might be interesting to compile some historic hedge fund fraud/scams for them to mull over.**" (A true and accurate copy of the redacted public version of the November 11, 2004 Cambridge Associates internal email is attached hereto as Ex. 92 (emphasis added).)

515. In 2003, a team from Société Générale's investment bank was sent to New York to perform due diligence on BLMIS. What Société Générale discovered was that BLMIS's numbers simply "did not add up." Madoff explained to the Société Générale team how his investment strategy worked, but when the team tested the strategy, they could not match Madoff's returns. Another red flag made the due diligence team anxious - Madoff's brother, Peter, was serving as chief compliance officer of BLMIS. Société Générale immediately forbade its investment bank from doing business with BLMIS and discouraged its private banking clients from investing with Madoff. After uncovering obvious red flags during its due diligence visit,

Société Générale blacklisted Madoff. (A true and accurate copy of the December 17, 2008 New York Times article entitled, "European Banks Tally Losses Linked to Fraud," is attached hereto as Ex. 93.)

516. Shortly after Madoff's arrest, Robert Rosenkranz of Acorn Partners, a fund of funds, and an investment adviser to high net worth individuals, reflected in email that Acorn had done due diligence on Madoff and concluded "that fraudulent activity was highly likely." (A true and accurate copy of the December 15, 2008 email from Rosenkranz is attached hereto as Ex. 94.)

517. Acorn succinctly described the indicia of fraud that led it to conclude years prior that Madoff was a fraud.

> We had considered investing in a Madoff managed account, and decided to pass for reasons that give a useful insight into our due diligence process.
>
> First, we ascertained that the description of the strategy (purchase of large cap stocks versus sale of out of the money calls) appeared to be inconsistent with the pattern of returns in the track record, which showed no monthly losses.
>
> Second, we persuaded a Madoff investor to share with us several months of his account statements with Madoff. These revealed a pattern of purchases at or close to daily lows and sales at or close to daily highs, which is virtually impossible to achieve. Moreover, the trading volumes reflected in the account (projected to reflect his account's share [of] Madoff's purported assets under management at the time) were vastly in excess of actually reported trading volumes.
>
> Third, we noted that Madoff operated through managed accounts, rather than by setting up a hedge fund of his own. That was suspicious inasmuch as hedge fund fees are typically much higher than the brokerage commissions Madoff was meant to be charging. We suspected the requirement for annual hedge fund audits was the reason he wanted to avoid that approach. We knew that when his clients are audited, their auditors simply look at the account

> statements and transaction reports generated by the brokerage firm; they don't investigate the books of the brokerage firm itself.
>
> Fourth, although brokerage firms are required to provide annual audit reports, the investor appeared not to have received any. With considerable perseverance, we obtained audit reports filed with the SEC, which were prepared by an utterly obscure accounting firm located in Rockland County New York.
>
> Fifth, we reviewed the audit report itself, which showed no evidence of customer activity whatsoever, neither accounts payables to or accounts receivable from customers. They appeared to be the reports of a market maker, not of a firm that at the time was meant to have some $20 billion of customer accounts.
>
> **Taken together, these were not merely warning lights, but a smoking gun.** The only plausible explanation we could conceive was that the account statements and trade confirmations were not bona fide but were generated as part of some sort of fraudulent or improper activity.

(A true and accurate copy of the December 12, 2008 email from Acorn to its investors is attached hereto as Ex. 95 (emphasis added).)

518. All of the information flagged by Acorn through proper, independent, and reasonable due diligence, was information that was known or should have been known by the Defendants. The Defendants did not conduct the type of due diligence performed by Acorn. In fact they conducted no reasonable or independent due diligence at all, even when on both actual and inquiry notice of possible fraud.

519. Media reports following Madoff's arrest, as well as emails between FGG employees, indicate that in 2004, Mr. Oswald Gruebel, formerly of Credit Suisse and now of UBS, felt uncomfortable with Madoff and Fairfield Sentry after a meeting between FGG personnel and Credit Suisse representatives. (A true and accurate copy of the February 25, 2004 email from Noel to Piedrahita, Tucker, Toub and Landsberger is attached hereto as Ex. 96.)

During that meeting, Mr. Gruebel raised serious concerns about Madoff's obscure auditor who had only one client, BLMIS, and the fact that BLMIS was the self-custodian of its investment clients, such as the Feeder Funds. After Madoff refused to provide answers to such basic questions as to how much money he was managing in the SSC Strategy or further, who worked with him to implement the strategy, Gruebel quickly urged customers to withdraw their funds from BLMIS and redeem their shares from feeder funds, like the FGG funds. (A true and accurate copy of the January 7, 2009 Bloomberg article entitled, "Credit Suisse Urged Clients to Dump Madoff Funds," is attached hereto as Ex. 97.)

520. In 2005, ML continued its long-standing policy of not investing in Fairfield Sentry or any other Madoff feeder fund. ML identified major red flags associated with Fairfield Sentry and stated conclusively that "the prime broker [Madoff] was an affiliate of the company, the custodian wasn't independent," published articles stated the fund's "affiliated broker was subsidizing the fund," and "[t]he fund manager refuses to meet potential clients." (A true and accurate copy of the June 15, 2005 internal ML email is attached hereto as Ex. 98.) A year later, ML once again expressed its discomfort with Madoff and Fairfield Sentry stating, "Madoff is known for keeping the source of his returns a secret. This caused a lot of speculation on Wall Street about the true sources of the admittedly impressive returns." ML also commented internally that "Fairfield is a fund that is unusually opaque to its investors and doesn't accept detailed due diligence which automatically disqualif[ies] it. . . ." (A true and accurate copy of the December 2006 internal ML emails is attached hereto as Ex. 99.) ML emphasized that they were not the only company refusing to get involved with Fairfield Sentry or other Madoff feeder funds. Most of their competitors had taken similar positions. (A true and accurate copy of the February 6, 2008 internal ML email is attached hereto as Ex. 100.)

521. In 2007, Aksia, LLC, an independent hedge fund research and advisory firm, advised clients against investing with BLMIS, Madoff, or any of his feeder funds. (A true and accurate copy of Aksia's 2007 report is attached hereto as Ex. 101.) Jim Vos, Chief Operating Officer and head of research at Aksia, concluded that the stock holdings reported in the quarterly statements BLMIS filed with the SEC appeared too small to support the size of the assets BLMIS claimed to be managing. (A true and accurate copy of the December 11, 2008 letter from Vos to his clients and friends is attached hereto as Ex. 102.) Aksia also spoke with Mr. Michael Ocrant (the author of the 2001 MAR/Hedge article), who reaffirmed that Madoff was "definitely a Ponzi," is as "bogus as a three dollar bill," and that "[i]t's rather easy to come out looking good when you're a Ponzi." (A true and accurate copy of the August 14, 2007 email from Ocrant to Vos is attached hereto as Ex. 103.)

522. Aksia made the simple effort as part of its due diligence to do a background check on BLMIS's auditor, as well as having Friehling's office physically inspected. What was discovered was a simple, closed office in a strip mall with what appeared to be a conference room, secretary space, and two offices. Friehling's office neighbors told Aksia's investigator the office did not have regular hours. (A true and accurate copy of the August 23, 2007 email to Vos is attached hereto as Ex. 104.)

523. In a post-Madoff arrest letter to clients Aksia summarized why its due diligence led it to not recommend Madoff feeders:

> [T]here were a host of red flags, which taken together made us concerned about the safety of client assets should they invest in these feeders. Consequently, every time we were asked by clients, we waved them away from the Madoff feeder funds.
>
> . . .

As a research firm we are forced to make difficult judgments about the hedge funds we evaluate for clients. This was not the case with the Madoff feeder funds. Our judgment was swift given the extensive list of red flags. Some of these red flags were as follows:

. . .

- It seemed implausible that the S&P100 options market that Madoff purported to trade could handle the size of the combined feeder funds' assets which we estimated to be $13 billion.

- The feeder funds had recognized administrators and auditors but substantially all of the assets were custodied with Madoff Securities. This necessitated Aksia checking the auditor of Madoff Securities, Friehling & Horowitz . . . After some investigating, we concluded that Friehling & Horowitz had three employees, of which one was 78 years old and living in Florida, one was a secretary, and one was an active 47 year old accountant (and the office in Rockland County, NY was only 13ft x 18ft large). This operation appeared small given the scale and scope of Madoff's activities.

- There was at least $13 billion in all the feeder funds, but our standard 13F review showed scatterings of small positions in small (non-S&P100) equities. The explanation provided by the feeder fund managers was that the strategy is 100% cash at every quarter end.

- Madoff's website claimed that the firm was technologically advanced ("the clearing and settlement process is rooted in advanced technology") and the feeder managers claimed 100% transparency. But when we asked to see the transparency during our onsite visits, we were shown paper tickets that were sent via U.S. mail daily to the managers. The managers had no demonstrated electronic access to their funds accounts at Madoff. Paper copies provide a hedge fund manager with the end of the day ability to manufacture trade tickets that confirm the investment results.

- Conversations with former employees indicated a high degree of secrecy surrounding the trading of these feeder fund accounts. Key Madoff family members (brother, daughter, two sons) seemed to control all the key positions at the firm. Aksia is consistently negative on firms where key and control positions are held by family members.

- Madoff Securities, through discretionary brokerage agreements, initiated trades in the accounts, executed the trades, and custodied and administered the assets. This seemed to be a clear conflict of interest and a lack of segregation of duties is high on our list of red flags.

(*See* Ex. 102 (emphasis added).)

524. In 2007, David Giampaolo, the chief executive of Pi Capital, a money-management firm based in the United Kingdom, met with Piedrahita and other potential investors in London to discuss an FGG Madoff-related fund. During this meeting, Piedrahita stressed the "longevity and the consistency" of the fund's returns, but was unable to give substantive details regarding the strategy of the fund. When questions arose regarding how the fund generated its performance, Giampaolo recalls "there was no deep scientific or intellectual response" from Piedrahita. (A true and accurate copy of the December 19, 2008 email summarizing the meeting is attached hereto as Ex. 105.)

525. In 2007, Neil Chelo, a portfolio manager at Benchmark Plus Partners, a hedge fund with its headquarters in Washington State, conducted due diligence on FGG. Chelo and Vijayvergiya had a 45-minute conference call. During this call, Chelo asked Vijayvergiya a list of due diligence questions and concluded that FGG "was **not asking any of [the] questions one would expect of a firm purporting to conduct due diligence.**" (A true and accurate copy of the February 4, 2009 summary of the call is attached hereto as Ex. 106 (emphasis added).) Specifically, Chelo asked multiple risk management questions that Vijayvergiya was unable to answer in a satisfactory manner.

526. London due diligence firm Albourne Partners ("Albourne") stated publicly that it had long-standing concerns about Madoff's investment strategy and consistent returns, and had been urging clients for a decade to avoid Madoff-related funds. (A true and accurate copy of the December 31, 2008 Bloomberg Businessweek article entitled, "The Madoff Case Could Reel in Former Investors," is attached hereto as Ex. 107.) Albourne emphasized that the consistency of Madoff's returns was "too good to be true," Madoff refused to meet with investors, and Madoff charged no management or performance fees for his services, resulting in his leaving hundreds of

millions of dollars of money on the table each year. (A true and accurate copy of the December 15, 2008 Albourne press release entitled, "Albourne on Madoff," is attached hereto as Ex. 108.) Like others, Albourne flagged as possible fraud the fact that Madoff required that his investors never reveal to anyone that they invested with him. (*See* Ex. 83.)

527. The above are some of the many illustrations showing that "the street" fully and openly suspected Madoff was a fraud. These Defendants – who represented nearly half of Madoff's billions of dollars of reported assets under management – chose to ignore these well-recognized suspicions.

XIII. THE DEFENDANTS' MOTIVATION WAS BOUNDLESS AVARICE

528. For years the Defendants looked away when faced with repeated signs that Madoff's operations and performance could not be legitimate. The reason was simple: greed.

529. The Defendants had an extraordinary and lucrative financial arrangement with BLMIS. Their sole job was to sell a fund that had returns that were so consistently positive, they were seemingly impossible. In exchange for selling Madoff's strategy, the Defendants received in the aggregate over a billion dollars in fees. The Defendants in their role as fiduciaries had no desire to perform their duties based on known information because if they did, they knew it could and would result in an abrupt end to this lucrative financial relationship.

530. The Defendants also knew that without Madoff they could not survive. The funds the Defendants tried to create without Madoff's assistance, making their own choices about which investment managers to place money, were all failures.

531. The Defendants repeatedly lied about why Madoff would personally leave hundreds of millions of dollars in management and performance fees for FGG Affiliates and Individual Defendants. Hedge funds typically collect management fees of approximately 1% of assets under management and performance fees of 20%.

532. Unlike virtually everyone in the money-management world, Madoff charged *no fees* for his investment management services. Madoff sometimes explained his decision not charge fees by stating they he was "perfectly happy to just earn commissions." In reality, Madoff was happy to forgo typical performance and management fees, and only earn commissions, as long as his investors remained mum about the source of their inflated returns. And hedge funds like the Defendant Feeder Funds kept procuring billions of dollars to prolong and prop up the Ponzi scheme so they could continue to reap their enormous fees.

533. A number of professional investors noticed Madoff's failure to charge fees, in addition to the multitude of other red flags, and made the decision to invest their money elsewhere. (A true and accurate copy of excerpts from the August 2009 SEC Office of Inspector General's report on Madoff is attached hereto as Ex. 109.) Madoff's decision to not collect traditional investment manager's fees should have raised red flags with FGG given the sheer amount of money that Madoff was foregoing. Madoff could easily have earned an additional $200 to $400 million plus in annualized management and performance fees. Investment professionals reasonably concluded that a fee structure where the true investment manager voluntarily chose to pass on massive amount of fees was a major red flag of fraud. Defendants knew that the very compensation structure from their relationship with Madoff, which permitted them to be so unjustly enriched, was itself a massive sign of fraud.

534. The Defendants were not victims. They were enablers. They were facilitators. They deepened the pain of Madoff's customers and their own investors. The effect of their actions was a catastrophic continuation of the Ponzi scheme, the worsening of the BLMIS insolvency, and billions of dollars in additional damages. They cannot be allowed to keep the many hundreds of millions of dollars in stolen Customer Property they received from BLMIS.

XIV. THE TRANSFERS

A. *Transfers from BLMIS to the Feeder Funds*

535. Prior to the Filing Date, the Feeder Funds invested approximately $4.7 billion with BLMIS through over 300 separate transfers via check and wire directly into the 703 Account.

536. During the six years preceding the Filing Date, BLMIS made transfers to the Feeder Funds in the collective amount of approximately $3.2 billion (the "Six Year Initial Transfers"). The Six Year Initial Transfers included transfers of approximately $3.0 billion to Fairfield Sentry (the "Fairfield Six Year Initial Transfers"), $206.0 million to GS, and $6.0 million to GSP (collectively, the "Greenwich Six Year Initial Transfers"). (*See* Exs. 2, 5, 7.) The Six Year Initial Transfers were and continue to be Customer Property within the meaning of SIPA § 78*lll*(4) and are subject to turnover to the Trustee pursuant to SIPA § 78fff-2(c)(3) and section 542 of the Bankruptcy Code. The Six Year Initial Transfers are avoidable and recoverable under sections 544, 550, and 551 of the Bankruptcy Code, applicable provisions of SIPA, particularly SIPA §78fff-2(c)(3), and sections 273-279 of New York Debtor and Creditor Law.

537. The Six Year Initial Transfers include approximately $1.7 billion BLMIS transferred to the Feeder Funds during the two years preceding the Filing Date, (the "Two Year Initial Transfers"). The Two Year Initial Transfers included transfers of approximately $1.6 billion to Fairfield Sentry (the "Fairfield Two Year Initial Transfers"), $81.7 million to GS, and $5.4 million to GSP (collectively, the "Greenwich Two Year Initial Transfers"). (*See* Exs. 2, 5, 7.) The Two Year Initial Transfers were and continue to be Customer Property within the meaning of SIPA §78*lll*(4) and are subject to turnover to the Trustee pursuant to SIPA §78fff-2(c)(3) and section 542 of the Bankruptcy Code. The Two Year Initial Transfers are avoidable and recoverable under sections 548(a)(1), 550, and 551 of the Bankruptcy Code, and applicable provisions of SIPA, particularly SIPA §78fff-2(c)(3).

538. The Six Year Initial Transfers and Two Year Initial Transfers include $1.2 billion BLMIS transferred to the Feeder Funds during the 90 days preceding the Filing Date (the "Preference Period Initial Transfers"). The Preference Period Initial Transfers included transfers of approximately $1.1 billion to Fairfield Sentry (the "Fairfield Preference Period Transfers") and $23.0 million to GS (the "Greenwich Preference Period Transfers"). (*See* Exs. 2, 5.) The Preference Period Initial Transfers were and are Customer Property subject to turnover to the Trustee pursuant to SIPA §78fff-2(c)(3) and Section 542 of the Bankruptcy Code. The Preference Period Initial Transfers are avoidable and recoverable under sections 547, 550(a)(1), and 551 of the Bankruptcy Code, and applicable provisions of SIPA, particularly SIPA § 78fff-2(c)(3).

539. The Trustee has filed this action against the Feeder Funds to avoid and recover the Initial Transfers and/or seek the turnover of Customer Property to the Trustee.

540. The Trustee may recover the transfers to GS and GSP from all entities and individuals that served as general partner at the time the transfers were made. GS's and GSP's April, 2006 partnership agreements provide that the general partner "shall have unlimited liability for the repayment and discharge of all debts and obligations of the Partnership attributable to any fiscal year during which they are or were General Partners of the Partnership." (True and accurate copies of GS's and GSP's Partnership Agreements are attached hereto as Exs. 110, 111.) Upon information and belief, prior and preceding limited partnership agreements of GS and GSP contained similar provisions regarding the liability of the general partner.

541. Both GS and GSP were formed as limited partnerships under the laws of the State of Delaware. The entities and individuals that served as general partner are also liable under the Delaware Code provisions governing limited partnerships. Under Delaware law, general partners of limited partnerships have the same liability as partners in general partnerships. Del. Code Ann. tit. 6, § 17-403(b). Partners in general partnerships are "liable jointly and severally for all obligations of the partnership." Del. Code Ann. tit. 6, § 15-306(a).

542. Noel and Tucker served as general partners of GS from 1990 to 1998, FGL served as general partner from 1998 to 2003, FGB served as general partner from 2003 to 2004, and then again from 2006 to the present, and GBL served as general partner from 2004 to 2006. FGB has served as GSP's general partner since its inception in 2006.

B. *Transfers from the Feeder Funds to the FGG Affiliates, Management Defendants, and Sales Defendants*

543. Much of the money transferred from BLMIS to the Feeder Funds was subsequently transferred by the Feeder Funds to the FGG Affiliates, Management Defendants, and Sales Defendants. These payments from the Feeder Funds constitute subsequent transfers of

the Initial Transfers from BLMIS to the Feeder Funds. Because the FGG Affiliates, Management Defendants, and Sales Defendants did not take the funds in good faith or without knowledge of the voidability of the initial transfers, all transfers from BLMIS to the Feeder Funds, which the Feeder Funds subsequently transferred, either directly or indirectly, to the FGG Affiliates, Management Defendants, and Sales Defendants (the "Subsequent Transfers"), were and remain Customer Property subject to turnover to the Trustee and/or are avoidable and recoverable by the Trustee.

544. The portion of the Six Year Initial Transfers that the Feeder Funds subsequently transferred to the FGG Affiliates and FGG Individuals will be referred to as the "Six Year Subsequent Transfers."

545. The portion of the Two Year Initial Transfers that the Feeder Funds subsequently transferred to the FGG Affiliates, Management Defendants, and Sales Defendants will be referred to as the "Two Year Subsequent Transfers."

546. The portion of the Preference Period Initial Transfers that the Feeder Funds subsequently transferred to the FGG Affiliates, Management Defendants, and Sales Defendants will be referred to as the "Preference Period Subsequent Transfers."

547. To the extent that any of the recovery counts may be inconsistent with each other, they are to be treated as being pled in the alternative.

548. The Trustee's investigation is on-going and the Trustee reserves the right to (i) supplement the information on the Initial Transfers, Subsequent Transfers, and any additional transfers, and (ii) seek recovery of such additional transfers.

COUNT ONE: TURNOVER AND ACCOUNTING – 11 U.S.C. § 542

Against All the Defendants

549. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

550. The Initial Transfers and the Subsequent Transfers constitute Customer Property of the estate to be recovered and administered by the Trustee pursuant to sections 541 and 542 of the Bankruptcy Code and SIPA § 78fff-2(c)(3) and § 78lll(4).

551. The Trustee has filed a case on behalf of BLMIS's estate.

552. As recipients of the Initial Transfers and the Subsequent Transfers, the Defendants are in possession, custody or control of property the Trustee may use, sell, or lease under section 363 of the Bankruptcy Code, or that BLMIS may exempt under section 522 of the Bankruptcy Code.

553. The Defendants are not custodians of the Initial Transfers or the Subsequent Transfers.

554. The Initial Transfers and the Subsequent Transfers are not of inconsequential value or benefit to the estate.

555. As a result of the foregoing, pursuant to section 542 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is entitled to the immediate payment and turnover from the Defendants of any and all Initial Transfers and Subsequent Transfers made, directly or indirectly, to the Defendants.

556. As a result of the foregoing, pursuant to section 542 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is also entitled to an accounting of any and all Initial Transfers and Subsequent Transfers made, directly or indirectly, to the Defendants.

COUNT TWO: PREFERENTIAL TRANSFERS (INITIAL TRANSFEREE) – 11 U.S.C. §§ 547(b), 550(a)(1), AND 551

Against the Feeder Funds

557. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

558. At the time of each of the Preference Period Initial Transfers, the Feeder Funds were each a "creditor" of BLMIS within the meaning of section 101(10) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3).

559. Each of the Preference Period Initial Transfers constitutes a transfer of an interest of BLMIS in property within the meaning of section 101(54) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3).

560. Each of the Preference Period Initial Transfers was to or for the benefit of the Feeder Funds.

561. Each of the Preference Period Initial Transfers was made for or on account of an antecedent debt owed by BLMIS before such transfer was made.

562. Each of the Preference Period Initial Transfers was made while BLMIS was insolvent.

563. Each of the Preference Period Initial Transfers was made during the preference period under section 547(b)(4) of the Bankruptcy Code.

564. Each of the Preference Period Initial Transfers enabled Fairfield Sentry, GS, and/or GSP to receive more than each of the Feeder Funds would receive if (i) this case was a case under chapter 7 of the Bankruptcy Code, (ii) the transfers had not been made, and (iii) the applicable fund received payment of such debt to the extent provided by the provisions of the Bankruptcy Code.

565. Each of the Preference Period Initial Transfers constitutes a preferential transfer avoidable by the Trustee pursuant to section 547(b) of the Bankruptcy Code and recoverable from the Feeder Funds as initial transferees or the entities for whose benefit such transfers were made pursuant to section 550(a)(1) of the Bankruptcy Code.

566. As a result of the foregoing, pursuant to sections 547(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of Title 6 of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Preference Period Initial Transfers, (b) directing that the Preference Period Initial Transfers be set aside, and (c) recovering the Preference Period Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS.

COUNT THREE: PREFERENTIAL TRANSFERS (INITIAL TRANSFEREE) – 11 U.S.C. §§ 547(b), 550(a)(1), AND 551

Against FGB

567. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

568. At the time of each of the Greenwich Preference Period Initial Transfers, GS was a "creditor" of BLMIS within the meaning of section 101(10) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3).

569. Each of the Greenwich Preference Period Initial Transfers constitutes a transfer of an interest of BLMIS in property within the meaning of section 101(54) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3).

570. Each of the Greenwich Preference Period Initial Transfers was to or for the benefit of GS.

571. Each of the Greenwich Preference Period Initial Transfers was made for or on account of an antecedent debt owed by BLMIS before such transfer was made.

572. Each of the Greenwich Preference Period Initial Transfers was made while BLMIS was insolvent.

573. Each of the Greenwich Preference Period Initial Transfers was made during the preference period under section 547(b)(4) of the Bankruptcy Code.

574. Each of the Greenwich Preference Period Initial Transfers enabled GS to receive more than it would receive if (i) this case was a case under chapter 7 of the Bankruptcy Code, (ii) the transfers had not been made, and (iii) GS received payment of such debt to the extent provided by the provisions of the Bankruptcy Code.

575. Each of the Greenwich Preference Period Initial Transfers constitutes a preferential transfer avoidable by the Trustee pursuant to section 547(b) of the Bankruptcy Code

and recoverable from GS as a direct transferee pursuant to section 550(a)(1) of the Bankruptcy Code.

576. FGB served as general partner to GS during the Preference Period. As general partner to GS, FGB is liable, pursuant to sections 15-306(a) and 17-403(b) of Title 6 of the Delaware Code, for all obligations GS incurred while FGB was serving as general partner.

577. FGB did not take the Preference Period Initial Transfers for value, in good faith, or without knowledge of the voidability of the Preference Period Initial Transfers.

578. As a result of the foregoing, pursuant to sections 547(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Preference Period Initial Transfers, (b) directing that the Greenwich Preference Period Initial Transfers be set aside, and (c) recovering the Greenwich Preference Period Initial Transfers, or the value thereof, from FGB for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT FOUR: PREFERENTIAL TRANSFERS (SUBSEQUENT TRANSFEREE) – 11 U.S.C. §§ 547(b), 550(a)(2), AND 551

Against the FGG Affiliates, Management Defendants, and Sales Defendants

579. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

580. At the time of each of the Preference Period Initial Transfers, Fairfield Sentry and GS were each a "creditor" of BLMIS within the meaning of section 101(10) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3).

581. Each of the Preference Period Initial Transfers constitutes a transfer of an interest of BLMIS in property within the meaning of section 101(54) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3).

582. Each of the Preference Period Initial Transfers was to or for the benefit of Fairfield Sentry or GS.

583. Each of the Preference Period Initial Transfers was made for or on account of an antecedent debt owed by BLMIS before such transfer was made.

584. Each of the Preference Period Initial Transfers was made while BLMIS was insolvent.

585. Each of the Preference Period Initial Transfers was made during the preference period under section 547(b)(4) of the Bankruptcy Code.

586. Each of the Preference Period Initial Transfers enabled Fairfield Sentry and/or GS to receive more than each of the funds would receive if (i) this case was a case under chapter 7 of the Bankruptcy Code, (ii) the transfers had not been made, and (iii) the applicable fund received payment of such debt to the extent provided by the provisions of the Bankruptcy Code.

587. Each of the Preference Period Initial Transfers constitutes a preferential transfer avoidable by the Trustee pursuant to section 547(b) of the Bankruptcy Code.

588. The Trustee has filed a lawsuit against Fairfield Sentry and GS to avoid the Preference Period Initial Transfers pursuant to section 547 of the Bankruptcy Code, and to

recover the Preference Period Initial Transfers from Fairfield Sentry and GS pursuant to section 550(a)(1) of the Bankruptcy Code.

589. The FGG Affiliates, Management Defendants, and Sales Defendants were immediate or mediate transferees of some portion of the Preference Period Initial Transfers pursuant to section 550(a)(2) of the Bankruptcy Code.

590. As a result of the foregoing, the Trustee is entitled to a judgment pursuant to sections 547(b), 550(a)(2), and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3) recovering the Preference Period Subsequent Transfers, or the value thereof, from the FGG Affiliates and FGG Individuals for the benefit of the estate of BLMIS.

591. As a result of the foregoing, pursuant to sections 547(b), 550(a)(2), and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Preference Period Initial Transfers, (b) directing that the Preference Period Initial Transfers be set aside and (c) recovering the Preference Period Subsequent Transfers, or the value thereof, from the FGG Affiliates, Management Defendants, and Sales Defendants for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT FIVE: FRAUDULENT TRANSFERS (INITIAL TRANSFEREE) – 11 U.S.C. §§ 548(a)(1)(A), 550(a)(1), AND 551

Against the Feeder Funds

592. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

593. The Two Year Initial Transfers were made on or within two years before the Filing Date.

594. The Two Year Initial Transfers were made by BLMIS with the actual intent to hinder, delay, or defraud some or all of BLMIS's then existing or future creditors.

595. Each of the Two Year Initial Transfers constitutes a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(1)(A) of the Bankruptcy Code and recoverable from Fairfield Sentry, GS, and GSP as direct transferees pursuant to section 550(a)(1) of the Bankruptcy Code and SIPA § 78fff-2(c)(3).

596. As a result of the foregoing, pursuant to sections 548(a)(1)(A), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of Title 6 of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Two Year Initial Transfers, (b) directing that the Two Year Initial Transfers be set aside, and (c) recovering the Two Year Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT SIX: FRAUDULENT TRANSFERS (INITIAL TRANSFEREE) – 11 U.S.C. §§ 548(a)(1)(A), 550(a)(1), AND 551

Against FGB

597. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

598. The Greenwich Two Year Initial Transfers were made on or within two years before the Filing Date.

599. The Greenwich Two Year Initial Transfers were made by BLMIS with the actual intent to hinder, delay, or defraud some or all of BLMIS's then existing or future creditors.

600. Each of the Greenwich Two Year Initial Transfers constitutes a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(1)(A) of the Bankruptcy Code and recoverable from GS and GSP as direct transferees pursuant to section 550(a)(1) of the Bankruptcy Code and SIPA § 78fff-2(c)(3).

601. FGB served as general partner to GS and GSP during the two years preceding the Filing Date. As general partner of GS and GSP, FGB is liable, pursuant to sections 15-306(a) and 17-403(b) of the Delaware Code, for all obligations GS and GSP incurred while FGB was serving as general partner.

602. As a result of the foregoing, pursuant to sections 548(a)(1)(A), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Two Year Initial Transfers, (b) directing that the Greenwich Two Year Initial Transfers be set aside, and (c) recovering the Greenwich Two Year Initial Transfers, or the value thereof, from FGB for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT SEVEN: FRAUDULENT TRANSFERS (SUBSEQUENT TRANSFEREE) – 11 U.S.C. §§ 548(a)(1)(A), 550(a)(2), AND 551

Against the FGG Affiliates, Management Defendants, and Sales Defendants

603. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

604. The Two Year Initial Transfers were made on or within two years before the Filing Date.

605. The Two Year Initial Transfers were made by BLMIS with the actual intent to hinder, delay, or defraud some or all of BLMIS's then existing or future creditors.

606. Each of the Two Year Initial Transfers constitutes a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(1)(A) of the Bankruptcy Code and recoverable from the FGG Affiliates and FGG Individuals pursuant to section 550(a)(2) and SIPA § 78fff-2(c)(3).

607. The Trustee has filed a lawsuit against Fairfield Sentry, GS, and GSP to avoid the Two Year Initial Transfers pursuant to section 548(a)(1)(A) of the Bankruptcy Code, and to recover the Two Year Initial Transfers from Fairfield Sentry, GS, and GSP pursuant to section 550(a)(1) of the Bankruptcy Code.

608. The FGG Affiliates, Management Defendants, and Sales Defendants were immediate or mediate transferees of some portion of the Two Year Initial Transfers pursuant to section 550(a)(2) of the Bankruptcy Code.

609. As a result of the foregoing, pursuant to sections 548(a)(1)(A), 550(a)(2), and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Two Year Initial Transfers, (b) directing that the Two Year Initial Transfers be set aside, and (c) recovering the Two Year Subsequent Transfers, or the value thereof, from the FGG Affiliates, Management Defendants, and Sales Defendants for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT EIGHT: FRAUDULENT TRANSFER (INITIAL TRANSFEREE) – 11 U.S.C. §§ 548(a)(1)(B) , 550(a)(1), AND 551

Against the Feeder Funds

610. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

611. The Two Year Initial Transfers were made on or within two years before the Filing Date.

612. BLMIS received less than a reasonably equivalent value in exchange for each of the Two Year Initial Transfers.

613. At the time of each of the Two Year Initial Transfers, BLMIS was insolvent, or became insolvent as a result of the Two Year Initial Transfer in question.

614. At the time of each of the Two Year Initial Transfers, BLMIS was engaged in a business or a transaction, or was about to engage in a business or a transaction, for which any property remaining with BLMIS was an unreasonably small capital.

615. At the time of each of the Two Year Initial Transfers, BLMIS intended to incur, or believed that it would incur, debts that would be beyond BLMIS's ability to pay as such debts matured.

616. Each of the Two Year Initial Transfers constitutes a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(1)(B) of the Bankruptcy Code and recoverable from Fairfield Sentry, GS, and GSP pursuant to section 550(a)(1) of the Bankruptcy Code and SIPA § 78fff-2(c)(3).

617. As a result of the foregoing, pursuant to sections 548(a)(1)(B), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of Title 6 of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Two Year Initial Transfers, (b) directing that the Two Year Initial Transfers be set aside, and (c) recovering the Two Year Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT NINE: FRAUDULENT TRANSFER (INITIAL TRANSFEREE) – 11 U.S.C. §§ 548(a)(1)(B) , 550(a)(1), AND 551

Against FGB

618. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

619. The Greenwich Two Year Initial Transfers were made on or within two years before the Filing Date.

620. BLMIS received less than a reasonably equivalent value in exchange for each of the Greenwich Two Year Initial Transfers.

621. At the time of each of the Greenwich Two Year Initial Transfers, BLMIS was insolvent, or became insolvent as a result of the Greenwich Two Year Initial Transfer in question.

622. At the time of each of the Greenwich Two Year Initial Transfers, BLMIS was engaged in a business or a transaction, or was about to engage in a business or a transaction, for which any property remaining with BLMIS was an unreasonably small capital.

623. At the time of each of the Greenwich Two Year Initial Transfers, BLMIS intended to incur, or believed that it would incur, debts that would be beyond BLMIS's ability to pay as such debts matured.

624. Each of the Greenwich Two Year Initial Transfers constitutes a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(1)(B) of the Bankruptcy Code and recoverable from GS and GSP pursuant to section 550(a)(1) of the Bankruptcy Code and SIPA § 78fff-2(c)(3).

625. FGB served as general partner to GS and GSP during the two years preceding the Filing Date. As general partner of GS and GSP, FGB is liable, pursuant to sections 15-306(a) and 17-403(b) of Title 6 of the Delaware Code, for all obligations GS and GSP incurred while FGB was serving as general partner.

626. As a result of the foregoing, pursuant to sections 548(a)(1)(B), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of Title 6 of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Two Year Initial Transfers, (b) directing that the Greenwich Two Year Initial Transfers be set aside, and (c) recovering the Greenwich Two Year Initial Transfers, or the value thereof, from FGB for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT TEN: FRAUDULENT TRANSFER (SUBSEQUENT TRANSFEREE) – 11 U.S.C. §§ 548(a)(1)(B) , 550(a)(2), AND 551

Against the FGG Affiliates, Management Defendants, and Sales Defendants

627. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

628. The Two Year Initial Transfers were made on or within two years before the Filing Date.

629. BLMIS received less than a reasonably equivalent value in exchange for each of the Two Year Initial Transfers.

630. At the time of each of the Two Year Initial Transfers, BLMIS was insolvent, or became insolvent as a result of the Two Year Initial Transfers in question.

631. At the time of each of the Two Year Initial Transfers, BLMIS was engaged in a business or a transaction, or was about to engage in a business or a transaction, for which any property remaining with BLMIS was an unreasonably small capital.

632. At the time of each of the Two Year Initial Transfers, BLMIS intended to incur, or believed that it would incur, debts that would be beyond BLMIS's ability to pay as such debts matured.

633. Each of the Two Year Initial Transfers constitutes a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(1)(B) of the Bankruptcy Code and recoverable from the FGG Affiliates and FGG Individuals pursuant to section 550(a)(2) and SIPA § 78fff-2(c)(3).

634. The Trustee has filed a lawsuit against Fairfield Sentry, GS, and GSP to avoid the Two Year Initial Transfers pursuant to section 548(a)(1)(B) of the Bankruptcy Code, and to recover the Two Year Initial Transfers from Fairfield Sentry, GS, and GSP pursuant to section 550(a)(1) of the Bankruptcy Code and SIPA § 78fff-2(c)(3).

635. The FGG Affiliates, Management Defendants, and Sales Defendants were immediate or mediate transferees of some portion of the Two Year Initial Transfers pursuant to section 550(a)(2) of the Bankruptcy Code.

636. As a result of the foregoing, pursuant to sections 548(a)(1)(B), 550(a)(2), and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Two Year Initial Transfers, (b) directing that the Two Year Initial Transfers be set aside, and (c) recovering the Two Year Subsequent Transfers, or the value thereof, from the FGG Affiliates, Management Defendants, and Sales Defendants for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT ELEVEN: FRAUDULENT TRANSFER (INITIAL TRANSFEREE) – NEW YORK DEBTOR AND CREDITOR LAW §§ 276, 276-a, 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(1), AND 551

Against the Feeder Funds

637. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

638. At all times relevant to the Six Year Initial Transfers, there have been one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

639. The Six Year Initial Transfers were made by BLMIS and transferees with the actual intent to hinder, delay, or defraud the creditors of BLMIS. BLMIS made the Six Year Initial Transfers to or for the benefit of Fairfield Sentry, GS, and/or GSP in furtherance of a fraudulent investment scheme.

640. The Six Year Initial Transfers were received by the Feeder Funds with actual intent to hinder, delay, or defraud creditors of BLMIS at the time of each of the transfers and/or future creditors of BLMIS.

641. As a result of the foregoing, pursuant to sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, (c) recovering the Six Year Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS, , and to return to injured customers, and (d) recovering attorneys' fees from the Feeder Funds.

COUNT TWELVE: FRAUDULENT TRANSFER (INITIAL TRANSFEREE) – NEW YORK DEBTOR AND CREDITOR LAW §§ 276, 276-a, 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(1), AND 551

Against FGB, FGL, and GBL

642. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

643. At all times relevant to the Greenwich Six Year Initial Transfers, there have been one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

644. The Greenwich Six Year Initial Transfers were made by BLMIS and the transferees with the actual intent to hinder, delay, or defraud the creditors of BLMIS. BLMIS

made the Greenwich Six Year Initial Transfers to or for the benefit of GS and/or GSP in furtherance of a fraudulent investment scheme.

645. The Greenwich Six Year Initial Transfers were received by GS and GSP with the actual intent to hinder, delay, or defraud creditors of BLMIS at the time of each of the transfers and/or future creditors of BLMIS.

646. FGB, FGL, and GBL each served as general partner to GS and/or GSP during the six years preceding the Filing Date. As general partner of GS and GSP, FGB, FGL, and GBL are each liable, pursuant to sections 15-306(a) and 17-403(b) of the Delaware Code, for all obligations GS and GSP incurred while FGB, FGL, and GBL were each serving as general partner.

647. As a result of the foregoing, pursuant to sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Six Year Initial Transfers, (b) directing that the Greenwich Six Year Initial Transfers be set aside, (c) recovering the Greenwich Six Year Initial Transfers, or the value thereof, from FGB, FGL, and GBL for the benefit of the estate of BLMIS, and to return to injured customers, and (d) recovering attorneys' fees from FGB, FGL and GBL.

COUNT THIRTEEN: FRAUDULENT TRANSFER (SUBSEQUENT TRANSFEREE) – NEW YORK DEBTOR AND CREDITOR LAW §§ 276, 276-a, 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(2), AND 551

Against the FGG Affiliates, Management Defendants, and Sales Defendants

648. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

649. At all times relevant to the Six Year Initial Transfers, there have been one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

650. The Six Year Initial Transfers were made by BLMIS and the transferees with the actual intent to hinder, delay, or defraud the creditors of BLMIS. BLMIS made the Six Year Initial Transfers to or for the benefit of Fairfield Sentry, GS, and/or GSP in furtherance of a fraudulent investment scheme.

651. The Trustee has filed a lawsuit against Fairfield Sentry, GS, and GSP to avoid the Six Year Initial Transfers pursuant to section 544 of the Bankruptcy Code, and sections 276-9 of the New York Debtor and Creditor Law, and to recover the Six Year Initial Transfers from Fairfield Sentry, GS, and GSP pursuant to section 550(a)(1) of the Bankruptcy Code and SIPA § 78fff-2(c)(3).

652. The FGG Affiliates, Management Defendants, and Sales Defendants were immediate or mediate transferees of some portion of the Six Year Initial Transfers pursuant to section 550(a)(2) of the Bankruptcy Code.

653. As a result of the foregoing, pursuant to sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(2), and 551 of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, (c) recovering the Six Year Subsequent Transfers, or the value thereof, from the FGG Affiliates, Management Defendants, and Sales Defendants for the benefit of the estate of BLMIS, and to return to injured customers, and (d) recovering attorneys' fees from the FGG Affiliates, Management Defendants, and Sales Defendants.

COUNT FOURTEEN: FRAUDULENT TRANSFER (INITIAL TRANSFEREE) – NEW YORK DEBTOR AND CREDITOR LAW §§ 273 AND 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(1), AND 551

Against the Feeder Funds

654. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Amended Complaint as if fully rewritten herein.

655. At all relevant times there was and is at least one or more creditors who held and hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

656. BLMIS did not receive fair consideration for the Six Year Initial Transfers.

657. BLMIS was insolvent at the time it made each of the Six Year Initial Transfers or, in the alterative, BLMIS became insolvent as a result of each of the Six Year Initial Transfers.

658. As a result of the foregoing, pursuant to sections 273, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), 551 of the Bankruptcy Code, SIPA

§ 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, and (c) recovering the Six Year Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT FIFTEEN: FRAUDULENT TRANSFER (INITIAL TRANSFEREE) – NEW YORK DEBTOR AND CREDITOR LAW §§ 273 AND 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(1), AND 551

Against the FGB, FGL, and GBL

659. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Amended Complaint as if fully rewritten herein.

660. At all relevant times there was and is at least one or more creditors who held and hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

661. BLMIS did not receive fair consideration for the Greenwich Six Year Initial Transfers.

662. BLMIS was insolvent at the time it made each of the Greenwich Six Year Initial Transfers or, in the alterative, BLMIS became insolvent as a result of each of the Greenwich Six Year Initial Transfers.

663. FGB, FGL and GBL each served as general partner to GS and/or GSP during the six years preceding the Filing Date. As general partner of GS and GSP, FGB, FGL, and GBL are each liable, pursuant to sections 15-306(a) and 17-403(b) of the Delaware Code, for all

obligations GS and GSP incurred while FGB, FGL, and GBL were each serving as general partner.

664. As a result of the foregoing, pursuant to sections 273, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Six Year Initial Transfers, (b) directing that the Greenwich Six Year Initial Transfers be set aside, and (c) recovering the Greenwich Six Year Initial Transfers, or the value thereof, from FGB, FGL, and GBL for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT SIXTEEN: FRAUDULENT TRANSFER (SUBSEQUENT TRANSFEREE) – NEW YORK DEBTOR AND CREDITOR LAW §§ 273 AND 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(2), AND 551

Against the FGG Affiliates, Management Defendants, and Sales Defendants

665. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Amended Complaint as if fully rewritten herein.

666. At all relevant times there was and is at least one or more creditors who held and hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

667. BLMIS did not receive fair consideration for the Six Year Initial Transfers.

668. BLMIS was insolvent at the time it made each of the Six Year Initial Transfers or, in the alterative, BLMIS became insolvent as a result of each of the Six Year Initial Transfers.

669. The Trustee has filed a lawsuit against Fairfield Sentry, GS, and GSP to avoid the Six Year Initial Transfers pursuant to section 544 of the Bankruptcy Code, and sections 273, 278, and/or 279 of the New York Debtor and Creditor Law, and to recover the Six Year Initial Transfers from Fairfield Sentry, GS, and GSP pursuant to section 550(a)(1) of the Bankruptcy Code.

670. The FGG Affiliates, Management Defendants, and Sales Defendants were immediate or mediate transferees of some portion of the Six Year Initial Transfers pursuant to section 550(a)(2) of the Bankruptcy Code.

671. As a result of the foregoing, pursuant to sections 273, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(2), 551 of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, and (c) recovering the Six Year Subsequent Transfers, or the value thereof, from the FGG Affiliates, Management Defendants, and Sales Defendants for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT SEVENTEEN: FRAUDULENT TRANSFERS (INITIAL TRANSFEREE) – NEW YORK DEBTOR AND CREDITOR LAW §§ 274, 278, AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(1), AND 551

Against the Feeder Funds

672. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Amended Complaint as if fully rewritten herein.

673. At all relevant times there was and is at least one or more creditors who held and hold matured or unmatured unsecured claims against BLMIS that were and are allowable under

section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

674. BLMIS did not receive fair consideration for the Six Year Initial Transfers.

675. At the time BLMIS made each of the Six Year Initial Transfers, BLMIS was engaged or was about to engage in a business or transaction for which the property remaining in its hands after each of the Six Year Initial Transfers was an unreasonably small capital.

676. As a result of the foregoing, pursuant to §§ 274, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1) and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, and (c) recovering the Six Year Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT EIGHTEEN: FRAUDULENT TRANSFERS (INITIAL TRANSFEREE) – NEW YORK DEBTOR AND CREDITOR LAW §§ 274, 278, AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(1), AND 551

Against FGB, FGL, and GBL

677. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Amended Complaint as if fully rewritten herein.

678. At all relevant times there was and is at least one or more creditors who held and hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

679. BLMIS did not receive fair consideration for the Greenwich Six Year Initial Transfers.

680. At the time BLMIS made each of the Greenwich Six Year Initial Transfers, BLMIS was engaged or was about to engage in a business or transaction for which the property remaining in its hands after each of the Greenwich Six Year Initial Transfers was an unreasonably small capital.

681. FGB, FGL, and GBL each served as general partner to GS and/or GSP during the six years preceding the Filing Date. As general partner of GS and GSP, FGB, FGL, and GBL are each liable, pursuant to sections 15-306(a) and 17-403(b) of the Delaware Code, for all obligations GS and GSP incurred while FGB, FGL, and GBL were each serving as general partner.

682. As a result of the foregoing, pursuant to sections 274, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Six Year Initial Transfers, (b) directing that the Greenwich Six Year Initial Transfers be set aside, and (c) recovering the Greenwich Six Year Initial Transfers, or the value thereof, from FGB, FGL, and GBL for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT NINETEEN: FRAUDULENT TRANSFERS (SUBSEQUENT TRANSFEREE) – NEW YORK DEBTOR AND CREDITOR LAW §§ 274, 278, AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(2), AND 551

Against the FGG Affiliates, Management Defendants, and Sales Defendants

683. The Trustee incorporates by reference the allegations contained in the previous

paragraphs of the Amended Complaint as if fully rewritten herein.

684. At all relevant times there was and is at least one or more creditors who held and hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

685. BLMIS did not receive fair consideration for the Six Year Initial Transfers.

686. At the time BLMIS made each of the Six Year Initial Transfers, BLMIS was engaged or was about to engage in a business or transaction for which the property remaining in its hands after each of the Six Year Initial Transfers was an unreasonably small capital.

687. The Trustee has filed a lawsuit against Fairfield Sentry, GS, and GSP to avoid the Six Year Initial Transfers pursuant to section 544 of the Bankruptcy Code, and sections 274, 278, and/or 279 of the New York Debtor and Creditor Law, and to recover the Six Year Initial Transfers from Fairfield Sentry, GS, and GSP pursuant to section 550(a)(1) of the Bankruptcy Code and SIPA § 78fff-2(c)(3).

688. The FGG Affiliates, Management Defendants, and Sales Defendants were immediate or mediate transferees of some portion of the Six Year Initial Transfers pursuant to section 550(a)(2) of the Bankruptcy Code.

689. As a result of the foregoing, pursuant to sections 274, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(2), and 551 of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, and (c)

recovering the Six Year Subsequent Transfers, or the value thereof, from the FGG Affiliates, Management Defendants, and Sales Defendants for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT TWENTY: FRAUDULENT TRANSFERS (INITIAL TRANSFEREE) – NEW YORK DEBTOR AND CREDITOR LAW §§ 275, 278, AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(1), AND 551

Against the Feeder Funds

690. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Amended Complaint as if fully rewritten herein.

691. At all relevant times there was and is at least one or more creditors who held and hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

692. BLMIS did not receive fair consideration for the Six Year Initial Transfers.

693. At the time BLMIS made each of the Six Year Initial Transfers, BLMIS had incurred, was intending to incur, or believed that it would incur debts beyond its ability to pay them as the debts matured.

694. As a result of the foregoing, pursuant to sections 275, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, and (c) recovering the Six Year Initial Transfers,

or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT TWENTY-ONE: FRAUDULENT TRANSFERS (INITIAL TRANSFEREE) – NEW YORK DEBTOR AND CREDITOR LAW §§ 275, 278, AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(1), AND 551

Against FGB, FGL, and GBL

695. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Amended Complaint as if fully rewritten herein.

696. At all relevant times there was and is at least one or more creditors who held and hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

697. BLMIS did not receive fair consideration for the Greenwich Six Year Initial Transfers.

698. At the time BLMIS made each of the Greenwich Six Year Initial Transfers, BLMIS had incurred, was intending to incur, or believed that it would incur debts beyond its ability to pay them as the debts matured.

699. FGB, FGL, and GBL each served as general partner to GS and/or GSP during the six years preceding the Filing Date. As general partner of GS and GSP, FGB, FGL and GBL are each liable, pursuant to sections 15-306(a) and 17-403(b) of the Delaware Code, for all obligations GS and GSP incurred while FGB, FGL, and GBL were each serving as general partner.

700. As a result of the foregoing, pursuant to sections 275, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Six Year Initial Transfers, (b) directing that the Greenwich Six Year Initial Transfers be set aside, and (c) recovering the Greenwich Six Year Initial Transfers, or the value thereof, from FGB, FGL, and GBL for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT TWENTY-TWO: FRAUDULENT TRANSFERS (SUBSEQUENT TRANSFEREE) – NEW YORK DEBTOR AND CREDITOR LAW §§ 275, 278, AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(2), 551

Against the FGG Affiliates, Management Defendants, and Sales Defendants

701. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Amended Complaint as if fully rewritten herein.

702. At all relevant times there was and is at least one or more creditors who held and hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

703. BLMIS did not receive fair consideration for the Six Year Initial Transfers.

704. At the time BLMIS made each of the Six Year Initial Transfers, BLMIS had incurred, was intending to incur, or believed that it would incur debts beyond its ability to pay them as the debts matured.

705. The Trustee has filed a lawsuit against Fairfield Sentry, GS, and GSP to avoid the Six Year Initial Transfers pursuant to section 544 of the Bankruptcy Code, and sections 275, 278,

and/or 279 of the New York Debtor and Creditor Law, and to recover the Six Year Initial Transfers from Fairfield Sentry, GS, and GSP pursuant to section 550(a)(1) of the Bankruptcy Code and SIPA § 78fff-2(c)(3).

706. The FGG Affiliates, Management Defendants, and Sales Defendants were immediate or mediate transferees of some portion of the Six Year Initial Transfers pursuant to section 550(a)(2) of the Bankruptcy Code.

707. As a result of the foregoing, pursuant to sections 275, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(2), and 551 of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, and (c) recovering the Six Year Subsequent Transfers, or the value thereof, from the FGG Affiliates, Management Defendants, and Sales Defendants for the benefit of the estate of BLMIS, and to return to injured customers.

COUNT TWENTY-THREE: UNDISCOVERED FRAUDULENT TRANSFERS (INITIAL TRANSFEREE) – NEW YORK CIVIL PROCEDURE LAW AND RULES 203(g), 213(8), NEW YORK DEBTOR AND CREDITOR LAW §§ 276, 276-a, 278, AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(1), AND 551

Against the Feeder Funds

708. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

709. At all times relevant to the Initial Transfers, the fraudulent scheme perpetrated by BLMIS was not reasonably discoverable by at least one unsecured creditor of BLMIS.

710. At all times relevant to the Initial Transfers, there have been one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

711. The Initial Transfers were made by BLMIS and the transferees with the actual intent to hinder, delay, or defraud the creditors of BLMIS. BLMIS made the Initial Transfers to or for the benefit of Fairfield Sentry, GS, and GSP in furtherance of a fraudulent investment scheme.

712. Fairfield Sentry, GS, and GSP received the Initial Transfer with actual intent to hinder, delay, or defraud creditors of BLMIS at the time of each of the transfers and/or future creditors of BLMIS.

713. As a result of the foregoing, pursuant to NY CPLR 203(g), 213(8), sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Initial Transfers, (b) directing that the Initial Transfers be set aside, (c) recovering the Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS, and to return to injured customers, and (d) recovering attorneys' fees from the Feeder Funds.

COUNT TWENTY-FOUR: UNDISCOVERED FRAUDULENT TRANSFERS (INITIAL TRANSFEREE) – NEW YORK CIVIL PROCEDURE LAW AND RULES 203(g), 213(8), NEW YORK DEBTOR AND CREDITOR LAW §§ 276, 276-a, 278, AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(1), AND 551

Against FGB, FGL, GBL, Noel, and Tucker

714. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

715. At all times relevant to the Greenwich Initial Transfers, the fraudulent scheme perpetrated by BLMIS was not reasonably discoverable by at least one unsecured creditor of BLMIS.

716. At all times relevant to the Greenwich Initial Transfers, there have been one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

717. The Greenwich Initial Transfers were made by BLMIS and the transferees with the actual intent to hinder, delay, or defraud the creditors of BLMIS. BLMIS made the Greenwich Initial Transfers to or for the benefit of GS and GSP in furtherance of a fraudulent investment scheme.

718. GS and GSP received the Greenwich Initial Transfers with actual intent to hinder, delay, or defraud creditors of BLMIS at the time of each of the transfers and/or future creditors of BLMIS.

719. FGB, FGL, GBL, Noel, and Tucker each served as general partner to GS and/or GSP during the six years preceding the Filing Date. As general partner of GS and GSP, FGB,

FGL, GBL, Noel, and Tucker are each liable, pursuant to sections 15-306(a) and 17-403(b) of the Delaware Code, for all obligations GS and GSP incurred while FGB, FGL, GBL, Noel, and Tucker were each serving as general partner.

720. As a result of the foregoing, pursuant to NY CPLR 203(g), 213(8), sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Initial Transfers, (b) directing that the Greenwich Initial Transfers be set aside, (c) recovering the Greenwich Initial Transfers, or the value thereof, from FGB, FGL, GBL, Noel, and Tucker for the benefit of the estate of BLMIS, and to return to injured customers, and (d) recovering attorneys' fees from FGB, FGL, GBL, Noel, and Tucker.

COUNT TWENTY-FIVE: UNDISCOVERED FRAUDULENT TRANSFERS (SUBSEQUENT TRANSFEREE) – NEW YORK CIVIL PROCEDURE LAW AND RULES 203(g), 213(8), NEW YORK DEBTOR AND CREDITOR LAW §§ 276, 276-a, 278, AND/OR 279, AND 11 U.S.C. §§ 544, 550(a)(2), AND 551

Against the FGG Affiliates, Management Defendants, and Sales Defendants

721. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

722. At all times relevant to the Initial Transfers, the fraudulent scheme perpetrated by BLMIS was not reasonably discoverable by at least one unsecured creditor of BLMIS.

723. At all times relevant to the Initial Transfers, there have been one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

724. The Initial Transfers were made by BLMIS and the transferees with the actual intent to hinder, delay, or defraud the creditors of BLMIS. BLMIS made the Initial Transfers to or for the benefit of Fairfield Sentry, GS, and GSP in furtherance of a fraudulent investment scheme.

725. The Trustee has filed a lawsuit against Fairfield Sentry, GS, and GSP to avoid the Initial Transfers pursuant to section 544 of the Bankruptcy Code, sections 275, 278, and/or 279 of the New York Debtor and Creditor Law, and Rule 203(g) of the New York Civil Procedure Law and Rules, and to recover the Initial Transfers from Fairfield Sentry, GS, and GSP pursuant to section 550(a)(1) of the Bankruptcy Code.

726. The FGG Affiliates, Management Defendants, and Sales Defendants were immediate or mediate transferees of some portion of the Initial Transfers pursuant to section 550(a)(2) of the Bankruptcy Code.

727. As a result of the foregoing, pursuant to NY CPLR 203(g) and 213(8), sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(2), and 551 of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Initial Transfers, (b) directing that the Initial Transfers be set aside, (c) recovering the Subsequent Transfers, or the value thereof, from the FGG Affiliates, Management Defendants, and Sales Defendants for the benefit of the estate of BLMIS, and to return to injured customers, and (d) recovering attorneys' fees from the FGG Affiliates, Management Defendants, and Sales Defendants.

COUNT TWENTY-SIX: OBJECTION TO THE DEFENDANTS' CUSTOMER CLAIMS

Against Fairfield Sentry, GS, GSP, Sigma, Lambda, FGB, Noel, Tucker, Blum, and Harary

728. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

729. Fairfield Sentry, GS, GSP, Sigma, Lambda, FGB, Noel, Tucker, Blum, and Harary have filed customer claims.

730. These claims (the "Claims") are not supported by the books and records of BLMIS nor the claim materials submitted by the claimants, and, therefore, should be disallowed pursuant to sections 502(d) of the Bankruptcy Code.

731. The Claims also should not be allowed as customer claims or as general unsecured claims. Fairfield Sentry, GS, GSP, Sigma, Lambda, FGB, Noel, Tucker, Blum, and Harary are the recipients, as direct, immediate, and/or mediate transferees, of transfers of customers' property that are available and recoverable under sections 502(a), 544(b), 547, 548, and 550 of the Bankruptcy Code, NY Debtor and Creditor Law 270 *et seq*., NYCPLR 203(g) and 213(8), and applicable sections of SIPA, including § 78fff-2(c)(3), and Fairfield Sentry, GS, GSP, Sigma, Lambda, FGB, Noel, Tucker, Blum, and Harary have not returned the Initial Transfers or the Subsequent Transfers to the Trustee. As a result, pursuant to section 502(d), the Claims must be disallowed unless and until Fairfield Sentry, GS, GSP, Sigma, Lambda, FGB, Noel, Tucker, Blum, and Harary return the Initial Transfers and the Subsequent Transfers to the Trustee.

732. As a result of the foregoing, the Trustee is entitled to an order disallowing the Claims and/or that Fairfield Sentry, GS, GSP, Sigma, Lambda, FGB, Noel, Tucker, Blum, and Harary are not entitled to customer status.

COUNT TWENTY-SEVEN: UNJUST ENRICHMENT

Against the FGG Affiliates, Management Defendants, and Sales Defendants ("Non-Feeder Fund Defendants")

733. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

734. The Non-Feeder Funds Defendants have all been unjustly enriched. They have wrongfully and unconscionably benefited from the receipt of stolen money from BLMIS and from the Feeder Funds' investors, for which they did not in good faith provide fair value. These Defendants were further unjustly enriched as a result of aiding, abetting, enabling, and substantially participating in a fraudulent scheme.

735. The FGG Affiliates earned over a billion dollars in fees. The Management Defendants and Sales Defendants received hundreds of millions of dollars in partnership distributions, salaries, bonuses, and other compensation. None of this money has been returned to the Trustee for equitable distribution to BLMIS customers who lost billions of dollars in the Ponzi scheme.

736. As described above, the Non-Feeder Fund Defendants were constantly faced with evidence that BLMIS was a fraud. For example, in 2005 they confirmed Madoff's auditor lied about his capacities and ability to audit the billions of dollars in BLMIS's customer accounts. (*See supra* ¶¶377-398.) They also knew the consistency of Madoff's returns were, statistically,

too good to be true. (*See supra* ¶¶400-404, 451-461.) They knew Madoff's purported trading structure was inconsistent with industry practices and produced trading volumes that were virtually impossible. (*See supra* ¶¶412-440.) Their own investors and paid consultants, along with numerous industry professionals, raised these concerns over and over again. (*See supra* ¶¶462-479, 498-527.)

737. Instead of warning their investors and Madoff's other customers, and reporting Madoff to regulators, the Non-Feeder Fund Defendants helped Madoff market BLMIS to their own investors, helped shield him from FGG investors who wanted to meet with him, and protected him by making misrepresentations to the SEC. (*See supra* ¶¶350-361.) Confronted with a plethora of red flags, these Defendants continued to try to raise billions of dollars from investors to enrich themselves. (*See supra* ¶¶480-489.)

738. Faced with the prospect of losing hundreds of millions of dollars in fees, the Non-Feeder Fund Defendants chose to cover up the compelling evidence of Madoff's fraud. As a result, they have been unjustly enriched by over one billion dollars that rightfully belongs to BLMIS customers.

739. Equity and good conscience require full restitution of the monies received by the Non-Feeder Fund Defendants, directly and indirectly, from BLMIS and any assets derived from that money.

COUNT TWENTY-EIGHT: CONVERSION

Against Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith

740. The Trustee incorporates by reference the allegations in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

741. The Trustee has the possessory right and interest to all property in the Defendants' possession that went to the Defendants by virtue of the Ponzi scheme. This property reflects money and other interests, which originated from and were co-mingled with other BLMIS customer accounts.

742. The Trustee's possessory interest in this Customer Property is governed by SIPA. The Trustee has the superior right of possession to all fees, distributions, and other monies that the Defendants possess and that originated from BLMIS. The Defendants' dominion over and interference with the Trustee's interest in the Customer Property is in derogation of the Trustee's right and obligation to return this property on an equitable basis to BLMIS customers.

743. The Defendants are not authorized, and have never been authorized, to exercise dominion and control over Customer Property. These specifically identified funds have been wrongfully converted by the Defendants.

744. As a result of the foregoing, the Defendants are liable to the Trustee for having wrongfully converted this Customer Property and are obligated to return all such monies.

COUNT TWENTY-NINE: MONEY HAD AND RECEIVED

745. The Trustee incorporates by reference the allegations of the preceding paragraphs of this Amended Complaint as if fully rewritten herein.

746. The Defendants are currently in possession of, or have control over, money that originated from BLMIS. These monies are Customer Property and belong to the customer fund

under the Trustee's control. The Defendants have no lawful or equitable right to these monies, having obtained the monies through fraud, deceit, and/or mistake.

747. In equity and good conscience, the Defendants may not retain possession or control of these monies, which rightfully belong to the customer fund under the Trustee's control. The Defendants are obligated to return all such monies to the Trustee.

COUNT THIRTY: AIDING AND ABETTING FRAUD

Against Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith

748. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

749. By virtue of their individual functions and responsibilities within FGG, their communications with investors, and all of the information of which they had knowledge, each of Defendants Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith knew Madoff was engaged in fraudulent behavior. Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith actively and substantially assisted Madoff in perpetrating the fraud by, among other things, providing marketing; protection from due diligence inquiries; credibility; sales support; and an influx of billions of dollars to keep the Ponzi scheme going. (*See supra* ¶¶333-489.) These individual Defendants each knew of material information that demonstrated Madoff was engaged in fraudulent activities. (*See id.*) Instead of reporting Madoff's fraudulent activities to the SEC or their investors, Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith substantially assisted Madoff in continuing to grow the fraud. Each of these Defendants intentionally and knowingly helped Madoff deceive the SEC

for many years, and repeatedly misled investors, prospective investors, and others, all of which directly and substantially aided Madoff in maintaining the fraud. (*See supra* ¶¶333-373.)

750. Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith each knew that Madoff's returns were statistically too good to be true. (*See supra* ¶¶400-404, 451-461.) These Defendants also knew that Madoff's purported trading structure was inconsistent with industry practices and produced trading volumes that were virtually impossible. (*See supra* ¶¶412-440.)

751. In addition, Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Blum, Toub, and Smith conspired to enter into explicit and implicit agreements with BLMIS to help perpetuate Madoff's fraud. These agreements were corrupt in their purpose to raise billions of dollars in the face of fraudulent activity. Each of these Defendants took intentional and overt actions pursuant to these agreements and participated in the fraud, causing billions of dollars in damages to BLMIS customers.

752. Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith explicitly agreed to market BLMIS, and the market the SSC Strategy as their own investment scheme, resulting in billions of dollars of capital to maintain the Ponzi scheme. They each explicitly agreed to protect Madoff from direct inquiries from the Feeder Funds' investors, and to provide the investors with misleading information where necessary. They also each explicitly agreed to help mislead the SEC in order to protect Madoff from having to register as an investment adviser. (*See supra* ¶¶350-361.)

753. Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith acted pursuant to these implicit and explicit agreements by

traveling the world to market BLMIS and the Feeder Funds and by providing false and misleading responses to customer concerns that Madoff might be a fraud. (*See supra* ¶¶339-349, 362-373.) Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith purposely and knowingly discouraged investors from performing due diligence and helped Madoff by working to remove all references to BLMIS from the Feeder Funds' marketing materials. (*See id.*)

754. Defendant Noel is a founding partner of FGG and was involved in the day-to-day management decisions that resulted in FGG falsely marketing the Feeder Funds. He procured billions of dollars from investors to hand to Madoff; deceived the Feeder Funds' investors by providing them with information about BLMIS that was untrue; and made misrepresentations to the SEC about how BLMIS and the Feeder Funds operated. (*See supra* ¶¶193-202.)

755. Noel substantially assisted Madoff by leading and engineering FGG's global marketing efforts to sell Madoff. Noel traveled around with his Feeder Funds summary sheets, convincing investors to give Madoff billions of dollars. Noel knew those summary sheets contained false and misleading information regarding BLMIS and he knowingly misled investors when he parroted the misstatements contained on those sheets. (*See supra* ¶¶193-202, 339-349, 362-373.)

756. Noel also knew of the inconsistent and contradictory information Madoff provided during FGG's "due diligence" visits. He knew Madoff refused to provide critical information including the identity of the options counterparties. He also knew FGG trained its sales force to provide false answers to investor queries. (*See supra* ¶¶339-349, 362-373.)

757. All of Noel's intentional and overt actions concerning Madoff and BLMIS substantially assisted Madoff in perpetrating a fraud.

758. Defendant Tucker is a founding partner of FGG and was involved in the day-to-day management decisions that resulted in FGG falsely marketing the Feeder Funds. He procured billions of dollars from investors to hand to Madoff; deceived the Feeder Funds investors by providing them with information about BLMIS that was untrue; and made misrepresentations to the SEC about how BLMIS and the Feeder Funds operated. (*See supra* ¶¶203-210.)

759. Tucker frequently fielded investor questions and provided them with misleading responses. Tucker also knew Madoff's auditor was a sham and never disclosed this information to investors or the SEC, which substantially aided Madoff in perpetrating the fraud. By intentionally lying to the Feeder Funds' investors, Tucker substantially assisted Madoff in maintaining the fraud. (*See supra* ¶¶350-361.)

760. Tucker also intentionally and overtly instigated the cover-up of damning information showing BLMIS's auditor lied to FGG's CFO and was not capable of performing proper audits on the billions of dollars under Madoff's management. Tucker specifically directed others to provide false answers to investors when they questioned Madoff's market timing strategy. Tucker also readily assisted Madoff by deflecting criticism, claiming PwC reviewed BLMIS, and by hiding Madoff's options trading structure, which was not in accord with industry practices. (*See supra* ¶¶333-373, 412-440.)

761. All of Tucker's intentional and overt actions concerning Madoff and BLMIS substantially assisted Madoff in perpetrating a fraud.

762. Defendant Piedrahita is a founding partner and Chairman of the Board of Directors of FGG. He was involved in the day-to-day management decisions that resulted in FGG falsely marketing the Feeder Funds; procuring billions of dollars from investors to hand to Madoff; deceiving the Feeder Funds' investors by providing them with information about BLMIS that was untrue; and making misrepresentations to the SEC about how BLMIS and the Feeder Funds operated. (*See supra* ¶¶211-218.)

763. Piedrahita substantially assisted Madoff by directing all of FGG's operations as the Chairman of the Board of Directors and head of the Executive Committee. Piedrahita had knowledge of fraud evidenced by Madoff's trade confirmations, his auditor's lies, and the statistical improbability of the returns reported to the Feeder Funds. Despite his knowledge of fraud, Piedrahita substantially assisted Madoff by selling Madoff to any and all would-be investors. (*See supra* ¶¶211-218.)

764. Piedrahita also entered into explicit and implicit agreements with Madoff to provide false and misleading information to investors. The information Piedrahita provided helped convince investors to give billions of dollars to the Feeder Funds, which then sent the money to Madoff. Piedrahita also agreed with Madoff to do everything he could to provide billions of dollars to Madoff, which allowed Madoff to further the Ponzi scheme for his own and the Defendants' benefit. Piedrahita acted pursuant to these agreements in routinely providing false information about Madoff to potential Feeder Funds investors during his global marketing trips. (*See supra* ¶¶333-373.)

765. All of Piedrahita's intentional and overt actions concerning Madoff and BLMIS substantially assisted Madoff in perpetrating a fraud.

766. Defendant McKeefry served as FGG's COO and CLO, is a member of the Executive Committee of FGG, and was involved in the day-to-day management decisions that resulted in FGG falsely marketing the Feeder Funds. He procured billions of dollars from investors to hand to Madoff; deceived the Feeder Funds' investors by providing them with information about BLMIS that was untrue; and made misrepresentations to the SEC about how BLMIS and the Feeder Funds operated. (*See supra* ¶¶219-224.)

767. As COO, McKeefry was responsible for reviewing and approving FGG's marketing materials. McKeefry approved FGG's marketing materials with knowledge they contained false and misleading information. As CLO, he reviewed the regulatory filings for the Feeder Funds and the FGG Affiliates, as well as the Feeder Funds' agreements with Madoff. With full knowledge of the terms of the agreements with BLMIS, McKeefry agreed to make misrepresentations to the SEC about the nature of the Feeder Funds' relationship with BLMIS in an attempt to stop the SEC from applying additional regulations to BLMIS, and thereby, delaying any discovery of the fraud. (*See supra* ¶¶219-224, 350-361.)

768. McKeefry entered into explicit and implicit agreements with Madoff to provide false and misleading information to investors. The information McKeefry provided helped convince investors to invest billions of dollars in the Feeder Funds, which was then delivered to Madoff. McKeefry also agreed to conspire with Madoff to provide false and misleading information to the SEC about the true role BLMIS and Madoff played in managing the Feeder Funds' investments. McKeefry acted pursuant to these agreements when he approved the publication of marketing materials that contained erroneous information; approved fund agreements that contained similarly erroneous information; and misled the SEC. (*See supra* ¶¶219-224, 350-361.)

769. All of McKeefry's intentional and overt actions concerning Madoff and BLMIS substantially assisted Madoff in perpetrating a fraud.

770. Defendant Lipton acted as FGG's CFO and, in that capacity, was involved in upper-level management decisions regarding investor redemptions. Lipton was frequently involved in discussions about how to respond to investor concerns about Madoff, and intentionally devised ways to provide investors false and misleading responses. (*See supra* ¶¶225-230, 339-349, 362-373.)

771. When faced with the knowledge he had been lied to about the real nature of Madoff's auditing firm, as well as the capabilities of that firm, Lipton did not inform FGG's investors or the SEC that BLMIS's auditor was a sham. By protecting Madoff's fraud from the SEC and FGG's own investors, Lipton substantially assisted Madoff in perpetrating the fraud. (*See supra* ¶¶350-361.)

772. Lipton also entered into explicit and implicit agreements with Madoff to conspire with him to hide the fact that BLMIS's auditor, Friehling, was a sham. He intentionally acted pursuant to these agreements when he provided false information regarding the auditor to other FGG personnel that Lipton knew would distribute the same false information to the Feeder Funds' investors. Lipton also purposely did not disclose to investors or regulatory authorities that Madoff's auditor had lied to Lipton about the firm's size and reputation. (*See supra* ¶¶377-398.)

773. All of Lipton's intentional and overt actions concerning Madoff and BLMIS substantially assisted Madoff in perpetrating a fraud.

774. Defendant Vijayvergiya knowingly and intentionally assisted Madoff in perpetrating his fraud by routinely providing false and misleading information to investors about FGG's knowledge of Madoff's operations and FGG's own due diligence process. Vijayvergiya lied stating Madoff's auditors had twenty partners. He also conspired with Madoff to purposely deceive the SEC in 2006 by knowingly providing false information to the SEC regarding the Feeder Funds' relationship with BLMIS. (*See supra* ¶¶231-236, 333-373, 377-398.)

775. Vijayvergiya intentionally and overtly provided false answers to investors regarding Madoff's market timing strategy. He also personally trained FGG's sales personnel to provide false statements about the Feeder Funds' relationship with BLMIS including, among other things, telling the sales personnel that FGG had a list of approved options trade counterparties for Madoff's trades, that FGG verified trades at the DTCC, and that PwC reviewed BLMIS. (*See supra* ¶¶333-373.)

776. All of Vijayvergiya's intentional and overt actions concerning Madoff and BLMIS substantially assisted Madoff in perpetrating a fraud.

777. Defendant McKenzie knowingly participated in misleading investors. His intentional acts substantially assisted Madoff in perpetrating the fraud and helped prevent others from uncovering Madoff's fraud. McKenzie knew Madoff's auditor had provided false information to CFO Lipton and then allowed Vijayvergiya to provide false and misleading information about Madoff's auditor. By his actions, McKenzie shielded Madoff from due diligence or investigations by third parties that could have uncovered the fraud. (*See supra* ¶¶237-242, 377-398.)

778. McKenzie also entered into explicit and implicit agreements with Madoff to hide

the fact that Madoff's auditor was a sham. He acted pursuant to these agreements when he did not inform investors or regulatory authorities that he knew that the auditor was a fraud. (*See supra* ¶¶377-398.)

779. All of McKenzie's intentional and overt actions concerning Madoff and BLMIS substantially assisted Madoff in perpetrating a fraud.

780. Defendant Landsberger is a member of the Executive Committee of FGG and was involved in the day-to-day management decisions that resulted in FGG falsely marketing the Feeder Funds. He procured billions of dollars from investors to hand to Madoff; deceived the Feeder Funds' investors by providing them with information about BLMIS that was untrue; and made misrepresentations to the SEC about how BLMIS and the Feeder Funds operated. (*See supra* ¶¶243-247.)

781. Landsberger addressed investor concerns about possible fraud at BLMIS by working with his colleagues to provide answers that were not only careful not disclose the fraud, but were designed to bury the fraud from inquiry or discovery. Landsberger substantially assisted Madoff by allowing him to avoid additional due diligence investigations that could have led to the discovery of the fraud well before December 2008. (*See supra* ¶¶339-349, 362-373.)

782. Landsberger also entered into explicit and implicit agreements with Madoff to provide false and misleading information to investors. These agreements served two primary purposes. They allowed Landsberger to help raise billions of dollars for Madoff to replenish the Ponzi scheme and they prevented investors from conducting additional, independent due diligence that might have uncovered the fraud. Landsberger intentionally and overtly acted

pursuant to these agreements when he allowed other FGG personnel to provide information to investors which Landsberger knew to be false. (*See supra* ¶¶339-349, 362-373.)

783. All of Landsberger's intentional and overt actions concerning Madoff and BLMIS substantially assisted Madoff in perpetrating a fraud.

784. Defendant Toub is a member of the Executive Committee of FGG and was involved in the day-to-day management decisions that resulted in FGG marketing the Feeder Funds. He procured billions of dollars from investors to hand to Madoff; deceived the Feeder Funds' investors by providing them with information about BLMIS that was untrue; and made misrepresentations to the SEC about how BLMIS and the Feeder Funds operated. (*See supra* ¶¶248-253.)

785. Toub also substantially assisted Madoff in perpetrating a fraud by falsely addressing investor concerns that BLMIS was involved in fraudulent activities and by working with his colleagues to prevent the fraud from being discovered. Toub substantially assisted Madoff by purposely shielding him from additional due diligence investigations that could have led to the discovery of the fraud well before December, 2008. (*See supra* ¶¶339-349, 362-373.)

786. Toub entered into explicit and implicit agreements with Madoff to provide false and misleading information to investors. These agreements served two purposes. They allowed Toub to help procure billions of dollars for Madoff to use in the Ponzi scheme and they prevented investors from conducting additional, independent due diligence that might have uncovered the fraud. Toub also acted pursuant to these agreements when he allowed other FGG personnel to provide information to investors which Toub knew to be false. (*See supra* ¶¶339-349, 362-373.)

787. All of Toub's intentional and overt actions concerning Madoff and BLMIS substantially assisted Madoff in perpetrating a fraud.

788. Defendant Blum was involved in marketing the funds and responding to investor concerns about Madoff. Blum reviewed FGG's marketing materials and approved the publication of those materials even though he knew they contained false or misleading statements. Blum also substantially assisted Madoff in perpetrating a fraud by working with his colleagues at FGG to limit transparency to Madoff and to avoid delivering to investors accurate information about Madoff. (*See supra* ¶¶260-265, 339-349, 362-373.)

789. Blum entered into explicit and implicit agreements with Madoff to limit transparency into BLMIS and to limit investors' access to Madoff. He intentionally and overtly acted pursuant to these agreements. All of Blum's activities concerning Madoff substantially assisted in Madoff perpetrating the fraud. (*See supra* ¶¶339-349, 362-373.)

790. All of Blum's intentional and overt actions concerning Madoff and BLMIS substantially assisted Madoff in perpetrating a fraud.

791. Defendant Smith actively responded to investors concerns about Madoff. Like his fellow partners, Smith substantially assisted Madoff in perpetrating a fraud by devising schemes to appease investors' concerns about Madoff being a fraud. Smith intentionally and overtly assisted Madoff in escaping due diligence and investigation that could have uncovered the fraudulent activities. (*See supra* ¶¶266-271, 339-349, 362-373.)

792. Smith also entered into explicit and implicit agreements with Madoff to provide false and misleading information to investors. These agreements served two primary purposes.

They allowed Smith to help deliver billions of dollars to Madoff to use in the Ponzi scheme and they prevented investors from conducting additional, independent due diligence that might have uncovered the fraud. Smith purposely acted pursuant to these agreements when he misled investors regarding Madoff's lack of transparency by providing false information. (*See supra* ¶¶339-349, 362-373.)

793. All of Smith's intentional and overt actions concerning Madoff and BLMIS substantially assisted Madoff in perpetrating a fraud.

COUNT THIRTY-ONE: AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

Against Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith

794. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

795. BLMIS owed a fiduciary duty to its customers. BLMIS breached that fiduciary duty by perpetrating a massive Ponzi scheme. Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith knowingly participated in that breach, which resulted in billions of dollars of damage to BLMIS customers.

796. BLMIS owed a fiduciary duty to act in the best interests of investors. In this role, BLMIS held a superior position over investors in the Feeder Funds, which required investors to repose trust and confidence with BLMIS. (*See supra* ¶6.)

797. Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith knew of Madoff's fraudulent activity that was breaching BLMIS's fiduciary duties. They substantially assisted Madoff in breaching his duties by, among

other things: traveling the world to market BLMIS and the Feeder Funds; avoiding customer inquiries and providing false answers that all knew would discourage investors from asking additional questions; removing references to BLMIS from their marketing materials; and providing the SEC with answers Madoff gave them, knowing that those answers were not true, but would serve to protect Madoff from further regulatory scrutiny. (*See supra* ¶¶333-489.)

798. The intentional and overt actions by Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith to substantially assist Madoff in breaching his fiduciary duties to customers exacerbated BLMIS's monumental insolvency. The intentional and overt actions of Noel, Tucker, Piedrahita, McKeefry, Lipton, Vijayvergiya, McKenzie, Landsberger, Toub, Blum, and Smith to substantially assist Madoff in breaching his fiduciary duties to customers was a proximate cause of loss of billions of dollars of Customer Property.

WHEREFORE, the Trustee respectfully requests that this Court enter judgment in favor of the Trustee and against the Defendants as follows:

i. On the First Claim for Relief, pursuant to section 542 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is also entitled to an accounting of any and all Initial Transfers and Subsequent Transfers made, directly or indirectly, to the Defendants;

ii. On the Second Claim for Relief, pursuant to sections 547(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Preference Period Initial Transfers, (b) directing that the Preference Period Initial Transfers be set aside, and (c) recovering the Preference Period Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS;

iii. On the Third Claim for Relief, pursuant to sections 547(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Preference Period Initial Transfers, (b) directing that the Greenwich Preference Period Initial Transfers be set aside, and (c) recovering the Greenwich Preference Period Initial Transfers, or the value thereof, from FGB for the benefit of the estate of BLMIS;

iv. On the Fourth Claim for Relief, pursuant to sections 547(b), 550(a)(2), and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Preference Period Initial Transfers, (b) directing that the Preference Period Initial Transfers be set aside and (c) recovering the Preference Period Subsequent Transfers, or the value thereof, from the FGG Affiliates and FGG Individuals for the benefit of the estate of BLMIS;

v. On the Fifth Claim for Relief, pursuant to sections 548(a)(1)(A), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Two Year Initial Transfers, (b) directing that the Two Year Initial Transfers be set aside, and (c) recovering the Two Year Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS;

vi. On the Sixth Claim for Relief, pursuant to sections 548(a)(1)(A), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Two Year Initial Transfers, (b) directing that the Greenwich Two Year Initial Transfers be set

aside, and (c) recovering the Greenwich Two Year Initial Transfers, or the value thereof, from FGB for the benefit of the estate of BLMIS;

vii. On the Seventh Claim for Relief, pursuant to sections 548(a)(1)(A), 550(a)(2), and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Two Year Initial Transfers, (b) directing that the Two Year Initial Transfers be set aside, and (c) recovering the Two Year Subsequent Transfers, or the value thereof, from the FGG Affiliates and FGG Individuals for the benefit of the estate of BLMIS;

viii. On the Eighth Claim for Relief, pursuant to sections 548(a)(1)(B), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Two Year Initial Transfers, (b) directing that the Two Year Initial Transfers be set aside, and (c) recovering the Two Year Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS;

ix. On the Ninth Claim for Relief, pursuant to sections 548(a)(1)(B), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Two Year Initial Transfers, (b) directing that the Greenwich Two Year Initial Transfers be set aside, and (c) recovering the Greenwich Two Year Initial Transfers, or the value thereof, from FGB for the benefit of the estate of BLMIS;

x. On the Tenth Claim for Relief, pursuant to sections 548(a)(1)(B), 550(a)(2), and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Two Year Initial Transfers, (b) directing that the Two Year Initial

Transfers be set aside, and (c) recovering the Two Year Subsequent Transfers, or the value thereof, from the FGG Affiliates and FGG Individuals for the benefit of the estate of BLMIS;

xi. On the Eleventh Claim for Relief, pursuant to sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, (c) recovering the Six Year Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS, and (d) recovering attorneys' fees from the Feeder Funds;

xii. On the Twelfth Claim for Relief, pursuant to sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Six Year Initial Transfers, (b) directing that the Greenwich Six Year Initial Transfers be set aside, (c) recovering the Greenwich Six Year Initial Transfers, or the value thereof, from FGB, FGL, and GBL for the benefit of the estate of BLMIS, and (d) recovering attorneys' fees from FGB, FGL, and GBL;

xiii. On the Thirteenth Claim for Relief, pursuant to sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(2), and 551 of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, (c) recovering the Six Year Subsequent Transfers, or the value thereof, from the FGG

Affiliates and FGG Individuals for the benefit of the estate of BLMIS, and (d) recovering attorneys' fees from the FGG Affiliates and FGG Individuals;

xiv. On the Fourteenth Claim for Relief, pursuant to sections 273, 278, and 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, and (c) recovering the Six Year Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS;

xv. On the Fifteenth Claim for Relief, pursuant to sections 273, 278, and 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Six Year Initial Transfers, (b) directing that the Greenwich Six Year Initial Transfers be set aside, and (c) recovering the Greenwich Six Year Initial Transfers, or the value thereof, from FGB, FGL, and GBL for the benefit of the estate of BLMIS;

xvi. On the Sixteenth Claim for Relief, pursuant to sections 273, 278, and 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(2), 551 of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, and (c) recovering the Six Year Subsequent Transfers, or the value thereof, from the FGG Affiliates and FGG Individuals for the benefit of the estate of BLMIS;

xvii. On the Seventeenth Claim for Relief, pursuant to sections 274, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b) and 550(a)(1) of the Bankruptcy Code,

SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, and (c) recovering the Six Year Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS;

xviii. On the Eighteenth Claim for Relief, pursuant to sections 274, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b) and 550(a)(1) of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Six Year Initial Transfers, (b) directing that the Greenwich Six Year Initial Transfers be set aside, and (c) recovering the Greenwich Six Year Initial Transfers, or the value thereof, from FGB, FGL, and GBL for the benefit of the estate of BLMIS;

xix. On the Nineteenth Claim for Relief, pursuant to sections 274, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b) and 550(a)(2) of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, and (c) recovering the Six Year Subsequent Transfers, or the value thereof, from the FGG Affiliates and FGG Individuals for the benefit of the estate of BLMIS;

xx. On the Twentieth Claim for Relief, pursuant to sections 275, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, and (c) recovering the Six Year Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS;

xxi. On the Twenty-First Claim for Relief, pursuant to sections 275, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Six Year Initial Transfers, (b) directing that the Greenwich Six Year Initial Transfers be set aside, and (c) recovering the Greenwich Six Year Initial Transfers, or the value thereof, from FGB, FGL and GBL for the benefit of the estate of BLMIS;

xxii. On the Twenty-Second Claim for Relief, pursuant to sections 275, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(2), and 551 of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Six Year Initial Transfers, (b) directing that the Six Year Initial Transfers be set aside, and (c) recovering the Six Year Subsequent Transfers, or the value thereof, from the FGG Affiliates and FGG Individuals for the benefit of the estate of BLMIS;

xxiii. On the Twenty-Third Claim for Relief, pursuant to NY CPLR 203(g), sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Initial Transfers, (b) directing that the Initial Transfers be set aside, (c) recovering the Initial Transfers, or the value thereof, from the Feeder Funds for the benefit of the estate of BLMIS, and (d) recovering attorneys' fees from the Feeder Funds;

xxiv. On the Twenty-Fourth Claim for Relief, pursuant to NY CPLR 203(g), sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(1), and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), and sections 15-306(a) and 17-

403(b) of the Delaware Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the Greenwich Initial Transfers, (b) directing that the Greenwich Initial Transfers be set aside, (c) recovering the Greenwich Initial Transfers, or the value thereof, from FGB, FGL, GBL, Noel, and Tucker for the benefit of the estate of BLMIS, and (d) recovering attorneys' fees from FGB, FGL, GBL, Noel, and Tucker;

xxv. On the Twenty-Fifth Claim for Relief, pursuant to NY CPLR 203(g), sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a)(2), and 551 of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the Initial Transfers, (b) directing that the Initial Transfers be set aside, (c) recovering the Subsequent Transfers, or the value thereof, from the FGG Affiliates and FGG Individuals for the benefit of the estate of BLMIS, and (d) recovering attorneys' fees from the FGG Affiliates and FGG Individuals;

xxvi. On the Twenty-Sixth Claim for Relief, a judgment that the SIPA claims filed by Fairfield Sentry, GS, GSP, Sigma, Lambda, FGB, Noel, and Tucker be disallowed;

xxvii. On all Claims for Relief, a judgment pursuant to common law and NY CPLR 5001 and 5004, awarding the Trustee prejudgment interest from the date on which the Subsequent Transfers were received by the Defendants;

xxviii. On all Claims for Relief, establishment of a constructive trust over the proceeds of the Initial Transfers, Subsequent Transfers and unjust enrichment to the Defendants in favor of the Trustee for the benefit of BLMIS's estate;

xxix. On all Claims for Relief, assignment of the Defendants' right to seek refunds from the government for federal, state, and local taxes paid on Fictitious Profits during the course of the scheme;

xxx. On the Twenty-Seventh, Twenty-Eighth, Twenty-Ninth, Thirtieth, and Thirty-First Claims for Relief, compensatory, exemplary, and punitive damages in excess of $3.6 billion, with the specific amount to be determined at trial;

xxxi. Awarding the Trustee all applicable interest, costs, and disbursements of this action; and

xxxii. Granting Plaintiff such other, further, and different relief as the Court deems just, proper, and equitable.

Date: New York, New York
July 20, 2010

s/Marc E. Hirschfield

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
E-mail: dsheehan@bakerlaw.com
Marc E. Hirschfield
E-mail: mhirschfield@bakerlaw.com
Mark A. Kornfeld
E-mail: mkornfeld@bakerlaw.com

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

Of Counsel:

Thomas L. Long
Jessie M. Gabriel
Baker & Hostetler LLP
65 East State Street, Suite 2100
Columbus, Ohio 43215
Telephone: (614) 228-1541
Facsimile: (614) 462-2616
Thomas L. Long
E-mail: tlong@bakerlaw.com
Jessie M. Gabriel
E-mail: jgabriel@bakerlaw.com

EXHIBIT 2

EXHIBIT A

FORM OF AGREEMENT BETWEEN THE TRUSTEE AND KENNETH KRYS AND JOANNA LAU, SOLELY IN THEIR RESPECTIVE CAPACITIES AS THE FOREIGN REPRESENTATIVES FOR AND JOINT LIQUIDATORS OF FAIRFIELD SENTRY LIMITED, FAIRFIELD SIGMA LIMITED, AND FAIRFIELD LAMBDA LIMITED

AGREEMENT

This Agreement, dated as of May 9, 2011 ("Agreement"), is made by and among Irving H. Picard, in his capacity as Trustee for the liquidation under the Securities Investor Protection Act of 1970, as amended ("SIPA"), of Bernard L. Madoff Investment Securities LLC (the "Trustee"), on the one hand, and Kenneth Krys and Joanna Lau (together with their predecessors, the "Liquidators" or the "Joint Liquidators"), solely in their respective capacities as the Foreign Representatives for and Joint Liquidators of Fairfield Sentry Limited, a British Virgin Islands corporation ("Fairfield Sentry"), Fairfield Sigma Limited, a British Virgin Islands corporation ("Fairfield Sigma"), and Fairfield Lambda Limited, a British Virgin Islands corporation ("Fairfield Lambda" and, together with Fairfield Sentry and Fairfield Sigma, the "Fairfield Funds"), on the other hand (each of the Trustee, the Liquidators, Fairfield Sentry, Fairfield Sigma and Fairfield Lambda, a "Party" and, collectively, the "Parties").

BACKGROUND

A. Bernard L. Madoff Investment Securities LLC ("BLMIS") was a registered broker-dealer and a member of the Securities Investor Protection Company ("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 Bernard L. Madoff ("Madoff"). On December 12, 2008, the District Court entered an order which among other things appointed a receiver for the assets of BLMIS (No. 08-CV-10791(LSS)).

C. On December 15, 2008, pursuant to section 5(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with the application of SIPC. Thereafter, SIPC filed an application in the District Court under section 5(a)(3) of SIPA alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA. On December 15, 2008, the District Court granted the SIPC application and entered an order under SIPA, which, in pertinent part, appointed the Trustee for the liquidation of the business of BLMIS under section 5(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 5(b)(4) of SIPA, where it is currently pending as Case No. 08-01789 (BRL) (the "SIPA Proceeding"). The Trustee is duly qualified to serve and act on behalf of the estate of BLMIS (the "BLMIS Estate").

D. Fairfield Sentry is a British Virgin Islands ("BVI") company that at all relevant times, was a customer of BLMIS.

E. Fairfield Sigma and Fairfield Lambda are BVI companies that at all relevant times, had as their respective sole purposes to invest funds in Fairfield Sentry.

F. Pursuant to an Order entered on April 23, 2009, the Eastern Caribbean Supreme Court in the High Court of Justice of the Virgin Islands (the "BVI Court") appointed Christopher Stride to be the Liquidator for Fairfield Lambda, which appointment commenced the winding up of Fairfield Lambda pursuant to the British Virgin Islands Insolvency Act 2003 (the "Lambda Proceeding").

G. Pursuant to an Order entered on July 21, 2009, the BVI Court (i) permitted the commencement of the winding up of Fairfield Sentry in accordance with the British Virgin Islands Insolvency Act 2003 (the "Sentry Proceeding"), and (ii) appointed Kenneth Krys and Christopher Stride as the Joint Liquidators for Fairfield Sentry.

H. Pursuant to an Order entered on July 21, 2009, the BVI Court (i) permitted the commencement of the winding up of Fairfield Sigma in accordance with the British Virgin Islands Insolvency Act 2003 (the "Sigma Proceeding" and, together with the Lambda Proceeding and the Sentry Proceeding, the "BVI Proceedings"), and (ii) appointed Kenneth Krys and Christopher Stride to be the Joint Liquidators for Fairfield Sigma.

I. On July 22, 2010, in proceedings commenced by the Liquidators pursuant to Chapter 15 of the Bankruptcy Code (the "Chapter 15 Proceedings"), the Bankruptcy Court entered an order recognizing the BVI Proceedings as foreign main proceedings and granting related relief to the Liquidators.

J. On or about September 6, 2010, the BVI Court issued notices acknowledging Christopher Stride's resignation and Joanna Lau's appointment as Joint Liquidator with Kenneth Krys of each of the Fairfield Funds.

K. Fairfield Sentry was a customer of BLMIS and maintained customer accounts, Accounts 1FN012, 1FN045, 1FN069, 1FN070 with BLMIS (the "Fairfield Sentry Accounts") commencing in or about 1990. The Fairfield Sentry Accounts are listed as Exhibit A to this Agreement. According to the Trustee, between then and the Filing Date, on an overall basis Fairfield Sentry deposited into the Fairfield Sentry Accounts a total of one billion, one hundred ninety-two million, five hundred thirty-six thousand, three hundred forty-two dollars ($1,192,536,342) in excess of the amount of withdrawals that Fairfield Sentry made from the accounts (the "Sentry Net Loss"). According to the Trustee, Fairfield Sentry withdrew one billion one hundred thirty thousand dollars ($1,130,000,000) from the Fairfield Sentry Accounts within ninety days before the Filing Date ("90 Day Withdrawals") and an additional one billion nine hundred twenty four million dollars ($1,924,000,000) from the Fairfield Sentry Accounts, during the period more than 90 days, but less than six years, before the Filing Date (the "Pre 90-Day Withdrawals" and, together with the 90 Day Withdrawals, the "Withdrawals").

L. Prior to the appointment of the Liquidators, Fairfield Sentry filed three customer claims in the SIPA Proceeding (assigned claim numbers 008037, 007898 and 11251, later amended by claim numbers 011234 and 11429) (such claims, collectively, the "Sentry SIPA Claim") alleging aggregate losses from the Fairfield Sentry Accounts of six billion, two hundred eighty-four million, three hundred twenty-one thousand, five hundred eighty-one dollars ($6,284,321,581) (the "Last Statement Amount"). The Sentry SIPA Claim, including the relevant BLMIS Account Numbers 1FN012, 1FN045, 1FN069, 1FN070, is included as Exhibit B to this Agreement. The Sentry SIPA Claim, as filed, asserts that Fairfield Sentry is entitled to allowance of a customer claim in the SIPA proceeding in an amount reflected on Fairfield Sentry's BLMIS account statements for the period ending November 30, 2008, i.e., the Last Statement Amount.

M. The Trustee has disputed that Fairfield Sentry is entitled to allowance of a customer claim in the amount of the Last Statement Amount. On March 1, 2010, the Honorable Burton R. Lifland, of the Bankruptcy Court, issued an opinion applying the Trustee's "net equity" calculation of customer claims as the difference between investment into BLMIS and amounts withdrawn (the "Net Equity Method"). On March 8, 2010 Judge Lifland entered an order implementing the decision and certifying it for immediate appeal for the United States Court of Appeals for the Second Circuit. According to the Trustee, the amount of the Sentry SIPA Claim based on the Net Equity Method is the Sentry Net Loss, i.e., One Billion, One Hundred Ninety-Two Million, Five Hundred Thirty-Six Thousand, Three Hundred Forty-Two Dollars ($1,192,536,342) (the "Sentry SIPA Net Equity Claim").

N. Prior to the appointment of the Liquidators, Fairfield Sigma filed four customer claims in the SIPA Proceeding (assigned claim numbers 011250, 011744, 011240 and 011249) claiming aggregate losses of seven hundred seventy-three million, six hundred thirty-five thousand, one hundred eighty-eight dollars ($773,635,188) (such claims, collectively, the "Sigma SIPA Claim"). On or about December 8, 2009, the Trustee issued a notice of denial of the Sigma SIPA Claim on the asserted basis that Sigma is not a customer of BLMIS within the meaning of 15 U.S.C. § 78*lll*(2) (the "Sigma Denial Notice"). On or about January 7, 2010, the Liquidators filed a timely objection to the Sigma Denial Notice in the SIPA Proceeding, and that objection remains pending. The Sigma SIPA Claim, the Sigma Denial Notice and the Liquidators' objection to the Sigma Denial Notice are included as Exhibit C to this Agreement.

O. Prior to the appointment of the Liquidators, Fairfield Lambda filed four customer claims in the SIPA Proceeding (assigned claim numbers 014661, 014761, 014762 and 014795) claiming aggregate losses of thirty-six million, six hundred seventy-six thousand, two hundred and five dollars ($36,676,205) (such claims, collectively, the "Lambda SIPA Claim" and, together with the Sentry SIPA Claim and the Sigma SIPA Claim, the "Fairfield SIPA Claims"). On or about December 8, 2009, the Trustee issued a notice of denial of the Lambda SIPA Claim on the asserted basis that Lambda is not a customer of BLMIS within the meaning of 15 U.S.C. § 78*lll*(2) (the "Lambda Denial Notice"). On or about January 7, 2010, the Liquidators filed a timely objection to the Lambda Denial Notice in the SIPA Proceeding, and that objection remains pending. The Lambda SIPA Claim, the Lambda Denial Notice and the Liquidators' objection to the Lambda Denial Notice are included as Exhibit D to this Agreement.

P. The Trustee has brought an adversary proceeding against Fairfield Sentry, Fairfield Sigma, Fairfield Lambda and other defendants in the Bankruptcy Court under the caption *Picard v. Fairfield Sentry Ltd. et al.*, Adv. Pro. No. 09-01239 (BRL) (the "Adversary Proceeding"). In the Adversary Proceeding, the Trustee asserts that the Fairfield Funds are liable to the BLMIS Estate under 11 U.S.C. §§ 544, 547, 548, 550, SIPA § 78fff-(2)(c)(3) and the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 270-281) for the Withdrawals made by Fairfield Sentry from BLMIS, and Fairfield Sentry's subsequent transfer of approximately Seven Hundred Fifty-Two Million, Three Hundred Thousand Dollars ($752,300,000) and Fifty-Two Million, Nine Hundred Thousand Dollars ($52,900,000) of the Withdrawals to Fairfield Sigma and Fairfield Lambda, respectively; specifically, the Trustee seeks, inter alia, recovery from the Fairfield Funds of an amount totaling Three Billion, Fifty-Four Million Dollars ($3,054,000,000). The Trustee has also asserted claims for turnover and accounting of the Withdrawals, and for disallowance of the Fairfield SIPA Claims.

Q. All claims of the Trustee against the Fairfield Funds under 11 U.S.C. §§ 544, 547, 548 or 550, applicable provisions of SIPA, including § 78fff-(2)(c)(3), and the New York Debtor and Creditor Law §§ 270-281 shall be referred to herein as the "Avoiding Power Claims."

R. The Liquidators, on behalf of each of the Fairfield Funds, have disputed any liability to the BLMIS Estate in connection with the Adversary Proceeding and the Avoiding Power Claims alleged therein.

S. The Trustee, on the one hand, and the Liquidators, for each of the estates that they represent, on the other hand, desire to settle their disputes about the matters described above without the expense, delay and uncertainty of litigation.

AGREEMENT

1. Judgments Regarding the Trustee's Avoiding Power Claims. The Trustee and the Liquidators agree they shall jointly request the Bankruptcy Court to (i) enter a judgment against Fairfield Sentry in the amount of Three Billion, Fifty Four Million Dollars ($3,054,000,000), representing the settled amount of the Trustee's Avoiding Power Claims against Fairfield Sentry (the "Sentry Judgment"), (ii) enter a judgment against Fairfield Sigma in the amount of Seven Hundred Fifty Two Million, Three Hundred Thousand Dollars ($752,300,000), representing the settled amount of the Trustee's Avoiding Power Claims against Fairfield Sigma (the "Sigma Judgment") and (iii) enter a judgment against Fairfield Lambda in the amount of Fifty Two Million, Nine Hundred Thousand Dollars ($52,900,000), representing the settled amount of the Trustee's Avoiding Power Claims against Fairfield Lambda (the "Lambda Judgment" and, together with the Sentry Judgment and the Sigma Judgment, the "Judgments"), each Judgment in the form attached hereto as Exhibit E. By virtue of the mutual covenants and agreements contained in, and the consideration provided by, this Agreement, including (i) the cash payment to be made by the Liquidators to the Trustee as set forth below at Paragraph 2, infra, and (ii) the mutually agreed to reduction of the Sentry SIPA Net Equity Claim from One Billion, One Hundred Ninety-Two Million, Five Hundred Thirty-Six Thousand, Three Hundred Forty-Two Dollars ($1,192,536,432) to an allowed SIPA claim of Two Hundred Thirty Million Dollars ($230,000,000) as set forth below at Paragraph 13, infra, the Trustee agrees to forbear exercising any right to collect One Billion, One Hundred Thirty Million Dollars ($1,130,000,000) on the Sentry Judgment from Liquidators, the Fairfield Funds or their estates, leaving a non-forbearance amount of One Billion, Nine Hundred Twenty Four Million ($1,924,000,000) (the "Non-Forbearance Amount"). The Trustee shall have (i) an admitted claim in Fairfield Sentry's estate that is provable in the Sentry Proceeding for the full amount of the Sentry Judgment (the "Sentry Admitted Claim"), (ii) an admitted claim in Fairfield Sigma's estate that is provable in the Sigma Proceeding for the full amount of the Sigma Judgment (the "Sigma Admitted Claim"), and (iii) an admitted claim in Fairfield Lambda's estate that is provable in the Lambda Proceeding for the full amount of the Lambda Judgment (the "Lambda Admitted Claim" and, together with the Sentry Admitted Claim and the Sigma Admitted Claim, the "Admitted Claims"). Notwithstanding the foregoing, the Trustee's rights to enforce, collect on and/or satisfy the Judgments or any claims against the Liquidators and/or as against any of the Fairfield Funds, including, without limitation, the Admitted Claims, shall be limited solely to the

rights, remedies and considerations expressly provided in, under and by this Agreement (and such rights, remedies and considerations shall be the dividends paid to the Trustee on account of the Admitted Claims). For the avoidance of doubt, the Trustee shall not be entitled to, nor shall he seek, any distributions on account of the Admitted Claims in the BVI Proceedings or in any other proceedings. Interest shall not accrue on the Judgments. The Judgments shall be filed and entered by the Trustee on or after the Effective Date, defined below at Paragraph 18. The Judgments and the Admitted Claims shall not be assignable.

2. Payment of Cash. The Liquidators shall pay to the Trustee a total of Seventy Million Dollars ($70,000,000) (the "Settlement Payment") of Fairfield Sentry's cash as outlined in this Paragraph 2. On the Closing, as defined below at Paragraph 20, the Liquidators shall pay to the Trustee the sum of Twenty Four Million Dollars ($24,000,000). The Liquidators shall pay to the Trustee the balance of the Settlement Payment totaling Forty Six Million Dollars ($46,000,000) three (3) Business Days (as identified below) following the first to occur of (a) the first date when Fairfield Sentry's account at Citco Bank Nederland N.V.-Dublin branch (the "Citco Account") is no longer subject to an order of attachment; (b) the sale by the Liquidators of any Allowed Claim as defined in Paragraph 13; or (c) the aggregate receipt by the Liquidators of funds belonging to Fairfield Sentry equal to Forty Six Million Dollars ($46,000,000) from any source, other than from a Sharing Claim (as defined below), after the Closing (as defined below). Notwithstanding the foregoing, the Liquidators, in their sole discretion, may elect to pay the entire Settlement Payment to the Trustee prior to the occurrences outlined above. For the avoidance of doubt, none of Fairfield Sigma's cash shall be used to pay the Settlement Amount. For purposes of this Agreement, the term "Business Day" shall mean any day other than Saturday, Sunday, or a day that is a legal holiday in either New York City or the British Virgin Islands.

3. Termination of Escrow Agreements. The escrow agreements between the Trustee and the Liquidators dated as of September 24, 2009 and June 8, 2010, respectively (the "Escrow Agreements") (attached hereto as Exhibit F to this Agreement), shall terminate and be of no further force or effect upon receipt by the Trustee of the full amount of the Settlement Payment. Upon the termination of the Escrow Agreements, the Trustee shall have no interest in, rights to or control over any cash or cash equivalents or other property of the Liquidators or any of the Fairfield Funds, including, without limitation, the Fairfield Funds' non-BLMIS investments and the proceeds thereof, except as otherwise provided herein. Upon the receipt by the Trustee of the full amount of the Settlement Payment, the Parties shall jointly instruct the respective escrow agents under the Escrow Agreements to release all property that is subject thereto to the Liquidators. The Trustee hereby consents to (i) the transfer of all unattached funds of the Fairfield Funds in the Citco Account to Fairfield Sentry's accounts, and/or, as applicable, to Fairfield Sigma's or Fairfield Lambda's accounts, in the BVI at Scotiabank British Virgin Islands and/or VP Bank and Trust Company (BVI) (such accounts, collectively, the "Fairfield BVI Accounts"), (ii) the transfer of all funds of the Fairfield Funds in their Clydesdale Bank account in Great Britain, established pursuant to September 24, 2009 Escrow Agreement between the Parties to the applicable Fairfield BVI Accounts of the Fairfield Funds and (iii) the transfer of all proceeds of the Fairfield Funds' non-BLMIS investments to the applicable Fairfield BVI Accounts.

4. Redeemer Action Recoveries. So long as the Non-Forbearance Amount of the Sentry Judgment, the Sigma Judgment and the Lambda Judgment have not been satisfied in full, the Liquidators shall pay to the Trustee fifteen percent (15%) of the Liquidators' Net Recoveries from all claims and causes of actions, asserted by the Liquidators (either on their behalf or on behalf of any of the Fairfield Funds) in any jurisdiction (including, without limitation, the State of New York and the British Virgin Islands) and based on any law (including, without limitation, the statutory and common law of the British Virgin Islands), seeking to recover payments made by or behalf any of the Fairfield Funds in connection with the redemption of shares in the Fairfield Funds ("Redeemer Actions"), and the Liquidators shall retain eighty-five percent (85%) of such Net Recoveries. The Redeemer Actions include, but are not limited to, those pending actions identified on Exhibit G attached hereto. The Liquidators shall provide reasonable notice to, and reasonably confer in good faith with, the Trustee prior to commencing any Redeemer Action not identified on Exhibit G. The Liquidators shall retain one-hundred percent (100%) of the Net Recoveries from Redeemer Actions that the Liquidators receive once the Non-Forbearance Amount of the Sentry Judgment, the Sigma Judgment and the Lambda Judgment are satisfied in full. Except as otherwise provided herein, the Liquidators shall prosecute the Redeemer Actions at their sole expense, and the Trustee shall not, and shall have no right to, (i) intervene in or otherwise interfere with the Liquidators' prosecution of any Redeemer Actions, other than the Trustee's pursuit of the Subsequent Transferee Claims pursuant to Paragraphs 7, 8 and 9 below, or (ii) file, assert, pursue or prosecute any claims or causes of action against any shareholder of any of the Fairfield Funds, or any beneficiary thereof, seeking to recover payments made by or on behalf of any of the Fairfield Funds in connection with the redemption of shares in the Fairfield Funds, other than the Subsequent Transferee Claims pursuant to Paragraphs 7, 8 and 9 below. For purposes of this Agreement, the term "Net Recoveries" shall mean the consideration of cash or a cash equivalent that is paid to the Liquidators pursuant to a settlement, judgment or other resolution of a claim or cause of action, and less the amount of the Liquidators' reasonable costs and/or expenses (including professional fees and expenses) incurred in connection with such claim or cause of action other than and expressly excluding any contingency or success fees of the Liquidators' attorneys (the "Liquidator Expenses"). The Liquidator Expenses (other than attorneys' contingency fees) shall be reasonably allocated to a particular claim or cause of action. The Trustee shall have no right to object to or challenge the Liquidators' payment of any Liquidator Expenses reasonably incurred and properly allocated. Further, for the avoidance of doubt, the Liquidators shall not be required to pay any amounts to the Trustee, or provide any credit to the Trustee, on account of the waiver, disallowance or reduction in amount of any claims against the Fairfield Funds, and any such waiver, disallowance or reduction in amount will not be credited against the Judgments.

5. Management Claim Recoveries. The Trustee, solely at the Trustee's expense, shall prosecute all claims and causes of action he has asserted in the Adversary Proceeding against the Fairfield Funds' former investment managers, investment advisors, managing entities, directors, partners, and officers, including but not limited to Fairfield Greenwich Group, Fairfield Greenwich (Bermuda) Limited, Fairfield Greenwich Advisors, LLC, Fairfield Risk Services Limited, Fairfield Greenwich Limited, Fairfield International Managers, Inc., Walter M. Noel, Jr., Jeffrey Tucker, and all other individual persons named as defendants in the Adversary Proceeding (the "Adversary Proceeding Claims"). At the Closing, the Liquidators shall unconditionally and irrevocably assign to the Trustee any and all claims asserted by, or on behalf of, the Fairfield Funds against Fairfield Greenwich Group, Fairfield Greenwich

(Bermuda) Limited, Fairfield Greenwich Advisors, LLC, Fairfield Greenwich Limited, Fairfield Investment Mangers, Inc., Walter M. Noel, Jr., Jeffrey Tucker, Andres Piedrahita, Amit Vijayvergiya, Brain Francouer, Lourdes Barrenche, Cornelius Boele, Philip Toub, Richard Landsberger, Charles Murphy, Andrew Smith, Daniel Lipton, Mark McKeffrey, Harold Greisman, Santiago Reyes, Jacqueline Harrary, Robert Blum, Corina Noel-Piedrahita and Maria Teresa Pulido Mendoza in the action entitled *Fairfield Sentry Limited v. Fairfield Greenwich Group, et al.*, currently pending in the Bankruptcy Court, Adv. Pro. No. 10-03800 (BRL) (the "Liquidators' New York Action"), including but not limited to the Fairfield Funds' claims for Breach of Fiduciary Duty, Breach of Contract, Unjust Enrichment, Constructive Trust, Rescission of Investment Manager Contract based on Mutual Mistake, and Accounting (the "Assigned Claims" and, together with the Adversary Proceeding Claims, the "Management Claims"). For avoidance of doubt, the Management Claims shall not include claims or causes of action, if any, against the Liquidators or their agents, attorneys, employees, representatives or professionals.

In prosecuting the Assigned Claims, the Trustee shall assert only those substantive law claims and allegations set forth and contained in the Liquidators' New York Action and shall not assert any other substantive law claims or allegations as part of the Assigned Claims without the Liquidators' reasonable, written approval. Prior to the assignment of the Management Claims to the Trustee, the Liquidators, in their discretion, may amend their pleadings in the Liquidators' New York Action and shall confer in good faith with the Trustee with respect to the amendment in advance thereof. The Trustee shall retain one-hundred percent (100%) of the consideration received by the Trustee from the prosecution of the Management Claims until the Trustee recovers a gross amount of Two Hundred Million Dollars ($200,000,000) in the aggregate from such claims. The Trustee shall pay to the Liquidators fifteen percent (15%) of the gross consideration received by the Trustee from prosecution of the Management Claims in excess of Two Hundred Million Dollars ($200,000,000) in the aggregate, and the Trustee shall retain the remaining eighty five percent (85%) of the gross consideration received by the Trustee from the Management Claims in excess of Two Hundred Million Dollars ($200,000,000) in the aggregate. Except as otherwise provided in this Paragraph 5, the Liquidators shall not, and shall have no right to, intervene in or otherwise interfere with the Trustee's prosecution of the Management Claims, and the Trustee shall prosecute the Management Claims at his sole expense. The Trustee shall seek, in good faith, as part of any full or partial settlement of the Management Claims, a release of all claims by any settling party against the Fairfield Funds and the Liquidators.

6. Service Provider Claim Recoveries. So long as the Non-Forbearance Amount of the Sentry Judgment, the Sigma Judgment and the Lambda Judgment have not been satisfied in full, (i) the Liquidators shall retain one-hundred percent (100%) of the Net Recoveries from all claims and causes of action against the Fairfield Funds' custodians, administrators, accountants and auditors, including but not limited to PricewaterhouseCoopers LLP (Canada), PricewaterhouseCoopers Accountants N.V., Citco Fund Services (Europe) BV, Citco Bank Nederland N.V., Citco Global Custody N.V., Citco Global Custody (NA) N.V., Citco (Canada) Inc. and all affiliates of the foregoing entities (the "Service Provider Claims"), until the Liquidators collect Three Hundred Million Dollars ($300,000,000) in the aggregate from such claims, and (ii) the Liquidators shall pay to the Trustee fifteen percent (15%) of the Net Recoveries from Service Provider Claims in excess of Three Hundred Million Dollars

($300,000,000) in the aggregate, and the Liquidators shall retain the remaining eighty-five percent (85%) of such Net Recoveries. The Liquidators shall retain one-hundred percent (100%) of the Net Recoveries they receive from the Service Provider Claims once the Non-Forbearance Amount of the Sentry Judgment, the Sigma Judgment and the Lambda Judgment are satisfied in full. The Liquidators shall prosecute the Service Provider Claims at their sole expense, and the Trustee shall not, and shall have no right to, intervene in or otherwise interfere with the Liquidators' prosecution of such actions.

7. Designated Subsequent Transferee Claim Recoveries. The Trustee in his sole discretion has commenced certain actions and may choose to commence additional actions against individuals and entities identified on Exhibit H hereto (the "Designated Subsequent Transferees" and "Designated Subsequent Transferee Claims") to recover transfers from BLMIS to Fairfield Sentry, and subsequently transferred to other individuals and/or entities (the "Subsequent Transferee Claims"). Said Exhibit H, attached and incorporated by reference hereto, is not, and is not intended to be, an exhaustive or inclusive list of all Subsequent Transferee Claims commenced, or to be commenced by the Trustee; provided, however, and except as otherwise provided in the last sentence of this Paragraph 7, that only the Subsequent Transferee Claims against the Designated Subsequent Transferees identified on Exhibit H shall be treated as provided in this Paragraph 7. The Trustee in his discretion has commenced and/or may commence Subsequent Transferee Claims against individuals and/or entities that are not Designated Subsequent Transferees to recover transfers from BLMIS to Fairfield Sentry, Fairfield Sigma, or Fairfield Lambda and subsequently transferred to such individuals and/or entities ("Non-Designated Subsequent Transferees" and "Non-Designated Subsequent Transferee Claims"), upon the Trustee's determination, in the exercise of his sole discretion, that his statutory duties require him to commence such Non-Designated Subsequent Transferee Claims; provided, however, that, with respect to Non-Designated Subsequent Transferee Claims not yet commenced, the Trustee shall provide reasonable notice to, and reasonably confer in good faith with, the Liquidators prior to commencing a Non-Designated Subsequent Transferee Claim; and provided, further, that the Trustee shall not commence a Non-Designated Subsequent Transferee Claim against Fairfield Sigma or Fairfield Lambda. Once the Trustee commences a Non-Designated Subsequent Transferee Claim, the case shall become a Subsequent Transferee Claim for purposes of this Agreement which shall, except as otherwise provided in the last sentence of this Paragraph 7, be treated as provided in either Paragraphs 8 or 9 of this Agreement, as applicable. The Trustee shall pay to the Liquidators forty percent (40%) of Subsequent Transferee Recoveries (as defined below) in connection with Designated Subsequent Transferee Claims, and the Trustee shall retain all other Subsequent Transferee Recoveries from such Designated Subsequent Transferee Claims. The Trustee shall prosecute all Subsequent Transferee Claims solely at his expense.

Pursuant to the cooperation and joint interest provisions set forth and contemplated by Paragraph 14 below, the Trustee and Liquidators shall be in regular communication about the commencement of any Subsequent Transferee Claims. As soon as is reasonably practicable following the Effective Date (defined below), the Liquidators shall take reasonable steps to enable the Trustee to prosecute Subsequent Transferee Claims against the Designated Subsequent Transferees that are subject to an existing action commenced by the Liquidators to the extent the parties mutually agree that any action by the Liquidators is required.

For purposes of this Agreement generally and Paragraphs 7, 8 and 9 herein specifically, the term "Subsequent Transferee Recoveries" shall mean the gross consideration that is paid to the Trustee pursuant to a settlement, judgment or other resolution of a Subsequent Transferee Claim; provided that if, in a particular action, the Trustee asserts a Subsequent Transferee Claim against an individual or entity and in the same action seeks to recover transfers made to or for the benefit of the defendant from one or more entities other than any of the Fairfield Funds, and the entire action is resolved without a judicially determined allocation of the total recoveries therein, the Subsequent Transferee Recoveries shall be deemed to be the gross amount of the Trustee's recoveries from such action, multiplied by a fraction, the numerator of which shall be the amounts claimed by the Trustee on account of transfers made to or for the benefit of the defendant from the Fairfield Funds, and the denominator of which shall be the total amount claimed by the Trustee in such action; provided, further, that any allocation of recoveries set forth in a settlement agreement resolving a Subsequent Transferee Claim shall have no effect on the amount of Subsequent Transferee Recoveries under this Agreement unless the Liquidators consent to such allocation in writing, which consent shall not be unreasonably withheld. To the extent that the Trustee commences a Subsequent Transferee Claim against a Non-Designated Subsequent Transferee and that action is neither a Common Defendant Claim as provided in and by Paragraph 8 below nor a Separately Treated Common Defendant Claim as provided in and by Paragraph 9 below, this Paragraph 7 shall apply to any such action.

8. Common Defendant Claim Recoveries. The Parties expressly acknowledge that the Liquidators have commenced or will commence certain Redeemer Actions, and the Trustee has commenced or will commence certain Subsequent Transferee Claims, against the same individuals or entities ("Common Defendants"), and the Trustee and the Liquidators expressly agree that a Redeemer Action and a Subsequent Transferee Claim may be prosecuted against a Common Defendant unless the Parties mutually determine in writing, in good faith, that only the Liquidators' Redeemer Action or only the Trustee's Subsequent Transferee Claim should proceed. Notwithstanding Paragraphs 4 and 7 above, and except as otherwise provided in this Paragraph 8 and in Paragraph 9 below, in the event that the Liquidators have commenced and are actively prosecuting a Redeemer Action and the Trustee has commenced and is actively prosecuting a Subsequent Transferee Claim against one or more Common Defendants ("Common Defendant Claims"), any and all Net Recoveries paid to the Liquidators and Subsequent Transferee Recoveries paid to the Trustee by or on behalf of Common Defendants in connection with any Common Defendant Claims (collectively, "Common Defendant Recoveries") shall be deemed to be pooled and aggregated by the Parties with respect to each such Common Defendant and allocated among the Parties as follows:

(i) The Liquidators shall be paid or retain (as applicable) Eighty-Five Percent (85%) of the Fictitious Profit Component (as defined below), if any, and the Trustee shall be paid or retain (as applicable) Fifteen Percent (15%) of the Fictitious Profit Component, if any;

(ii) The Liquidators shall be paid or retain (as applicable) Sixty-Five Percent (65%) of the BVI Vulnerability Period Component (as defined below), if any, and the Trustee shall be paid or retain (as applicable) Thirty-Five Percent (35%) of the BVI Vulnerability Period Component, if any; and

(iii) The Liquidators shall be paid or retain (as applicable) Forty Percent (40%) of the Other Principal Component (as defined below), if any, and the Trustee shall be paid or retain (as applicable) Sixty Percent (60%) of the Other Principal Component, if any.

Notwithstanding the foregoing, the allocation set forth in this Paragraph 8 shall not apply to (i) Subsequent Transferee Recoveries from the Designated Subsequent Transferees identified on Exhibit H hereto, and such Subsequent Transferee Recoveries shall, in all such Designated Subsequent Transferee Claims, be allocated among the Parties pursuant to Paragraph 7 above, or (ii) Non-Designated Subsequent Transferees identified on Exhibit I hereto, and such Subsequent Transferee Recoveries shall, in all such Non-Designated Subsequent Transferee Claims, be allocated among the Parties pursuant to Paragraph 9 below.

For purposes of this Agreement, (x) the term "Fictitious Profit Component" shall mean and include the first Common Defendant Recoveries up to and including the total amounts claimed by the Liquidators in the applicable Redeemer Action on account of payments made to or for the benefit of the applicable Common Defendant from each Fairfield Fund in excess of the amounts such Common Defendant invested in each such Fairfield Fund (directly or indirectly) as determined according to the Fairfield Funds' books and records (if and to the extent there is such excess); (y) the term "BVI Vulnerability Period Redemptions" shall mean the amounts claimed by the Liquidators in the applicable Redeemer Action on account of payments made to or for the benefit of each Common Defendant in connection with the redemption of shares in the Fairfield Funds (i) from and including April 21, 2007 and thereafter, in the case of redemption of shares in Fairfield Sentry, (ii) from and including April 23, 2007 and thereafter, in the case of redemption of shares in Fairfield Sigma and (iii) from and including February 27, 2007 and thereafter, in the case of redemption of shares in Fairfield Lambda, in all cases, less the Fictitious Profit Component for such Common Defendant, if any; and (z) the term "Other Principal Redemptions" shall mean the total amounts claimed by the Trustee in the applicable Subsequent Transferee Claim on account of payments made to or for the benefit of each Common Defendant in connection with the redemption of shares in the Fairfield Funds, less the BVI Vulnerability Period Redemptions, if any; and (xx) the term "BVI Vulnerability Period Pro Rata Share" shall mean a fraction, the numerator of which is the BVI Vulnerability Period Redemptions, and the denominator of which is the BVI Vulnerability Period Redemptions plus the Other Principal Redemptions; (yy) the term "BVI Vulnerability Period Component" shall mean the amount of the Common Defendant Recoveries less the Fictitious Profit Component, if any, multiplied by the BVI Vulnerability Period Pro Rata Share; and (zz) the term "Other Principal Component" shall mean the amount of the Common Defendant Recoveries less (i) the Fictitious Profit Component, if any, and (ii) the BVI Vulnerability Period Component, if any.

Notwithstanding the foregoing: (a) in the event that all of the Liquidators' claims against a Common Defendant asserted pursuant to the British Virgin Islands Insolvency Act 2003 are dismissed with prejudice prior to the payment of the applicable Common Defendant Recoveries to the Trustee and/or the Liquidators (as applicable), then (i) the BVI Vulnerability Period Component as to such Common Defendant Recoveries shall be zero and (ii) the Other Principal Component as to such Common Defendant Recoveries shall be the amount of Common Defendant Recoveries less the Fictitious Profit Component, if any; (b) in the event that a Subsequent Transferee Claim against a Common Defendant is dismissed with prejudice prior to

the resolution of a Redeemer Action against such Common Defendant, then the Liquidators' Net Recoveries from such Redeemer Action shall not constitute Common Defendant Recoveries, and such Net Recoveries shall be allocated among the Parties in accordance with Paragraph 4; and (c) in the event that the Fictitious Profit Component, BVI Vulnerability Period Component, and/or Other Principal Component of any Common Defendant Recoveries are determined pursuant to a settlement agreement mutually agreed to in writing by the Parties hereto, judgment, jury verdict form, jury interrogatories or other judicial adjudication with respect to the applicable Common Defendant Claim, such determination shall control and be used for purposes of determining the allocation of such Common Defendant Recoveries pursuant to this Paragraph 8.

9. Separately Treated Common Defendant Claim Recoveries. Notwithstanding Paragraph 8 above, unallocated Common Defendant Recoveries from Common Defendant Claims against the Non-Designated Subsequent Transferees identified on Exhibit I hereto ("Separately Treated Common Defendants" and "Separately Treated Common Defendant Claims") shall be deemed to be pooled and aggregated by the Parties with respect to each such Separately Treated Common Defendant and allocated among the Parties as follows:

(i) The Liquidators shall be paid or retain (as applicable) Eighty-Five Percent (85%) of the Pro Rata Fictitious Profit Component (as defined below), if any, and the Trustee shall be paid or retain (as applicable) Fifteen Percent (15%) of the Pro Rata Fictitious Profit Component, if any; and

(ii) The Liquidators shall be paid or retain (as applicable) Forty Percent (40%) of the Pro Rata Principal Component (as defined below), if any, and the Trustee shall be paid or retain (as applicable) Sixty Percent (60%) of the Pro Rata Principal Component, if any.

For purposes of this Agreement, (x) the term "Pro Rata Fictitious Profit Component" shall mean the applicable Common Defendant Recoveries multiplied by a fraction, the numerator of which shall be the total amounts claimed by the Liquidators in the applicable Redeemer Action on account of payments made to or for the benefit of the applicable Common Defendant from each Fairfield Fund in excess of the amounts such Common Defendant invested in each such Fairfield Fund (directly or indirectly) as determined according to the Fairfield Funds' books and records (if and to the extent there is such excess), and the denominator of which shall be the total amounts claimed by the Trustee in the applicable Subsequent Transferee Claim on account of payments made to or for the benefit of such Common Defendant in connection with the redemption of shares in the Fairfield Funds; and (y) the term "Pro Rata Principal Component" shall mean the applicable Common Defendant Recoveries less the Pro Rata Fictitious Profit Component. Notwithstanding the foregoing, in the event that the Pro Rata Fictitious Profit Component and/or Pro Rata Principal Component of any Common Defendant Recoveries are determined pursuant to a settlement agreement mutually agreed to in writing by the Parties hereto, judgment, jury verdict form, jury interrogatories or other judicial adjudication with respect to the applicable Separately Treated Common Defendant Claim, such determination shall control and be used for purposes of determining the allocation of such Common Defendant Recoveries with respect to Separately Treated Common Defendant Claims pursuant to this Paragraph 9.

10. JPMC Claim Recoveries. The Trustee shall pay to the Liquidators Thirty-Three and Two-Tenths percent (33.2%) of the first gross consideration the Trustee receives from any of the Trustee's and/or BLMIS Estate's claims or causes of action against JPMorgan Chase, N.A. and/or any of its affiliates in an adversary proceeding entitled, *Picard v. JP Morgan Chase & Co.*, which claims were initially filed in the Bankruptcy Court and, following decision on a motion to withdraw the reference, are currently pending in the United States District Court for the Southern District of New York, Case No. 11-cv-00913 (the "JPMC Claims"), until the Liquidators are paid Eighty Eight Million Dollars ($88,000,000) from such consideration. The Trustee shall prosecute the JPMC Claims solely at his expense, and the Liquidators shall not, and shall have no right to, intervene in or otherwise interfere with the Trustee's prosecution of the JPMC Claims, except if, and only to extent that, the Trustee expressly agrees in writing otherwise. The Liquidators shall have no right to any consideration received by the Trustee in connection with the JPMC Claims once the Liquidators are paid Eighty Eight Million Dollars ($88,000,000) in accordance with the terms hereof; provided, however, that each dollar the Trustee recovers from the JPMC Claims in excess of $88,000,000 shall be credited to the Judgments pursuant to Paragraph 11 below, until the Trustee recovers Two-Hundred Sixty-Five Million Dollars ($265,000,000) in the aggregate from such claims. Within five (5) Business Days after the Effective Date (defined below), the Liquidators shall dismiss with prejudice all claims and causes of action they have asserted against JPMorgan Bank, N.A., JPMorgan (Suisse) S.A., JPMorgan Securities Limited and JPMorgan Trust Company (Cayman).

11. Application of Recoveries to the Judgments. Any and all recoveries of monies from the Redeemer Actions, Management Claims, Service Provider Claims, Designated Subsequent Transferee Claims, Non-Designated Subsequent Transferee Claims, Common Defendant Claims, Separately Treated Common Defendant Claims and the JPMC Claims (with respect to the JPMC Claims, as provided in Paragraph 10 above) (collectively, the "Sharing Claims") that are paid, turned over or credited to, or otherwise retained or received by, the Trustee hereunder ("Judgment Reducing Recoveries") shall reduce, on a dollar-for-dollar basis, each of (i) the outstanding amount to be paid by Fairfield Sentry towards satisfying the Non-Forbearance Amount of the Sentry Judgment, and (ii) the outstanding amount to be paid by either (x) Fairfield Sigma towards satisfying the Sigma Judgment or (y) Fairfield Lambda towards satisfying the Lambda Judgment, to be determined by the Liquidators in their sole discretion. For the sake of clarity, each dollar of Judgment Reducing Recoveries shall reduce the outstanding amounts owing on the Non-Forbearance Amount of the Sentry Judgment by one dollar and, at the same time and at the Liquidators' discretion, either the Sigma Judgment or the Lambda Judgment, by one dollar.

12. Allocation of Shared Recoveries. On the date that is three (3) months from the Effective Date of this Agreement, and every three (3) months thereafter (each such date, a "Reconciliation Date"), the Trustee and the Liquidators shall jointly and in good faith determine and reconcile the consideration (cash or otherwise) that is payable to each from the Sharing Claims. If the Trustee is entitled to payment from the Liquidators in connection with the Sharing Claims, the Liquidators shall make a cash payment to the Trustee, to an account identified by the Trustee, of the amount owed to the Trustee, plus any interest that has been earned on and is specifically allocable to such amount, within five (5) Business Days after the applicable Reconciliation Date. If the Liquidators are entitled to payment from the Trustee in connection with the Sharing Claims, the Trustee shall make a cash payment to the Liquidators, to

one or more of the Fairfield BVI Accounts as identified by the Liquidators, of the amount owed to the Liquidators, plus any interest that has been earned on and is specifically allocable to such amount, within five (5) Business Days after the applicable Reconciliation Date. Any amounts recovered by a Party that are subject to payment, turnover or allocation to another Party hereunder shall be held in trust for the benefit of such Party. If a dispute arises between the Parties as to the amounts payable to any Party from recoveries on the Sharing Claims, and such dispute is not resolved within thirty (30) days following a Reconciliation Date, the Parties consent to the jurisdiction of the Bankruptcy Court to resolve such dispute. For the avoidance of doubt, the Trustee shall not be entitled to share in any recoveries from claims or causes of action prosecuted by the Liquidators, and the Liquidators shall not be entitled to share in any recoveries from claims or causes of action prosecuted by the Trustee, except for recoveries from the Sharing Claims.

13. Allowance of a Fairfield Sentry Customer Claim. Upon the occurrence of the making of the Twenty Four Million Dollar ($24,000,000) partial payment of the Settlement Payment as set forth in Paragraph 2 above, and notwithstanding Section 502(d) of the Bankruptcy Code, the Trustee shall allow a Fairfield Sentry customer claim pursuant to 15 U.S.C. § 78*lll* (11) equal in priority to other allowed customer claims against the BLMIS Estate (the "Allowed Claim"), in the initial amount of Seventy Eight Million Dollars ($78,000,000). Upon the payment of the balance of the Settlement Payment as set forth in Paragraph 2 above, the Trustee shall increase the amount of the Allowed Claim by the amount of One Hundred Fifty Two Million Dollars ($152,000,000) resulting in an Allowed Claim in a final amount of Two Hundred Thirty Million Dollars ($230,000,000) (the "Final Amount"). The amount of the Allowed Claim represents Nineteen and Two-Tenths percent (19.2%) (the "Settlement Percentage") of the Sentry SIPA Net Equity Claim. The Liquidators shall receive the full benefit of any SIPC customer advances under Section 9 of SIPA. The payment of any sums to the Trustee by the Liquidators and/or the Fairfield Funds or via recoveries of monies from the Sharing Claims shall not serve to increase the Allowed Claim. Notwithstanding any other language in this Agreement, in the event that, as a result of a final, non-appealable judicial determination and order of the Net Equity Method issue, allowed customer claims against BLMIS are ultimately calculated based on the amounts reflected on a customer's BLMIS account statement for the period ending November 30, 2008 (the "Last Statement Method"), or to include other amounts beyond the Net Equity Method (including, for example, if customers are entitled to receive interest on their deposits with BLMIS) (together with the Last Statement Method, the "Modified Net Equity Method"), the amount of the Allowed Claim shall be calculated in the same manner as other allowed customer claims are calculated pursuant to the Modified Net Equity Method, provided that, in such event, the allowed amount of the Allowed Claim shall equal the product of multiplying the Settlement Percentage of nineteen and two-tenths percent (.192) times the amount of the Sentry SIPA Claim as calculated pursuant to the Modified Net Equity Method (the "Adjusted Allowed Claim"). The Trustee shall not seek to subordinate, under principles of equitable subordination or any other basis (including, but not limited to, pursuant to Section 510(c) of the Bankruptcy Code), the Allowed Claim or the Adjusted Allowed Claim (as applicable) below allowed customer claims in the SIPA Proceeding. For the avoidance of doubt, in the event that valid customer claims against BLMIS are ultimately calculated using the Last Statement Method without any other adjustments, the Adjusted Allowed Claim would total One Billion Two Hundred Six Million Five Hundred Eighty Nine Thousand Seven Hundred Forty Three Dollars ($1,206,589,743), which amount is calculated by

multiplying the Last Statement Amount of Six Billion Two Hundred Eighty Four Million Three Hundred Twenty One Thousand Five Hundred Eighty One Dollars ($6,284,321,581) times Nineteen and Two Tenths Percent (.192). The Bankruptcy Court's order approving this Agreement shall provide for the allowance of the initial amount of the Allowed Claim and the increase of the Allowed Claim as provided in this Paragraph 13.

14. Cooperation in Pursuing and Resolving the Sharing Claims. Through a separate joint interest agreement, to be entered into by the Parties as soon as reasonably practicable following the Effective Date, the Trustee and the Liquidators each agree to provide reasonable access to the other's documents, data, and other information relating to, or beneficial to the pursuit of, the Sharing Claims. The Trustee and the Liquidators each agree to provide reasonable cooperation and assistance to the other Party in connection with the prosecution of the Sharing Claims, provide the other with a reasonable opportunity to consider the terms for resolving any Sharing Claims and confer in good faith regarding such terms; provided, however, that the Party authorized under this Agreement with the right and/or responsibility of prosecuting a Sharing Claim (such Party, the "Prosecuting Party") shall not be required to obtain the consent of the other Party to resolve or settle the Prosecution Party's claim. Within five (5) Business Days following the settlement or other resolution of a Sharing Claim, the Prosecuting Party shall (i) notify the other Party of the amounts, if any, paid or to be paid to the Prosecuting Party in connection therewith and (ii) provide the other Party with a copy of the applicable settlement agreement, if any, subject to compliance with any applicable confidentiality obligations. If the Liquidators request that the Trustee, on behalf of himself, BLMIS and/or its estate, release claims against a person or entity in connection with the settlement of any of the Sharing Claims prosecuted by the Liquidators against such person or entity, the Trustee agrees that he shall not unreasonably refuse to provide such release. If the Trustee requests that the Liquidators, on behalf of themselves, any of the Fairfield Funds and/or their estates, release claims against a person or entity in connection with the settlement of any of the Sharing Claims prosecuted by the Trustee against such person or entity, the Liquidators agree that they shall not unreasonably refuse to provide such release. The Trustee and the Liquidators agree and stipulate that a joint interest exists between them with respect to the Sharing Claims. The Trustee and the Liquidators further agree and stipulate that neither this Agreement nor any action taken thereunder constitutes the waiver of any privilege or immunity of the Trustee or the Liquidators or their respective counsel.

15. Release by the Trustee. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Trustee, on behalf of himself, BLMIS and its estate hereby releases, acquits and forever discharges each of the Fairfield Funds, the Liquidators, individually and in their capacities as Liquidators, and all of the Liquidators' agents, representatives, attorneys, employees and professionals from any and all Trustee Released Claims (as defined below). The Trustee and the Liquidators expressly agree this release shall not affect or encompass any claims by the Trustee against any third party, including but not limited to, the Fairfield Funds' respective former officers, directors, custodians, administrators, accountants, auditors, investment advisors and management companies, and the Fairfield Funds' former and present investors or shareholders. For purposes of this Agreement, the term "Trustee Released Claims" shall mean any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, damages,

judgments, and claims whatsoever, asserted or unasserted, known or unknown, now existing or arising in the future (including, without limitation, the claims asserted against the Fairfield Funds in the Adversary Proceeding), except for any and all claims and rights (and the enforcement thereof) of the Trustee and obligations of the Liquidators arising under this Agreement.

16. Release by the Liquidators and the Fairfield Funds. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Liquidators, on behalf of themselves, each of the Fairfield Funds and their respective estates, hereby release, acquit and forever discharge the Trustee and all of the Trustee's agents, representatives, attorneys, employees and professionals from any and all Liquidator Released Claims (as defined below). The Trustee and the Liquidators expressly agree this release shall not affect or encompass (i) any claims by the Liquidators or any of the Fairfield Funds against any third party, including, but not limited to, the Fairfield Funds' investors and shareholders and former directors, auditors, managers, investment advisors, administrators, custodians and other service providers, (ii) any claims by any creditors or shareholders of, or investors in, any the Fairfield Funds against BLMIS or the BLMIS Estate, or (iii) the status or resolution of the Sigma SIPA Claim or the Lambda SIPA Claim, which shall be determined in a manner consistent with the customer claims asserted by other indirect investors in BLMIS. For purposes of this Agreement, (i) the term "Liquidator Released Claims" shall mean any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, damages, judgments, and claims whatsoever, asserted or unasserted, known or unknown, now existing or arising in the future, except for the Fairfield SIPA Claims, the Allowed Claim, the Adjusted Allowed Claim (if applicable), and/or any and all claims and rights (and the enforcement thereof) of the Fairfield Funds and obligations of the Trustee arising under this Agreement; and (ii) the term "Released Claims" shall mean, collectively, the Trustee Released Claims and the Liquidator Released Claims.

17. Unknown Claims. Unknown Claims shall mean any Released Claim, as defined herein, that the Trustee and/or the Liquidators do not know or suspect to exist in their favor at the time of giving the release in this Agreement that if known by them, might have affected their settlement and release in this Agreement. With respect to any and all Released Claims in Paragraphs 15 and 16 of this Agreement, the Trustee and the Liquidators shall expressly waive or be deemed to have waived, 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The Trustee and the Liquidators expressly waive, and shall be deemed to have waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to California Civil Code section 1542. The Trustee and/or the Liquidators may hereafter

discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but the Trustee and the Liquidators shall expressly have and shall be deemed to have fully, finally and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence or such different or additional facts. Each of the Trustee and the Liquidators acknowledge and shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

18. Bankruptcy Court and BVI Court Approval; Effective Date; Termination. This Agreement is subject to, and shall become effective and binding on the Parties upon, and only upon, the later of both, (i) fourteen days following the Bankruptcy Court's entry of an order approving this Agreement in the SIPA Proceeding that is not subject to a timely stay by any court of competent jurisdiction and (ii) fourteen days following the BVI Court's entry of an order approving this Agreement that is not subject to a timely stay by any court of competent jurisdiction (the date when this Agreement becomes effective and binding on the Parties, the "Effective Date"). The form of the approval order in the SIPA Proceeding shall be subject to the Liquidators' reasonable approval. The Trustee shall use his reasonable efforts to obtain approval of the Agreement in the SIPA Proceeding as promptly as practicable after the date of this Agreement. The form of the approval order in the BVI Proceedings shall be subject to the Trustee's reasonable approval. The Liquidators shall use their reasonable efforts to obtain approval of the Agreement in the BVI Proceedings as promptly as practicable after the date of this Agreement. If this Agreement has not become effective as provided in this Paragraph 18 within Three Hundred Sixty (360) days after the date of this Agreement (or within such additional time as mutually agreed upon by the Parties), then (a) this Agreement (other than this Paragraph 18) shall terminate and be void, (b) all of the statements, concessions, consents and agreements contained in the Agreement (other than this Paragraph 18) shall be void; and (c) none of the Trustee, the Liquidators, or any of the Fairfield Funds may use or rely on any such statements, concessions, consents or agreements in any public statement or litigation involving the SIPA Proceeding, the BVI Proceedings or the Chapter 15 Proceedings, any case or proceeding relating to the SIPA Proceeding, the BVI Proceedings or the Chapter 15 Proceedings or any case or proceeding relating to any of the Fairfield Funds, BLMIS or Madoff.

19. Use of Complaint. The Parties agree and acknowledge that the Liquidators, on behalf of themselves and each of the Fairfield Funds, deny any liability to the BLMIS Estate, do not admit to any of the allegations in the complaint or the amended complaint filed in the Adversary Proceeding, and none of the allegations in such complaints shall be binding on or admissible against the Liquidators or any of the Fairfield Funds in any proceeding.

20. Closing. There shall be a closing ("Closing") on the Effective Date of this Agreement. On the date when the Settlement Payment is paid in full pursuant to Paragraph 2 hereof, whether on the date of the Closing or some later date, (a) the Trustee shall pay Fairfield Sentry $500,000 from SIPC advances under Section 9 of SIPA to one or more of the Fairfield BVI Accounts as identified by the Liquidators, which amount may, prior to the payment in full

of the Settlement Payment, and with the mutual written consent of the Parties, such consent not to be reasonably withheld, be paid by setoff against the Settlement Payment; (b) the amount of the Allowed Claim shall be increased to the Final Amount without any further action by any of the Parties (subject to the adjustment of such amount as provided for in Paragraph 13); (c) the releases contained in Paragraphs 15 and 17 in favor of the Liquidators and the Fairfield Funds shall become effective without any further action by any of the Parties; and (d) the Escrow Agreements referenced in Paragraph 3 of this Agreement shall terminate without any further action by any of the Parties.

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

22. Further Assurances. The Trustee and the Liquidators shall execute and deliver any document or instrument reasonably requested by either of them after the date of this Agreement to effectuate the intent of this Agreement.

23. Entire Agreement. This 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. No admission. This Agreement and all negotiations, statements, and proceedings in connection therewith are not, will not be argued to be, and will not be deemed to be a presumption, concession or admission by any Party of any fault, liability or wrongdoing whatsoever. This Agreement and any matter relating thereto may not be offered or received in evidence or otherwise referred to in any civil, criminal, or administrative action or proceeding as evidence of any wrongdoing or liability. Notwithstanding the foregoing, the Judgments may be used by the Trustee to prosecute a Subsequent Transferee Claim, and then for the purpose of establishing the avoidance of the Withdrawals.

25. Amendments, Waiver. This Agreement may not be terminated, waived, amended or modified in any way except in a writing signed by all the Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

26. Assignability. No Party hereto may assign his or her rights under this Agreement to a third party without the prior written consent of each of the other Parties hereto.

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

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

29. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York (without regard to its conflict of laws provisions); provided, however, that the BVI Court's approval of this Agreement pursuant to Paragraph 18 hereof shall be in accordance with the law of the BVI.

30. Exclusive Jurisdiction. The Parties agree that the Bankruptcy Court shall have exclusive jurisdiction over any action to enforce this Agreement, or any provision thereof, and the Parties hereby consent to and submit to the jurisdiction of the Bankruptcy Court for any such action. The Parties agree that no Party shall bring, institute, prosecute or maintain any action to enforce this Agreement, or any provision thereof, in any court other than the Bankruptcy Court except for the limited purpose of enforcing a final award or judgment entered by the BVI Court or Bankruptcy Court in connection with this Agreement.

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

32. Recitals. Any facts set forth in any sentence in the Background section hereto preceded by the phrase "according to the Trustee" are those provided by the Trustee, and none of such facts shall be binding on or admissible against the Liquidators or any of the Fairfield Funds in any proceeding.

33. 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 shall constitute one and the same document. The Parties may evidence their execution of this Agreement by delivery to the other Parties of scanned or faxed copies of their signatures, with the same effect as the delivery of an original signature.

34. Notices. Any notices under this Agreement shall be in writing, shall be effective when received and may be delivered only by hand, by overnight delivery service, by fax or by electronic transmission to:

If to the Trustee, c/o:

Mark Kornfeld, Esq.
Baker & Hostetler LLP
45 Rockefeller Center, Suite 1100
New York, NY 10111
F: (212) 589-4201
mkornfeld@bakerlaw.com

If to the Liquidators, c/o:

William Hare
Forbes Hare
Palm Grove House
P.O. Box 4649
Tortola VG 1110
British Virgin Islands
F: (284) 494-1316
whare@forbeshare.com

With copies to:

Kenneth M. Krys and Joanna Lau
c/o KRyS Global
Commerce House, 2nd Floor
P.O. Box 930
Tortola VG 1110
British Virgin Islands
F: (284) 494-7169
kenneth.krys@krys-global.com
joanna.lau@krys-global.com

-and-

David J. Molton, Esq.
Brown Rudnick LLP
Seven Times Square
New York, NY 10036
F: (212) 938-2822
dmolton@brownrudnick.com

[*Signature page follows*]

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

Irving H. Picard, Trustee

Kenneth Krys, as Joint Liquidator for and on behalf of Fairfield Sentry Limited, Fairfield Sigma Limited and Fairfield Lambda Limited

Joanna Lau, as Joint Liquidator for and on behalf of Fairfield Sentry Limited, Fairfield Sigma Limited and Fairfield Lambda Limited

EXHIBIT 3

EXHIBIT A

AMENDED AGREEMENT

This amended agreement, dated as of July 7, 2011 ("Agreement"), amends, restates and supercedes the agreement dated as of May 17, 2011 made by and between Irving H. Picard, in his capacity as Trustee (the "Trustee") for the liquidation under the Securities Investor Protection Act of 1970, as amended ("SIPA"), of Bernard L. Madoff Investment Securities LLC, and the substantively consolidated Chapter 7 case pending before the United States Bankruptcy Court for the Southern District of New York of Bernard L. Madoff ("Madoff"), on the one hand, and Greenwich Sentry, L.P. ("Greenwich Sentry") debtor and debtor-in-possession, on the other hand (each of the Trustee and Greenwich Sentry, a "Party" and, collectively, the "Parties").

BACKGROUND

A. Bernard L. Madoff Investment Securities LLC ("BLMIS") and its predecessor 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. On December 12, 2008, the District Court entered an order which, among other things, appointed Lee S. Richards, Esq. as receiver (the "Receiver") for the assets of BLMIS (No. 08-CV-10791 (LSS)).

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

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

E. On December 15, 2008, pursuant to section 5(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with the application of SIPC. Thereafter, SIPC filed an application in the District Court under section 5(a)(3) of SIPA alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA. On December 15, 2008, the District Court granted the SIPC application and entered an order under SIPA, which, in pertinent part, appointed Trustee as the trustee for the liquidation of the business of BLMIS under section 5(b)(3) of SIPA, removed the Receiver as the receiver for BLMIS, and removed the case to the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") under section 5(b)(4) of SIPA, where it is currently pending as Case No. 08-01789 (BRL) (the "SIPA Proceeding"). The Trustee is duly qualified to serve and act on behalf of the estate of BLMIS (the "BLMIS Estate").

F. Greenwich Sentry was a customer of BLMIS and maintained Customer Account 1G0092 with BLMIS (the "Greenwich Sentry Account") commencing in or about November, 1992. The Greenwich Sentry Account is listed as Attachment A to this Agreement. Between the opening of the account and the Filing Date, on an overall basis, Greenwich Sentry deposited into the Greenwich Sentry Account a total of One Hundred Forty Million Four Hundred Thirty Nine Thousand One Hundred Forty Six Dollars ($140,439,146) in excess of the amount of withdrawals that Greenwich Sentry made from the account (the "Greenwich Sentry Net Equity Claim"). Greenwich Sentry withdrew Twenty Three Million Dollars ($23,000,000) from the Greenwich Sentry Account within ninety days before the Filing Date ("90 Day Withdrawals") and an additional One Hundred Eighty Three Million Thirty Eight Thousand Six Hundred Fifty Four Dollars ($183,038,654) from the Greenwich Sentry Account during the period more than 90 days, but less than six years, before the Filing Date (the "Pre 90-Day Withdrawals" and, together with the 90 Day Withdrawals, collectively, the "Withdrawals").

G. Greenwich Sentry filed a customer claim in the SIPA Proceeding (assigned claim number 7897) alleging aggregate losses from the Greenwich Sentry Accounts of Three Hundred Fourteen Million Fifty Three Thousand Nine Hundred Twenty Three Dollars ($314,053,923) (the "Greenwich Sentry SIPA Claim"). The Greenwich Sentry SIPA Claim, including the relevant BLMIS Account Number, is included as Attachment B to this Agreement. The Greenwich Sentry SIPA Claim, as filed, asserts that Greenwich Sentry is entitled to the allowance and distribution of a customer claim in the SIPA Proceeding in an amount reflected on the Greenwich Sentry BLMIS account statement for the period ending November 30, 2008.

H. The Trustee has disputed that Greenwich Sentry is entitled to allowance and distribution of a customer claim in the amount reflected on its November 30, 2008 BLMIS account statement. On March 1, 2010 the Honorable Burton R. Lifland of the Bankruptcy Court issued an opinion applying the Trustee's "net equity" calculation of customer claims as the difference between investment into BLMIS and amounts withdrawn (the "Net Equity Method"). On March 8, 2010 Judge Lifland entered an order implementing the decision and certifying it for immediate appeal for the United States Court of Appeals for the Second Circuit.

I. The Trustee has brought an adversary proceeding against Greenwich Sentry and other defendants in the Bankruptcy Court under the caption *Picard v. Fairfield Sentry Ltd. et al.*, Adv. Pro. No. 09-01239 (BRL) (the "Adversary Proceeding"). In the Adversary Proceeding, the Trustee asserts that Greenwich Sentry is liable to the BLMIS Estate under 11 U.S.C. §§ 544, 547, 548, 550, SIPA, and the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 270-281) for the Withdrawals made by it from BLMIS ("the Avoiding Power Claims"); specifically, the Trustee seeks, inter alia, recovery from Greenwich Sentry in an aggregate amount totaling Two Hundred Six Million Thirty Eight Thousand Six Hundred Fifty Four Dollars ($206,038,654) ("Trustee's Maximum Recovery"). The Trustee has also asserted claims for turnover and accounting of the Withdrawals, and for disallowance of the Greenwich Sentry SIPA Claim. On November 19, 2010, Greenwich Sentry filed a voluntary petition for relief under the Bankruptcy Code in the Bankruptcy Court (the "Greenwich Sentry Case") and has continued in the possession of its property as a debtor and debtor in possession.

J. Greenwich Sentry has disputed any liability to the BLMIS Estate in connection with the Adversary Proceeding and the Avoiding Power Claims alleged therein. Nevertheless,

Greenwich Sentry recognizes that there is litigation risk associated with the Avoiding Power Claims and has decided to settle with the Trustee. While the Trustee believes he would prevail at trial, he also recognizes there is litigation and/or collection risk associated with his Avoiding Power Claims as against Greenwich Sentry.

K. The Trustee, on the one hand, and Greenwich Sentry, on the other hand, desire to settle their disputes about the matters described above without the expense, delay and uncertainty of litigation, and to provide a framework for the allowance and satisfaction of the Trustee's claims against Greenwich Sentry and Greenwich Sentry's customer claim against the BLMIS Estate.

AGREEMENT

1. Judgment Regarding the Trustee's Avoiding Power Claims. This Agreement provides for the entry of a judgment against Greenwich Sentry in the aggregate amount of Two Hundred Six Million Thirty Eight Thousand Six Hundred Fifty Four Dollars ($206,038,654), representing the settled amount of the Trustee's Avoiding Power Claims in the form attached hereto as Attachment C (the "Judgment"). As set forth in the Judgment, the Withdrawals are deemed both to have been avoidable and avoided by the Trustee. The Judgment will be entered by the Bankruptcy Court upon the Effective Date (as defined in paragraph 15 below). The Trustee shall hold an allowed general unsecured claim in the Greenwich Sentry Case in the amount of Two Hundred Six Million Thirty Eight Thousand Six Hundred Fifty Four Dollars ($206,038,654) (the "Trustee's Allowed Claim"). The Plan (as defined in paragraph 17 below) shall impair and provide for satisfaction of the Trustee's Allowed Claim against Greenwich Sentry on the terms set forth in this Agreement.

2. Forbearance and Non-Forbearance Amounts. The Trustee shall receive under the Plan, in full settlement and satisfaction of the Trustee's Allowed Claim as against Greenwich Sentry, the property described in paragraphs 3, 4, 5 and 6 below. For the avoidance of doubt, it is expressly agreed and understood that the property received by the Trustee under the Plan does not equal the full amount of the Judgment or the amount of transfers from BLMIS to Greenwich Sentry and the Trustee reserves the right, on the terms and subject to the conditions set forth herein, to pursue subsequent transferees of funds initially transferred from BLMIS to Greenwich Sentry. Sixty Seven Million Dollars ($67,000,000) of the Judgment and the Trustee's Allowed Claim shall be referred to herein as the "Forbearance Amount" and the balance of the Judgment and Allowed Claim of One Hundred Thirty Nine Million Thirty Eight Thousand Six Hundred Fifty Four Dollars ($139,038,654) shall be referred to herein as the "Non-Forbearance Amount." The Trustee agrees that he will not seek to recover any part of the Judgment or the Trustee's Allowed Claim against Greenwich Sentry except as provided in this Agreement, and will not assert any additional claim in the Greenwich Sentry Chapter 11 proceeding except for his right to enforce this Agreement. The Judgment shall be filed and entered by the Trustee on the Effective Date. Any and all property of the Greenwich Sentry estate or proceeds of such property including, without limitation, cash or cash equivalents (including amounts on deposit with any financial institution including Signature Bank), Redeemer Actions, Service Provider Claims, Subsequent Transferee Claims, the Allowed Claim (all as defined below), or claims held by Greenwich Sentry arising under Chapter 5 of the Bankruptcy Code or the proceeds thereof, which this Agreement does not expressly provide to be transferred, assigned, conveyed or paid to the

Trustee (collectively the "Retained Assets"), shall be free and clear of any rights of the Trustee arising from the Judgment or the Trustee's Allowed Claim.

3. Redeemer Claims. Greenwich Sentry shall unconditionally and irrevocably assign to the Trustee, upon the Effective Date, and shall not retain in any respects any and all claims it owns, holds or which could be asserted by or on behalf of Greenwich Sentry under Delaware common or statutory law against Greenwich Sentry limited partners who or which redeemed all or part of their limited partnership interests (the "Redeemer Claims"). For the avoidance of doubt, (i) Redeemer Claims shall not include any claims, rights or causes of action held by Greenwich Sentry against any of its limited partners arising under Chapter 5 of the Bankruptcy Code or the proceeds thereof, and (ii) Redeemer Claims shall not include any claims and rights assigned to the Trustee which are included within Claims Against Management (which are defined in and governed by paragraph 4 below). Greenwich Sentry makes this assignment without any representation, warranty or recourse as to the validity, collectability or merits of any of the Redeemer Claims. The Trustee shall prosecute the Redeemer Claims at his expense.

4. Claims Against Management. The Trustee, solely at the Trustee's expense, shall prosecute all claims and causes of action for damages or other relief that he has asserted in the Adversary Proceeding (the "Adversary Proceedings Claims") against Greenwich Sentry's general partner, former investment managers, investment advisors (excluding the Service Providers as defined in paragraph 5 below), managing entities, directors, alleged partners, and officers, including but not limited to entities denominated the "Fairfield Greenwich Group", Fairfield Greenwich (Bermuda) Limited, Fairfield Greenwich Advisors, LLC, Fairfield Risk Services Limited, Fairfield Greenwich Limited, Fairfield International Managers, Inc., Walter M. Noel, Jr., Jeffrey Tucker, and all other individual persons named as defendants in the Adversary Proceeding. Greenwich Sentry shall unconditionally and irrevocably assign to the Trustee upon the Effective Date, and shall not retain in any respect, any and all claims it owns or holds whether or not such claims have been asserted by, or on behalf of, Greenwich Sentry against entities denominated as the "Fairfield Greenwich Group", Fairfield Greenwich (Bermuda) Limited, Fairfield Greenwich Advisors, LLC, Fairfield Risk Services Limited, Fairfield Greenwich Limited, Fairfield International Managers, Inc., Walter M. Noel, Jr., Jeffrey Tucker, Andres Piedrahita, Amit Vijayvergiya and all other officers, directors, employees, shareholders, partners, alleged partners, or members of the foregoing Fairfield Greenwich entities or their relatives (as defined in 11 U.S.C. 101(45)), or the affiliates of any of the foregoing (such entities and individuals collectively "Management"), including but not limited to any claims for breach of fiduciary duty, breach of contract, unjust enrichment, constructive trust, mutual mistake, and accounting and claims under any other legal, equitable, statutory or common law theory (such claims the "Assigned Management Claims"). Greenwich Sentry makes this assignment without any representation, warranty or recourse as to the validity, collectability or merits of any of the Assigned Management Claims. The Adversary Proceeding Claims and Assigned Management Claims shall be referred to herein collectively as the "Claims Against Management." The first Two Hundred Million Dollars recovered by the Trustee from assertion or prosecution of the Claims Against Management shall be credited against the Non-Forbearance Amount. If the Trustee recovers a gross amount of Two Hundred Million Dollars ($200,000,000) in the aggregate from the Claims Against Management, the Trustee thereafter shall credit toward the Non-Forbearance Amount ten percent (10%) of the gross consideration received by the Trustee from the Claims Against Management in excess of Two Hundred Million Dollars ($200,000,000) in the

aggregate. Greenwich Sentry and its general or limited partners shall not, and shall have no right to, intervene in, object to, or otherwise interfere in any way with the Trustee's prosecution or settlement of the Claims Against Management, including, without limitation, any right to object to the amount or any other terms of any settlement of the Claims Against Management; provided, however, any settlement of the Claims Against Management with any member of Management shall provide that such member of Management shall release and waive all of such member's claims against Greenwich Sentry.

5. Service Provider Claim Recoveries. Greenwich Sentry in its discretion, subject only to Bankruptcy Court approval if required, may commence, prosecute, and settle and shall retain one-hundred percent (100%) of the Net Recoveries from all claims and causes of action against Greenwich Sentry's custodians, administrators, accountants, and auditors, including but not limited to GlobeOps Financial Services, LLC, Citco Fund Services (Europe) BV, Citco (Canada), Inc., PricewaterhouseCoopers LLC, and PricewaterhouseCoopers Accountants N.V., and all affiliates of the foregoing entities (the "Service Providers" and the claims the "Service Provider Claims"), until Greenwich Sentry collects Fifty Million Dollars ($50,000,000) in the aggregate from such claims, and (ii) Greenwich Sentry shall pay to the Trustee twenty percent (20%) of the Net Recoveries from Service Provider Claims in excess of Fifty Million Dollars ($50,000,000) in the aggregate until the Non-Forbearance Amount of the Judgment has been satisfied in full. Greenwich Sentry shall retain the remaining eighty percent (80%) of such Net Recoveries. Greenwich Sentry shall retain one-hundred percent (100%) of the Net Recoveries it receives from the Service Provider Claims after the Non-Forbearance Amount of the Judgment is satisfied in full. Greenwich Sentry shall prosecute the Service Provider Claims solely at its expense. "Net Recoveries" means the gross amount of property recovered from assertion or prosecution of the Service Provider Claims less the reasonable actual amounts incurred in the assertion or prosecution of such claim. The Trustee shall not, and shall have no right to, intervene in, object to, or otherwise interfere in any way with Greenwich Sentry's prosecution or settlement of the Service Provider Claims, including, without limitation, any right to object to the amount or any other terms of any settlement of the Service Provider Claims.

6. Subsequent Transferee Claim Recoveries. The Trustee, in his sole discretion, may commence, prosecute and settle certain actions pursuant to the Bankruptcy Code, SIPA, the New York Debtor-Creditor Law and other applicable laws, to recover transfers from BLMIS to Greenwich Sentry, and subsequently transferred to other individuals and/or entities (the "Subsequent Transferee Claims"). The Trustee shall pay to Greenwich Sentry twenty percent (20%) of the gross recoveries received by the Trustee from the Subsequent Transferee Claims, and the Trustee shall retain all other recoveries from such actions until the Trustee has recovered the Trustee's Maximum Recovery. Notwithstanding the foregoing, any amounts recovered by the Trustee on the Subsequent Transferee Claims after the Trustee has recovered the Trustee's Maximum Recovery shall be paid to Greenwich Sentry. The Trustee shall prosecute the Subsequent Transferee Claims solely at his expense. Pursuant to the cooperation provision set forth and contemplated by paragraph 11 below, the Trustee shall notify Greenwich Sentry of the commencement of any Subsequent Transferee Claim cases. If the Trustee asserts Redeemer Claims and Subsequent Transferee Claims against the same person or entity, then the amounts recovered from such person or entity shall be deemed recovered on account of a Subsequent Transferee Claim. For the avoidance of doubt, Subsequent Transferee Claims shall not include

any claims and rights assigned to the Trustee which are included within Claims Against Management (as defined in and governed by paragraph 4 above).

7. Application of Recoveries to the Judgment. Any recoveries of monies from the Redeemer Actions, Service Provider Claims and Subsequent Transferee Claims that are paid to, turned over or credited to, or otherwise retained or received by, the Trustee pursuant to this Agreement shall first reduce on a dollar-for-dollar basis the outstanding amount of the Non-Forbearance Amount of the Judgment. Ten Percent (10%) of the amount of any recoveries in excess of Two Hundred Million Dollars ($200,000,000) obtained and paid to the Trustee as a result of Claims Against Management shall be credited to the Non-Forbearance Amount of the Judgment.

8. Allocation of Shared Recoveries. On the date that is six (6) months from the Effective Date, and every six (6) months thereafter (each such date, a "Reconciliation Date"), the Trustee and Greenwich Sentry shall jointly and in good faith determine and reconcile the consideration (cash or otherwise) that is payable to each from claims and causes of action that are subject to shared recoveries under this Agreement (except for Claims Against Management, the "Sharing Claims") and the amounts allocable to the Non-Forbearance Amount of the Judgment. If the Trustee is entitled to payment from Greenwich Sentry in connection with the Sharing Claims, Greenwich Sentry shall make a cash payment to the Trustee of the amount owed to the Trustee within five (5) Business Days after the applicable Reconciliation Date. If Greenwich Sentry is entitled to payment from the Trustee in connection with the Sharing Claims, the Trustee shall make a cash payment to Greenwich Sentry within five (5) Business Days after the applicable Reconciliation Date. Any amounts recovered by a Party that are subject to payment, turnover or allocation to another Party hereunder shall be held in trust for the benefit of such Party. If a dispute arises between the Parties as to the amounts payable to any Party from recoveries on the Sharing Claims or the amounts allocable to the Non-Forbearance Amount of the Judgment, and such dispute is not resolved within thirty (30) days following a Reconciliation Date, the Parties consent to the exclusive jurisdiction of the Bankruptcy Court to resolve such dispute.

9. Allowance of a Greenwich Sentry Customer Claim.

(a) On the Effective Date (as defined in Paragraph 15 below), notwithstanding section 502(d) of the Bankruptcy Code, the Trustee shall allow Greenwich Sentry a customer claim pursuant to 15 U.S.C. § 78lll(11)) in the fixed amount of Thirty-Five Million Dollars ($35,000,000) (the "Allowed Claim") and Greenwich Sentry shall receive the full benefit of any SIPC customer advances under section 9 of SIPA. The amount of the Allowed Claim shall be subject to increase in accordance with this Paragraph 9.

(b) Notwithstanding any other language in this Agreement, in the event that, as a result of a final, non-appealable judicial determination and order concerning the Net Equity Method issue, valid customer claims against BLMIS are ultimately calculated based on the amounts reflected on a customer's BLMIS account statement for the period ending November 30, 2008, or to include other amounts beyond the Net Equity Method (including, for example, if customers are entitled to receive interest on their deposits with BLMIS), the Allowed Claim shall be calculated as follows: Greenwich Sentry's SIPA Claim shall be calculated in the same manner in accordance with the Order of the Court and subject to all applicable law as other allowed

customer claims are calculated (the "Adjusted Greenwich Sentry SIPA Claim"), provided that, in such event, the allowed amount of the Adjusted Greenwich Sentry SIPA Claim shall equal the greater of (a) the amount of the Allowed Claim, or (b) the product of multiplying the Settlement Percentage of twenty-five percent (25%) times the Adjusted Greenwich Sentry SIPA Claim (the "Adjusted Allowed Greenwich Sentry SIPA Claim"). The Bankruptcy Court's order approving this Agreement shall provide for the allowance of the Allowed Claim or, if applicable, the Adjusted Allowed Greenwich Sentry SIPA Claim, as provided in this paragraph.

10. Claims and Counterclaims of Management.

(a) Fairfield Greenwich (Bermuda) Ltd. (the "General Partner" of Greenwich Sentry), and its affiliated company Fairfield Greenwich Advisors LLC (together referred to herein as the "Fairfield Claimants") claim to hold unsecured, non-priority claims against Greenwich Sentry totaling an amount of at least Three Hundred Seventeen Thousand Three Hundred and Eighty Dollars ($317,380) (the "Unsecured Claims"). The Plan shall provide that Fairfield Claimants shall not receive or retain anything of value from Greenwich Sentry on account of their Unsecured Claims, except as provided in paragraph 10(e) below.

(b) Certain members of Management also claim to hold contingent unliquidated claims for indemnification costs and expenses, pursuant to Greenwich Sentry's Limited Partnership Agreement or otherwise (the "Indemnification Claims"). The Plan shall provide that holders of the Indemnification Claims shall not receive or retain anything of value from Greenwich Sentry on account of such claims, except as provided in paragraph 10(e) below.

(c) The Fairfield Claimants also allege that they hold claims against Greenwich Sentry by virtue of having paid Six Million Four Hundred Ninety Two Thousand Seven Hundred Forty Four Dollars ($6,492,744) to Massachusetts residents who were limited partners of Greenwich Sentry as of December 8, 2008 (the "Massachusetts Interests"), in connection with the Fairfield Claimants' settlement, dated as of September 8, 2009, of an administrative proceeding brought by the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts (the "Massachusetts Interests Claims"). The Plan shall provide that neither the Fairfield Claimants nor the holders of the Massachusetts Interests shall receive or retain anything of value from Greenwich Sentry on account of such claims, except as provided in paragraph 10(e) below.

(d) The following members of Management and their affiliates who were partners of Greenwich Sentry as of December 11, 2008, to wit, Noel Family LLC, Fairfield Greenwich (Bermuda) Limited, Noel Family Trust, Walter and Monica Noel Foundation, Walter Noel IRA, and Walter Noel, claim to hold claims against or interests in Greenwich Sentry in connection with their having limited partner or general partner interests in Greenwich Sentry (collectively the "Management Interests Claims"). The Plan shall provide the holders of the Management Interests Claims shall not receive or retain anything of value from Greenwich Sentry on account of such claims, except as provided in paragraph 10(e) below.

(e) Notwithstanding anything to the contrary set forth herein, any person or entity holding all or any part of the Unsecured Claims, the Indemnification Claims, the Massachusetts Interests Claims and the Management Interests Claims shall retain any and all such

claims and may assert any and all such claims and rights by way of set-off, defense, counterclaim or recoupment with respect to any claim or claims filed or asserted against any one or more of them by the Trustee, or any third party, including without limitation the Claims Against Management.

11. Cooperation in Pursuing and Resolving the Sharing Claims. The Trustee and Greenwich Sentry each agree to provide reasonable cooperation and assistance to the other Party in connection with the prosecution of the Sharing Claims, provide the other with a reasonable opportunity to consider the terms for resolving any Sharing Claims and confer in good faith regarding such terms; provided, however, that the Party authorized under this Agreement with the right and responsibility of prosecuting a Sharing Claim (such Party, the "Prosecuting Party") shall not be required to obtain the consent of the other Party to resolve or settle the Prosecution Party's claim. Within five (5) Business Days following the settlement or other resolution of a Sharing Claim, the Prosecuting Party shall notify the other Party of the amounts, if any, paid or to be paid to the Prosecuting Party in connection therewith. The Trustee and Greenwich Sentry agree and stipulate that a joint interest exists between them with respect to the Sharing Claims. The Trustee and Greenwich Sentry further agree and stipulate that neither this Agreement nor any action taken thereunder constitutes the waiver of any privilege or immunity of the Trustee or Greenwich Sentry or their respective counsel.

12. Release by Trustee. Upon the Effective Date and in consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and without the need for any further documentation, except with respect to the Trustee's Allowed Claim and the obligations, rights and considerations arising under this Agreement, the Trustee, on behalf of himself, BLMIS and its estate, hereby releases, acquits and forever discharges only Greenwich Sentry from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, damages, judgments, and claims whatsoever, asserted or unasserted, known or unknown, now existing or arising in the future (including, without limitation, the claims asserted against Greenwich Sentry in the Adversary Proceeding). Nothing contained herein shall operate to release any claims by the Trustee against any third party, including but not limited to, Greenwich Sentry's general partner, Fairfield Greenwich (Bermuda) Limited and its officers, directors, shareholders and employees and any and all immediate, mediate or subsequent transferees from Greenwich Sentry.

13. Release by Greenwich Sentry. Upon the Effective Date and in consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and without the need for any further documentation, except for the Greenwich Sentry SIPA Claim, the Greenwich Sentry Adjusted Claim, the Allowed Claim, the Adjusted Greenwich Sentry SIPA Claim, and the Adjusted Allowed Greenwich Sentry SIPA Claim (if applicable), and the obligations, rights and considerations arising under this Agreement, Greenwich Sentry, on behalf of itself and its estate hereby releases, acquits and forever discharges and agrees to hold harmless, the Trustee, all of the Trustee's agents, representatives, attorneys, employees and professionals, and BLMIS and its consolidated estate from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, damages, judgments, and claims whatsoever, asserted or unasserted, known or unknown, now existing or arising in the

future, except for any and all claims and rights (and the enforcement thereof) of Greenwich Sentry and obligations of the Trustee arising under this Agreement. The Trustee and Greenwich Sentry expressly agree this release shall not affect any claims by Greenwich Sentry against any third party as set forth in paragraphs 3, 4 and 5 of this Agreement, including but not limited to, Greenwich Sentry's general partner, Fairfield Greenwich (Bermuda) Ltd. and its officers, directors, employees, alleged partners, or shareholders, custodians; accountants; auditors; investment advisors; management companies; investors; or limited partners, or any transferees from Greenwich Sentry. Greenwich Sentry shall not object to a provision in the Order approving this Agreement to be entered in the SIPA Proceeding that Greenwich Sentry's limited partners and its general partner shall be barred from asserting any claims directly against the Trustee and all of the Trustee's agents, representatives, attorneys, employees and professionals, arising out of their interests in or claims against Greenwich Sentry, except as provided in paragraph 10 of this Agreement.

14. Unknown Claims. Unknown claims shall mean any Released Claim, as defined herein, that Greenwich Sentry or the Trustee does not know or suspect to exist in its favor at the time of giving the release in this Agreement that if known by it, might have affected its settlement and release in this Agreement. With respect to any and all Released Claims in paragraphs 12 and 13 of this Agreement, Greenwich Sentry and the Trustee shall expressly waive or be deemed to have waived, 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Greenwich Sentry and the Trustee expressly waive, and shall be deemed to have waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to California Civil Code section 1542. Greenwich Sentry and the Trustee may hereafter discover facts in addition to or different from those that it now knows or believes to be true with respect to the subject matter of the Released Claims, but Greenwich Sentry and the Trustee shall expressly have and shall be deemed to have fully, finally and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence or such different or additional facts. Greenwich Sentry and the Trustee acknowledge and shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part. "Released Claims" means the claims released and waived by Greenwich Sentry and the Trustees pursuant to paragraphs 12 and 13 of the Agreement.

15. Bankruptcy Court Approval; Effective Date; Termination. This Agreement is subject to the Bankruptcy Court's approval of this Agreement in the SIPA Proceeding and the Greenwich Sentry Case by an order (each such order an "Approval Order") that is no longer subject to appeal. The transactions contemplated by this Agreement shall take effect (and shall be deemed to have occurred simultaneously) on the effective date of the Plan (the "Effective Date"); provided, however, that the only obligations of the Parties from the date the Approval Orders become final orders not subject to appeal through and including the Effective Date shall be those obligations set forth in paragraph 17 below. The form of the Approval Order in the SIPA Proceeding shall be subject to Greenwich Sentry's reasonable approval and the form of Approval Order in the Greenwich Sentry Case shall be subject to the Trustee's reasonable approval. Each party shall use their reasonable efforts to obtain approval of the Agreement in the SIPA Proceeding and the Greenwich Sentry Case as promptly as practicable after the date of this Agreement. In addition, the Trustee shall use his reasonable efforts to obtain entry of an order of the court with jurisdiction over the SIPA Proceeding that enjoins and restrains any person or entity who is or ever was a limited partner or a beneficial owner of any limited partnership interest in Greenwich Sentry (the "SIPA Injunction") from commencing, continuing, asserting or prosecuting any Claims Against Management or other claims against Management arising from related facts and circumstances that Greenwich Sentry owns or holds, and is assigning to the Trustee hereunder, whether or not such claims have been asserted by or on behalf of Greenwich Sentry or the Trustee against Management (collectively, "Enjoined Claims"). The SIPA Injunction shall not bar or enjoin the prosecution of any direct claims against Management that are or could be asserted by past or present Greenwich Sentry limited partners in their respective individual capacities (collectively, "Direct LP Claims"), whether such Direct LP Claims are brought individually by such limited partners or as part of a class action against Management. The foregoing is without prejudice to the right of the Trustee to seek an injunction against prosecution by Greenwich Sentry's present and former limited partners and holders of any limited partner interest in Greenwich Sentry of Direct LP Claims against Management in connection with any future settlement of claims against Management and without prejudice to the right of such Greenwich Sentry limited partners to oppose any such injunction that may be sought by the Trustee. If this Agreement has not been approved by the Bankruptcy Court in the SIPA Proceeding and the Greenwich Sentry Case as provided in this paragraph within ninety (90) days after the date of this Agreement (or within such additional time as mutually agreed upon by the Parties), then (a) this Agreement (other than this paragraph) shall terminate and be void, (b) all of the statements, concessions, consents and agreements contained in the Agreement (other than this paragraph) shall be void; and (c) neither the Trustee, nor Greenwich Sentry may use or rely on any such statement, concession, 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 Greenwich Sentry, BLMIS or Madoff.

16. Closing. On the Effective Date or as soon thereafter as practicable, (a) the Trustee shall pay Greenwich Sentry $500,000 on account of the Allowed Claim from SIPC advances under Section 9 of SIPA; and (b) the Allowed Claim shall become effective without any further action by any of the Parties.

17. The Plan. Concurrent with seeking approval of this Agreement by the Bankruptcy Court in the SIPA Proceeding and the Greenwich Sentry Case, respectively, Greenwich Sentry shall file and diligently seek entry of an order approving and confirming,

respectively, a disclosure statement (as defined below) and plan of reorganization ("Plan") pursuant to chapter 11 of the Bankruptcy Code. The Plan and order confirming the Plan (the "Confirmation Order") shall (a) expressly incorporate the terms of this Agreement, (b) provide for the SIPA Injunction to bar the Enjoined Claims, including without limitation the claims asserted in *Ferber v. Fairfield Greenwich Group*, Index No. 600469/2009 (N.Y. Sup. Ct 2009), (c) comply with applicable law, and (d) otherwise be subject to the reasonable approval of the Trustee. The foregoing provisions of the Plan and the Confirmation Order shall be without prejudice to the right of the Trustee to seek an injunction against prosecution by Greenwich Sentry present and former limited partners of Direct LP Claims against Management in connection with any future settlement of claims against Management and without prejudice to the right of such Greenwich Sentry limited partners to oppose any such injunction that may be sought by the Trustee. To the extent a conflict exists between the terms of this Agreement, the Plan and the Confirmation Order, this Agreement shall control. The Trustee agrees that the Plan may separately classify the Trustee's Allowed Claim and that treatment of the Trustee's Allowed Claim in accordance with this Agreement shall constitute impairment of such claim. Subject to incorporation of this Agreement and all of its material terms into the Plan and Confirmation Order and the Trustee's reasonable approval of the same, the Trustee shall (i) support approval of the Disclosure Statement and confirmation of the Plan; (ii) not directly or indirectly propose, support, solicit votes for or seek to confirm any plan of reorganization other than the Plan or any other restructuring, reorganization or liquidation of Greenwich Sentry that is inconsistent with the Plan or this Agreement; (iii) not seek, and will oppose the conversion or dismissal of the Greenwich Sentry Case or the appointment of a trustee for Greenwich Sentry, and (iv) not object to, oppose or interfere with the acceptance, implementation, confirmation or consummation of the Plan unless, in the Trustee's reasonable discretion, the Plan is inconsistent with the provisions of this Agreement. If the Confirmation Order, in form and substance satisfactory to the Trustee and Greenwich Sentry is not entered and is no longer subject to appeal within 180 days of the date of this Agreement (or within such additional time as mutually agreed upon by the Parties), then (a) this Agreement (other than this paragraph) shall terminate and be void, (b) all of the statements, concessions, consents and agreements contained in the Agreement (other than this paragraph) shall be void; and (c) neither the Trustee, nor Greenwich Sentry may use or rely on any such statement, concession, 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 Greenwich Sentry, BLMIS or Madoff. For purposes of this Agreement, "Disclosure Statement" shall mean the written disclosure statement and its appendices and/or exhibits, as they may be amended, supplemented, or further modified from time to time, filed by Greenwich Sentry in connection with prosecution of the Plan.

18. Greenwich Sentry's and Trustee's Authority. Subject to Bankruptcy Court approval, Greenwich Sentry represents and warrants to the Trustee that, as of the date hereof, it has the full power, authority and legal right to execute and deliver, and to perform its respective obligations under, this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of its obligations under this Agreement. The Trustee represents and warrants to Greenwich Sentry that, as of the date hereof, and subject to the approval of the Bankruptcy Court as set forth in paragraph 15 above, he has the full power, authority and legal right to execute and deliver, and to perform his obligations under, this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of his obligations under this Agreement.

19. Business Days. For purposes of this Agreement the term "Business Days" shall mean any day other than Saturday, Sunday, or a day that is a legal holiday in New York City.

20. Further Assurances. The Trustee and Greenwich Sentry shall execute and deliver any document or instrument reasonably requested by either of them after the date of this Agreement to effectuate the intent of this Agreement.

21. Entire Agreement. This 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.

22. Amendments, Waiver. This Agreement may not be terminated, waived, amended or modified in any way except in a writing signed by all the Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

23. Assignability. No Party hereto may assign his or her rights under this Agreement to a third party without the prior written consent of each of the other Parties hereto, provided, however that Greenwich Sentry may assign its rights and delegate its duties under this Agreement to one or more successor entities formed under the Plan to hold the Retained Assets and distribute such assets or their proceeds to persons entitled under the Plan to receive such distributions.

24. Successors Bound. This Agreement shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns, including but not limited to, any subsequent Chapter 11 trustee, Chapter 7 trustee, or post-confirmation trustee appointed in the Greenwich Sentry Case.

25. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard to the principle of conflicts of law. Each Party hereby waives on behalf of itself and its successors and assigns any and all rights to argue that the choice of New York law provisions is or has become unreasonable in any legal proceeding.

26. Exclusive Jurisdiction. The Parties agree and the Approval Orders shall provide that the Bankruptcy Court shall retain and shall have exclusive jurisdiction over any action to enforce this Agreement, or any provision thereof, and the Parties hereby consent to and submit to the jurisdiction of the Bankruptcy Court for any such action. The Parties agree that no Party shall bring, institute, prosecute or maintain any action to enforce, modify, terminate, void, or interpret this Agreement, or any provision thereof, in any court other than the Bankruptcy Court. In any action commenced in another court by a third-party to enforce, modify, terminate, void or interpret this Agreement, the Parties agree to seek to transfer the action to the Bankruptcy Court or to stay or terminate the action in favor of Bankruptcy Court jurisdiction.

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

28. 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 shall constitute one and the same document. The Parties may evidence their execution of this Agreement by delivery to the other Parties of scanned or faxed copies of their signatures, with the same effect as the delivery of an original signature.

29. Non Severability. If any part of this Agreement is found in a judgment or order by a court of competent jurisdiction to be void or unenforceable, the entire Agreement shall be void or unenforceable (except this paragraph), unless otherwise agreed to in writing by the Parties.

30. Notices. Any notices under this Agreement shall be in writing, shall be effective when received and may be delivered only by hand, by overnight delivery service, by fax or by electronic transmission to:

If to the Trustee, c/o:

Mark Kornfeld, Esq.
Baker & Hostetler LLP
45 Rockefeller Center, Suite 1100
New York, NY 10111
F: (212) 589-4201
mkornfeld@bakerlaw.com

If to the Greenwich Sentry, c/o:

Paul R. De Filippo, Esq.
Wollmuth Maher & Deutsch LLP
500 Fifth Avenue
New York, NY 10110
F: (212) 382-0050
pdefilippo@wmd-law.com

[Signature page follows]

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

Dated: 7/7/11

On Behalf of Irving H. Picard, Trustee

Greenwich Sentry, L.P.

Dated: _____

By: Fairfield Greenwich (Bermuda), Ltd., its General Partner

By:

_____

Name

_____

Title

_____

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

Dated: _____

_____
Irving H. Picard, Trustee

Greenwich Sentry, L.P.

Dated: July 7, 2011

By: Fairfield Greenwich (Bermuda), Ltd., its General Partner

By: _____
Name

Jeffrey Tucker
Title

Director

ATTACHMENT A

GREENWICH SENTRY LP ACCOUNT

Account Number

1-G0092

ATTACHMENT B

GREENWICH SENTRY CLAIM

ATTACHMENT B

GREENWICH SENTRY CLAIM

CUSTOMER CLAIM

Bernard L. Madoff Investment Securities LLC
Case No 08-01789-BRL
U.S. Bankruptcy Court for the Southern District of New York
Claim Number: 007897

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

RECEIVED
MAR 10 2009

In Liquidation

DECEMBER 11, 2008

(Please print or type)

Name of Customer: Greenwich Sentry LP
Mailing Address: c/o Fairfield Greenwich (Bermuda) Limited 12 Church St., Suite 606
City: Hamilton **State:** Bermuda **Zip:** HM 11
Account No.: 1-G0092-3-0
Taxpayer I.D. Number (Social Security No.): 06-1317669

NOTE: **BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.**

****

1. Claim for money balances as of **December 11, 2008:**

   a. The Broker owes me a Credit (Cr.) Balance of $ 314,053,923 *

   b. I owe the Broker a Debit (Dr.) Balance of $ 0

   c. If you wish to repay the Debit Balance, please insert the amount you wish to repay and attach a check payable to "Irving H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC." If you wish to make a payment, **it must be enclosed** with this claim form. $ N/A

   d. If balance is zero, insert "None." $ 314,053,923

* Please see Addendum for details

2. Claim for securities as of **December 11, 2008**:

PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.

		YES	NO
a.	The Broker owes me securities	See Account	Statement
b.	I owe the Broker securities		
c.	If yes to either, please list below:		

Date of Transaction (trade date)	Name of Security	Number of Shares or Face Amount of Bonds: The Broker Owes Me (Long)	I Owe the Broker (Short)

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.
PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

		YES	NO
3.	Has there been any change in your account since December 11, 2008? If so, please explain.		X
4.	Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker?		X
5.	Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker?		X
6.	Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s)		X
7.	Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming.		X
8.	Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers. *	X	
9.	Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? If so, give name of that broker.		X

Please list the full name and address of anyone assisting you in the preparation of this claim form:

Seward & Kissel LLP 1 Battery Park Plaza NY, NY 10004

* Please see Addendum

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

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

THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF.

Greenwich Sentry LP
By: Fairfield Greenwich (Bermuda) Ltd., General Partner of the Fund
Jeffrey Tucker

Date 3/4/09 Signature _____, Director

Date _____ Signature _____

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, *e.g.*, corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

This customer claim form must be completed and mailed promptly, together with supporting documentation, etc. to:

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

Greenwich Sentry LP ("GS")
Addendum to Customer Claim Form
Bernard L. Madoff Investment Securities LLC ("BLMIS")

GS submits this addendum in support of its Customer Claim Form.

1. GS is a limited partnership organized under the laws of the State of Delaware. GS sold limited partnership interests to qualified, experienced and sophisticated investors (the "Limited Partners"). GS sought to obtain capital appreciation of its assets. In connection therewith, GS held two brokerage accounts under its name with BLMIS:

Account Number	**Value as of November 2008**	**Purpose of Account**
I-G0092-3	$ 323,519,453	Trade securities
I-G0092-4	$ (9,465,530)	Option hedging transactions
Total	**$ 314,053,923**	

2. GS presently is submitting a Customer Claim Form under its name only. GS presently is not submitting individual claims on behalf of its Limited Partners. However, GS reserves the right to amend or supplement its Customer Claim Form to include its individual Limited Partners in the event the Securities Investor Protection Act of 1970, 15 U.S.C. § 78aaa *et seq.* ("SIPA"), is amended or interpreted now or in the future to provide coverage to indirect customers or investors of BLMIS, such as the Limited Partners. Further, while neither GS nor its counsel is authorized to represent or bind the Limited Partners in connection with this filing, GS reserves the rights of the Limited Partners to file their own customer claim forms in the event SIPA is amended or interpreted to provide coverage to the Limited Partners.

3. In support of its customer claim under 15 U.S.C. §78fff(a)(1)(B), GS submits copies of the last account statements and purchase/sales confirmations that GS received from BLMIS.

4. GS is aware of the Trustee's February 20, 2009 representations that the Trustee intends to implement a cash "in and out" analysis in determining the value of customer claims in light of what the Trustee has indicated is evidence that BLMIS did not, at least for the past 13 years, conduct trades on the account of customers. In this regard, GS has in its possession account statements and related information dating back to January 1995, showing that GS was a "net contributor" to BLMIS in the amount of approximately $115 million. In other words, GS deposited approximately $115 million more into BLMIS than it withdrew over the period January 1995 to November 2008. Copies of these materials are available upon request.

5. In further response to Item 8 of the Claim Form, Fairfield Greenwich (Bermuda) Limited, as GS's General Partner, managed GS's investments. Fairfield Greenwich (Bermuda) Limited is located at 12 Church Street, Suite 606, Hamilton, Bermuda, HM 11. The telephone number is (441) 292-5401.

RESERVATION OF RIGHTS

6. GS expressly reserves its right to replace, amend and/or supplement this Customer Claim to include any claim at law or in equity.

7. The filing of this Customer Claim shall not be deemed a waiver of any claim in law or equity that GS may have against BLMIS. Furthermore, nothing contained herein shall be construed as a waiver of any rights or remedies of GS with respect to any claims against any of BLMIS's affiliates or the right to assert claims that are otherwise warranted in any related or unrelated action. The filing of this Customer Claim is not and shall not be deemed to be an admission for the purposes of any other proceeding and/or concerning any other person.

8. The filing of this Customer Claim is not intended to be and should not be construed as (a) a consent by GS to the jurisdiction of the court overseeing the BLMIS SIPA liquidation proceeding with respect to the subject matter of this claim, any objection or other proceeding commenced in this case or otherwise involving GS; (b) a waiver of the rights and remedies against any other person or entity who may be liable for all or part of the claims set forth herein, whether an affiliate or guarantor of BLMIS or otherwise; (c) a waiver or release of GS's right to trial by jury, or a consent to trial by jury, in this or any other court; or (d) a waiver of any right to challenge the jurisdiction of the court, with respect to the subject matter of this claim, any objection or other proceeding commenced in this case against or otherwise involving GS.

9. GS specifically preserves all of its procedural and substantive defenses and rights with respect to any claim that may be asserted against GS by BLMIS, any of its successors and assigns or by any trustee for BLMIS's estate.

SK 25528 0034 969453

ATTACHMENT C

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 (BRL) 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. FAIRFIELD SENTRY LIMITED, GREENWICH SENTRY, L.P., GREENWICH SENTRY PARTNERS, L.P., FAIRFIELD SIGMA LIMITED, FAIRFIELD LAMBDA LIMITED, CHESTER GLOBAL STRATEGY FUND LIMITED, CHESTER GLOBAL STRATEGY FUND, IRONGATE GLOBAL STRATEGY FUND LIMITED, FAIRFIELD GREENWICH FUND (LUXEMBOURG), FAIRFIELD INVESTMENT FUND LIMITED, FAIRFIELD INVESTORS (EURO) LIMITED, FAIRFIELD INVESTORS (SWISS FRANC) LIMITED, FAIRFIELD INVESTORS (YEN) LIMITED, FAIRFIELD INVESTMENT TRUST, FIF ADVANCED, LTD., SENTRY SELECT LIMITED, STABLE FUND, FAIRFIELD GREENWICH LIMITED, FAIRFIELD	Adv. Pro. No. 09-01239 (BRL)

GREENWICH (BERMUDA), LTD., FAIRFIELD GREENWICH ADVISORS LLC, FAIRFIELD GREENWICH GP, LLC, FAIRFIELD GREENWICH PARTNERS, LLC, FAIRFIELD HEATHCLIFF CAPITAL LLC, FAIRFIELD INTERNATIONAL MANAGERS, INC., FAIRFIELD GREENWICH (UK) LIMITED, GREENWICH BERMUDA LIMITED, CHESTER MANAGEMENT CAYMAN LIMITED, WALTER NOEL, JEFFREY TUCKER, ANDRÉS PIEDRAHITA, MARK MCKEEFRY, DANIEL LIPTON, AMIT VIJAYVERGIYA, GORDON MCKENZIE, RICHARD LANDSBERGER, PHILIP TOUB, CHARLES MURPHY, ROBERT BLUM, ANDREW SMITH, HAROLD GREISMAN, GREGORY BOWES, CORINA NOEL PIEDRAHITA, LOURDES BARRENECHE, CORNELIS BOELE, SANTIAGO REYES, JACQUELINE HARARY

Defendants.

CONSENT JUDGMENT[1]

WHEREAS, Irving H. Picard (the "Trustee") is the trustee for the substantively consolidated liquidations of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff ("Madoff") under the Securities Investor Protection Act ("SIPA") §§ 78aaa *et seq.*, currently pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") as Case No. 08-01789 (BRL) (the "SIPA Proceeding"); and

WHEREAS, the Trustee is duly qualified to serve and act on behalf of the estates of BLMIS and Madoff (together, the "BLMIS Estate"); and

[1] All capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement, dated May 17, 2011, between the Trustee (as defined herein) and Greenwich Sentry L.P.

WHEREAS, Greenwich Sentry, L.P. ("Greenwich Sentry") is a Delaware Limited Partnership that, at all times relevant hereto, was a customer of BLMIS and maintained an account with BLMIS (the "Greenwich Sentry BLMIS Account"); and

WHEREAS, Fairfield Greenwich (Bermuda) Limited is the general partner of Greenwich Sentry; and

WHEREAS, according to the Trustee, Greenwich Sentry withdrew Twenty Three Million Dollars ($23,000,000) from the Greenwich Sentry BLMIS Account within ninety (90) days before the date on which the SIPA Proceedings commenced ("90 Day Withdrawals") and an additional One Hundred Eighty Three Million Thirty Eight Thousand Six Hundred Fifty Four Dollars ($183, 038,654) from the Greenwich Sentry Account, during the period more than ninety (90) days, but less than six (6) years, before the date on which the SIPA Proceedings commenced (the "Pre 90-Day Withdrawals" and, together with the 90 Day Withdrawals, the "Withdrawals"); and

WHEREAS, the above-captioned adversary proceeding (the "Adversary Proceeding") was commenced by the Trustee in the Bankruptcy Court on or about May 18, 2009 [Docket No. 1]; and

WHEREAS, pursuant to Counts Two, Five, Eight, Eleven, Fourteen, Seventeen, Twenty, and Twenty-Three of the amended complaint filed in the Adversary Proceeding on or about July 20, 2010 [Docket No. 23] (the "Amended Complaint"), the Trustee asserts, pursuant to 11 U.S.C. §§ 544, 547, 548, 550, SIPA § 78fff-(2)(c)(3) and the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 270-281), that the Withdrawals are avoidable and that Greenwich Sentry is liable to the BLMIS Estate for amount of the Withdrawals, which total Two Hundred Six Million Thirty Eight

Thousand Six Hundred Fifty Four Dollars ($206,038,654) (the "Greenwich Sentry Avoiding Power Claims"); and

WHEREAS, on or about May 17, 2011, the Trustee and Greenwich Sentry entered into a settlement agreement (the "Agreement"), in order to settle certain matters in controversy among them and the respective estates they represent, including the Greenwich Sentry Avoiding Power Claims, upon the terms as set forth therein; and

WHEREAS, pursuant to the terms of the Agreement, Greenwich Sentry has consented to the entry of judgment against Greenwich Sentry with respect to the Greenwich Sentry Avoiding Power Claims as set forth below.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, ORDERED AND ADJUDGED THAT, that judgment be entered as follows:

1. Judgment (the "Consent Judgment") is hereby entered in favor the Trustee and against Greenwich Sentry on the Sentry Avoiding Power Claims in the amount of Two Hundred Six Million Thirty Eight Thousand Six Hundred Fifty Four Dollars ($206,038,654) (the "Judgment Amount").

2. The Consent Judgment is defined and limited as set forth herein and by the terms of the Agreement. Notwithstanding anything to the contrary in this Consent Judgment, (i) entry, enforcement and/or execution of this Consent Judgment, (ii) the provisions of this Consent Judgment and (iii) the satisfaction of the Judgment Amount as against Greenwich Sentry is governed entirely and exclusively by the terms of the Agreement. In the event of any conflict between this Consent Judgment and the Agreement, the terms of the Agreement shall govern.

3. Interest shall not accrue on the Judgment Amount.

4. This Consent Judgment is not assignable.

5. The Bankruptcy Court shall have exclusive jurisdiction over any action to enforce this Consent Judgment, or any provision thereof, subject in all cases to the terms of the Agreement.

6. The signatories to this Consent Judgment represent that they are expressly authorized to bind the respective parties to the terms hereof and herby represent that the parties have read, understand, agree and consent to the foregoing Consent Judgment and all of the terms and conditions set forth herein.

7. The undersigned represent that the respective parties have obtained the advice of counsel and are consenting and agreeing to all of the terms of this Consent Judgment freely and voluntarily.

8. The Clerk of Court shall enter judgment as set forth herein.

AGREED AND CONSENTED TO:

Greenwich Sentry, L.P.

By: Fairfield Greenwich (Bermuda) Limited, its General Partner

By: _____
Name

_____
Title

AGREED AND CONSENTED TO, FOR FORM :

For Defendant Greenwich Sentry, L.P.

_____
Paul R. DeFilippo
Wollmuth Maher & Deutsch LLP
500 Fifth Avenue
New York, NY 10110
F: (212) 382-0050
pdefilippo@wmd-law.com

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

_____
Mark Kornfeld, Esq.
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111
F: (212) 589-4201
mkornfeld@bakerlaw.com

SO ORDERED

This __day of _____

_____
HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY
JUDGE

JUDGMENT IS HEREBY ENTERED in accordance with the terms of the foregoing:

_____
Clerk of the Court

EXHIBIT 4

EXHIBIT B

AMENDED AGREEMENT

This amended agreement, dated as of July 7, 2011 ("Agreement"), amends, restates and supercedes the agreement dated as of May 17, 2011 made by and between Irving H. Picard, in his capacity as Trustee (the "Trustee") for the liquidation under the Securities Investor Protection Act of 1970, as amended ("SIPA"), of Bernard L. Madoff Investment Securities LLC, and the substantively consolidated Chapter 7 case pending before the United States Bankruptcy Court for the Southern District of New York of Bernard L. Madoff ("Madoff"), on the one hand, and Greenwich Sentry Partners, L.P. ("GSP") debtor and debtor-in-possession, on the other hand (each of the Trustee and GSP, a "Party" and, collectively, the "Parties").

BACKGROUND

A. Bernard L. Madoff Investment Securities LLC ("BLMIS") and its predecessor 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. On December 12, 2008, the District Court entered an order which, among other things, appointed Lee S. Richards, Esq. as receiver (the "Receiver") for the assets of BLMIS (No. 08-CV-10791 (LSS)).

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

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

E. On December 15, 2008, pursuant to section 5(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with the application of SIPC. Thereafter, SIPC filed an application in the District Court under section 5(a)(3) of SIPA alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA. On December 15, 2008, the District Court granted the SIPC application and entered an order under SIPA, which, in pertinent part, appointed Trustee as the trustee for the liquidation of the business of BLMIS under section 5(b)(3) of SIPA, removed the Receiver as the receiver for BLMIS, and removed the case to the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") under section 5(b)(4) of SIPA, where it is currently pending as Case No. 08-01789 (BRL) (the "SIPA Proceeding"). The Trustee is duly qualified to serve and act on behalf of the estate of BLMIS (the "BLMIS Estate").

F. GSP was a customer of BLMIS and maintained Customer Account 1G0371 with BLMIS (the "GSP Account") commencing in or about May 1, 2006. The GSP Account is listed as Attachment A to this Agreement. The GSP Account was opened by the transfer of Five Million Seven Hundred Sixty Two Thousand Five Hundred Sixty Dollars ($5,762,560) from the Greenwich Sentry LP ("Greenwich Sentry") BLMIS account. At the time of the May 1 transfer, although Greenwich Sentry's BLMIS account statement showed a positive balance, in reality, the Greenwich Sentry BLMIS account had a negative cash balance. On June 30, 2006, One Million Two Hundred Seven Thousand Three Hundred Forty Four Dollars ($1,207,344) was transferred back to the Greenwich Sentry account from the GSP Account. As a result of these transfers and later cash deposits and withdrawals, between the opening of the account and the Filing Date, on an overall basis, GSP deposited into the GSP Account a total of Two Million Five Hundred Forty Thousand Dollars ($2,540,000) in excess of the amount of withdrawals that GSP made from the account (the "GSP Net Equity Claim"). GSP withdrew Five Million Nine Hundred Eighty Five Thousand ($5,985,000) from the GSP Account during the period more than 90 days, but less than six years, before the Filing Date (the "Withdrawals").

G. GSP filed a customer claim in the SIPA Proceeding (assigned claim number 7896) alleging aggregate losses from the GSP Accounts of Ten Million Four Hundred Twenty Six Thousand One Hundred Eighty Two ($10,426,182) (the "GSP SIPA Claim"). The GSP SIPA Claim, including the relevant BLMIS Account Number, is included as Attachment B to this Agreement. The GSP SIPA Claim, as filed, asserts that GSP is entitled to the allowance and distribution of a customer claim in the SIPA proceeding in an amount reflected on the GSP BLMIS account statement for the period ending November 30, 2008.

H. The Trustee has disputed that GSP is entitled to allowance and distribution of a customer claim in the amount reflected on its November 30, 2008 BLMIS account statement. On March 1, 2010 the Honorable Burton R. Lifland of the Bankruptcy Court issued an opinion applying the Trustee's "net equity" calculation of customer claims as the difference between investment into BLMIS and amounts withdrawn (the "Net Equity Method"). On March 8, 2010 Judge Lifland entered an order implementing the decision and certifying it for immediate appeal for the United States Court of Appeals for the Second Circuit.

I. The Trustee has brought an adversary proceeding against GSP and other defendants in the Bankruptcy Court under the caption *Picard v. Fairfield Sentry Ltd. et al.*, Adv. Pro. No. 09-01239 (BRL) (the "Adversary Proceeding"). In the Adversary Proceeding, the Trustee asserts that GSP is liable to the BLMIS Estate under 11 U.S.C. §§ 544, 547, 548, 550, SIPA, and the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 270-281) for the Withdrawals made by it from BLMIS ("the Avoiding Power Claims"); specifically, the Trustee seeks, inter alia, recovery from GSP in an aggregate amount totaling Five Million Nine Hundred Eighty Five Thousand Dollars ($5,985,000) ("Trustee's Maximum Recovery"). The Trustee has also asserted claims for turnover and accounting of the Withdrawals, and for disallowance of the GSP SIPA Claim. On November 19, 2010, GSP filed a voluntary petition for relief under the Bankruptcy Code in the Bankruptcy Court (the "GSP Case") and has continued in the possession of its property as a debtor and debtor in possession.

J. GSP has disputed any liability to the BLMIS Estate in connection with the Adversary Proceeding and the Avoiding Power Claims alleged therein. Nevertheless, GSP

recognizes that there is litigation risk associated with the Avoiding Power Claims and has decided to settle with the Trustee. While the Trustee believes he would prevail at trial, he also recognizes there is litigation and/or collection risk associated with his Avoiding Power Claims as against GSP.

K. The Trustee, on the one hand, and GSP, on the other hand, desire to settle their disputes about the matters described above without the expense, delay and uncertainty of litigation, and to provide a framework for the allowance and satisfaction of the Trustee's claims against GSP and GSP's customer claim against the BLMIS Estate.

AGREEMENT

1. Judgment Regarding the Trustee's Avoiding Power Claims. This Agreement provides for the entry of a judgment against GSP in the aggregate amount of Five Million Nine Hundred Eighty Five Thousand Dollars ($5,985,000) representing the settled amount of the Trustee's Avoiding Power Claims in the form attached hereto as Attachment C (the "Judgment"). As set forth in the Judgment, the Withdrawals are deemed both to have been avoidable and avoided by the Trustee. The Judgment will be entered by the Bankruptcy Court upon the Effective Date (as defined in paragraph 15 below). The Trustee shall hold an allowed general unsecured claim in the GSP Case in the amount of Five Million Nine Hundred Eighty Five Thousand Dollars ($5,985,000) (the "Trustee's Allowed Claim"). The Plan (as defined in paragraph 17 below) shall impair and provide for satisfaction of the Trustee's Allowed Claim against GSP on the terms set forth in this Agreement.

2. Forbearance and Non-Forbearance Amounts. The Trustee shall receive under the Plan, in full settlement and satisfaction of the Trustee's Allowed Claim as against GSP, the property described in paragraphs 3, 4, 5 and 6 below. For the avoidance of doubt, it is expressly agreed and understood that the property received by the Trustee under the Plan does not equal the full amount of the Judgment or the amount of the avoided or avoidable transfers from BLMIS to GSP and the Trustee reserves the right, on the terms and subject to the conditions set forth herein, to pursue subsequent transferees of funds initially transferred from BLMIS to GSP. One Million Nine Hundred Seventy Five Thousand Dollars ($1,975,000) of the Judgment and the Trustee's Allowed Claim shall be referred to herein as the "Forbearance Amount" and the balance of the Judgment and Allowed Claim of Four Million Nine Thousand Nine Hundred Fifty Dollars ($4,010,000) shall be referred to herein as the "Non-Forbearance Amount." The Trustee agrees that he will not seek to recover any part of the Judgment or the Trustee's Allowed Claim against GSP except as provided in this Agreement, and will not assert any additional claim in the GSP Chapter 11 proceeding except for his right to enforce this Agreement. The Judgment shall be filed and entered by the Trustee on the Effective Date. Any and all property of the GSP estate or proceeds of such property including, without limitation, cash or cash equivalents (including amounts on deposit with any financial institution including Signature Bank), Redeemer Actions, Service Provider Claims, Subsequent Transferee Claims, the Allowed Claim (all as defined below), or claims held by GSP arising under Chapter 5 of the Bankruptcy Code or the proceeds thereof, which this Agreement does not expressly provide to be transferred, assigned, conveyed or paid to the Trustee (collectively the "Retained Assets"), shall be free and clear of any rights of the Trustee arising from the Judgment or the Trustee's Allowed Claim.

3. Redeemer Claims. GSP shall unconditionally and irrevocably assign to the Trustee, upon the Effective Date, and shall not retain in any respects any and all claims it owns, holds or which could be asserted by or on behalf of GSP under Delaware common or statutory law against GSP limited partners who or which redeemed all or part of their limited partnership interests (the "Redeemer Claims"). For the avoidance of doubt, (i) Redeemer Claims shall not include any claims, rights or causes of action held by GSP against any of its limited partners arising under Chapter 5 of the Bankruptcy Code or the proceeds thereof, and (ii) Redeemer Claims shall not include any claims and rights assigned to the Trustee which are included within Claims Against Management (which are defined in and governed by paragraph 4 below). GSP makes this assignment without any representation, warranty or recourse as to the validity, collectability or merits of any of the Redeemer Claims. The Trustee shall prosecute the Redeemer Claims at his expense.

4. Claims Against Management. The Trustee, solely at the Trustee's expense, shall prosecute all claims and causes of action for damages or other relief that he has asserted in the Adversary Proceeding (the "Adversary Proceedings Claims") against GSP's general partner, former investment managers, investment advisors (excluding the Service Providers as defined in paragraph 5 below), managing entities, directors, alleged partners, and officers, including but not limited to entities denominated the "Fairfield Greenwich Group", Fairfield Greenwich (Bermuda) Limited, Fairfield Greenwich Advisors, LLC, Fairfield Risk Services Limited, Fairfield Greenwich Limited, Fairfield International Managers, Inc., Walter M. Noel, Jr., Jeffrey Tucker, and all other individual persons named as defendants in the Adversary Proceeding. GSP shall unconditionally and irrevocably assign to the Trustee upon the Effective Date, and shall not retain in any respect, any and all claims it owns or holds whether or not such claims have been asserted by, or on behalf of GSP against entities denominated as the "Fairfield Greenwich Group", Fairfield Greenwich (Bermuda) Limited, Fairfield Greenwich Advisors, LLC, Fairfield Risk Services Limited, Fairfield Greenwich Limited, Fairfield International Managers, Inc., Walter M. Noel, Jr., Jeffrey Tucker, Andres Piedrahita, Amit Vijayvergiya and all other officers, directors, employees, shareholders, partners, alleged partners, or members of the foregoing Fairfield Greenwich entities or their relatives (as defined in 11 U.S.C. 101(45)), or the affiliates of any of the foregoing (such entities and individuals collectively "Management"), including but not limited to any claims for breach of fiduciary duty, breach of contract, unjust enrichment, constructive trust, mutual mistake, and accounting and claims under any other legal, equitable, statutory or common law theory (such claims the "Assigned Management Claims"). GSP makes this assignment without any representation, warranty or recourse as to the validity, collectability or merits of any of the Assigned Management Claims. The Adversary Proceeding Claims and Assigned Management Claims shall be referred to herein collectively as the "Claims Against Management." The first Two Hundred Million Dollars recovered by the Trustee from assertion or prosecution of the Claims Against Management shall be credited against the Non-Forbearance Amount. If the Trustee recovers a gross amount of Two Hundred Million Dollars ($200,000,000) in the aggregate from the Claims Against Management, the Trustee thereafter shall credit toward the Non-Forbearance Amount six tenths of one percent (.6%) of the gross consideration received by the Trustee from the Claims Against Management in excess of Two Hundred Million Dollars ($200,000,000) in the aggregate. GSP and its general or limited partners shall not, and shall have no right to, intervene in, object to, or otherwise interfere in any way with the Trustee's prosecution or settlement of the Claims Against Management, including, without limitation, any

right to object to the amount or any other terms of any settlement of the Claims Against Management; provided, however, any settlement of the Claims Against Management with any member of Management shall provide that such member of Management shall release and waive all of such member's claims against GSP.

5. Service Provider Claim Recoveries. GSP in its discretion, subject only to Bankruptcy Court approval if required, may commence, prosecute, and settle and shall retain one-hundred percent (100%) of the Net Recoveries from all claims and causes of action against GSP's custodians, administrators, accountants, and auditors, including but not limited to GlobeOps Financial Services, LLC, Citco Fund Services (Europe) BV, Citco (Canada), Inc., PricewaterhouseCoopers LLC, and PricewaterhouseCoopers Accountants N.V., and all affiliates of the foregoing entities (the "Service Providers" and the claims the "Service Provider Claims"), until GSP collects Two Million Eight Hundred Thousand Dollars ($2,800,000) in the aggregate from such claims, and (ii) GSP shall pay to the Trustee twenty percent (20%) of the Net Recoveries from Service Provider Claims in excess of Two Million Eight Hundred Thousand Dollars ($2,800,000) in the aggregate until the Non-Forbearance Amount of the Judgment has been satisfied in full. GSP shall retain the remaining eighty percent (80%) of such Net Recoveries. GSP shall retain one-hundred percent (100%) of the Net Recoveries it receives from the Service Provider Claims after the Non-Forbearance Amount of the Judgment is satisfied in full. GSP shall prosecute the Service Provider Claims solely at its expense. "Net Recoveries" means the gross amount of property recovered from assertion or prosecution of the Service Provider Claims less the reasonable actual amounts incurred in the assertion or prosecution of such claim. The Trustee shall not, and shall have no right to, intervene in, object to, or otherwise interfere in any way with GSP's prosecution or settlement of the Service Provider Claims, including, without limitation, any right to object to the amount or any other terms of any settlement of the Service Provider Claims.

6. Subsequent Transferee Claim Recoveries. The Trustee, in his sole discretion, may commence, prosecute and settle certain actions pursuant to the Bankruptcy Code, SIPA, the New York Debtor-Creditor Law and other applicable laws, to recover transfers from BLMIS to GSP, and subsequently transferred to other individuals and/or entities (the "Subsequent Transferee Claims"). The Trustee shall pay to GSP twenty percent (20%) of the gross recoveries received by the Trustee from the Subsequent Transferee Claims, and the Trustee shall retain all other recoveries from such actions until the Trustee has recovered the Trustee's Maximum Recovery. Notwithstanding the foregoing, any amounts recovered by the Trustee on the Subsequent Transferee Claims after the Trustee has recovered the Trustee's Maximum Recovery shall be paid to GSP. The Trustee shall prosecute the Subsequent Transferee Claims solely at his expense. Pursuant to the cooperation provision set forth and contemplated by paragraph 11 below, the Trustee shall notify GSP of the commencement of any Subsequent Transferee Claim cases. If the Trustee asserts Redeemer Claims and Subsequent Transferee Claims against the same person or entity, then the amounts recovered from such person or entity shall be deemed recovered on account of a Subsequent Transferee Claim. For the avoidance of doubt, Subsequent Transferee Claims shall not include any claims and rights assigned to the Trustee which are included within Claims Against Management (as defined in and governed by paragraph 4 above).

7. Application of Recoveries to the Judgment. Any recoveries of monies from the Redeemer Actions, Service Provider Claims and Subsequent Transferee Claims that are paid to,

turned over or credited to, or otherwise retained or received by, the Trustee pursuant to this Agreement shall first reduce on a dollar-for-dollar basis the outstanding amount of the Non-Forbearance Amount of the Judgment. Six-tenths of one percent (.6%) of the amount of any recoveries in excess of Two Hundred Million Dollars ($200,000,000) obtained and paid to the Trustee as a result of Claims Against Management shall be credited to the Non-Forbearance Amount of the Judgment.

8. Allocation of Shared Recoveries. On the date that is six (6) months from the Effective Date, and every six (6) months thereafter (each such date, a "Reconciliation Date"), the Trustee and GSP shall jointly and in good faith determine and reconcile the consideration (cash or otherwise) that is payable to each from claims and causes of action that are subject to shared recoveries under this Agreement (except for Claims Against Management, the "Sharing Claims") and the amounts allocable to the Non-Forbearance Amount of the Judgment. If the Trustee is entitled to payment from GSP in connection with the Sharing Claims, GSP shall make a cash payment to the Trustee of the amount owed to the Trustee within five (5) Business Days after the applicable Reconciliation Date. If GSP is entitled to payment from the Trustee in connection with the Sharing Claims, the Trustee shall make a cash payment to GSP within five (5) Business Days after the applicable Reconciliation Date. Any amounts recovered by a Party that are subject to payment, turnover or allocation to another Party hereunder shall be held in trust for the benefit of such Party. If a dispute arises between the Parties as to the amounts payable to any Party from recoveries on the Sharing Claims or the amounts allocable to the Non-Forbearance Amount of the Judgment, and such dispute is not resolved within thirty (30) days following a Reconciliation Date, the Parties consent to the exclusive jurisdiction of the Bankruptcy Court to resolve such dispute.

9. Allowance of a GSP Customer Claim.

(a) On the Effective Date (as defined in paragraph 15 below), notwithstanding section 502(d) of the Bankruptcy Code, the Trustee shall allow GSP a customer claim pursuant to 15 U.S.C. § 78lll(11)) in the fixed amount of Two Million, Eleven Thousand Three Hundred Four Dollars ($2,011,304.00) (the "Allowed Claim") and GSP shall receive the full benefit of any SIPC customer advances under section 9 of SIPA. The amount of the Allowed Claim shall be subject to increase in accordance with this paragraph 9.

(b) Notwithstanding any other language in this Agreement, in the event that, as a result of a final, non-appealable judicial determination and order concerning the Net Equity Method issue, valid customer claims against BLMIS are ultimately calculated based on the amounts reflected on a customer's BLMIS account statement for the period ending November 30, 2008, or to include other amounts beyond the Net Equity Method (including, for example, if customers are entitled to receive interest on their deposits with BLMIS), the Allowed Claim shall be calculated as follows: GSP's SIPA Claim shall be calculated in the same manner in accordance with the Order of the Court and subject to all applicable law as other allowed customer claims are calculated (the "Adjusted GSP SIPA Claim"), provided that, in such event, the allowed amount of the Adjusted GSP SIPA Claim shall equal the greater of (a) the amount of the Allowed Claim, or (b) the product of multiplying the Settlement Percentage of twenty-five percent (25%) times the Adjusted GSP SIPA Claim (the "Adjusted Allowed GSP SIPA Claim"). The Bankruptcy Court's order approving this Agreement shall provide for the allowance of the

Allowed Claim or, if applicable, the Adjusted Allowed GSP SIPA Claim, as provided in this paragraph.

10. Claims and Counterclaims of Management.

(a) Fairfield Greenwich (Bermuda) Ltd. (the "General Partner" of GSP), and its affiliated company Fairfield Greenwich Advisors LLC (together referred to herein as the "Fairfield Claimants") claim to hold unsecured, non-priority claims against GSP totaling an amount of at least Sixty-Eight Thousand, Four Hundred Thirty-Two Dollars ($68,432) (the "Unsecured Claims"). The Plan shall provide that Fairfield Claimants shall not receive or retain anything of value from GSP on account of their Unsecured Claims, except as provided in paragraph 10(d) below.

(b) Certain members of Management also claim to hold contingent unliquidated claims for indemnification costs and expenses, pursuant to GSP's Limited Partnership Agreement or otherwise (the "Indemnification Claims"). The Plan shall provide that holders of the Indemnification Claims shall not receive or retain anything of value from GSP on account of such claims, except as provided in paragraph 10(d) below.

(c) The General Partner who was a partner of GSP as of December 11, 2008, Fairfield Greenwich (Bermuda) Ltd., claims to hold claims against or interests in GSP in connection with their having limited partner or general partner interests in GSP (collectively the "Management Interests Claims"). The Plan shall provide the holders of the Management Interests Claims shall not receive or retain anything of value from GSP on account of such claims, except as provided in paragraph 10(d) below.

(d) Notwithstanding anything to the contrary set forth herein, any person or entity holding all or any part of the Unsecured Claims, the Indemnification Claims, and the Management Interests Claims shall retain any and all such claims and may assert any and all such claims and rights by way of set-off, defense, counterclaim or recoupment with respect to any claim or claims filed or asserted against any one or more of them by the Trustee, or any third party, including without limitation the Claims Against Management.

11. Cooperation in Pursuing and Resolving the Sharing Claims. The Trustee and GSP each agree to provide reasonable cooperation and assistance to the other Party in connection with the prosecution of the Sharing Claims, provide the other with a reasonable opportunity to consider the terms for resolving any Sharing Claims and confer in good faith regarding such terms; provided, however, that the Party authorized under this Agreement with the right and responsibility of prosecuting a Sharing Claim (such Party, the "Prosecuting Party") shall not be required to obtain the consent of the other Party to resolve or settle the Prosecution Party's claim. Within five (5) Business Days following the settlement or other resolution of a Sharing Claim, the Prosecuting Party shall notify the other Party of the amounts, if any, paid or to be paid to the Prosecuting Party in connection therewith. The Trustee and GSP agree and stipulate that a joint interest exists between them with respect to the Sharing Claims. The Trustee and GSP further agree and stipulate that neither this Agreement nor any action taken thereunder constitutes the waiver of any privilege or immunity of the Trustee or GSP or their respective counsel.

12. Release by Trustee. Upon the Effective Date and in consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and without the need for any further documentation, except with respect to the Trustee's Allowed Claim and the obligations, rights and considerations arising under this Agreement, the Trustee, on behalf of himself, BLMIS and its estate, hereby releases, acquits and forever discharges only GSP from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, damages, judgments, and claims whatsoever, asserted or unasserted, known or unknown, now existing or arising in the future (including, without limitation, the claims asserted against GSP in the Adversary Proceeding). Nothing contained herein shall operate to release any claims by the Trustee against any third party, including but not limited to, GSP's general partner, Fairfield Greenwich (Bermuda) Limited and its officers, directors, shareholders and employees and any and all immediate, mediate or subsequent transferees from GSP.

13. Release by GSP. Upon the Effective Date and in consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and without the need for any further documentation, except for the GSP SIPA Claim, the GSP Adjusted Claim, the Allowed Claim, the Adjusted GSP SIPA Claim, and the Adjusted Allowed GSP SIPA Claim (if applicable), and the obligations, rights and considerations arising under this Agreement, GSP, on behalf of itself and its estate hereby releases, acquits and forever discharges and agrees to hold harmless, the Trustee, all of the Trustee's agents, representatives, attorneys, employees and professionals, and BLMIS and its consolidated estate from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, damages, judgments, and claims whatsoever, asserted or unasserted, known or unknown, now existing or arising in the future, except for any and all claims and rights (and the enforcement thereof) of GSP and obligations of the Trustee arising under this Agreement. The Trustee and GSP expressly agree this release shall not affect any claims by GSP against any third party as set forth in paragraphs 3, 4 and 5 of this Agreement, including but not limited to, GSP's general partner, Fairfield Greenwich (Bermuda) Ltd. and its officers, directors, employees, alleged partners, or shareholders, custodians; accountants; auditors; investment advisors; management companies; investors; or limited partners, or any transferees from GSP. GSP shall not object to a provision in the Order approving this Agreement to be entered in the SIPA Proceeding that GSP's limited partners and its general partner shall be barred from asserting any claims directly against the Trustee and all of the Trustee's agents, representatives, attorneys, employees and professionals, arising out of their interests in or claims against GSP, except as provided in paragraph 10 of this Agreement.

14. Unknown Claims. Unknown claims shall mean any Released Claim, as defined herein, that GSP or the Trustee does not know or suspect to exist in its favor at the time of giving the release in this Agreement that if known by it, might have affected its settlement and release in this Agreement. With respect to any and all Released Claims in paragraphs 12 and 13 of this Agreement, GSP and the Trustee shall expressly waive or be deemed to have waived, 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

GSP and the Trustee expressly waive, and shall be deemed to have waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to California Civil Code section 1542. GSP and the Trustee may hereafter discover facts in addition to or different from those that it now knows or believes to be true with respect to the subject matter of the Released Claims, but GSP and the Trustee shall expressly have and shall be deemed to have fully, finally and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence or such different or additional facts. GSP and the Trustee acknowledge and shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part. "Released Claims" means the claims released and waived by GSP and the Trustees pursuant to paragraphs 12 and 13 of the Agreement.

15. Bankruptcy Court Approval; Effective Date; Termination. This Agreement is subject to the Bankruptcy Court's approval of this Agreement in the SIPA Proceeding and the GSP Case by an order (each such order an "Approval Order") that is no longer subject to appeal. The transactions contemplated by this Agreement shall take effect (and shall be deemed to have occurred simultaneously) on the effective date of the Plan (the "Effective Date"); provided, however, that the only obligations of the Parties from the date the Approval Orders become final orders not subject to appeal through and including the Effective Date shall be those obligations set forth in paragraph 17 below. The form of the Approval Order in the SIPA Proceeding shall be subject to GSP's reasonable approval and the form of Approval Order in the GSP Case shall be subject to the Trustee's reasonable approval. Each party shall use their reasonable efforts to obtain approval of the Agreement in the SIPA Proceeding and the GSP Case as promptly as practicable after the date of this Agreement. In addition, the Trustee shall use his reasonable efforts to obtain entry of an order of the court with jurisdiction over the SIPA Proceeding that enjoins and restrains any person or entity who is or ever was a limited partner in GSP or the beneficial owner of any limited partnership interest in GSP (the "SIPA Injunction") from commencing, continuing, asserting or prosecuting any Claims Against Management or other claims against Management arising from related facts and circumstances that GSP owns or holds, and is assigning to the Trustee hereunder, whether or not such claims have been asserted by or on behalf of GSP or the Trustee against Management (collectively, "Enjoined Claims"). The SIPA Injunction shall not bar or enjoin the prosecution of any direct claims against Management that are or could be asserted by past or present GSP limited partners in their respective individual capacities (collectively, "Direct LP Claims"), whether such Direct LP Claims are brought individually by such limited partners or as part of a class action against Management. The

foregoing is without prejudice to the right of the Trustee to seek an injunction against prosecution by GSP's present and former limited partners and holders of any limited partner interest in GSP of Direct LP Claims against Management in connection with any future settlement of claims against Management and without prejudice to the right of such GSP limited partners to oppose any such injunction that may be sought by the Trustee. If this Agreement has not been approved by the Bankruptcy Court in the SIPA Proceeding and the GSP Case as provided in this paragraph within ninety (90) days after the date of this Agreement (or within such additional time as mutually agreed upon by the Parties), then (a) this Agreement (other than this paragraph) shall terminate and be void, (b) all of the statements, concessions, consents and agreements contained in the Agreement (other than this paragraph) shall be void; and (c) neither the Trustee, nor GSP may use or rely on any such statement, concession, 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 GSP, BLMIS or Madoff.

16. Closing. On the Effective Date or as soon thereafter as practicable, (a) the Trustee shall pay GSP $500,000 on account of the Allowed Claim from SIPC advances under Section 9 of SIPA; and (b) the Allowed Claim shall become effective without any further action by any of the Parties.

17. The Plan. Concurrent with seeking approval of this Agreement by the Bankruptcy Court in the SIPA Proceeding and the GSP Case, respectively, GSP shall file and diligently seek entry of an order approving and confirming, respectively, a disclosure statement (as defined below) and plan of reorganization ("Plan") pursuant to chapter 11 of the Bankruptcy Code. The Plan and order confirming the Plan (the "Confirmation Order") shall (a) expressly incorporate the terms of this Agreement, (b) provide for the SIPA Injunction to bar the Enjoined Claims, including without limitation the claims asserted in *Pierce v. Fairfield Greenwich Group*, Index No. 600498/2009 (N.Y. Sup. Ct. 2009), (c) comply with applicable law, and (d) otherwise be subject to the reasonable approval of the Trustee. The foregoing provisions of the Plan and the Confirmation Order shall be without prejudice to the right of the Trustee to seek an injunction against prosecution by GSP present and former limited partners of Direct LP Claims against Management in connection with any future settlement of claims against Management and without prejudice to the right of such GSP limited partners to oppose any such injunction that may be sought by the Trustee. To the extent a conflict exists between the terms of this Agreement, the Plan and the Confirmation Order, this Agreement shall control. The Trustee agrees that the Plan may separately classify the Trustee's Allowed Claim and that treatment of the Trustee's Allowed Claim in accordance with this Agreement shall constitute impairment of such claim. Subject to incorporation of this Agreement and all of its material terms into the Plan and Confirmation Order and the Trustee's reasonable approval of the same, the Trustee shall (i) support approval of the Disclosure Statement and confirmation of the Plan; (ii) not directly or indirectly propose, support, solicit votes for or seek to confirm any plan of reorganization other than the Plan or any other restructuring, reorganization or liquidation of GSP that is inconsistent with the Plan or this Agreement; (iii) not seek, and will oppose the conversion or dismissal of the GSP Case or the appointment of a trustee for GSP, and (iv) not object to, oppose or interfere with the acceptance, implementation, confirmation or consummation of the Plan unless, in the Trustee's reasonable discretion, the Plan is inconsistent with the provisions of this Agreement. If the Confirmation Order, in form and substance satisfactory to the Trustee and GSP and that is no longer subject to appeal, is not entered within 180 days of the date of this Agreement (or within such additional

time as mutually agreed upon by the Parties), then (a) this Agreement (other than this paragraph) shall terminate and be void, (b) all of the statements, concessions, consents and agreements contained in the Agreement (other than this paragraph) shall be void; and (c) neither the Trustee, nor GSP may use or rely on any such statement, concession, 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 GSP, BLMIS or Madoff. For purposes of this Agreement, "Disclosure Statement" shall mean the written disclosure statement and its appendices and/or exhibits, as they may be amended, supplemented, or further modified from time to time, filed by GSP in connection with prosecution of the Plan.

18. GSP's and Trustee's Authority. Subject to Bankruptcy Court approval, GSP represents and warrants to the Trustee that, as of the date hereof, it has the full power, authority and legal right to execute and deliver, and to perform its respective obligations under, this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of its obligations under this Agreement. The Trustee represents and warrants to GSP that, as of the date hereof, and subject to the approval of the Bankruptcy Court as set forth in paragraph 15 above, he has the full power, authority and legal right to execute and deliver, and to perform his obligations under, this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of his obligations under this Agreement.

19. Business Days. For purposes of this Agreement the term "Business Days" shall mean any day other than Saturday, Sunday, or a day that is a legal holiday in New York City.

20. Further Assurances. The Trustee and GSP shall execute and deliver any document or instrument reasonably requested by either of them after the date of this Agreement to effectuate the intent of this Agreement.

21. Entire Agreement. This 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.

22. Amendments, Waiver. This Agreement may not be terminated, waived, amended or modified in any way except in a writing signed by all the Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

23. Assignability. No Party hereto may assign his or her rights under this Agreement to a third party without the prior written consent of each of the other Parties hereto, provided, however that GSP shall assign its rights and delegate its duties under this Agreement to one or more successor entities formed under the Plan to hold the Retained Assets and distribute such assets or their proceeds to persons entitled under the Plan to receive such distributions.

24. Successors Bound. This Agreement shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns, including but not limited to, any subsequent Chapter 11 trustee, Chapter 7 trustee, or post-confirmation trustee appointed in the GSP Case.

25. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard to the principle of conflicts of law. Each Party hereby waives on behalf of itself and its successors and assigns any and all rights to argue that the choice of New York law provisions is or has become unreasonable in any legal proceeding.

26. Exclusive Jurisdiction. The Parties agree and the Approval Orders shall provide that the Bankruptcy Court shall retain and shall have exclusive jurisdiction over any action to enforce this Agreement, or any provision thereof, and the Parties hereby consent to and submit to the jurisdiction of the Bankruptcy Court for any such action. The Parties agree that no Party shall bring, institute, prosecute or maintain any action to enforce, modify, terminate, void, or interpret this Agreement, or any provision thereof, in any court other than the Bankruptcy Court. In any action commenced in another court by a third-party to enforce, modify, terminate, void or interpret this Agreement, the Parties agree to seek to transfer the action to the Bankruptcy Court or to stay or terminate the action in favor of Bankruptcy Court jurisdiction.

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

28. 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 shall constitute one and the same document. The Parties may evidence their execution of this Agreement by delivery to the other Parties of scanned or faxed copies of their signatures, with the same effect as the delivery of an original signature.

29. Non Severability. If any part of this Agreement is found in a judgment or order by a court of competent jurisdiction to be void or unenforceable, the entire Agreement shall be void or unenforceable (except this paragraph), unless otherwise agreed to in writing by the Parties.

30. Notices. Any notices under this Agreement shall be in writing, shall be effective when received and may be delivered only by hand, by overnight delivery service, by fax or by electronic transmission to:

If to the Trustee, c/o:

Mark Kornfeld, Esq.
Baker & Hostetler LLP
45 Rockefeller Center, Suite 1100
New York, NY 10111
F: (212) 589-4201
mkornfeld@bakerlaw.com

If to the GSP, c/o:

Paul R. De Filippo, Esq.
Wollmuth Maher & Deutsch LLP
500 Fifth Avenue
New York, NY 10110
F: (212) 382-0050
pdefilippo@wmd-law.com

[Signature page follows]

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

Dated: 7/7/11

On Behalf of Irving H. Picard, Trustee

Greenwich Sentry Partners, L.P.

Dated: _____

By: Fairfield Greenwich (Bermuda), Ltd., its General Partner

By: _____

Name

_____

Title

_____

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

Dated: _____

_____
Irving H. Picard, Trustee

Greenwich Sentry Partners, L.P.

Dated: July 7, 2011

By: Fairfield Greenwich (Bermuda), Ltd., its General Partner

By: Jeffrey Tucker
Name

Jeffrey Tucker
Title

Director

ATTACHMENT A

GREENWICH SENTRY PARTNERS LP ACCOUNT

Account Number

1-G0371

ATTACHMENT B

CUSTOMER CLAIM

Bernard L. Madoff Investment Securities LLC
Case No 08-01789-BRL
U.S. Bankruptcy Court for the Southern District of New York
Claim Number: 007896

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

RECEIVED
MAR 10 2009

DECEMBER 11, 2008

(Please print or type)

Name of Customer: Greenwich Sentry Partners, LP
Mailing Address: c/o Fairfield Greenwich (Bermuda) Limited, 12 Church St., Suite 606
City: Hamilton State: Bermuda Zip: HM 11
Account No.: 1-60371-3-0
Taxpayer I.D. Number (Social Security No.): 13-4331206

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

****

1. Claim for money balances as of December 11, 2008:

   a. The Broker owes me a Credit (Cr.) Balance of $ 10,426,182 *
   b. I owe the Broker a Debit (Dr.) Balance of $ 0
   c. If you wish to repay the Debit Balance, please insert the amount you wish to repay and attach a check payable to "Irving H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC." If you wish to make a payment, it must be enclosed with this claim form. $ N/A
   d. If balance is zero, insert "None." $ 10,426,182

* Please see Addendum for details

2. Claim for securities as of **December 11, 2008**:

PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.

		YES	NO
a.	The Broker owes me securities	See Account	Statement
b.	I owe the Broker securities		
c.	If yes to either, please list below:		

Date of Transaction (trade date)	Name of Security	Number of Shares or Face Amount of Bonds: The Broker Owes Me (Long)	I Owe the Broker (Short)

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 8.

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

		YES	NO
3.	Has there been any change in your account since December 11, 2008? If so, please explain.		X
4.	Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker?		X
5.	Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker?		X
6.	Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s)		X
7.	Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming.		X
8.	Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers. *	X	
9.	Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? If so, give name of that broker.		X

Please list the full name and address of anyone assisting you in the preparation of this claim form:
Seward & Kissel LLP 1 Battery Park Plaza NY, NY 10004

* Please see Addendum

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

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

THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF.

Date 3/4/09 Signature Greenwich Sentry Partners, LP By: Fairfield Greenwich (Bermuda) Ltd., General Partner Jeffrey Tucker, Director

Date _____ Signature _____

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, *e.g.*, corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

This customer claim form must be completed and mailed promptly, together with supporting documentation, etc. to:

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

Greenwich Sentry Partners LP ("GSP")
Addendum to Customer Claim Form
Bernard L. Madoff Investment Securities LLC ("BLMIS")

GSP submits this addendum in support of its Customer Claim Form.

1. GSP is a limited partnership organized under the laws of the State of Delaware. GSP sold limited partnership interests to qualified, experienced and sophisticated investors (the "Limited Partners"). GSP sought to obtain capital appreciation of its assets. In connection therewith, GSP held two brokerage accounts under its name with BLMIS:

Account Number	**Value as of November 2008**	**Purpose of Account**
I-G0092-3	$ 10,426,182	Trade securities
I-G0092-4	$ (312,390)	Option hedging transactions
Total	**$ 10,426,182**	

2. GSP presently is submitting a Customer Claim Form under its name only. GSP presently is not submitting individual claims on behalf of its Limited Partners. However, GSP reserves the right to amend or supplement its Customer Claim Form to include its individual Limited Partners in the event the Securities Investor Protection Act of 1970, 15 U.S.C. § 78aaa *et seq.* ("SIPA"), is amended or interpreted, now or in the future, to provide coverage to indirect customers or investors of BLMIS, such as the Limited Partners. Further, while neither GSP nor its counsel is authorized to represent or bind the Limited Partners in connection with this filing, GSP reserves the rights of its Limited Partners to file their own customer claim forms in the event SIPA is amended or interpreted to provide coverage to the Limited Partners.

3. In support of its customer claim under 15 U.S.C. §78fff(a)(1)(B), GSP submits copies of the last account statements and purchase/sales confirmations that GSP received from BLMIS.

4. GSP is aware of the Trustee's February 20, 2009 representations that the Trustee intends to implement a cash "in and out" analysis in determining the value of customer claims in light of what the Trustee has indicated is evidence that BLMIS did not, at least for the past 13 years, conduct trades on the account of customers. In this regard, GSP has in its possession account statements and related information dating back to May 2006, showing that GSP was a "net contributor" to BLMIS in the approximate amount of $8.6 million. In other words, GSP deposited approximately $8.6 million more into BLMIS than it withdrew over the period May 2006 to November 2008. Copies of these materials are available upon request.

5. In further response to Item 8 of the Customer Claim Form, Fairfield Greenwich (Bermuda) Limited, as GSP's General Partner, managed GSP's investments. Fairfield Greenwich (Bermuda) Limited, GSP's most recent general partner, is located at 12 Church Street, Suite 606, Hamilton, Bermuda, HM 11. The telephone number is (441) 292-5401.

RESERVATION OF RIGHTS

6. GSP expressly reserves its right to replace, amend and/or supplement this Customer Claim to include any claim at law or in equity.

7. The filing of this Customer Claim shall not be deemed a waiver of any claim in law or equity that GSP may have against BLMIS. Furthermore, nothing contained herein shall be construed as a waiver of any rights or remedies of GSP with respect to any claims against any of BLMIS's affiliates or the right to assert claims that are otherwise warranted in any related or unrelated action. The filing of this Customer Claim is not and shall not be deemed to

be an admission for the purposes of any other proceeding and/or concerning any other person.

8. The filing of this Customer Claim is not intended to be and should not be construed as (a) a consent by GSP to the jurisdiction of the court overseeing the BLMIS SIPA liquidation proceeding with respect to the subject matter of this claim, any objection or other proceeding commenced in this case or otherwise involving GSP; (b) a waiver of the rights and remedies against any other person or entity who may be liable for all or part of the claims set forth herein, whether an affiliate or guarantor of BLMIS or otherwise; (c) a waiver or release of GSP's right to trial by jury, or a consent to trial by jury, in this or any other court; or (d) a waiver of any right to challenge the jurisdiction of the court, with respect to the subject matter of this claim, any objection or other proceeding commenced in this case against or otherwise involving GSP.

9. GSP specifically preserves all of its procedural and substantive defenses and rights with respect to any claim that may be asserted against GSP by BLMIS, any of its successors and assigns or by any trustee for BLMIS's estate.

SK 25528 0034 969570

SEWARD & KISSEL LLP
ONE BATTERY PARK PLAZA
NEW YORK, NEW YORK 10004

JACK YOSKOWITZ
PARTNER
(212) 574-1215
yoskowitz@sewkis.com

TELEPHONE: (212) 574-1200
FACSIMILE: (212) 480-8421
WWW.SEWKIS.COM

1200 G STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE: (202) 737-8833
FACSIMILE: (202) 737-5184

March 4, 2009

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Re: Greenwich Sentry Partners

Dear Mr. Picard:

Please find enclosed Customer Claim forms for accounts held in the name of Greenwich Sentry Partners. We have provided electronic copies of account statements and trade confirmations in support of each claim. They have been stamped with a prefix to correspond to the appropriate account number. Additional information is available upon request. We reserve the right to update or amend each of these claims as necessary.

Sincerely,

Jack Yoskowitz

Enclosures

cc: Michael Thorne, Esq.

SK 25528 0034 972748

ATTACHMENT C

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 (BRL) 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. FAIRFIELD SENTRY LIMITED, GREENWICH SENTRY, L.P., GREENWICH SENTRY PARTNERS, L.P., FAIRFIELD SIGMA LIMITED, FAIRFIELD LAMBDA LIMITED, CHESTER GLOBAL STRATEGY FUND LIMITED, CHESTER GLOBAL STRATEGY FUND, IRONGATE GLOBAL STRATEGY FUND LIMITED, FAIRFIELD GREENWICH FUND (LUXEMBOURG), FAIRFIELD INVESTMENT FUND LIMITED, FAIRFIELD INVESTORS (EURO) LIMITED, FAIRFIELD INVESTORS (SWISS FRANC) LIMITED, FAIRFIELD INVESTORS (YEN) LIMITED, FAIRFIELD INVESTMENT TRUST, FIF ADVANCED, LTD., SENTRY SELECT LIMITED, STABLE FUND, FAIRFIELD GREENWICH LIMITED, FAIRFIELD	Adv. Pro. No. 09-01239 (BRL)

GREENWICH (BERMUDA), LTD., FAIRFIELD GREENWICH ADVISORS LLC, FAIRFIELD GREENWICH GP, LLC, FAIRFIELD GREENWICH PARTNERS, LLC, FAIRFIELD HEATHCLIFF CAPITAL LLC, FAIRFIELD INTERNATIONAL MANAGERS, INC., FAIRFIELD GREENWICH (UK) LIMITED, GREENWICH BERMUDA LIMITED, CHESTER MANAGEMENT CAYMAN LIMITED, WALTER NOEL, JEFFREY TUCKER, ANDRÉS PIEDRAHITA, MARK MCKEEFRY, DANIEL LIPTON, AMIT VIJAYVERGIYA, GORDON MCKENZIE, RICHARD LANDSBERGER, PHILIP TOUB, CHARLES MURPHY, ROBERT BLUM, ANDREW SMITH, HAROLD GREISMAN, GREGORY BOWES, CORINA NOEL PIEDRAHITA, LOURDES BARRENECHE, CORNELIS BOELE, SANTIAGO REYES, JACQUELINE HARARY

Defendants.

CONSENT JUDGMENT[1]

WHEREAS, Irving H. Picard (the "Trustee") is the trustee for the substantively consolidated liquidations of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff ("Madoff") under the Securities Investor Protection Act ("SIPA") §§ 78aaa *et seq.*, currently pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") as Case No. 08-01789 (BRL) (the "SIPA Proceeding"); and

WHEREAS, the Trustee is duly qualified to serve and act on behalf of the estates of BLMIS and Madoff (together, the "BLMIS Estate"); and

[1] All capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement, dated May 17, 2011, between the Trustee (as defined herein), and Greenwich Sentry Partners, L.P.

WHEREAS, Greenwich Sentry Partners, L.P. ("GSP") is a Delaware limited partnership; and

WHEREAS, Fairfield Greenwich (Bermuda) Limited is the general partner of GSP; and

WHEREAS, GSP, at all times relevant hereto, was a customer of BLMIS and maintained an account with BLMIS (the "GSP BLMIS Account"); and

WHEREAS, according to the Trustee, GSP withdrew Five Million Nine Hundred Eighty Five Thousand Dollars ($5,985,000) from the GSP BLMIS Account during the period less than six (6) years, before the date on which the SIPA Proceedings commenced (the "Withdrawals"); and

WHEREAS, the above-captioned adversary proceeding (the "Adversary Proceeding") was commenced by the Trustee in the Bankruptcy Court on or about May 18, 2009 [Docket No. 1]; and

WHEREAS, pursuant to Counts Two, Five, Eight, Eleven, Fourteen, Seventeen, Twenty, and Twenty-Three of the amended complaint filed in the Adversary Proceeding on or about July 20, 2010 [Docket No. 23] (the "Amended Complaint"), the Trustee asserts, pursuant to 11 U.S.C. §§ 544, 547, 548, 550, SIPA § 78fff-(2)(c)(3) and the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 270-281), that the Withdrawals are avoidable and that GSP is liable to the BLMIS Estate for amount of the Withdrawals, which total Five Million Nine Hundred Eighty Five Thousand Dollars ($5,985,000) (the "GSP Avoiding Power Claims"); and

WHEREAS, on or about May 17, 2011, the Trustee and GSP entered into a settlement agreement (the "Agreement"), in order to settle certain matters in controversy

among them, including the Fairfield Avoiding Power Claims, upon the terms as set forth therein; and

WHEREAS, pursuant to the terms of the Agreement, the GSP has consented to the entry of judgment against GSP with respect to the GSP Avoiding Power Claims as set forth below.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, ORDERED AND ADJUDGED THAT, that judgment be entered as follows:

1. Judgment (the "Consent Judgment") is hereby entered in favor the Trustee and against GSP on the GSP Avoiding Power Claims in the amount of Five Million Nine Hundred Eighty Five Thousand Dollars ($5,985,000) (the "Judgment Amount").

2. The Consent Judgment is defined and limited as set forth herein and by the terms of the Agreement. Notwithstanding anything to the contrary in this Consent Judgment, (i) entry, enforcement and/or execution of this Consent Judgment, (ii) the provisions of this Consent Judgment and (iii) the satisfaction of the Judgment Amount as against GSP is governed entirely and exclusively by the terms of the Agreement. In the event of any conflict between this Consent Judgment and the Agreement, the terms of the Agreement shall govern.

3. Interest shall not accrue on the Judgment Amount.

4. This Consent Judgment is not assignable.

5. The Bankruptcy Court shall have exclusive jurisdiction over any action to enforce this Consent Judgment, or any provision thereof, subject in all cases to the terms of the Agreement.

6. The signatories to this Consent Judgment represent that they are expressly authorized to bind the respective parties to the terms hereof and herby represent that the parties have read, understand, agree and consent to the foregoing Consent Judgment and all of the terms and conditions set forth herein.

7. The undersigned represent that the respective parties have obtained the advice of counsel and are consenting and agreeing to all of the terms of this Consent Judgment freely and voluntarily.

8. The Clerk of Court shall enter judgment as set forth herein.

AGREED AND CONSENTED TO:

Greenwich Sentry Partners, L.P.

By: Fairfield Greenwich (Bermuda) Limited, its General Partner

By: _____
Name

_____
Title

AGREED AND CONSENTED TO, FOR FORM :

For Defendant Greenwich Sentry Partners L.P.

_____
Paul R. DeFilippo
Wollmuth Maher & Deutsch LLP
500 Fifth Avenue
New York, NY 10110
F: (212) 382-0050
pdefilippo@wmd-law.com

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

_____
Mark Kornfeld, Esq.
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111
F: (212) 589-4201
mkornfeld@bakerlaw.com

SO ORDERED

This __day of _____

_____
HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY
JUDGE

JUDGMENT IS HEREBY ENTERED in accordance with the terms of the foregoing:

_____
Clerk of the Court

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PASHA S. ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants. This Document Relates To: 09-cv-118 (VM)	Master File No. 09-cv-118 (VM)

NOTICE OF MOTION FOR (I) PRELIMINARY APPROVAL OF THE PARTIAL SETTLEMENT, (II) PRELIMINARY CERTIFICATION OF THE CLASS FOR PURPOSES OF THE PARTIAL SETTLEMENT, (III) APPROVAL OF NOTICE TO THE CLASS, AND (IV) SCHEDULING OF A SETTLEMENT HEARING

PLEASE TAKE NOTICE that Representative Plaintiffs,[1] on their own behalf and on behalf of the Settlement Class, through counsel, hereby move this Court before the Honorable Victor Marrero, for an order pursuant to Rule 23 of the Federal Rules of Civil Procedure: preliminarily approving the proposed partial class action settlement; preliminarily certifying the Settlement Class for settlement purposes only; appointing Representative Plaintiffs as class representatives and Boies, Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian Jacobsen LLP as class counsel; approving the proposed forms of the Notice of Proposed Partial Settlement of Class Action and Settlement Fairness Hearing and Motion for Attorneys' Fees and Reimbursement of Expenses, and the Summary Notice of Proposed Partial Settlement; approving the proposed

[1] All capitalized terms not otherwise defined herein have the same meanings as set forth in the Stipulation of Settlement dated as of November 6, 2012, filed herewith.

methods of disseminating notice; approving Rust Consulting as Claims Administrator; setting a date for the Settlement Hearing; and such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that in support of this motion, Representative Plaintiffs submit herewith: Plaintiffs' Memorandum in Support of their Motion for (i) Preliminary Approval of Partial Settlement, (ii) Preliminary Certification of the Class for Purposes of Settlement, (iii) Approval of Notice to the Class, and (iv) Scheduling of a Settlement Hearing; and the accompanying Stipulation of Settlement dated as of November 6, 2012, with exhibits appended thereto, including the Proposed Order Preliminarily Approving Settlement and Providing for Notice of Proposed Settlement.

Dated: November 6, 2012

Respectfully submitted,

By: /s/ David A. Barrett

Robert C. Finkel
James A. Harrod
WOLF POPPER LLP
845 Third Avenue
New York, NY 10022
Telephone: 212.759.4600
Facsimile: 212.486.2093

Christopher Lovell
Victor E. Stewart
LOVELL STEWART HALEBIAN JACOBSON LLP
61 Broadway, Suite 501
New York, NY 10006
Telephone: 212.608.1900

David A. Barrett
Howard L. Vickery, II
BOIES, SCHILLER & FLEXNER LLP
575 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-2300
Facsimile: (212) 446-2350

Stuart H. Singer
Carlos Sires
Sashi Bach Boruchow
BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Boulevard, #1200
Ft. Lauderdale, Florida 33301
Telephone: (954) 356-0011

Interim Co-Lead Counsel for Plaintiffs and Lead Counsel for PSLRA Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2012, I caused true and correct copies of the foregoing to be served by ECF on all parties registered with the Court's ECF system under docket number 09-CV-118 (VM).

/s/ Eli J. Glasser
Eli J. Glasser

EXHIBIT 6

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants.	MASTER FILE NO. 09-CV-0118 (VM)

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the "Stipulation"), dated as of November 6, 2012, which is entered into by and among the Representative Plaintiffs (as defined herein), on their own behalf and on behalf of the Settlement Class (as defined herein), Fairfield Greenwich Limited ("FGL") and Fairfield Greenwich (Bermuda) Limited ("FGBL"), by and through their undersigned attorneys, states all of the terms of the settlement and resolution of this matter by the Settling Parties (as defined herein) and is intended by the Settling Parties to fully and finally release, resolve, remise and discharge the Released Claims (as defined herein) against the Released Parties (as defined herein), subject to the approval of the United States District Court for the Southern District of New York (the "Court"). All undefined terms below with initial capitalization shall have the meanings ascribed to them in Section A.1. below.

WHEREAS:

The Action

A. On December 19, 2008, plaintiffs Pasha S. Anwar and Julia Anwar filed a putative class action lawsuit on behalf of themselves and all others similarly situated in the

Supreme Court for the State of New York, entitled *Anwar v. Fairfield Greenwich Group, et al.*, No. 603769/2008 ("*Anwar*"). On January 7, 2009, *Anwar* was removed to the Court.

B. On and after January 8, 2009, putative class action lawsuits were filed by plaintiffs on behalf of themselves and all others similarly situated in the Court, entitled *Pacific West Health Medical Center Inc. Employees Retirement Trust v. Fairfield Greenwich Group, et al.*, No. 09 Civ. 00134; *Inter-American Trust v. Fairfield Greenwich Group, et al.*, No. 09 Civ. 00301; *Laor v. Fairfield Greenwich Group et al.*, No. 09 Civ. 2222; *The Knight Services Holdings Limited v. Fairfield Sentry Limited, et al.*, No. 09 Civ. 2269; and *Zohar v. Fairfield Greenwich Group, et al.*, No. 09 Civ. 4031 (collectively, and together with *Anwar*, the "Action").

C. By Orders dated on and after January 14, 2009, the Court consolidated the Action under the Docket No. 09-cv-0118 (VM).

D. By Orders dated January 30, 2009 and July 7, 2009, the Court appointed Boies, Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian Jacobson LLP ("Plaintiffs' Lead Counsel") as Interim Co-Lead Counsel to act on behalf of all Plaintiffs and Lead Counsel for PSLRA Plaintiffs in the Action. In the Action, through the filing of the SCAC on September 29, 2009, the Representative Plaintiffs asserted claims on behalf of a proposed class of similarly situated investors in the Funds against the SCAC Defendants for violations of federal securities law, specifically Sections 10(b) and 20 of the Securities Exchange Act of 1934, and New York law, under various common-law theories. The SCAC also included over one hundred other Named Plaintiffs.

E. By orders of the Court dated July 29, 2010 and August 18, 2010, the Court granted in part and denied in part the FG Defendants' motions to dismiss the SCAC. Thereafter, extensive discovery ensued. The Settling Defendants and the Non-Dismissed Defendants

produced, and Plaintiffs' Counsel reviewed, more than six million pages of documents; and Plaintiffs' Lead Counsel reviewed and produced to defense counsel more than 75,000 pages of documents on behalf of the Representative Plaintiffs and certain other Named Plaintiffs. Plaintiffs' Lead Counsel have conducted approximately thirty depositions of the FG Defendants and former and current employees of the Non-Dismissed Defendants in locations including New York, Miami, Toronto, Amsterdam and Bermuda. Twenty individuals who are associated with or who are the Representative Plaintiffs or other Named Plaintiffs were deposed in Arizona, Cleveland, and New York, some of whom traveled from international residences including Israel, Bahrain, and Belgium for their depositions. Discovery against the Non-Dismissed Defendants is continuing.

F. By orders dated on and after December 15, 2010, over forty other Persons joined the Action as Named Plaintiffs and were deemed parties to the same extent as if they had been named as plaintiffs in the SCAC.

G. On March 1, 2011, the Representative Plaintiffs served a motion for class certification requesting the Court to certify the Action as a class action and to appoint them as class representatives (the "Motion for Class Certification"). Following discovery on class certification issues, all defendants in the Action, including the FG Defendants, opposed the Motion for Class Certification, which is currently pending before the Court.

H. By Order of the Court filed on November 3, 2011, the claims of ABN AMRO Life S.A. in the Action were dismissed with prejudice.

I. By Order of the Court filed on February 22, 2012, the claims of Jeffrey S. Lieberman in the Action were dismissed with prejudice.

Other Actions Against the FG Defendants

J. On May 13, 2009, a shareholder derivative suit styled *Morning Mist Holdings Limited v. Fairfield Greenwich Group, et al.*, No. 601511/2009 ("Morning Mist"), was filed in the Supreme Court for the State of New York in the name and on behalf of Fairfield Sentry Limited against, among others, certain FG Defendants, specifically, Fairfield Greenwich Group, FGL, FGBL, Fairfield Greenwich Advisors LLC, Fairfield Risk Services Ltd., Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, and Amit Vijayvergiya (the "FG Derivative Action Defendants").

K. On May 18, 2009, an adversary proceeding styled *Picard v. Fairfield Sentry Limited, et al.*, Adv. Pro. No. 09-01239 (the "Trustee Action") was filed by the BLMIS Trustee in the United States Bankruptcy Court for the Southern District of New York against Fairfield Sentry Limited, Greenwich Sentry, L.P., and Greenwich Sentry Partners, L.P. On July 20, 2010, the BLMIS Trustee amended the complaint in the Trustee Action to assert claims against, among others, certain FG Defendants, specifically, FGL, FGBL, Fairfield Greenwich Advisors LLC, Fairfield Heathcliff Capital LLC, Fairfield Greenwich (UK) Limited, Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Mark McKeefry, Daniel E. Lipton, Amit Vijayvergiya, Richard Landsberger, Philip Toub, Charles Murphy, Robert Blum, Andrew Smith, Harold Greisman, Gregory Bowes, Corina Noel Piedrahita, Lourdes Barreneche, Cornelis Boele, Santiago Reyes, and Jacqueline Harary.

L. On May 29, 2009, an action styled *Fairfield Sentry Limited v. Fairfield Greenwich Group, et al.*, No. 601687/2009 (the "Sentry Action"), was filed in the Supreme Court for the State of New York by Fairfield Sentry Limited against, among others, certain FG Defendants, specifically, Fairfield Greenwich Group, FGBL, Fairfield Greenwich Advisors LLC,

FGL, Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Amit Vijayvergiya, Lourdes Barreneche, Cornelis Boele, Philip Toub, Richard Landsberger, Charles Murphy, Andrew Smith, Daniel E. Lipton, Mark McKeefry, Harold Greisman, Santiago Reyes, Jacqueline Harary, Robert Blum, Corina Noel Piedrahita, and Maria Teresa Pulido Mendoza (the "Sentry Action FG Defendants").

M. On May 9, 2011, the Trustee entered into a settlement agreement with Fairfield Sentry Limited, Fairfield Sigma Limited, and Fairfield Lambda Limited (the "Offshore Funds"), pursuant to which the Liquidators for the Offshore Funds agreed to unconditionally and irrevocably assign to the Trustee any and all claims asserted by, or on behalf of, the Offshore Funds in the Sentry Action against the Sentry Action FG Defendants.

N. On May 17, 2011, the Trustee entered into settlement agreements with Greenwich Sentry, L.P. and Greenwich Sentry Partners, L.P. (the "Onshore Funds"), pursuant to which the Onshore Funds agreed to unconditionally and irrevocably assign to the BLMIS Trustee any and all claims the Onshore Funds own or hold (whether or not such claims have been asserted by, or on behalf of, the Funds) against FG Derivative Action Defendants and all other officers, directors, employees, shareholders, partners, alleged partners, members, relatives, or affiliates of the FG Derivative Action Defendants.

The Proposed Settlement of the Action Against the FG Defendants

O. Beginning in 2010, and then more intensively between May 21, 2012 and August 3, 2012, while discovery was ongoing, the Settling Parties engaged in extensive, arm's-length negotiations in an attempt to resolve the Action as against the FG Defendants.

P. On August 3, 2012, the Settling Parties signed an agreement in principle to fully and finally settle the Action as against the Settling Defendants in return for specified

consideration and to fully release all claims asserted against the FG Defendants and the Released Parties, which is memorialized in this Stipulation.

Q. In return for the consideration described herein, this Stipulation is intended to fully and finally release, resolve, remise and discharge the Released Claims (as defined herein) against the Released Parties (as defined herein) with prejudice.

R. The Settling Parties' entry into this Stipulation is not, and shall not be construed as or deemed to be evidence of, an admission as to the merit or lack of merit of any claims or defenses asserted in the Action.

S. In addition to the extensive and ongoing discovery described above, Plaintiffs' Lead Counsel have conducted a further investigation since August 3, 2012 relating to the claims and the underlying events alleged in the Action. Plaintiffs' Lead Counsel have also investigated the financial status of each of the FG Defendants. Plaintiffs' Lead Counsel have analyzed the evidence and information adduced through discovery and investigation, and have researched the applicable law with respect to the Representative Plaintiffs and the Settlement Class. In negotiating and evaluating the terms of this Stipulation, Plaintiffs' Lead Counsel considered the significant legal and factual defenses to the Representative Plaintiffs' Claims; the lengthy time that completion of discovery, contested class certification, dispositive motion practice, trial and likely appeals would entail; and the FG Defendants' available assets and their potential inability to satisfy a judgment in the Action if the Representative Plaintiffs were to prevail at trial and on appeal, as well as the potential difficulty in executing on any such judgment. In addition, Plaintiffs' Lead Counsel considered the effect that the Settlement would have in simplifying litigation of the remaining claims against the Non-Dismissed Defendants, who are believed to have substantial assets that may through settlement or judgment provide significant additional

compensation to the class. Plaintiffs' Lead Counsel believe they have received sufficient information to evaluate the merits of the proposed Settlement. Based upon their evaluation, Plaintiffs' Lead Counsel and the Representative Plaintiffs unanimously have determined that the Settlement set forth in this Stipulation is fair, reasonable and adequate and in the best interests of all Settlement Class Members, and that it confers substantial benefits upon the Settlement Class Members.

T. The Released Parties deny any and all allegations of wrongdoing, fault, liability or damage whatsoever; deny that they engaged in, committed or aided or abetted the commission of any breach of duty, breach of contract, wrongdoing or violation of law; deny that they acted improperly in any way; deny that they caused any damage whatsoever to the Representative Plaintiffs or any of the other Settlement Class Members; believe that they acted properly at all times; maintain that they complied with their fiduciary duties; and maintain that they have complied with all laws at all times.

U. The Settling Defendants enter into this Stipulation solely to eliminate the uncertainties, burden and expense of further litigation. Nothing in this Stipulation shall be construed as any admission by any of the Released Parties of wrongdoing, fault, liability, or damages whatsoever.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Representative Plaintiffs, for themselves and on behalf of the Settlement Class, and the Settling Defendants, by and through their respective undersigned counsel that, subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Settling Parties from the Settlement set forth herein, the Action and the Released Claims as against the Settling Defendants shall be finally and fully

compromised, settled and released, the Action shall be dismissed with prejudice and the Released Claims shall be finally and fully released as against the FG Defendants and the Released Claims shall be finally and fully released as against the Released Parties, upon and subject to the terms and conditions of this Stipulation, as follows.

A. Definitions

1. In addition to the terms defined above, the following capitalized terms, used in this Stipulation, shall have the meanings specified below:

a. "Administrative Costs" means all costs and expenses associated with providing notice of the Settlement to the Settlement Class or otherwise administering or carrying out the terms of the Settlement, excluding legal fees.

b. "Augmented Settlement Amount" means the amount, not to exceed $5,000,000 (five million dollars), equal to fifty percent (50%) of the Qualifying Cash Amount.

c. "Authorized Claimant" means any Settlement Class Member who is a Claimant and whose claim for recovery has been allowed pursuant to the terms of this Stipulation, the exhibits hereto, and any order of the Court.

d. "BLMIS" means Bernard L. Madoff Investment Securities LLC.

e. "BLMIS Trustee" means Irving H. Picard, Trustee for the SIPA Liquidation of BLMIS, his successors and any other individual or entity acting on behalf of the BLMIS estate.

f. "Beneficial Owner" means any one of, and "Beneficial Owners" means all of, those Persons who were beneficial owners of shares or limited partnership interests in the Funds as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record). For the avoidance of doubt, only Beneficial Owners may file

a Proof of Claim or request for exclusion with respect to each share or limited partnership interest in the Funds. Where a fund, trust, or similar investment vehicle is an investor in one or more of the Funds, the fund, trust, or similar investment vehicle is the Beneficial Owner for purposes of this Stipulation, not the underlying investors in the fund or similar investment vehicle. Where the record owner of shares or limited partnership interests is a nominee, custodian, or other Person acting in a materially similar fashion on behalf of one or more Beneficial Owners, that nominee, custodian or other Person is not a Beneficial Owner and may not file a Proof of Claim or request for exclusion on behalf of any such Beneficial Owners.

g. "Claimant" means any Settlement Class Member who files a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

h. "Claims" means any and all manner of claims, demands, rights, actions, potential actions, causes of action, liabilities, duties, damages, losses, diminutions in value, obligations, agreements, suits, fees, attorneys' fees, expert or consulting fees, debts, expenses, costs, sanctions, judgments, decrees, matters, issues and controversies of any kind or nature whatsoever, whether known or unknown, contingent or absolute, liquidated or not liquidated, accrued or unaccrued, suspected or unsuspected, disclosed or undisclosed, apparent or not apparent, foreseen or unforeseen, matured or not matured, which now exist, or heretofore or previously existed, or may hereafter exist, (including, but not limited to, any claims arising under federal, state or foreign law, common law, bankruptcy law, statute, rule, or regulation relating to alleged fraud, breach of any duty, negligence, fraudulent conveyance, avoidance, violations of the federal securities laws, or otherwise), whether individual, class, direct, derivative, representative, on behalf of others, legal, equitable, regulatory, governmental or of any other type or in any other capacity.

i. "Claims Administrator" means Rust Consulting, which shall administer the Settlement.

j. "Escrow Agent" means Signature Bank, which shall be subject to the joint control of Boies Schiller & Flexner LLP and Simpson Thacher & Bartlett LLP, except after the occurrence of the Effective Date (with respect to the Settlement Fund) and the Other Claims Effective Date (with respect to the Escrow Fund) as provided in ¶¶ 45 and 46, respectively.

k. "Escrow Amount" means the total sum of $30,000,000 (thirty million dollars), up to fifty percent of which may be in the form of an appropriate security interest in one or more assets, including without limitation real estate assets, subject to the approval of Plaintiffs' Lead Counsel, which shall not be unreasonably withheld.

l. "Effective Date" means the first date by which all of the events and conditions specified in ¶ 44 of this Stipulation have been met and have occurred.

m. "FGL/FGBL Counsel" means Simpson Thacher & Bartlett LLP.

n. "FG Entity Defendants" means FGL, FGBL, Fairfield Greenwich Group, Fairfield Greenwich Advisors LLC, Fairfield Risk Services Ltd., Fairfield Heathcliff Capital LLC, and Fairfield Greenwich (UK) Limited.

o. "FG Defendants" means the FG Entity Defendants and the FG Individual Defendants.

p. "FG Individual Defendants" means Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko Della Schiava, Harold Greisman, Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel

Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya.

q. "Final" when referring to the Final Judgment means exhaustion of all possible appeals, meaning (i) if no appeal or request for review is filed, the day after the date of expiration of any time for appeal or review of the Final Judgment, and (ii) if an appeal or request for review is filed, the day after the date the appeal or request for review is dismissed, or the Final Judgment is upheld on appeal or review in all material respects, and is not subject to further review on appeal or by certiorari or otherwise; provided, however, that any dispute or appeals relating solely to the amount, payment or allocation of attorneys' fees and expenses, the Plan of Allocation, or the provisions of ¶¶ 26-27 of this Stipulation shall have no effect on finality for purposes of determining the date on which the Final Judgment or Alternative Judgment becomes Final.

r. "Final Judgment" means the final order and judgment to be entered by the Court approving the Settlement, materially in the form attached hereto as Exhibit B, or an alternative judgment finally approving the Settlement which is materially different from Exhibit B and which does not result in any Settling Party terminating the Settlement and Stipulation pursuant to ¶ 43 of this Stipulation.

s. "Founding Shareholders" means Walter M. Noel, Jr., Jeffrey H. Tucker and Andrés Piedrahita.

t. "Fund" means any one of, and "Funds" means all of, Fairfield Sentry Limited, Fairfield Sigma Limited, Fairfield Lambda Limited, Greenwich Sentry, L.P. and Greenwich Sentry Partners, L.P.

u. "Initial Settlement Amount" means the total cash sum of $50,250,000 (fifty million two hundred fifty thousand dollars).

v. "Named Plaintiffs" means the Persons identified as plaintiffs in paragraphs 1 through 116 of the SCAC, together with all other Persons who, by order of the Court, were subsequently joined as plaintiffs in the Action and deemed plaintiffs to the SCAC to the same extent as if they had been named as plaintiffs in the SCAC, except any plaintiffs whose claims have been dismissed with prejudice.

w. "Net Loss" means the total cash investment made by a Beneficial Owner in a Fund, directly or indirectly through one or more intermediaries, less the total amount of any redemptions or withdrawals or recoveries by that Beneficial Owner from or with respect to the same Fund.

x. "Non-Dismissed Defendants" means any Person who is not a Released Party and is currently named or may be added in the future as a defendant in the Action or any other legal action consolidated into the Action, now or in the future, and any persons acting on their behalf, including, but not limited to, PricewaterhouseCoopers International Ltd., PricewaterhouseCoopers LLP, PricewaterhouseCoopers Accountants Netherlands N.V., Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., Citco Fund Services (Bermuda) Ltd., The Citco Group Limited, and GlobeOp Financial Services LLC.

y. "Notice" means the "Notice of Proposed Partial Settlement of Class Action and Settlement Fairness Hearing, and Motion for Attorneys' Fees and Reimbursement of Expenses," which is to be sent to Settlement Class Members substantially in the form attached hereto as Exhibit A-1.

z. "Opt-Out" means any one of, and "Opt-Outs" means all of, any Persons who otherwise would be Settlement Class Members and have timely and validly requested exclusion from the Settlement Class in accordance with the provisions of the Preliminary Approval Order and the Notice given pursuant thereto.

aa. "Other Claims" means any and all Claims against any one or more of the Released Parties which are based upon, are by reason of, arise or arose out of, result from, are related to, in connection with, or involve any direct or indirect investment in BLMIS and/or one or more of the Funds or such Funds' investment in BLMIS, whether or not assigned once or more than once (i) ever asserted in any action, arbitration or other proceeding brought in any federal, state or foreign court, tribunal, forum or proceeding as of the Effective Date by, or that was the subject of a tolling agreement prior to the Effective Date with, any Person, class, trustee, liquidator, governmental or regulatory authority or complainant of any kind other than the Named Plaintiffs, (ii) ever asserted in any action, arbitration or other proceeding that has been, or in the future is brought in any federal, state or foreign court, tribunal, forum or proceeding by the BLMIS Trustee, any one or more of the Funds, or any trustee, liquidator or other individual or entity acting on behalf of one or more of the Funds, and (iii) ever asserted in any action, arbitration or other proceeding that has been, or in the future is brought in any federal, state or foreign court, tribunal, forum or proceeding by any Opt-Out who brought a separate civil action prior to August 3, 2012 in a United States District Court against one or more of the SCAC Defendants and such separate civil action was not consolidated with the Action under Master File No. 09-cv-0118(VM) (S.D.N.Y.) as of August 3, 2012.

bb. "Other Claims Effective Date" means the date of completion of the following in each and every legal action commenced on or before June 15, 2016 and asserting or

involving any of the Other Claims: entry of an order of final judgment and exhaustion of all possible appeals, meaning (i) if no appeal is filed, ten (10) days after the date of expiration of any time for appeal or review of the final judgment; and (ii) if an appeal is filed, ten (10) days after the date the appeal or request for review is dismissed, or the final judgment is upheld on appeal or review in all material respects, and is not subject to further review on appeal or by certiorari or otherwise. In the event that the Other Claims Effective Date has not occurred as of June 15, 2016, counsel for the Settling Parties will negotiate in good faith to determine whether any part of the Escrow Fund may be released to the Settlement Fund, notwithstanding the pendency of Other Claims. The FG Defendants represent and warrant that they will act in good faith in defending or seeking to resolve any Other Claim.

cc. "Person" means individual, corporation, fund, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

dd. "Plaintiffs' Counsel" means Plaintiffs' Lead Counsel and such other plaintiffs' counsel who have filed actions consolidated into the SCAC.

ee. "Plaintiffs' Lead Counsel" means Boies, Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian Jacobson LLP.

ff. "Plan of Allocation" means a plan or formula for allocating the Settlement Fund and Escrow Fund to Authorized Claimants after payment of Administrative Expenses, Taxes and Tax Expenses, and such attorneys' fees, costs and expenses as may be awarded by the

Court. Any Plan of Allocation is not a condition to the effectiveness of this Stipulation, and the Released Parties shall have no responsibility or liability with respect thereto.

gg. "Preliminary Approval Order" means the proposed order preliminarily approving the Settlement and directing notice thereof to the Settlement Class substantially in the form attached hereto as Exhibit A.

hh. "Proof of Claim" means the Proof of Claim to he suhmitted hy Claimants, substantially in the form attached as Exhibit A-3.

ii. "Qualified Expense" means any amount an FG Defendant is found liable for (or agrees to pay pursuant to a settlement) on, arising out of, resulting from, relating to or in connection with any Other Claim.

jj. "Qualifying Cash Amount" means the amount by which the cash collectively agreed to be paid by FGL and FGBL pursuant to a Qualifying Settlement exceeds $50,125,000 (fifty million one hundred twenty five thousand dollars).

kk. "Qualifying Settlement" means any settlement between or among FGL and/or FGBL on the one hand, and the BLMIS Trustee on the other hand, pursuant to which FGL and/or FGBL individually or collectively agree to pay the BLMIS Trustee a cash amount greater than $50,125,000 (fifty million one hundred twenty five thousand dollars).

ll. "Released Claims" means any and all Claims, including Unknown Claims, that have been, could have been, or in the future can or might be asserted in any federal, state or foreign court, tribunal, forum or proceeding by on or behalf of any of the Releasing Parties against any one or more of the Released Parties, whether any such Released Parties were named, served with process, or appeared in the Action, which have arisen, could have arisen, arise now, or hereafter arise out of or relate in any manner to the allegations, facts, events, matters, acts,

occurrences, statements, representations, misrepresentations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, or set forth in, or referred to or otherwise related in any way, directly or indirectly, to: (i) the Action, (ii) marketing and/or selling of the Funds by one or more of the FG Defendants and/or the Released Parties, (iii) disclosures or failures to disclose, by one or more of the FG Defendants and/or the Released Parties, with respect to one or more of the Funds and/or the FG Defendants and/or BLMIS, (iv) fiduciary obligations of one or more of the FG Defendants and/or the Released Parties related to the marketing and/or selling of the Funds (v) due diligence of one or more of the FG Defendants and/or the Released Parties related to the Funds and/or BLMIS, (vi) purchases of, sales of (or decisions not to sell), or fees paid in relation to, direct or indirect investments in one or more of the Funds, (vii) any direct or indirect investment in BLMIS, or (viii) any claims in connection with, based upon, arising out of, or relating to the Settlement (but excluding any claims to enforce the terms of the Settlement).

mm. "Released Parties" means (i) each of the FG Entity Defendants, their respective past, present and future, direct or indirect, parent entities, associates, affiliates, and subsidiaries, each and all of their respective past, present, and future directors, officers, partners, alleged partners, stockholders, predecessors, successors and employees, and in their capacity as such, each and all of their attorneys, advisors, consultants, trustees, insurers, co-insurers, reinsurers, representatives, and assigns; (ii) each of the FG Individual Defendants and their respective present, past and future spouses, parents, siblings, children, grandparents, and grandchildren, the present, past and future spouses of their respective parents, siblings and children, and the present, past and future parents and siblings of their respective spouses, including step and adoptive relationships; (iii) any and all persons, firms, trusts, corporations,

and other entities in which any of the FG Defendants has a financial interest or was a founder, settler or creator of the entity, and, in their capacity as such, any and all officers, directors, employees, trustees, beneficiaries, settlers, creators, attorneys, consultants, agents, or representatives of any such person, firm, trust, corporation or other entity; and (iv) in their capacity as such, the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing. For avoidance of doubt, "Released Parties" does not include the Funds, or auditors, custodians or fund administrators, in their capacity as such, including without limitation PricewaterhouseCoopers International Limited, PricewaterhouseCoopers LLP, PricewaterhouseCoopers Accountants Netherlands N.V., Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., Citco Fund Services (Bermuda) Ltd., The Citco Group Limited, and GlobeOp Financial Services LLC (the "Service Provider Defendants"), or any of the Service Provider Defendants' respective directors, officers, agents, employees or partners in their capacity as such.

nn. "Releasing Parties" means the Representative Plaintiffs, each and every member of the Settlement Class and each of their respective predecessors, successors, assigns, attorneys, heirs, representatives, administrators, executors, devisees, legatees, and estates.

oo. "Representative Plaintiffs" means the representative plaintiffs in the Action, specifically, Pacific West Health Medical Center Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company Bahrain, Dawson Bypass Trust, and St. Stephen's School.

pp. "SCAC" means the Second Consolidated Amended Complaint filed by the Representative Plaintiffs in the Action on September 29, 2009.

qq. "SCAC Defendants" means the FG Defendants, Lion Fairfield Capital Management Ltd., PricewaterhouseCoopers International Limited, PricewaterhouseCoopers LLP, PricewaterhouseCoopers Accountants Netherlands N.V., Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., Citco Fund Services (Bermuda) Ltd., The Citco Group Limited, Brian Francoeur, Ian Pilgrim, and GlobeOp Financial Services LLC.

rr. "Settlement" means the settlement contemplated by this Stipulation.

ss. "Settlement Class" means all Persons who were Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record) and who suffered a Net Loss of principal invested in the Funds, excluding (i) Opt-Outs; (ii) any Persons who have been dismissed from this Action with prejudice; (iii) Fairfield Sigma Limited; (iv) Fairfield Lambda Limited; and (v) the FG Defendants and any entity in which the FG Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, immediate family members, heirs, successors, subsidiaries and/or assigns of any such individual or entity in their capacity as such. For the avoidance of doubt, Fairfield Sigma Limited and Fairfield Lambda Limited are excluded from the Settlement Class because shareholders of those funds are included as Settlement Class Members to the extent they have suffered a Net Loss of principal in those funds.

tt. "Settlement Class Member" means any one of, and "Settlement Class Members" means all of, the members of the Settlement Class.

uu. "Settlement Hearing" means the hearing at or after which the Court will make a final decision pursuant to Rule 23 of the Federal Rules of Civil Procedure as to whether

the Settlement contained in the Stipulation is fair, reasonable and adequate, and therefore, should receive final approval from the Court.

vv. "Settling Defendants" means FGL and FGBL.

ww. "Settling Party" means any one of, and "Settling Parties" means all of, the parties to the Stipulation, namely FGL, FGBL and the Representative Plaintiffs on behalf of themselves and the Settlement Class.

xx. "Unknown Claims" shall mean all claims, demands, rights, liabilities, and causes of action of every nature and description which any Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her or its decision not to opt-out or object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Representative Plaintiffs shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Final Judgment shall have waived, the provisions, rights and benefits of California Civil Code § 1542, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Representative Plaintiffs shall expressly waive and each of the Settlement Class Members shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state, territory, foreign country or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. Settlement Class Members may hereafter discover facts in addition to or

different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but the Representative Plaintiffs shall expressly fully, finally and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of fiduciary duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Representative Plaintiffs acknowledge, and the Settlement Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

B. The Settlement Consideration

2. In consideration for the promises and obligations contained herein and the full and final release, settlement and discharge of all Released Claims against the Released Parties, the Settling Parties have agreed to payments, contingent payments and waivers as set forth in ¶¶ 3-7 of this Stipulation, subject to the conditions set forth in this Stipulation.

3. The Settling Defendants shall pay or cause to be paid the Initial Settlement Amount of $50,250,000 (fifty million two hundred fifty thousand dollars) as follows in this ¶ 3 and ¶ 4 below. Subject to the terms of the Stipulation, within five (5) business days after the date on which the Court grants preliminary approval of the Settlement, and provided that Plaintiffs' Lead Counsel has timely provided complete wire transfer information and instructions, the

Settling Defendants shall cause $500,000 (five hundred thousand dollars) of the Initial Settlement Amount to be deposited into an interest-bearing escrow account mutually agreed upon by the Settling Parties (the "Account"), under the control of the Escrow Agent, which shall be used by Plaintiffs' Lead Counsel or its designees only to pay Administrative Costs.

4. Subject to the terms of the Stipulation, and no later than thirty (30) business days after the date on which the Court grants preliminary approval of the Settlement (the "Settlement Funding Date"), the Settling Defendants shall cause the remaining $49,750,000 (forty nine million seven hundred fifty thousand dollars) of the Initial Settlement Amount to be deposited into the Account, under the control of the Escrow Agent. The Initial Settlement Amount, plus any funds transferred to the Account pursuant to ¶ 7 hereto, and interest earned thereon is referred to as the "Settlement Fund."

5. Subject to the terms of the Stipulation, and no later than fourteen (14) business days prior to the scheduled date of the Settlement Hearing (the "Escrow Fund Funding Date"), the Settling Defendants shall cause the $30,000,000 (thirty million dollar) Escrow Amount, less any Qualified Expense reductions as specified in ¶ 5(i) below, to be transferred into a separate interest-bearing escrow account mutually agreed upon by the Settling Parties, under the control of the Escrow Agent. The Escrow Amount less any Qualified Expense reductions, plus interest earned thereon, is referred to as the "Escrow Fund".

i. In the event that any of the FG Defendants incur a Qualified Expense before the Escrow Funding Date, the Escrow Amount shall be reduced by seventy-five percent (75%) of all Qualified Expenses incurred before the Escrow Fund Funding Date, up to the point at which seventy-five (75%) of all such Qualified Expenses equals $30,000,000 (thirty million

dollars), at which point the Settling Defendants shall not be required to cause the transfer of any amount into the Escrow Fund.

6. Subject to the conditions set forth herein, the Settling Defendants agree to waive, and by operation of the Final Judgment shall have waived, (i) indemnification claims they hold against the Funds for the amounts paid under this Stipulation, and (ii) $20,000,000 (twenty million dollars) of indemnification claims they hold against the Funds for legal fees and expenses incurred by the Settling Defendants in defending the Action.

7. In the event of a Qualifying Settlement, and only in the event of a Qualifying Settlement, no later than thirty (30) business days after the date of the Qualifying Settlement, the Settling Defendants shall cause the Augmented Settlement Amount up to $5,000,000 to be deposited into the Account.

8. Apart from the payments, contingent payments and waivers identified in ¶¶ 3-7 above and the break-up fee identified in ¶ 47 below, the FG Defendants shall have no further monetary obligation to Plaintiffs' Counsel, the Representative Plaintiffs or the Settlement Class under this Settlement.

C. Representations and Warranties Regarding the Settlement Consideration

9. The Settling Parties understand and acknowledge that payments to the Settlement Fund and Escrow Fund by the Settling Defendants as set forth herein shall be treated as a return of fees previously paid to FGL, FGBL or related entities for services provided.

10. The Settling Defendants warrant that each of the FG Individual Defendants has agreed to contribute amounts to the Settling Defendants to facilitate the payment of the Initial Settlement Amount by the Settling Defendants and the Founding Shareholders also have agreed to contribute amounts to the Settling Defendants to facilitate payment of the Escrow Amount. In

the event that an FG Individual Defendant does not in fact contribute to either of the Settling Defendants to facilitate the payment of the Initial Settlement Amount (a "Non-Contributing Individual Defendant"), the Settling Defendants shall notify Plaintiffs' Lead Counsel and the Court in advance of the Settlement Hearing and the Non-Contributing Individual Defendant shall remain a defendant in the Action and shall not obtain the dismissal or release provided for in ¶¶ 24 and 26 of this Stipulation.

11. The Settling Defendants warrant as to themselves that they are not insolvent nor will the payments contemplated herein render them insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code, including §101 and §547 thereof. The Settling Defendants also warrant that to the best of their knowledge the FG Individual Defendants are not insolvent nor will the payments contemplated in ¶ 10 hereof render any of them insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code, including §101 and §547 thereof. In the event a third-party successfully claws back monies from the Settlement Fund or Escrow Fund (the "Clawed Back Amount") on account of the insolvency of any FG Defendant ("the Insolvent Defendant"), notwithstanding anything to the contrary in the Stipulation or any other order in connection with the Settlement, the Settlement Class will have a claim against the Insolvent Defendant in an amount not to exceed the amount of the Insolvent Defendant's settlement contribution included in the Clawed Back Amount. The warranties and representations made in this ¶ 11 are made by the Settling Defendants individually, and not by FGL/FGBL Counsel.

12. Plaintiffs' Lead Counsel acknowledge that they received certain confidential information regarding each of the FG Individual Defendants' finances prior to executing this Stipulation. If, prior to the earlier of the Effective Date or July 1, 2013 it is determined that any

FG Individual Defendant's net worth was materially greater than disclosed to Plaintiffs' Lead Counsel as of the applicable date of such representations, then the Representative Plaintiffs may, at their sole and absolute discretion, revoke the releases provided for in ¶¶ 24 and 26 of this Stipulation (the "Net Worth Option") with respect to any such FG Individual Defendant (the "Excluded Defendant"). In the event the Representative Plaintiffs elect to exercise the Net Worth Option, Plaintiffs' Lead Counsel shall notify the Excluded Defendant, FGL/FGBL Counsel and the Court, and the Initial Settlement Amount and Escrow Amount shall be reduced by an amount equal to the settlement contribution made or to be made by the Excluded Defendant pursuant to ¶ 10 of this Stipulation, and if already paid in, such amounts shall be promptly returned by the Escrow Agent (pursuant to written instructions from counsel pursuant to this Stipulation) to FGL and/or FGBL, which shall in turn promptly return such amounts to the Excluded Defendant.

D. Handling and Disbursement Of Funds By The Escrow Agent

13. No monies will be disbursed from the Settlement Fund until after the Effective Date except:

i. As provided in ¶ 12 above, if applicable;

ii. As provided in ¶ 17 below;

iii. As provided in ¶¶ 41 and 51 below, if applicable; and

iv. To pay Taxes and Tax Expenses (as defined in ¶ 19 below) on the income earned by the Settlement Fund. Taxes and Tax Expenses shall be paid out of the Settlement Fund and shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent (pursuant to written instructions from counsel pursuant to this Stipulation) without prior Order of the Court.

14. No monies or security interests in assets will be disbursed from the Escrow Fund until after the Other Claims Effective Date except:

i. As provided in ¶ 12 above, if applicable;

ii. As provided in ¶ 18 below;

iii. As provided in ¶¶ 41 and 51 below, if applicable; and

iv. To pay Taxes and Tax Expenses (as defined in ¶ 19 below) on the income earned by the Escrow Fund. Taxes and Tax Expenses shall be paid out of the Escrow Fund and shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent (pursuant to written instructions from counsel pursuant to this Stipulation) without prior Order of the Court.

15. The Escrow Agent (pursuant to written instructions from counsel pursuant to this Stipulation) shall invest any funds (other than security interests in assets) deposited into the Settlement Fund and Escrow Fund in short term instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates.

16. The Escrow Agent shall not disburse the Settlement Fund or Escrow Fund except as provided in this Stipulation, by an order of the Court, or with the written agreement of counsel for all of the Settling Parties pursuant to this Stipulation.

17. At any time after the Court grants preliminary approval of the Settlement, the Escrow Agent may, without further approval from FGL, FGBL or the Court, disburse at the direction of Plaintiffs' Lead Counsel up to $500,000 (five hundred thousand dollars) from the Settlement Fund prior to the Effective Date to pay the Administrative Costs, including, without

limitation: escrow agent costs, the costs of publishing summary notice, and printing and mailing the full Notice and Proof of Claim, as directed by the Court.

18. In the event that any of the FG Defendants incur a Qualified Expense, the Escrow Agent shall return from the Escrow Fund an amount equal to seventy-five percent (75%) of such Qualified Expense to FGL or FGBL, and only FGL or FGBL, until the Escrow Fund is exhausted, promptly upon the Escrow Agent's receipt of a certified letter or comparable notice from FGL/FGBL Counsel stating that a Qualified Expense has been incurred and specifying the amount of the Qualified Expense and the entity to be paid, in the same manner that an escrow agent provides payment on a letter of credit once the agent has received the appropriate notice.

E. Taxes

19. The Settling Parties agree to treat the Settlement Fund and the Escrow Fund as being at all times a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B-1. In addition, Plaintiffs' Lead Counsel or its designee shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 19, including the "relation-back election" (as defined in Treasury Regulation § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Plaintiffs' Lead Counsel or its designee to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

i. For purposes of § 468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation § 1.468B-2(k)(3) promulgated thereunder, the "administrator" shall be the Plaintiffs' Lead Counsel or its designee. Plaintiffs' Lead Counsel or is designee shall timely and properly file all informational and other tax returns necessary or

advisable with respect to the Settlement Fund and Escrow Fund (including without limitation the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in this ¶ 19) shall be consistent with this ¶ 19 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund and Escrow Fund shall be paid out of the Settlement Fund and Escrow Fund as provided in ¶ 19(ii) hereof.

ii. All Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund or the Escrow Fund, including any Taxes or tax detriments that may be imposed upon the Settling Defendants or their counsel with respect to any income earned by the Settlement Fund or Escrow Fund for any period during which the Settlement Fund or Escrow Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes ("Taxes"), and expenses and costs incurred in connection with the operation and implementation of this ¶ 19 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses or penalties relating to filing (or failing to file) the returns described in this ¶ 19) ("Tax Expenses"), shall be paid out of the Settlement Fund or Escrow Fund, as appropriate. The Settling Defendants and their counsel shall have no liability or responsibility for the Taxes or the Tax Expenses. Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid out of the Settlement Fund and Escrow Fund without prior order from the Court. The Escrow Agent (pursuant to written instructions from counsel pursuant to this Stipulation) shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that

may be withheld under Treasury Regulation § 1.468B-2(l)(2)). Neither the Settling Defendants nor their counsel is responsible therefore nor shall they have any liability with respect thereto. The Settling Parties agree to cooperate with each other, and their tax attorneys and accountants, to the extent reasonably necessary to carry out the provisions of this ¶ 19.

F. Preliminary Approval Order, Notice Order, and Settlement Hearing

20. Promptly after the execution of this Stipulation, Plaintiffs' Lead Counsel shall submit this Stipulation and its exhibits to the Court and shall apply for preliminary approval of the Settlement set forth in this Stipulation, entry of a preliminary approval order, and approval for the mailing and dissemination of notice, substantially in the form of Exhibits A, A-1, A-2, and A-3. The mailed Notice (Exhibit A-1) shall include the general terms of the Settlement and the provisions of the Plan of Allocation, and shall set forth the procedure by which recipients of the Notice may object to the Settlement or the Plan of Allocation or request to be excluded from the Settlement Class. The date and time of the Settlement Hearing shall be added to the Notice before it is mailed or otherwise provided to Settlement Class Members.

21. To assist in dissemination of notice, the Settling Defendants, at their own expense, will cooperate in providing names and contact information of the Settlement Class Members and their nominees or custodians in their possession and will use best reasonable efforts to assist Plaintiffs' Lead Counsel in obtaining such information from other sources.

22. At the time of the submission described in ¶ 20 hereof, the Settling Parties, through their counsel, shall jointly request that, after the Notice is provided, the Court hold the Settlement Hearing and approve the Settlement as set forth herein as promptly after the Settlement Hearing as possible, except to the extent a Settling Party has exercised the right to terminate the Settlement pursuant to ¶ 43 or ¶ 47.

23. The Court, in its discretion, may order that the notice of the Settlement be combined with the required notice of any class certified by the Court with respect to claims against other SCAC Defendants.

G. Releases

24. Upon the Effective Date, as defined in ¶ 1(l) hereof, the Releasing Parties, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the future) through or on behalf of them, regardless of whether any such Releasing Party ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim, any disbursement from the Settlement Fund or Escrow Fund, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties and shall have covenanted not to sue the Released Parties with respect to all such Released Claims, and shall be permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claim, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties. Nothing contained herein shall, however, bar the Releasing Parties from bringing any action or claim to enforce the terms of this Stipulation or the Final Judgment.

25. Upon the Effective Date, as defined in ¶ 1(l) hereof, the Released Parties, on behalf of themselves, their heirs, executors, predecessors, successors and assigns, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and all of the Representative Plaintiffs, Settlement Class Members and Plaintiffs' Counsel from all Claims which arise out of, concern or relate to

the institution, prosecution, settlement or dismissal of the Action (the "FG Defendant Released Claims"), and shall be permanently enjoined from prosecuting the FG Defendant Released Claims against the Representative Plaintiffs, Settlement Class Members and Plaintiffs' Counsel. The FG Defendants hereby represent and warrant that they are not aware of any claims that they have or may have against the Representative Plaintiffs, the Named Plaintiffs, Plaintiffs' Counsel or a Settlement Class Member (or nominee) that are not released by virtue of this ¶ 25. Nothing contained herein shall, however, bar the FG Defendants from bringing any action or claim to enforce the terms of this Stipulation or the Final Judgment.

26. To the fullest extent permitted by law, all Persons, including without limitation the Non-Dismissed Defendants, shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any claims, actions, or causes of action for contribution, indemnity or otherwise against any of the Released Parties seeking as damages or otherwise the recovery of all or any part of any liability, judgment or settlement which they pay or are obligated to pay or agree to pay to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning such Persons' participation in any acts, facts, statements or omissions that were or could have been alleged in the Action, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-party claims or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum. The proposed Final Judgment will include a reciprocal order equal in scope to that contemplated in this ¶ 26 enjoining the Released Parties from bringing claims against the Non-Dismissed Defendants.

27. Any final verdict or judgment that may be obtained by one or more of the Representative Plaintiffs or one or more of the other Settlement Class Members, whether

individually or on behalf of a class, against one or more Non-Dismissed Defendants or other Person barred from seeking contribution pursuant to this Stipulation (a "Non-Dismissed Defendant Judgment") shall be reduced, to the extent permitted by applicable law, by the greater of (i) the amount that corresponds to the percentage of responsibility attributed to the Released Parties under the Non-Dismissed Defendant Judgment; and (ii) the gross monetary consideration provided to such Representative Plaintiff or other Settlement Class Member or Members pursuant to this Stipulation.

H. Administration And Calculation Of Claims, Final Awards And Supervision And Distribution Of the Settlement Fund

28. Under the supervision of Plaintiffs' Lead Counsel, acting on behalf of the Settlement Class, and subject to such supervision and direction of the Court as may be necessary or as circumstances may require, the Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund (as defined below), and if applicable the Net Escrow Fund (as defined below), to Authorized Claimants.

29. The Settlement Fund shall be applied as follows:

i. To pay the Taxes and Tax Expenses described in ¶ 19 above;

ii. To pay Administrative Costs;

iii. To pay the Settling Defendants pursuant to ¶¶ 12 and 41 hereof in the event the Representative Plaintiffs exercise either the Net Worth Option or the Discovery Option.

iv. To pay Plaintiffs' Counsel's attorneys fees and expenses and the Representative Plaintiffs' actual out of pocket expenses relating to the representation of the putative class (including lost wages) and, if appropriate, an incentive award as provided in ¶ 34 and 35 hereof (the "Fee and Expense Award"), to the extent allowed by the Court; and

v. To distribute the balance of the Settlement Fund, that is, the Settlement Fund less the items set forth in ¶ 29(i), (ii), (iii) and (iv) hereof (the "Net Settlement Fund"), to the Authorized Claimants as allowed by this Stipulation, the Plan of Allocation, or the Court.

30. The Escrow Fund shall be applied as follows:

i. To pay Taxes and Tax Expenses described in ¶ 19 above;

ii. To reimburse the Settling Defendants for Qualified Expenses as provided in ¶ 18 above;

iii. To pay the Settling Defendants pursuant to ¶¶ 12 and 41 hereof in the event the Representative Plaintiffs exercise either the Net Worth Option or the Discovery Option.

iv. To pay Plaintiffs' Counsel an additional Fee and Expense Award to the extent allowed by the Court; and

v. To distribute the balance of the Escrow Fund, that is, the Escrow Fund less the items set forth in ¶ 30(i), (ii), (iii) and (iv) hereof (the "Net Escrow Fund"), to the Authorized Claimants as allowed by this Stipulation, the Plan of Allocation, or the Court.

31. Upon and after the Effective Date with respect to the Net Settlement Fund, and upon and after the Other Claims Effective Date with respect to the Net Escrow Fund, and in accordance with the terms of the Plan of Allocation or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund and Net Escrow Fund shall be distributed to Authorized Claimants subject to and in accordance with the Plan of Allocation set forth in the Notice.

32. This is not a claims-made settlement, and if all conditions of the Stipulation are satisfied and the Final Judgment becomes Final, no portion of the Settlement Fund will be returned to the Settling Defendants. Neither the Settling Defendants nor their counsel shall have

any responsibility for, interest in, or liability whatsoever with respect to the investment or distribution of the Net Settlement Fund, the Net Escrow Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith. No Person shall have any claims against Plaintiffs' Counsel, the Claims Administrator or any other agent designated by Plaintiffs' Counsel based on distribution determinations or claim rejections made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or orders of the Court.

33. It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund and Net Escrow Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a condition of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation. Any order or proceedings relating to the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this Stipulation, or affect or delay the finality of the Final Judgment, or any other orders entered pursuant to this Stipulation.

I. Plaintiffs' Counsel's Attorneys' Fees And Reimbursement of Expenses

34. Plaintiffs' Lead Counsel may submit an application or applications (the "Fee and Expense Application") for distributions from the Settlement Fund to Plaintiffs' Lead Counsel and other firms that have participated in the Action on behalf of the Settlement Class Members for (i) an award of attorneys' fees; (ii) reimbursement of actual costs and expenses, including the fees and expenses of experts and/or consultants, incurred in connection with prosecuting the

Action as against the FG Defendants; and (iii) reimbursement to the Representative Plaintiffs of their actual out of pocket expenses (including lost wages) and, if appropriate, an incentive award.

35. The attorneys' fees and expenses, including the fees and expenses of experts, consultants and/or the Representative Plaintiffs, as awarded by the Court, shall be paid to Plaintiffs' Lead Counsel (on behalf of all Plaintiffs' Counsel and the Representative Plaintiffs) from the Settlement Fund, as ordered, on or after the Effective Date, together with interest accrued on such amount from the date of such order to the date of payment at the same rate as earned on the Settlement Fund.

36. The procedure for, and allowance or disallowance by the Court of, any application by Plaintiffs' Lead Counsel or the Representative Plaintiffs for attorneys' fees and expenses, including the fees and expenses of experts and/or consultants, are not a condition of the Settlement set forth in this Stipulation and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation. Any order of or proceedings relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this Stipulation, or affect or delay the finality of the Final Judgment or any other orders entered pursuant to this Stipulation.

37. Any award of attorneys' fees and/or expenses shall be paid solely from the Settlement Fund and shall reduce the settlement consideration paid to the Settlement Class accordingly. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payments to Plaintiffs' Lead Counsel or any other plaintiffs' counsel or the Representative Plaintiffs and/or any other Person who receives payment from the Settlement Fund.

J. Class Certification

38. In the Final Judgment, the Settlement Class shall be certified for purposes of this Settlement, but in the event that the Final Judgment does not become Final or the Settlement fails to become effective for any reason, all Settling Parties reserve all their rights on all issues, including whether a class should be certified in the Action. For settlement purposes only, in connection with the Final Judgment, the Settling Defendants shall consent to (i) the appointment of Representative Plaintiffs as the class representatives, (ii) the appointment of Plaintiffs' Lead Counsel as class counsel, and (iii) the certification of the Settlement Class pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

K. Continuing Discovery Obligations

39. Except as provided in ¶¶ 40 and 41 below, the Settling Parties agree to stay the litigation of claims and related discovery in the Action as against the FG Defendants pending the occurrence of the Effective Date.

40. Pending the occurrence of the Effective Date, the Settling Parties agree that the FG Defendants shall have a continuing obligation to participate in discovery in the Action (other than the discovery stayed pursuant ¶ 39 above). In the event the Stipulation is terminated or the Settlement fails to become effective for any reason, the FG Defendants shall not object to the use or introduction of such discovery, or seek to retake such discovery, on the grounds that they did not have the opportunity to participate. For the avoidance of doubt, Plaintiffs' Lead Counsel shall have the right to question FG Defendants or persons affiliated with FG Defendants whose depositions are noticed in the Action by Non-Dismissed Defendants.

41. Upon the reasonable request of Plaintiffs' Lead Counsel, the Settling Defendants will exercise reasonable best efforts to bring about the FG Individual Defendants' cooperation in

providing trial testimony (in person or by deposition) in the Action, whether or not the FG Individual Defendant is within the subpoena power of the Court, provided that any such deposition shall be taken only where such FG Individual Defendant resides. If an FG Individual Defendant refuses to testify at the trial and declines to submit to a deposition despite a reasonable request of Plaintiffs' Lead Counsel (a "Discovery Refusal"), then the Representative Plaintiffs may, at their sole and absolute discretion, revoke the releases provided in ¶¶ 24 and 26 of this Stipulation (the "Discovery Option") with respect to any such FG Individual Defendant (the "Revoked Defendant") such that he or she shall remain a defendant in the Action, shall no longer be deemed a third-party beneficiary of the Stipulation and shall not obtain the dismissal or release provided for herein, or in the alternative, may request the Court to enforce the terms of this paragraph. In the event the Representative Plaintiffs exercise the Discovery Option, Plaintiffs' Lead Counsel shall notify the Revoked Defendant, FGL/FGBL Counsel and the Court, and the Initial Settlement Amount and Escrow Amount shall be reduced by an amount equal to the settlement contribution made or to be made by the Revoked Defendant pursuant to ¶ 10 of this Stipulation, and if already paid in, such amounts shall be promptly returned by the Escrow Agent (pursuant to written instructions from counsel pursuant to this Stipulation) to FGL and/or FGBL, which shall in turn promptly return such amounts to the Revoked Defendant. The Court shall retain jurisdiction over the Settling Defendants for purposes of enforcing this paragraph.

42. Except as provided in ¶ 39, nothing in this Stipulation shall limit Plaintiffs' rights under law to subpoena or otherwise seek discovery from any Person, including the FG Individual Defendants.

L. Conditions Of Settlement, Effect of Disapproval, Cancellation or Termination

43. The Representative Plaintiffs, on behalf of the Settlement Class, or the Settling Defendants shall have the right to terminate the Settlement and Stipulation by providing written notice of their election to do so ("Termination Notice") to all other Settling Parties within thirty (30) days of: (i) entry of a Court order declining to enter the Preliminary Approval Order in any material respect; (ii) entry of a Court order refusing to approve this Stipulation in any material respect; (iii) entry of a Court order declining to enter the Final Judgment in any material respect; or (iv) entry of an order by which the Final Judgment is modified or reversed in any material respect by the Court, the Court of Appeals or the United States Supreme Court.

44. The Effective Date of this Stipulation shall not occur unless and until each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

i. The Settling Parties have not exercised their respective rights to terminate the Settlement as provided in ¶¶ 43 or 47 hereof, and the time to exercise those rights has expired;

ii. The Court has entered the Preliminary Approval Order attached hereto as Exhibit A or an order containing materially the same terms;

iii. The Court has approved the Settlement, following notice to the Settlement Class and the Settlement Hearing, and has entered the Final Judgment; and

iv. The Final Judgment has become Final as defined in ¶ A.1(q).

45. Upon the occurrence of the Effective Date, any and all interest or right of the FG Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, except as set forth in this Stipulation. At the occurrence of the Effective Date, Simpson Thacher

& Bartlett LLP shall no longer have joint control of the Escrow Agent with respect to the Settlement Fund.

46. Upon the occurrence of the Other Claims Effective Date, any and all interest or right of the FG Defendants in or to the Escrow Fund, if any, shall be absolutely and forever extinguished, provided the Escrow Agent has satisfied all Qualified Expenses submitted prior to the Other Claims Effective Date as provided in ¶ 18 hereof. At the occurrence of the Other Claims Effective Date, and following the reimbursement of all Qualified Expenses as provided in ¶ 18 hereof, Simpson Thacher & Bartlett LLP shall no longer have joint control of the Escrow Agent with respect to the Escrow Fund.

47. If the aggregate Net Loss of Opt-Outs exceeds the threshold specified in a separate "Supplemental Agreement" between the Settling Parties, then the Settling Defendants shall have, in their sole and absolute discretion, the option to terminate this Stipulation and to render the Settlement null and void in accordance with the procedures set forth in the Supplemental Agreement. In the event the Settling Defendants elect to terminate the Stipulation under this ¶ 47 where the Net Loss of Opt-Outs does not exceed a separate threshold specified in the Supplemental Agreement, the Settling Defendants shall incur a break-up fee in the amount of $1,000,000 (one million dollars) which shall not be returned to the Settling Defendants and shall remain in the Settlement Fund (the "Break-Up Fee") subject to order of the Court. The Supplemental Agreement will not be filed with any court unless and until a dispute among the Settling Parties concerning its interpretation and application arises, or unless the Court requires, and in either event any Settling Party may seek to have the Supplemental Agreement filed under seal, which application shall not be opposed by any other Settling Party.

48. If some or all of the conditions specified in ¶ 44 above are not met, or in the event that this Stipulation is not approved by the Court, or the Settlement set forth in this Stipulation is terminated or fails to become effective in accordance with its terms, then this Stipulation shall be canceled and terminated, unless all of the Settling Parties agree in writing to proceed with this Stipulation. None of the Settling Parties, or any of them, shall have any obligation whatsoever to proceed under any terms other than those provided for and agreed herein. If any Settling Party engages in a material breach of the terms hereof, any other Settling Party, provided that it is in substantial compliance with the terms of this Stipulation, may terminate this Stipulation on notice to all the Settling Parties.

49. In the event the Stipulation shall terminate, or be canceled, or shall not become effective for any reason, the Settling Parties and the FG Defendants shall be restored to their respective positions in the Action immediately prior to August 3, 2012, and they shall proceed in all respects as if the Stipulation had not been executed and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice.

50. In the event that the Stipulation is not approved by the Court or the Settlement set forth in this Stipulation is terminated or fails to become effective in accordance with its terms, the terms and provisions of this Stipulation, except as otherwise provided herein, shall have no further force and effect with respect to the Settling Parties or FG Defendants and shall not be used in this Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*.

51. In the event the Stipulation shall be terminated, or be canceled, or shall not become effective for any reason, within seven (7) business days (except as otherwise provided in the Supplemental Agreement) after the occurrence of such event, the Settlement Fund and the Escrow Fund, less taxes, any Administrative Costs which have either been disbursed or are determined to be chargeable, and any applicable Break-Up Fee, shall be refunded by the Escrow Agent to the Settling Defendants (pursuant to written instructions from counsel pursuant to this Stipulation) and any security interest(s) in assets pledged to the Escrow Fund shall be terminated. At the request of counsel for the Settling Defendants, Plaintiffs' Lead Counsel or its designee shall apply for any tax refund owed on the Settlement Fund or the Escrow Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, pursuant to written direction from the Settling Defendants.

52. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation, ¶¶ 26 and 27 hereof, or the amount of any attorneys' fees, costs, expenses, and interest awarded by the Court to Plaintiffs' Counsel shall constitute grounds for cancellation or termination of the Stipulation.

M. Miscellaneous Provisions

53. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

54. Each of the attorneys executing this Stipulation, any of its exhibits, or any related settlement documents on behalf of any Settling Party hereto hereby warrants and represents that he or she has been duly empowered and authorized to do so by the Settling Parties he or she represents. In addition, the Settling Defendants warrant and represent that they have

been duly empowered and authorized by each of the FG Defendants to agree to and execute this Stipulation to the extent it applies to them.

55. This Stipulation, together with the Supplemental Agreement, constitute the entire agreement between the Settling Parties and supersede any prior agreements. No representations, warranties or inducements have been made to or relied upon by any Settling Party concerning this Stipulation, other than the representations, warranties and covenants expressly set forth herein and in the Supplemental Agreement. Except as otherwise provided herein, each Settling Party shall bear its own costs.

56. This Stipulation shall be binding upon, and shall inure to the benefit of, the Settling Parties and their respective agents, successors, executors, heirs, and assigns.

57. This Stipulation may be executed in any number of counterparts by any of the signatories hereto and the transmission of an original signature page electronically (including by facsimile or portable document format) shall constitute valid execution of the Stipulation as if all signatories hereto had executed the same document. Copies of this Stipulation executed in counterpart shall constitute one agreement.

58. This Stipulation, the Settlement, and any all disputes arising out of or relating in any way to this Stipulation, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles.

59. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Stipulation.

60. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Settling Parties or their counsel or their respective successors in interest.

61. The Settling Parties and their counsel represent that they will not encourage or otherwise influence any Settlement Class Members to request exclusion from, or object to, the Settlement.

62. The Settling Parties covenant and agree that neither this Stipulation, nor the fact nor any terms of the Settlement, nor any communication relating thereto, is evidence, or an admission or concession by any Settling Party or their counsel, any Settlement Class Member, or any of the FG Defendants or Released Parties, of any fault, liability or wrongdoing whatsoever, as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings, or as to the validity or merit of any of the claims or defenses alleged or asserted in any such action or proceeding. This Stipulation is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action, any wrongdoing by any Settling Party, Settlement Class Member, or any of the FG Defendants or Released Parties, or any damages or injury to any Settling Party, Settlement Class Member, or any of the FG Defendants or Released Parties. Neither this Stipulation nor the Supplemental Agreement, nor any of the terms and provisions of this Stipulation or Supplemental Agreement, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statement in connection therewith, (a) shall (i) be argued to be, used or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any, liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts

or omissions on the part of any of the FG Defendants or Released Parties, or of any infirmity of any defense, or of any damages to the Representative Plaintiffs or any other Settlement Class Member, or (ii) otherwise be used to create or give rise to any inference or presumption against any of the Released Parties concerning any fact or any purported liability, fault, or wrongdoing of the Released Parties or any injury or damages to any person or entity, or (b) shall otherwise be admissible, referred to or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Stipulation or the Supplemental Agreement or the Final Judgment may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to argue and establish that the Stipulation or Supplemental Agreement or Final Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement or Final Judgment, or as otherwise required by law.

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

64. All agreements by, between or among the Settling Parties, their counsel and their other advisors as to the confidentiality of information exchanged between or among them shall remain in full force and effect, and shall survive the execution and any termination of this Stipulation and the final consummation of the Settlement, if finally consummated, without regard to any of the conditions of the Settlement.

65. Representative Plaintiffs and Plaintiffs' Lead Counsel represent and warrant that the Representative Plaintiffs are Settlement Class Members and none of the Representative

Plaintiffs' claims or causes of action against one or more FG Defendants in the Action, or referred to in this Stipulation, or that could have been alleged against one or more FG Defendants in the Action, have been assigned, encumbered or in any manner transferred in whole or in part.

66. The Settling Parties shall not assert or pursue any action, claim or rights that any party violated any provision of Rule 11 of the Federal Rules of Civil Procedure in connection with the Action, the Settlement or the Stipulation. The Settling Parties agree that the Action was resolved in good faith following arm's-length bargaining.

67. Any failure by any of the Settling Parties to insist upon the strict performance by any other Settling Party of any of the provisions of the Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Settling Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by the other Settling Parties to this Stipulation.

68. The waiver, express or implied, by any Settling Party of any breach or default by any other Settling Party in the performance of such Settling Party of its obligations under the Stipulation shall not be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

IN WITNESS WHEREOF, the Settling Parties have executed this Stipulation by their undersigned counsel effective as of the date set forth below.

Dated: New York, New York
November 6, 2012

BOIES, SCHILLER & FLEXNER LLP

By: _____
David A. Barrett
Howard L. Vickery, II
575 Lexington Avenue
New York, NY 10022
(212) 446-2300

-- and --

Stuart H. Singer
Carlos Sires
Sashi Bach Boruchow
401 East Las Olas Blvd., #1200
Ft. Lauderdale, Florida 33301
(954) 356-0011

WOLF POPPER LLP

By: _____
Robert C. Finkel
James A. Harrod
845 Third Avenue
New York, NY 10022
(212) 759-4600

LOVELL STEWART HALEBIAN JACOBSON LLP

By: _____
Christopher Lovell
Victor E. Stewart
61 Broadway, Suite 501
New York, NY 10006
(212) 608-1900

Interim Co-Lead Counsel for Plaintiffs in the Action and Counsel for PSLRA Plaintiffs in the Action

SIMPSON THACHER & BARTLETT LLP

By: _____
Mark G. Cunha
Peter E. Kazanoff
425 Lexington Ave.
New York, NY 10017-3954
(212) 455-2000

Attorneys for Fairfield Greenwich Limited and Fairfield Greenwich (Bermuda) Ltd.

IN WITNESS WHEREOF, the Settling Parties have executed this Stipulation by their undersigned counsel effective as of the date set forth below.

Dated: New York, New York
November 6, 2012

BOIES, SCHILLER & FLEXNER LLP

By: _____
David A. Barrett
Howard L. Vickery, II
575 Lexington Avenue
New York, NY 10022
(212) 446-2300

-- and --

Stuart H. Singer
Carlos Sires
Sashi Bach Boruchow
401 East Las Olas Blvd., #1200
Ft. Lauderdale, Florida 33301
(954) 356-0011

WOLF POPPER LLP

By: _____
Robert C. Finkel
James A. Harrod
845 Third Avenue
New York, NY 10022
(212) 759-4600

LOVELL STEWART HALEBIAN JACOBSON LLP

By: _____
Christopher Lovell
Victor E. Stewart
61 Broadway, Suite 501
New York, NY 10006
(212) 608-1900

Interim Co-Lead Counsel for Plaintiffs in the Action and Counsel for PSLRA Plaintiffs in the Action

SIMPSON THACHER & BARTLETT LLP

By: _____
Mark G. Cunha
Peter E. Kazanoff
425 Lexington Ave.
New York, NY 10017-3954
(212) 455-2000

Attorneys for Fairfield Greenwich Limited and Fairfield Greenwich (Bermuda) Ltd.

IN WITNESS WHEREOF, the Settling Parties have executed this Stipulation by their undersigned counsel effective as of the date set forth below.

Dated: New York, New York
November 6, 2012

BOIES, SCHILLER & FLEXNER LLP

By:_____
David A. Barrett
Howard L. Vickery, II
575 Lexington Avenue
New York, NY 10022
(212) 446-2300

-- and --

Stuart H. Singer
Carlos Sires
Sashi Bach Boruchow
401 East Las Olas Blvd., #1200
Ft. Lauderdale, Florida 33301
(954) 356-0011

WOLF POPPER LLP

By:_____
Robert C. Finkel
James A. Harrod
845 Third Avenue
New York, NY 10022
(212) 759-4600

LOVELL STEWART HALEBIAN JACOBSON LLP

By:_____
Christopher Lovell
Victor E. Stewart
61 Broadway, Suite 501
New York, NY 10006
(212) 608-1900

Interim Co-Lead Counsel for Plaintiffs in the Action and Counsel for PSLRA Plaintiffs in the Action

SIMPSON THACHER & BARTLETT LLP

By: _____
Mark G. Cunha
Peter E. Kazanoff
425 Lexington Ave.
New York, NY 10017-3954
(212) 455-2000

Attorneys for Fairfield Greenwich Limited and Fairfield Greenwich (Bermuda) Ltd.

EXHIBIT A

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants.	Master File No. 09-cv-118 (VM) (FM)

[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE OF PROPOSED SETTLEMENT

WHEREAS, a class action is pending before the Court entitled *Pasha Anwar, et al. v. Fairfield Greenwich Limited, et al.*, Civil Action 09-cv-118 (VM), United States District Court for the Southern District of New York (the "Action");

WHEREAS, the Court has reviewed the Stipulation of Settlement dated as of November 6, 2012 (the "Stipulation"), which has been entered into by the Representative Plaintiffs (on behalf of the Settlement Class) and the Settling Defendants (the "Settling Parties");

WHEREAS, the Stipulation which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed partial settlement and dismissal of the Action with prejudice (the "Settlement");

WHEREAS, the Settling Parties have made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement, and the Court having read and considered the Stipulation, the exhibits annexed thereto, and submissions made relating to the Settlement;

WHEREAS, the Settling Parties have consented to the entry of this Order; and

WHEREAS, all capitalized and defined terms contained herein shall have the same meaning as set forth in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court does hereby preliminarily approve the Stipulation and the Settlement set forth therein, subject to further consideration at the Settlement Hearing described below.

2. Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and for the purposes of the Settlement only, the Action is hereby preliminarily certified as a class action on behalf of all Persons who were Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record), and who suffered a Net Loss of principal invested in the Funds, excluding (i) those Persons who timely and validly request exclusion from the Settlement Class; (ii) Fairfield Sigma Limited, (iii) Fairfield Lambda Limited, (iv) any Settlement Class Member who has been dismissed from this Action with prejudice; and (v) the FG Defendants and any entity in which the FG Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, immediate family members, heirs, successors, subsidiaries and/or assigns of any such individual or entity in their capacity as such ("Settlement Class Members").

3. The Court finds, preliminarily and for purposes of this Settlement only, that the prerequisites for a class action under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members of the Settlement Class is impracticable; (b) there are

questions of law or fact common to the Settlement Class Members that predominate over any individual questions; (c) the claims of the Representative Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) the Representative Plaintiffs fairly and adequately represent the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for the purposes of this Settlement only, the Representative Plaintiffs are appointed as the class representatives on behalf of the Settlement Class, and Boies, Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian Jacobson LLP are hereby appointed Lead Counsel for the Settlement Class ("Plaintiffs' Lead Counsel"). Plaintiffs' Lead Counsel have the authority to enter into the Stipulation on behalf of the Settlement Class and are authorized to act on behalf of the Settlement Class with respect to all acts or consents required by or that may be given pursuant to the Settlement.

5. The Court finds that: (a) the Stipulation resulted from good faith, arm's-length negotiations; and (b) the Stipulation is sufficiently fair, reasonable and adequate to the Settlement Class Members to warrant providing notice of the Settlement to Settlement Class Members and holding a Settlement Hearing.

6. The Settlement Hearing shall be held before the Honorable Victor Marrero on _____ _____, 2013, at __:__ __.m., at the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York, 10007, to determine whether the proposed partial Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to the Settlement Class and should be approved by

the Court; whether a Final Judgment and Order of Dismissal with Prejudice ("Final Judgment") as provided in Exhibit B to the Stipulation should be entered herein; whether the proposed Plan of Allocation should be approved; whether to approve the Representative Plaintiffs' application for their reasonable costs and expenses (including lost wages and an incentive award) directly relating to their representation of the Settlement Class; to determine the amount of fees and expenses that should be awarded to Plaintiffs' Counsel; and to rule upon such other matters as the Court may deem appropriate. The Court may adjourn the Settlement Hearing without further notice to Settlement Class Members.

7. The Court approves, as to form and content, the Notice of Proposed Settlement of Class Action and Settlement Fairness Hearing and Motion for Attorneys' Fees and Reimbursement of Expenses (the "Notice"), the Summary Notice ("Summary Notice"), and the Proof of Claim and Release form (the "Proof of Claim"), annexed as Exhibits A-1, A-2 and A-3 to the Stipulation.

8. The Court appoints Rust Consulting as the Claims Administrator to supervise and administer the notice procedure as well as the processing of claims, as follows:

(a) Not later than ten (10) days after the date of this Order, the Settling Defendants, and defendants Citco Fund Services (Europe) B.V., Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., Citco Fund Services (Bermuda) Ltd., The Citco Group Limited, and GlobeOp Financial Services LLC shall provide to the Claims Administrator the last known name, address, email address, and telephone number of record owners and Beneficial Owners (if known) of shares or limited partnership interests in the Funds as of December 2008 in electronic format (if available) or hard copy format.

(b) Not later than twenty (20) days after the date of this Order (the "Notice Date"), the Claims Administrator shall cause a copy of the Notice and the Proof of Claim, substantially in the forms annexed as Exhibits A-1 and A-3 to the Stipulation, to be mailed by first class mail to all record owners of shares or limited partnership interests in the Funds as of December 10, 2008 and all Settlement Class Members who can be identified with reasonable effort;

(c) Not later than thirty (30) days after the date of this Order, the Claims Administrator shall cause the Summary Notice to be published in the international and North American editions of The Wall Street Journal on two occasions at least seven days apart, and shall cause the Summary Notice to be published for international distribution over PR Newswire.

9. Record owners who are nominees or custodians who held as of December 10, 2008, or currently hold, shares or limited partnership interests of the Funds for the benefit of Settlement Class Members shall within ten (10) days of receipt of the Notice and Proof of Claim as provided in ¶ 8(b) hereof, either (i) request additional copies of the Notice and Proof of Claim sufficient to send the Notice and Proof of Claim to all Beneficial Owners for whom they are nominee or custodian, and within ten (10) days after receipt thereof send copies to such Beneficial Owners; or (ii) provide a list of the names, addresses and email addresses of such Beneficial Owners to the Claims Administrator, in which event the Claims Administrator shall promptly deliver the Notice and Proof of Claim to such Beneficial Owners. Nominees who elect to send the Notice and Proof of Claim to their Beneficial Owners shall send a statement to the Claims Administrator confirming that the mailing was made as directed, and subject to any confidentiality agreement, law or regulation that may limit their ability to do so, shall provide the

Claims Administrator with a list of the names and addresses of the Persons to whom the Notice and Proof of Claim were delivered. The Claims Administrator shall, if requested, reimburse banks, brokerage houses or other nominees or custodians out of the Settlement Fund solely for their reasonable out-of-pocket expenses incurred in providing notice to Beneficial Owners, which expenses would not have been incurred except for the sending of such notice, and subject to further order of this Court with respect to any dispute concerning such reimbursement.

10. Not later than twenty (20) days after the date of this Order, the Claims Administrator shall cause the Stipulation and its exhibits, this Preliminary Approval Order, and a copy of the Notice to be posted on the following website: www.rustconsulting.com.

11. Not later than eighty (80) days after the date of this Order, Plaintiffs' Lead Counsel shall cause to be filed with the Court proof, by affidavit or declaration, of the mailing and publishing required by this Order.

12. The forms and methods set forth herein of notifying Settlement Class Members of the Settlement and its terms and conditions meet the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Exchange Act, 15 U.S.C. 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constitute the best notice practicable under the circumstances; and constitute due and sufficient notice to all Persons entitled thereto.

13. All Settlement Class Members shall be bound by all determinations and judgments in this Action concerning the Settlement, unless such Persons request exclusion from the Settlement Class in a timely and proper manner.

14. Any Person falling within the definition of the Settlement Class may, upon request, be excluded from the Settlement Class. Any request for exclusion must be in the form of a written, signed statement (the "Request for Exclusion") and received by the Claims Administrator at the address designated in the Notice on or before 35 days prior to the Settlement Hearing (the "Exclusion Deadline").

15. In order to be valid, each such Request for Exclusion (A) must state the name, address, email address and telephone number of the Person seeking exclusion; state that the sender "requests exclusion from the Settlement Class in *Anwar, et al. v. Fairfield Greenwich Limited, et al.*, Case No. 09-cv-118," and state (i) the full name of the Fund(s) purchased; (ii) the date(s), number and dollar amount of shares or limited partnership interests purchased, and of any redemption transactions; (iii) the dates and amounts of any other recoveries the Person has received in respect of that Person's investment in the Fund(s); and (iv) the number of shares or limited partnership interests held by that Person in the Fund(s) as of December 10, 2008; and (B) must be submitted with documentary proof (i) of all transactions in Fund shares or limited partnership interests; and (ii) demonstrating the Person's status as a Beneficial Owner of the Fund(s). Any such Request for Exclusion must be signed and submitted by the Beneficial Owner.

16. A Request for Exclusion shall not be valid or effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. The Claims Administrator shall provide all Requests for Exclusion and supporting documentation submitted therewith (including untimely requests) to counsel for the Settling Parties as soon as possible and no later than the Exclusion Deadline or upon the receipt

thereof (if later than the Exclusion Deadline). The Settlement Class will not include any Person who delivers a valid and timely Request for Exclusion.

17. Any Settlement Class Member who submits a Request for Exclusion or a Proof of Claim thereby submits to the jurisdiction of the Court with respect to the subject matter thereof and all determinations made by the Court thereon.

18. Any Person that submits a Request for Exclusion may thereafter submit to the Claims Administrator a written revocation of that Request for Exclusion, provided that it is received no later than two business days before the Settlement Hearing, in which event that Person will be included in the Settlement Class.

19. All Persons who submit a valid, timely and unrevoked Request for Exclusion will be forever barred from receiving any payments pursuant to the Settlement.

20. Any Settlement Class Member who wishes to share in the distribution of the proceeds of the Settlement shall complete and submit a Proof of Claim form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proof of Claim forms must be received by the Claims Administrator no later than one hundred and twenty (120) days after the Notice Date. Any Settlement Class Member who does not submit a Proof of Claim and the information and documentation required therein within the time allowed shall be barred from sharing in the distribution of the proceeds of the Settlement, unless otherwise ordered by the Court.

21. Any Settlement Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice, in which case such counsel

must file with the Clerk of the Court a notice of such appearance. Absent entry of an appearance by counsel, Settlement Class Members will be represented by Plaintiffs' Lead Counsel.

22. Any Settlement Class Member may appear and show cause why the proposed Settlement should or should not be approved as fair, reasonable and adequate, why a judgment should or should not be entered thereon, why the Plan of Allocation should or should not be approved, or why attorneys' fees and reimbursement of expenses or an incentive award should or should not be awarded to Plaintiffs' Counsel or the Representative Plaintiffs; provided, however, that no Settlement Class Member or any other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Final Judgment, or any other order relating thereto, unless that Person has filed appropriate objections, affidavits and briefs with the Clerk of the United States District Court for the Southern District of New York, on or before thirty-five (35) days prior to the Settlement Hearing and delivered copies of any such papers to counsel identified in the Notice on or before such date. Any Settlement Class Member who does not make an objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any such objection, unless otherwise ordered by the Court.

23. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed or returned pursuant to the Stipulation and Plan of Allocation and/or further order(s) of the Court.

24. All papers in support of the Settlement, the Plan of Allocation, Representative Plaintiffs' application for reimbursement of expenses or an incentive award, and the application

for attorneys' fees or expenses, shall be filed and served not later than fifty (50) days prior to the Settlement Hearing. Any reply papers shall be filed and served no later than fourteen (14) days prior to the Settlement Hearing.

25. The Settling Defendants, their counsel and the Released Parties shall have no responsibility for or liability with respect to the Plan of Allocation or any application for attorneys' fees or expenses submitted by Plaintiffs' Counsel or the Representative Plaintiffs, and such matters will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

26. All reasonable expenses incurred in identifying and notifying Settlement Class Members, as well as in administering the Settlement, including payment of any taxes, shall be paid as set forth in the Stipulation. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither the Representative Plaintiffs nor Plaintiffs' Counsel shall have any obligation to repay any amounts actually and properly disbursed from the Settlement Fund to pay for such expenses.

27. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Settling Defendants or any of the Released Parties of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind and shall not be construed as, or deemed to be evidence of or an admission or concession that the Representative Plaintiffs or any Settlement Class Members have suffered any damages, harm, or loss. Further, neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, nor this Order shall be construed as an admission or concession by the

Representative Plaintiffs of the validity of any factual or legal defense or of any infirmity in any of the claims or facts alleged in this Action.

28. The Settling Defendants may elect to terminate the Settlement only as provided in the Stipulation. In such event, or in the event the Settlement does not become effective in accordance with the terms of the Stipulation or the Effective Date does not occur, then the Stipulation and this Order (including any amendment(s) thereof, and except as expressly provided in the Stipulation or by order of the Court) shall be rendered null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any action or proceeding by any Person against the Settling Parties or the Released Parties, and each shall be restored to his, her or its respective litigation positions as they existed prior to the execution of the Stipulation.

29. Pending final determination of whether the Settlement should be approved or further order of the Court, the Court hereby stays all litigation of claims and related discovery in the Action between the Representative Plaintiffs and Settlement Class Members on one hand and the FG Defendants on the other, except as provided in the Stipulation and as necessary to carry out or comply with the terms and conditions of the Stipulation.

30. Except as provided in the Stipulation, pending final determination of whether the Settlement should be approved or further order of the Court, no potential Settlement Class Member, whether directly, representatively or in any other capacity, and whether or not such Persons have appeared in the Action, shall commence or prosecute in any court or forum any proceeding involving the subject matter of any of the Released Claims against any of the Released Parties. This injunction is necessary to protect and effectuate the Settlement, this

Order, and the Court's flexibility and authority to effectuate the Settlement and to enter judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its judgments.

31. The Court reserves the right to consider all further applications arising out of or connected with the Stipulation. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, without further notice to the Settlement Class, where to do so would not impair Settlement Class Members' rights in a manner inconsistent with Rule 23 and due process of law.

IT IS SO ORDERED.

DATED: _____

_____
The Honorable Victor Marrero
United States District Judge

EXHIBIT A-1

EXHIBIT A-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PASHA S. ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants.	Master File No. 09-cv-118 (VM)

NOTICE OF PROPOSED PARTIAL SETTLEMENT OF CLASS ACTION AND SETTLEMENT FAIRNESS HEARING, AND MOTION FOR ATTORNEYS' FEES AND REIMBURSMENT OF EXPENSES

Your legal rights may be affected – Please read this Notice carefully.

To: All beneficial owners of shares or limited partnership interests in Fairfield Sentry Limited ("Sentry"), Fairfield Sigma Limited ("Sigma"), Fairfield Lambda Limited ("Lambda"), Greenwich Sentry, L.P. ("Greenwich Sentry") and Greenwich Sentry Partners, L.P. ("Greenwich Sentry Partners") (collectively, the "Funds") as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record) ("Beneficial Owners"), who suffered a Net Loss of principal invested in the Funds (collectively, the "Settlement Class").

If you meet the above definition of the Settlement Class, you could get a payment from a class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

The purpose of this Notice is to inform you of a proposed partial settlement of this class action (the "Action") for a minimum cash payment of $50,250,000 (the "Settlement Fund") and the potential cash payment to the Settlement Fund of up to an additional $30,000,000 (subject to contingencies) and the scheduling of a settlement fairness hearing with respect to the proposed partial settlement and the motion of the

Representative Plaintiffs and Plaintiffs' Counsel (collectively "Plaintiffs") for an award of attorneys' fees and reimbursement of expenses. Documents related to the proposed settlement are available on the Settlement website established by the Notice and Claims Administrator (the "Claims Administrator") at _____.

This Notice describes important rights you may have and what steps you must take if you wish to participate in the Settlement or wish to be excluded from the Settlement Class.

Deadlines

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

SUBMIT A CLAIM FORM	Deadline: _____ ([120 days of mailed notice]). This is the only way to receive a payment from the Settlement Fund.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS	Deadline: _____ ([35 days before the Settlement Hearing]). Receive no payment from the Settlement. If the Court approves the Settlement, this is the only option that allows you ever to participate in any other lawsuit against the FG Defendants (defined below) and other Released Parties (defined below) which involves the Released Claims (defined below).
OBJECT	Deadline: _____ ([35 days before the Settlement Hearing]). You may write to the Court if you do not like this Settlement or the request for an award of attorneys' fees and reimbursement of expenses. You may not object if you have excluded yourself from the Settlement.
GO TO THE SETTLEMENT HEARING	Settlement Hearing Date: _____ Whether or not you object to the Settlement, you may ask to speak in Court about the fairness of the Settlement. The Deadline to ask to speak in Court about the Settlement is ____ ([35 days before the Settlement Hearing]). Plaintiffs must file their motion papers for Final Approval of the Settlement and for Approval of Attorneys' Fees and Expenses on or before _____ ([50 days before the Settlement Hearing]).
DO NOTHING	Receive no payment if you do not submit a claim form.

These rights and options — ***and the deadlines to exercise them*** — are explained in this Notice.

The Court presiding over this case must decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement, and if there are any appeals, after appeals are resolved, and the Claims Administrator has had an opportunity to process all claim forms. Please be patient.

Your legal rights are affected whether you act or do not act. Please read this Notice carefully.

SPECIAL NOTICE TO NOMINEES OR CUSTODIANS

The Court has ordered that if you held as of December 10, 2008 or currently hold any shares or limited partnership interests as nominee, custodian or other holder for a Beneficial Owner, or re-sold or re-distributed shares or limited partnership interests in the Funds, then, within ten (10) days after you receive this Notice, you must, at your option, either (i) send this Notice and Proof of Claim and Release ("Proof of Claim") to the Beneficial Owner, or (ii) request the Claims Administrator to send you additional copies of this Notice and the Proof of Claim sufficient to deliver to all Beneficial Owners, and within ten (10) days after receipt thereof make such delivery to all Beneficial Owners, or (iii) provide a list of the names and addresses or email addresses of all Beneficial Owners to the Claims Administrator, who will send those Persons a copy of this Notice and the Proof of Claim by first class mail or email. Nominees who elect to themselves deliver the Notice and Proof of Claim to their Beneficial Owners shall send a statement to the Claims Administrator confirming that the delivery was made as directed, and subject to any confidentiality agreement, statute or regulation that may limit their ability to do so, shall provide the Claims Administrator with a list of the names and addresses of the Persons to whom the Notice and Proof of Claim were delivered.

If you choose to deliver the Notice and Proof of Claim yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the delivery, by submitting a request to:

Fairfield Greenwich Securities Litigation
Claims Administrator
c/o Rust Consulting
P.O. Box _____
1-800-_____

Regardless of whether you choose to complete the delivery yourself or elect to have the delivery performed for you, you may obtain reimbursement for reasonable administrative costs actually incurred in connection with forwarding the Notice and Proof of Claim and which would not have been incurred but for the obligation to forward the Notice and Proof of Claim, upon submission of appropriate documentation to the Claims Administrator. The Claims Administrator has also maintained on its website pdf versions of this Notice and the Proof of Claim. Delivery to Beneficial Owners may be effected through electronic means.

SUMMARY OF NOTICE

Summary of the Proposed Partial Settlement

- The Representative Plaintiffs[1] and the Settling Defendants[2] have entered into a proposed partial settlement releasing all claims that were asserted or could have been asserted by the Representative Plaintiffs in the Action, individually and on behalf of the Settlement Class, against the FG Defendants[3] and other Released Parties.[4]

- According to Plaintiffs' allegations in this Action, the FG Defendants comprised the sponsor, manager, and advisor to several feeder funds to Bernard L. Madoff Investment Securities ("BLMIS"). Plaintiffs alleged in

---

[1] "Representative Plaintiffs" means the representative plaintiffs in the Action, namely Pacific West Health Medical Center Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company Bahrain, Dawson Bypass Trust, and St. Stephen's School.

[2] The "Settling Defendants" consist of Fairfield Greenwich Limited ("FGL") and Fairfield Greenwich (Bermuda) Ltd. ("FGBL").

[3] The "FG Defendants" consist of the Settling Defendants, Fairfield Greenwich Group, Fairfield Greenwich Advisors LLC, Fairfield Risk Services Ltd., Fairfield Heathcliff Capital LLC, Fairfield Greenwich (UK) Limited (collectively, the "FG Entity Defendants"); and Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko Della Schiava, Harold Greisman, Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub and Amit Vijayvergiya (collectively, the "FG Individual Defendants").

[4] The "Released Parties" consist of (i) each of the FG Entity Defendants, their respective past, present and future, direct or indirect, parent entities, associates, affiliates, and subsidiaries, each and all of their respective past, present, and future directors, officers, partners, alleged partners, stockholders, predecessors, successors and employees, and in their capacity as such, each and all of their attorneys, advisors, consultants, trustees, insurers, co-insurers, reinsurers, representatives, and assigns; (ii) each of the FG Individual Defendants and their respective present, past and future spouses, parents, siblings, children, grandparents, and grandchildren, the present, past and future spouses of their respective parents, siblings and children, and the present, past and future parents and siblings of their respective spouses, including step and adoptive relationships; (iii) any and all persons, firms, trusts, corporations, and other entities in which any of the FG Defendants has a financial interest or was a founder, settler or creator of the entity, and, in their capacity as such, any and all officers, directors, employees, trustees, beneficiaries, settlers, creators, attorneys, consultants, agents, or representatives of any such person, firm, trust, corporation or other entity; and (iv) in their capacity as such, the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing. For avoidance of doubt, "Released Parties" does not include the Funds, or auditors, custodians or fund administrators, in their capacity as such, including without limitation PricewaterhouseCoopers International Ltd., PricewaterhouseCoopers LLP, PricewaterhouseCoopers Accountants Netherlands N.V., Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., Citco Fund Services (Bermuda) Ltd., The Citco Group Limited, and GlobeOp Financial Services LLC (the "Service Provider Defendants"), or any of the Service Provider Defendants' respective directors, officers, agents, employees or partners in their capacity as such.

their Second Consolidated Amended Complaint ("SCAC") filed with the Court on September 29, 2009, that the FG Defendants made misrepresentations to investors in connection with the sales of interests in the Funds and breached fiduciary duties and contracts with respect to due diligence on Fund investments with BLMIS. The SCAC also sought recovery of management and advisory fees paid to the FG Defendants that Plaintiffs claim were unearned. The District Court, in Orders dated July 29, 2010 and August 18, 2010 (728 F. Supp. 2d 354 and 728 F. Supp. 2d 372) sustained in part the claims asserted against the FG Defendants in the Action. Copies of those opinions are available on the Claims Administrator's website.

- Under the terms of the proposed partial Settlement, the aggregate amount of $50,250,000 (fifty million two hundred fifty thousand dollars) will be paid into the Settlement Fund. Each of the FG Individual Defendants is contributing amounts to FGL or FGBL to facilitate this payment into the Settlement Fund. These funds (less Court-approved attorneys' fees and reimbursement of expenses) shall be paid to the Settlement Class pursuant to the Plan of Allocation.

- As additional settlement consideration, subject to conditions set forth in the Stipulation of Settlement (the "Stipulation"), FGL and FGBL shall transfer the aggregate amount of $30,000,000 (thirty million dollars), in the form of cash or security interests, into a separate interest-bearing escrow account (the "Escrow Fund"). FG Individual Defendants Walter M. Noel, Jr., Jeffrey H. Tucker and Andrés Piedrahita are contributing cash or security interests to FGL or FGBL to facilitate the payment into the Escrow Fund. As set forth in more detail in the Stipulation, in the event that any of the FG Defendants settle certain other claims, or a judgment is entered against any of the FG Defendants arising from certain other claims, the Escrow Fund shall be reduced, pursuant to terms of the Stipulation. To the extent that funds remain in the Escrow Fund following the final resolution or disposition (including appeals) of such other claims commenced by June 15, 2016, the balance in the Escrow Fund less any additional attorneys' fee award permitted by the court shall be paid to the Settlement Class pursuant to the Plan of Allocation.

- The Settlement Agreement also provides for an additional amount, up to $5,000,000 (five million dollars), to be paid into the Settlement Fund by the Settling Defendants if they enter into a cash settlement with the Trustee of the BLMIS liquidation (the "Trustee") that exceeds $50,125,000 (fifty million one hundred twenty five thousand dollars). This additional payment will be equal to 50% of any amount of such a settlement with the Trustee in excess of $50,125,000, up to a total of $5,000,000. Because the payment of $50,125,000 to the Trustee would exhaust the Escrow Fund, the total consideration under this Settlement may be enhanced either by the net amount of the Escrow Account or the supplemental payment up to $5 million (or neither), but not both.

- As further additional settlement consideration, subject to the conditions set forth in the Stipulation, FGL and FGBL agree to waive (i) indemnification claims they hold against the Funds for the amounts paid under the Stipulation, and (ii) $20,000,000 (twenty million dollars) of indemnification claims they hold against the Funds for legal fees and expenses incurred by FGL and FGBL in defending the Action.

- The Settling Defendants also agreed, as part of the Settlement, to facilitate the Plaintiffs' ability to take deposition or trial testimony of the FG Individual Defendants in connection with the prosecution of the remaining claims in the Action.

- This is a partial settlement only. Plaintiffs will continue to prosecute pending claims against (i) the PwC Defendants (PricewaterhouseCoopers LLP [Canada], PricewaterhouseCoopers Accountants Netherlands N.V), (ii) the Citco Defendants (Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., Citco Fund Services (Bermuda), The Citco Group Limited)) and (iii) and GlobeOp Financial Services LLC ("GlobeOp"). The PwC Defendants were auditors of the Funds. The Citco Defendants were the administrator and custodian of the Funds and Funds' assets at various times. GlobeOp was the administrator of Greenwich Sentry at various times. In the July 29, 2010 and August 18, 2010 Orders, the District Court sustained certain claims against the PwC Defendants, the Citco Defendants, and GlobeOp. The District Court subsequently denied in part two separate motions to reargue the August 18, 2010 Order (800 F. Supp. 2d 571 and 2012 WL 345478). However, the Court, on the second motion to reargue, limited the claims against the PwC Defendants to subsequent investor and holder claims asserted by already existing investors in the Funds. Copies of these decisions are available on the Claims Administrator's website.

- The Settlement provides for a court order barring the Non-Dismissed Defendants and other similarly situated Persons from asserting claims for contribution, indemnification or other similar claims against the Released Parties. To compensate such Persons for the release of these claims against the Released Parties, any judgment that may be obtained by a Settlement Class Member against such Persons shall be reduced, to the extent permitted by applicable law, by the greater of (i) the amount that corresponds to the percentage of responsibility attributed to the Released Parties; and (ii) the gross monetary consideration provided to such Representative Plaintiff or other Settlement Class Member or Members pursuant to this Settlement.

- In addition to amounts that they would receive under the Settlement, Settlement Class Members also are likely to receive additional cash distributions from liquidation or bankruptcy proceedings involving the Funds

(including based on distributions from the BLMIS Trustee). Liquidation proceedings involving Sentry, Sigma, and Lambda are pending in the British Virgin Islands (Claim No. 0074/2009 (Lambda), Claim No. 0136/2009 (Sentry), Claim No. 0139/2009 (Sigma)). Bankruptcy proceedings involving Greenwich Sentry and Greenwich Sentry Partners are pending in the U.S. Bankruptcy Court for the Southern District of New York (Case No. 10-16229 (BRL)).

Statement of Settlement Class Members' Recovery

Estimates of the percentage recovery on the potential claims that may be filed vary depending on a number of factors including (i) the difference between losses at the Fund level (which are estimated to be approximately $1.33 billion) compared to losses at the Beneficial Owner level (which are not known), (ii) the number of Settlement Class Members who file claims and the aggregate Net Loss of those claims, and (iii) the ultimate amount distributed to the Settlement Class from the $30 million Escrow Fund, if any.

The aggregate Net Loss of principal of each possible Settlement Class Member is currently unknown to Plaintiffs because many of the Funds' holders of record are nominees and custodians who aggregate numerous different Beneficial Owners, some of whom have net gains that offset net losses.[5]

Based however on the $1.33 billion reported losses of investments in BLMIS at the Fund level (*i.e.*, the aggregate Net Loss of principal of the Sentry, Greenwich Sentry and Greenwich Sentry Partners funds), Plaintiffs approximate (assuming that all Settlement Class Members file claims equal in the aggregate to the Funds' losses) that Settlement Class Members will receive from the Settlement Fund, before deduction of Court-awarded attorneys' fees and expenses, approximately 4% to 6% of the Funds' Net Loss of principal, depending on the amount distributed to the Settlement Class from the Escrow Fund, if any. That percentage recovery, however, could be higher if less than all Settlement Class Members file claims and could be lower to the extent the aggregate Net Losses of Settlement Class Members exceeds $1.33 billion.

Any amounts received from non-settling defendants or from the liquidation and bankruptcy proceedings concerning the Funds, including distributions from the BLMIS Trustee, would be in addition to these settlement amounts.

[5] The Sigma and Lambda funds are not included in this analysis because they were investors in Sentry. Including their net losses or net gains in the analyses would double count their impact on of the Sentry fund.

Membership in the Settlement Class

The Settlement Class consists of Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record), who suffered a Net Loss of principal invested in the Funds. Plaintiffs' Lead Counsel, with the assistance of the Claims Administrator, will in the first instance determine, and make recommendations to the Court, as to the identity of investors who file claim forms who are appropriately Settlement Class Members. Determinations as to membership in the Settlement Class will be reviewable by the Court.

Statement of Potential Outcome of Settled Claims

The Settlement must be compared to the risk of no recovery on the relevant claims after contested dispositive motions, trial and likely appeals. The claims being settled involve numerous complex legal and factual issues, many of which would require expert testimony. Among the many key issues about which Plaintiffs and the Settling Defendants do not agree are: (1) whether any of the FG Defendants violated state or federal law or otherwise engaged in any wrongdoing; (2) whether any of the FG Defendants acted negligently, recklessly, or with intent to defraud; (3) whether any of the FG Individual Defendants could be held liable for the acts and conduct of any of the FG Entity Defendants; (4) whether the misrepresentations and omissions alleged by Plaintiffs were material, false, misleading or otherwise actionable; (5) the extent to which Plaintiffs relied on the FG Defendants' alleged misrepresentations and omissions; (6) whether any of the FG Defendants owed Plaintiffs a fiduciary duty; (7) whether the Fairfield Greenwich Group acted as a legal or de facto partnership and if so whether the FG Defendants can be held liable for the acts of the partnership as a whole; (8) whether Plaintiffs' state law claims are preempted by the Securities Litigation Uniform Standards Act of 1998; (9) whether Plaintiffs have standing to pursue their state law claims; (10) whether the Plaintiffs' federal securities law claims are barred by recent United States Supreme Court authority; (11) whether a litigation class can be certified (as opposed to a settlement class); (12) where the relevant transactions occurred; and (13) the method for determining whether, and the extent to which, investors suffered injury and damages that could be recovered at trial. In addition, even if Plaintiffs were to obtain a judgment against the FG Defendants that is affirmed on appeal, complex legal and factual issues may be presented by Plaintiffs' efforts to collect such a judgment from the FG Defendants.

Reasons for Settlement

Plaintiffs entered into the proposed partial settlement after almost four years of litigation, when they were fully familiar with the facts and circumstances of the Action. Plaintiffs' Counsel reviewed more than six million pages of documents produced by the Settling Defendants and the Non-Dismissed Defendants; and reviewed and produced to counsel for the defendants more than 75,000 pages of documents on behalf of the Representative Plaintiffs and certain other Named Plaintiffs. Plaintiffs' Lead Counsel

have conducted approximately thirty depositions of the FG Defendants and former and current employees of the Non-Dismissed Defendants in locations including New York, Miami, Toronto, Bermuda and Amsterdam. Twenty individuals associated with the Representative Plaintiffs and other Named Plaintiffs (including each of the Representative Plaintiffs and other plaintiffs named in the SCAC) were deposed in Arizona, Cleveland, and New York, some of whom traveled from international residences including Israel, Bahrain, and Belgium. Plaintiffs' motion for class certification on claims against the Non-Dismissed Defendants is currently pending, and discovery on the merits of Plaintiffs' claims against the Non-Dismissed Defendants is continuing.

All seven Representative Plaintiffs and all of Plaintiffs' Lead Counsel, who have extensive experience in securities and complex shareholder class-action litigation, believe that the Settlement provides the Settlement Class with significant and certain benefits now and eliminates the risk of no recovery following what would be years of further uncertain litigation, including disposition of the class certification motion on the claims against the FG Defendants, motions for summary judgment, and if summary judgment is not granted to defendants, a contested trial and likely appeals on the claims against the FG Defendants, with the possibility of no recovery at all. In this connection, the FG Defendants vigorously maintain that they did not know about wrongdoing at BLMIS until it was revealed to the public in December 2008, lost more than $72 million of their own and family members' money in the fraud, maintained a full time professional staff to perform due diligence and risk monitoring, and were among many financial firms and regulators that were fooled by Madoff, including the Securities and Exchange Commission. They also point to the efforts to conceal the fraud by Madoff and seven others who have pleaded guilty to crimes, including creating false trade blotters, trade confirmations and DTC reports which they were shown, and aspects of Madoff's activities that were not typical of a Ponzi scheme, including refusing new investments and redeeming billions of dollars upon request over many years.

Plaintiffs, in proposing that the Court approve the $50,250,000 minimum and $30,000,000 contingent partial settlement as fair, reasonable and adequate to the Settlement Class, have considered, among other factors, Plaintiffs' ability to prevail on the contested factual and legal issues summarized in the Statement of Potential Outcome of Settled Claims (above). There was a significant risk that Plaintiffs' claims could have been dismissed or limited prior to or at trial, or on appeal from a jury verdict. In addition, Plaintiffs' Lead Counsel considered that, by reducing the number of defendants and defense counsel in the litigation, and the factual and legal issues in dispute, the Settlement may have a beneficial effect on Plaintiffs' ability to successfully litigate the remaining claims against the Non-Dismissed Defendants, who are believed to have substantial assets that may through settlement or judgment provide significant additional compensation to the Settlement Class.

Plaintiffs' Lead Counsel also considered the likely difficulty of obtaining a significantly larger recovery from the FG Defendants in light of their depleted finances, continued payment of large legal fees and expenses, and the substantial potential difficulties in collecting on, a judgment. Among other things, the FG Defendants, as part

of the settlement process, provided Plaintiffs' Lead Counsel with written disclosure about their assets and liabilities. No insurance is available to fund the Settlement. Plaintiffs' Lead Counsel determined, based on the financial disclosures provided and their assessment of the legal and factual risks of continuing the Action against the FG Defendants and proving their claims at trial, some of which are discussed above, that the proposed settlement is in the best interests of the Settlement Class.

Plaintiffs will file with the Court on or before ____ [50 days prior to the Settlement Hearing] a formal motion for approval of the proposed Settlement further discussing the reasons justifying the settlement.

The FG Defendants have denied and continue to deny each and all of the claims and contentions alleged in the SCAC and believe that they have meritorious defenses to those claims and contentions. The Settlement shall in no event be construed as, or deemed to be evidence of, an admission or concession by any of the FG Defendants or Released Parties with respect to any claim of any fault or liability or wrongdoing or damage to the Representative Plaintiffs, the Settlement Class Members, or any Person.

Statement of Attorneys' Fees and Expenses

Plaintiffs' Counsel have not received any payment to date for their work or expenses incurred in investigating the facts, conducting this litigation and negotiating the Settlement on behalf of the Representative Plaintiffs and the Settlement Class. Plaintiffs' Lead Counsel will ask the Court to approve payment from the Settlement Fund of attorneys' fees of up to 25% of the Settlement Fund and for reimbursement of expenses that were advanced by Plaintiffs' Counsel through July 31, 2012 in connection with the litigation and for reimbursement of the Representative Plaintiffs' actual costs and expenses (including lost wages) directly related to their representation of the Settlement Class not to exceed $1,450,000 and $225,000 in the aggregate. Plaintiffs' Counsel may request additional attorneys' fees and expense reimbursement to the extent any contingent payments or other amounts are added in the future to the Settlement Fund.

If the above amounts are requested and approved by the Court, based upon current information, fees and expenses are estimated at approximately 28.3% of the Settlement Fund (prior to consideration of the $30,000,000 Escrow Fund or potential $5,000,000 supplemental recovery).

Dismissal and Releases

If the proposed Settlement is approved, the Court will enter a Final Judgment and Order of Dismissal with Prejudice (the "Final Judgment"). The Final Judgment will dismiss with prejudice the claims asserted in the Action against the FG Defendants. The Final Judgment will also provide that all Settlement Class Members shall be deemed to have released and forever discharged all Released Claims against all Released Parties. The specific terms of the releases, including the meaning of the term "Released Claims," are set forth in the Stipulation.

Unless you exclude yourself from the Settlement Class, you will be releasing claims you may have against the Released Parties. However, you will not be required to give up any claims you may have against any other individuals or entities (including the Non-Dismissed Defendants) relating to your losses in the Funds.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why Did I Receive This Notice Package?

You or someone in your family may have purchased or acquired an investment in Fairfield Sentry Limited, Fairfield Sigma Limited, Fairfield Lambda Limited, Greenwich Sentry, L.P. or Greenwich Sentry Partners, L.P. (the "Funds").

This Notice was sent because you have a right to know about a proposed partial settlement of a class action lawsuit concerning the Funds, and about all of your options, before the Court decides whether to approve the partial Settlement. If the Court approves the partial Settlement and after any objections or appeals are resolved, the Claims Administrator appointed by the Court will recommend that payments be made to those Settlement Class Members who timely submit valid claims in the manner described below. Persons who are not Settlement Class Members may have received this Notice. If you seek to obtain a distribution from the Settlement Fund (or the Escrow Fund) in this Action, it is your responsibility to demonstrate that you are a member of the Settlement Class.

This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Southern District of New York, and the case is known as *Anwar, et al. v. Fairfield Greenwich Limited, et al.*, Civil Action No. 09-cv-00118.

Certain of the entities and individuals who brought this action -- Pacific West Health Medical Center Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company Bahrain, Dawson Bypass Trust, and St. Stephen's School -- are called Representative Plaintiffs.

Defendants include the FG Defendants, consisting of Fairfield Greenwich Limited ("FGL"), Fairfield Greenwich (Bermuda) Ltd. ("FGBL"), Fairfield Greenwich Group,

Fairfield Greenwich Advisors LLC, Fairfield Risk Services Ltd., Fairfield Heathcliff Capital LLC, Fairfield Greenwich (UK) Limited, Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko Della Schiava, Harold Greisman, Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya. All claims against these defendants will be released if the Settlement is approved.

Whether or not the Settlement is approved, Plaintiffs' Counsel will continue to prosecute the Action against the PwC Defendants, consisting of PricewaterhouseCoopers LLP Canada ("PwC Canada") and PricewaterhouseCoopers Accountants Netherlands N.V. ("PwC Netherlands"); the Citco Defendants, consisting of Fund custodians/administrators, The Citco Group Limited ("Citco Group"), Citco Fund Services (Europe) B.V. ("Citco Fund Services"), Citco (Canada), Inc. ("Citco Canada"), Citco Global Custody N.V. ("Citco Global"), Citco Bank Nederland, N.V., Dublin Branch ("Citco Bank"), and Citco Fund Services (Bermuda) Limited ("CFSB"); and GlobeOp Financial Services, LLC ("GlobeOp").

FGL and FGBL are parties to the Settlement and are also called the Settling Defendants. The Settling Parties are the Representative Plaintiffs and the Settling Defendants. The PwC Defendants, Citco Defendants and GlobeOp are not parties to this Settlement and are called the Non-Dismissed Defendants.

2. What Is This Lawsuit About?

This lawsuit alleges that the FG Defendants engaged in deceptive conduct, made materially false and misleading statements and omissions, and breached their duties and contractual obligations with respect to the sales and management of shares and partnership interests in the Funds. Defendants deny the allegations.

3. Why Is This a Class Action?

In a class action, one or more people or entities called class representatives (in this case the Representative Plaintiffs) sue on behalf of people who have similar claims. Here, all these people are called a class or class members, and those included in this Settlement are called a Settlement Class or Settlement Class Members. One court resolves the issues for all class members, except for those who timely and validly excluded themselves from the class. United States District Judge, Hon. Victor Marrero, is in charge of this class action.

4. Why Is There a Partial Settlement?

The Court did not decide in favor of the Plaintiffs or the FG Defendants. Instead, the Settling Parties agreed to a settlement. This permits them to avoid the cost and uncertainty of a trial, and permits eligible Settlement Class Members who submit valid claims to receive compensation. The Representative Plaintiffs and their attorneys believe

the Settlement is in the best interests of all Settlement Class Members. The Settling Defendants have concluded that further defense of the Action would be protracted and expensive, and also have taken into account the uncertainty, risks and distractions inherent in any litigation, especially in a complex case such as the Action. The Settlement is "partial" because there is no settlement with the Non-Dismissed Defendants, and Plaintiffs' Counsel will continue to prosecute the Action against them.

WHO IS IN THE SETTLEMENT

To see if you will receive money from this Settlement, you first have to determine if you are a Settlement Class Member.

5. How Do I Know if I Am Part of the Settlement?

For purposes of the Settlement, the Court has provisionally approved the following definition of the Settlement Class:

> All Persons who were Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record), and who suffered a Net Loss of principal invested in the Funds.

6. What Are the Exceptions to Being Included?

The Settlement Class excludes (i) those Persons who timely and validly request exclusion from the Settlement Class; (ii) Fairfield Sigma Limited, (iii) Fairfield Lambda Limited, (iv) any Person who has been dismissed from this Action with prejudice; and (v) the FG Defendants and any entity in which the FG Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, immediate family members, heirs, successors, subsidiaries and/or assigns of any such individual or entity in their capacity as such. Fairfield Sigma Limited and Sentry Lambda Limited were both investors in Fairfield Sentry Limited and are excluded from the definition of the Settlement Class because investors in those Funds are already included in the Settlement Class to the extent such investors sustained a Net Loss.

7. I'm Still Not Sure if I Am Included.

If you are still not sure whether you are included, you can ask for free help. You can request additional information from the persons identified in Question 25 below. Or you can fill out and return the claim form described in question 10, to see if you qualify.

THE SETTLEMENT BENEFITS — WHAT YOU GET

8. What Does the Settlement Provide?

The Settling Defendants have agreed to cause to be paid a minimum of $50,250,000 in cash into the Settlement Fund. The Settling Defendants have also agreed to make contingent payments of up to an additional $30,000,000 into the Settlement Fund. The Settlement Fund, after payment of Court-approved attorneys' fees and expenses and the costs of claims administration, including the costs of printing and mailing this Notice and the cost of publishing notice (the "Net Settlement Fund"), will be divided among all eligible Settlement Class Members who send in valid claim forms pursuant to the Plan of Allocation described below.

9. How Much Will My Payment Be?

Your share of the Net Settlement Fund will depend on the size of your Net Loss of principal in the Funds compared to the aggregate Net Loss of principal of all Settlement Class Members who submit valid claim forms.

You can calculate your Net Loss in accordance with the explanation below in the Plan of Allocation. After the deadline for submitting a Proof of Claim, the payment you receive will reflect your Net Loss in relation to the Net Loss of all Settlement Class Members who submit a valid Proof of Claim. The Net Loss is not the amount of the payment that you can expect, but is used to determine how the Net Settlement Fund and Net Escrow Fund will be allocated among all Settlement Class Members who submit valid claims.

HOW YOU OBTAIN A PAYMENT — SUBMITTING A CLAIM FORM

10. How Will I Obtain a Payment?

To qualify for payment, you must be an eligible Settlement Class Member, submit a valid Proof of Claim, and properly document your claim as described in the Proof of Claim. A Proof of Claim form is enclosed with this Notice. You may also get a Proof of Claim form on the internet at www._____. Read the instructions carefully, fill out the Proof of Claim, include the documents the form asks for, sign it, and submit it so that it is received by the Administrator no later than _____.

Only Beneficial Owners may file a Proof of Claim with respect to each share or limited partnership interest in the Funds. Where a fund, trust, or similar investment vehicle is an investor in one or more of the Funds, the fund, trust, or similar investment vehicle is the Beneficial Owner for purposes of this Settlement, not the underlying investors in the fund or similar investment vehicle. Where the record owner of shares or limited partnership interests is a nominee, custodian, or other Person acting in a materially similar fashion on behalf of one or more Beneficial Owners, that nominee, custodian or other Person is not a Beneficial Owner and may not file a Proof of Claim on behalf of any such Beneficial Owners. However, executors, administrators, guardians,

conservators, or other legal representatives may file Proofs of Claim on behalf of Beneficial Owners.

11. When Will I Receive My Payment?

The Court will hold a hearing on _____, to decide whether to approve the Settlement. If Judge Marrero approves the Settlement, there may be appeals. It is always uncertain how these appeals will be resolved, and resolving them can take time, perhaps more than a year. After any approval by Judge Marrero and any appeals are decided favorably, it will take several months for the Claims Administrator to process all of the Proof of Claim forms and to determine and pay the ultimate distribution amounts.

12. What Am I Giving Up to Receive a Payment?

Unless you timely exclude yourself from the Settlement Class by the _____ deadline, you are a member of the Settlement Class and will be bound by the release of claims against the FG Defendants and the Released Parties. That means that you cannot sue, continue to sue, or be part of any other lawsuit against the FG Defendants or the Released Parties about the Released Claims. The specific terms of the release are included in the Stipulation.

13. If I Stay in the Settlement Class, May I Still Recover Additional Amounts from Other Sources?

Yes. If you participate in this class settlement, then you will not be required to give up any claims you may have against any individuals or entities other than the Released Parties. Investors in the Funds may recover on claims against the PwC Defendants, the Citco Defendants and GlobeOp, which Plaintiffs' Counsel are continuing to pursue in this litigation. The Court has limited the claims against the PwC Defendants to claims based on additional investments made by persons who already had an investment in the Funds. Investors in the Funds also are likely to receive distributions from the liquidation or bankruptcy proceedings overseen by the respective liquidators or trustees of the Funds.

THE LAWYERS REPRESENTING YOU

14. Do I Have a Lawyer in This Case?

The law firms of Boies, Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian Jacobson LLP brought the Action on behalf of Representative Plaintiffs and they represent you and all other Settlement Class Members. These lawyers are called Plaintiffs' Lead Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How Will the Lawyers Be Paid?

Plaintiffs' Counsel will ask the Court for attorneys' fees up to 25% of the $50,250,000 Settlement Fund, and for expenses that were advanced through July 31, 2012 by Plaintiffs' Counsel in connection with the litigation, and to reimburse the Representative Plaintiffs for their actual costs and expenses (including lost wages) directly related to their representation of the Settlement Class, not to exceed $1,450,000 and $225,000 in the aggregate. Such sums as may be approved by the Court will be paid from the Settlement Fund. Plaintiffs' Counsel may seek additional attorneys' fees at a later date based on any other recoveries, including any funds distributed to the Settlement Class from the Escrow Fund. Settlement Class Members are not personally liable for any such fees or expenses.

The attorneys' fees and expenses requested represent payment to Plaintiffs' Lead Counsel and other such counsel involved in the Action on behalf of the Plaintiffs (collectively "Plaintiffs' Counsel") for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. Since the case began in 2008, Plaintiffs' Counsel has undertaken extensive work necessary to prepare the case for trial. Plaintiffs' Counsel has conducted all of the investigation, drafted the SCAC, reviewed of millions of documents, taken and defended dozens of depositions, employed experts, performed an enormous amount of legal research and filed many legal briefs on novel and complex issues, including opposing dismissal of the claims, supporting class certification and arguing discovery issues. To date, Plaintiffs' Counsel have not been paid for their services in conducting this litigation on behalf of the Representative Plaintiffs and the Settlement Class, nor for their substantial expenses. Plaintiffs' Counsel have expended through July 31, 2012 in excess of 58,000 hours of attorney and paralegal time and have incurred through July 31, 2012 in excess of $1,450,000 in expenses in prosecuting the Action. The fee requested will compensate Plaintiffs' Counsel in part for their work and expenses in achieving the Settlement.

Plaintiffs' Lead Counsel shall file a motion with the Court for approval of the Settlement, the Plan of Allocation, and the request for attorneys' fees and reimbursement of expenses by [50 days prior to the Settlement Hearing]. Copies of that motion will be posted on the Claim Administrator's website. The Settling Defendants take no position with respect to the request for attorneys' fees and reimbursement of expenses. The Court determines the amount counsel should receive from the Settlement Fund for fees and expenses separately from its determination of whether the Settlement is fair, reasonable and adequate, and may award less than the amount Plaintiffs' Lead Counsel has requested.

EXCLUDING YOURSELF FROM THE SETTLEMENT

16. How Do I Exclude Myself From the Settlement?

If you want to retain the right to sue or to continue to sue the Released Parties on your own about the claims being released in this Settlement, then you must take steps to

exclude yourself from the Settlement. This is referred to as opting out of the Settlement Class, and persons who do so are referred to as "Opt-Outs".

Excluding yourself is not the same as doing nothing in response to this Notice. Each member of the Settlement Class shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable, unless such a Person delivers to the Claims Administrator a written request for exclusion from the Settlement Class, so that it is received by the Claims Administrator no later than _____ addressed to:

Fairfield Greenwich Securities Litigation
Claims Administrator
c/o Rust Consulting
P.O. Box _____

No Person may exclude himself, herself or itself from the Settlement Class after that date. In order to be valid, each request for exclusion by a Person seeking to opt-out must state the name, address and telephone number of the Person seeking exclusion; state that the Person "requests exclusion from the Settlement Class in *Anwar, et al. v. Fairfield Greenwich Limited, et al.*, Case No. 09-cv-118," and state (i) the full name of the Fund(s) purchased, (ii) the number and dollar amount of shares or limited partnership interests purchased, and redeemed if applicable, (iii) the dates and amounts of each purchase and any redemption transactions, any other recoveries received by the Person on the Person's investment in the Fund(s), and (iv) the number of shares or limited partnership interests held by the Person in the Fund(s) as of December 10, 2008. Each Person seeking to opt-out also must supply documentary proof of each purchase and redemption transaction and of the Person's membership in the Settlement Class. Any such request for exclusion must be signed by the Person requesting exclusion.

Requests for exclusion shall not be effective unless the request includes the required information and documentation and is made within the time period stated above, or the exclusion is otherwise accepted by the Court. Only Beneficial Owners may file a request for exclusion with respect to each share or limited partnership interest in the Funds. Where the record owner of shares or limited partnership interests is a nominee, custodian, or other Person acting in a materially similar fashion on behalf of one or more Beneficial Owners, that nominee, custodian or other Person is not a Beneficial Owner and may not file a request for exclusion on behalf of any such Beneficial Owners.

If you ask to be excluded, you will not receive any payment from this Settlement, and you cannot object to the Settlement. You will not be legally bound by anything that happens in the Action with respect to Released Claims and may be able to sue (or continue to sue) the Released Parties in the future. Even if you ask to be excluded from the Settlement Class, you will be entitled to participate in the continuing litigation against the Non-Dismissed Parties. In the event a class is certified as to the claims asserted against the Non-Dismissed Parties, you will be given a subsequent opportunity to request exclusion from that class.

If the aggregate Net Loss of Opt-Outs exceeds the threshold specified in a separate "Supplemental Agreement" between the Settling Parties, then the Settling Defendants shall have, in their sole and absolute discretion, the option to terminate this Settlement and to render it null and void in accordance with the procedures set forth in the Supplemental Agreement.

17. If I Do Not Exclude Myself From the Settlement, Can I Sue the Released Parties For the Same Thing Later?

No. Unless you exclude yourself, you give up any rights to bring a lawsuit or claim in any forum asserting any of the Released Claims against the Released Parties. If you have a pending lawsuit or claim in any forum that you believe concerns the Released Claims or the same matters alleged in this case, speak to your lawyer immediately. You will likely have to exclude yourself from the Settlement Class if you wish to continue your own lawsuit or claim. Remember, the exclusion deadline is _____.

18. If I Exclude Myself, Can I Get Money From This Settlement?

No. You will however, retain any right you may have to bring a lawsuit, to continue to pursue an existing lawsuit, or to be part of a different lawsuit asserting a Released Claim against a Released Party.

OBJECTING TO THE SETTLEMENT

19. How do I Tell the Court that I Do Not Like the Settlement or the Request for Attorneys Fees and Reimbursement of Expenses?

If you are a Settlement Class Member, you can object to the Settlement if you do not like any part of it, including the Plan of Allocation and the request for attorneys' fees or expenses. You can state the reasons why you think the Court should not approve it, and the Court will consider your views. To object, you must submit a letter saying that you object to the Settlement in *Anwar, et al. v. Fairfield Greenwich Limited, et al., Case No. 09-cv-118*. Be sure to include your name, address, telephone number, your signature, the full name of the Fund(s) purchased, the dates and number and dollar amounts of shares or limited partnership interests purchased, and redeemed if applicable, and other recoveries you have received on your investment in the Fund(s), and to supply documentary proof of the purchase or any redemption transactions and of your membership in the Settlement Class, and the reasons you object. Any objection letter must be delivered such that it is received by ***each*** of the following no later than _____:

Court:

Clerk of the Court
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Daniel Patrick Moynihan

United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Plaintiffs' Counsel Designee:

Robert C. Finkel, Esq.
Wolf Popper LLP
845 Third Avenue
New York, NY 10022

Settling Defendants' Counsel Designee:

Mark G. Cunha, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954

20. What is the Difference between Objecting and Requesting Exclusion?

Objecting is simply telling the Court that you do not like something about the proposed Settlement. Objecting does not prevent you from participating and recovering money in the Settlement. However, you can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

THE COURT'S SETTLEMENT HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to.

21. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Settlement Hearing at _____, on _____, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312, Courtroom 20B. At this hearing the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will also consider Plaintiffs' Lead Counsel's application for fees and expenses and whether the Plan of Allocation is fair, reasonable and adequate. The Court may decide these issues at the hearing or take them under consideration for a later decision.

22. Do I Have to Come to the Hearing?

No. Plaintiffs' Lead Counsel will answer questions Judge Marrero may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

23. May I Speak at the Hearing?

You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must submit a letter saying that it is your intention to appear in *Anwar, et al. v. Fairfield Greenwich Limited,* Case No. 09-cv-118. Be sure to include your name, address, telephone number, your signature, the full name of the Fund(s) purchased, the number and dollar amount of shares or limited partnership interests purchased, and redeemed if applicable, to supply documentary proof of the purchase and any redemption transactions and of your membership in the Settlement Class, and other recoveries you have received on your investment in the Fund(s), and the reasons you want to speak at the hearing. Your notice of intention to appear must be received no later than [35 days prior to the Settlement Hearing], by the Clerk of the Court, Lead Counsel Designee and Settling Defendants' Counsel Designee, at the three addresses listed in question 19.

IF YOU DO NOTHING

24. What Happens If I Do Nothing at All?

If you do nothing, all of your claims against the Released Parties will be released, but you will not receive any money from this Settlement, because in order to receive money it is necessary to submit a valid Proof of Claim.

GETTING MORE INFORMATION

25. Are There More Details About the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Stipulation of Settlement dated as of November 6, 2012. You can obtain a copy of the Stipulation of Settlement or more information about the Settlement by contacting the Claims Administrator.

Claims Administrator
c/o Rust Consulting
P.O. Box _____
[Email address]

1-800-________

or Plaintiffs' Counsel:

David A. Barrett	Robert C. Finkel, Esq.
Howard L. Vickery, II	James A. Harrod, Esq.
BOIES, SCHILLER & FLEXNER LLP	WOLF POPPER LLP
575 Lexington Avenue	845 Third Avenue
New York, NY 10022	New York, NY 10022
[Need one Email address for contacting	irrep@wolfpopper.com

counsel]
(212) 446-2300

Stuart H. Singer
Carlos Sires
Sashi Bach Boruchow
BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Blvd., #1200
Ft. Lauderdale, Florida 33301
[email]
(954) 356-0011

1-877-370-7703

Christopher Lovell
Victor E. Stewart
LOVELL STEWART HALEBIAN JACOBSON LLP
61 Broadway, Suite 501
New York, NY 10006
[email]
(212) 608-1900

or by visiting www._____.

You can also obtain a copy from the Clerk's office during regular business hours:

Clerk of the Court
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE

PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG CLASS MEMBERS

The Net Settlement Fund shall be distributed to Settlement Class Members who submit a valid Proof of Claim ("Authorized Claimants") according to the terms below. The purpose of this Plan of Allocation of the Net Settlement Fund ("Plan of Allocation" or "Plan") is to establish a reasonable and equitable method of distributing the Net Settlement Fund among Authorized Claimants. The Plan is not intended to replicate an assessment of damages that could have been recovered had the Representative Plaintiffs prevailed at trial.

Because the Net Settlement Fund is less than the total losses alleged to be suffered by Settlement Class Members, the formulas described below for calculating Net Losses are not intended to estimate the amount that will actually be paid to Authorized Claimants. Rather, these formulas provide the basis on which the Net Settlement Fund will be distributed among Authorized Claimants.

Approval of the Settlement is independent from approval of the Plan of Allocation. Any determination with respect to the Plan of Allocation will not affect the Settlement, if approved. The Plan of Allocation set forth herein is the plan that is being proposed by Representative Plaintiffs and Plaintiffs' Lead Counsel to the Court for approval. The Settling Defendants take no position with respect to the Plan of Allocation. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Settlement Class. Any orders regarding a modification of the Plan of Allocation will be posted on the settlement website, www._____.

Payment pursuant to the Plan of Allocation approved by the Court shall be final and conclusive against all Settlement Class Members. No person shall have any claim of any kind against the FG Defendants or their counsel with respect to the administration of the settlement, including the Plan of Allocation. No person shall have any claim against Representative Plaintiffs, Plaintiffs' Counsel, or the Claims Administrator or other agent designated by Plaintiffs' Counsel arising from distributions made substantially in accordance with the Stipulation, the Plan of Allocation, or further orders of the Court. Representative Plaintiffs, the FG Defendants, their respective counsel, and all other Released Parties shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund consistent with the terms of the Stipulation, the Plan of Allocation, or the determination, administration, calculation, or payment of any Proof of Claim or nonperformance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement (including the resolution of any appeals) pursuant to the following terms:

a. The Net Loss for each Authorized Claimant will be the Net Loss of principal with respect to each Fund. Net Loss means the total cash investment made by a Beneficial Owner in a Fund, directly or indirectly through one or more intermediaries, less the total amount of any redemptions or withdrawals or recoveries by that Beneficial Owner from or with respect to the same Fund. A Settlement Class Member may have a Net Loss on more than one Fund. Any transactions in foreign securities will be converted to a Net Loss in U.S. dollars at the exchange rate in effect as of the date of the Final Hearing.

b. For the avoidance of doubt, where a fund, trust, or similar investment vehicle was a registered shareholder or limited partner of record or otherwise invested in a Fund, the fund, trust or similar investment vehicle is the Beneficial Owner for purposes of this Stipulation, not the underlying investors in the fund or similar investment vehicle. Only one Proof of Claim or request for exclusion can be submitted with respect to each share or limited partnership interest in the Funds.

c. Only those Authorized Claimants who suffered a Net Loss of principal with respect to a Fund are entitled to a payment from the Net Settlement Fund with respect to that Fund.

d. Please note that the term "Net Loss" is used solely for calculating the amount of participation by Authorized Claimants in the Net Settlement Fund. It is not the actual amount an Authorized Claimant can expect to recover.

e. The Claims Administrator will determine each Authorized Claimant's share of the Net Settlement Fund. Each Authorized Claimant will receive a disbursement determined by multiplying the Net Settlement Fund by a fraction, the numerator of which is the Authorized Claimant's Net Loss and the denominator of which is the sum total of all Authorized Claimants' Net Losses with respect to all of the Funds.

f. If there is any balance remaining in the Net Settlement Fund (whether by reason of unclaimed funds, tax refunds, uncashed checks, or otherwise), at a date one hundred eighty (180) days from the later of (a) the date on which the Court enters an order directing the Net Settlement Fund to be distributed to Authorized Claimants, or (b) the date the Settlement is final and becomes fully effective, then Plaintiffs' Counsel shall, upon approval of the Court, disburse such balance among Authorized Claimants as many times as is necessary, in a manner consistent with this Plan of Allocation, until each Authorized Claimant has received its Net Loss (but no greater than its Net Loss) as defined in this Plan. If Plaintiffs' Lead Counsel determines that it is not cost-effective to conduct such further disbursement, or following such further disbursement any balance still remains in the Net Settlement Fund, Plaintiffs' Counsel shall, upon approval of the Court, and without further notice to Settlement Class Members, cause the remaining balance to be disbursed *cy pres*. Plaintiffs' Lead Counsel shall also consider the potential for additional distributions to be made from the Escrow Fund or other settlements or judgments in proposing supplemental distributions from the Net Settlement Fund.

DATED: _____, 2012

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT A-2

EXHIBIT A-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants.	Master File No. 09-cv-118 (VM)

SUMMARY NOTICE

TO: All beneficial owners of shares or limited partnership interests in Fairfield Sentry Limited, Fairfield Sigma Limited, Fairfield Lambda Limited, Greenwich Sentry, L.P. and Greenwich Sentry Partners, L.P. (collectively, the "Funds") as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record) ("Beneficial Owners"), who suffered a Net Loss of principal invested in the Funds (collectively, the "Settlement Class"). If you meet the above class definition, you could get a payment from a class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Southern District of New York, that a hearing will be held on _____, 2013, at _____.m., before The Honorable Victor Marrero, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New

York (the "Court"), for the purpose of determining (1) whether the proposed partial settlement of claims in the above-captioned Action for consideration including the sum of $50,250,000 in cash, plus an additional $30,000,000 that may be distributed subject to certain conditions, should be approved by the Court as fair, reasonable and adequate; (2) whether this Action should be dismissed with prejudice as to the FG Defendants pursuant to the terms and conditions set forth in the Stipulation dated as of November 6, 2012; (3) whether the proposed plan to distribute the settlement proceeds (the "Plan of Allocation") is fair, reasonable and adequate and therefore should be approved; and (4) whether the application of Plaintiffs' Lead Counsel for the payment of attorneys' fees and expenses incurred in connection with this Action and reimbursement of the Representative Plaintiffs' reasonable costs and expenses (including lost wages) directly related to their representation of the Settlement Class should be approved.

If you were a Beneficial Owner of shares or limited partnership interests in one or more of the Funds as of December 10, 2008 and suffered a Net Loss in principal on your investment in those shares or limited partnership interests, your rights may be affected by this Settlement, including the release and extinguishment of claims you may possess relating to your ownership interest in the Funds. Net Loss means the total cash investment made by a Beneficial Owner in a Fund, directly or indirectly through one or more intermediaries, less the total amount of any redemptions or

withdrawals or recoveries by that Beneficial Owner from or with respect to the same Fund.

If you are a member of the Settlement Class, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release form that is received no later than _____, 2013, establishing that you are entitled to recovery.

If you desire to be excluded from the Settlement Class, you must submit a request for exclusion that is received by _____ , 2012. Any objection to any aspect of the Settlement must be filed with the Court no later than _____, 2012.

If you wish to receive a detailed Notice concerning the terms of the Settlement or the Proof of Claim and Release form, you may obtain copies by writing to Rust Consulting, _____ or by visiting www.rustconsulting.com.

DO NOT TELEPHONE THE COURT, THE CLERK'S OFFICE OR ANY OF THE DEFENDANTS OR COUNSEL FOR THE DEFENDANTS REGARDING THIS NOTICE.

DATED: _____, 2012

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT A-3

EXHIBIT A-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants.	Master File No. 09-cv-118 (VM) (FM)

PROOF OF CLAIM AND RELEASE

I. GENERAL INSTRUCTIONS

1. The accompanying Notice of Proposed Partial Settlement of Class Action and Settlement Fairness Hearing, and Motion for Attorneys' Fees and Expenses (the "Notice") contains important information about your rights, defines certain settlement terms and eligibility criteria, and describes the proposed settlement and the manner in which the settlement will be distributed if the settlement is granted final approval by the Court. It is important that you read the Notice.

2. To recover as a member of the Settlement Class (as defined in the Notice) based on your claims in the action entitled *Pasha Anwar, et al. v. Fairfield Greenwich Limited, et al.*, Master File No. 09-cv-118 (VM) (the "Action"), you must review, complete and, on page [X] hereof, sign this Proof of Claim and Release ("Proof of Claim"). If you fail to submit a Proof of Claim by the deadline, your claim may be rejected and you may be precluded from receiving any recovery from the settlement fund created in connection with the proposed partial settlement of the Action (the "Settlement").

3. Submission of a Proof of Claim does not assure that you will share in the proceeds of the Settlement.

4. The Settlement Class consists of all beneficial owners of shares or limited partnership interests in Fairfield Sentry Limited, Fairfield Sigma Limited, Fairfield Lambda Limited, Greenwich Sentry, L.P. and Greenwich Sentry Partners, L.P. (the "Funds") as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record) ("Beneficial Owners"), who suffered a Net Loss of principal invested in the Funds (the "Settlement Class"). Net Loss means the total cash investment made by a Beneficial Owner in a Fund, directly or indirectly through one or more intermediaries, less the total amount of any redemptions or withdrawals or recoveries by that Beneficial Owner from or with respect to the same Fund. Even if you do not fill out this Proof of Claim, any and all claims you may have against the FG Defendants (as defined in the Notice) in this Action will be released by virtue of your being a non-excluded member of the Settlement Class. If you fail to file a timely and properly addressed Proof of Claim, your claim may be rejected and you may be precluded from any recovery from the settlement fund created in connection with the Settlement.

5. YOU MUST SUBMIT YOUR COMPLETED AND SIGNED PROOF OF CLAIM SO THAT IT IS RECEIVED ON OR BEFORE _____, 2013, ADDRESSED AS FOLLOWS:

Fairfield Greenwich Limited Litigation
c/o Rust Consulting, Inc.
P.O. Box xxxx
Faribault, MN 55021-xxxx

6. You should complete this Proof of Claim only if you are a member of the Settlement Class. If you are NOT a member of the Settlement Class, DO NOT submit a Proof of Claim. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND YOU DO NOT FILE A PROOF OF CLAIM, YOU WILL NOT RECEIVE ANY PAYMENT FROM THE SETTLEMENT FUND BUT YOU WILL NEVERTHELESS BE BOUND BY THE ORDER FINALLY APPROVING THE SETTLEMENT AND THE JUDGMENT DISMISSING THIS ACTION AS AGAINST THE FG DEFENDANTS, AND ALL ORDERS AND RELEASES THEREIN, UNLESS YOU PROPERLY EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS.

II. CLAIMANT IDENTIFICATION

1. If you purchased or acquired shares or limited partnership interests in one or more of the Funds registered in your name, you are the Beneficial Owner as well as the record owner. If, however, the shares or limited partnership interests were registered in the name of a third party, such as a nominee, bank or brokerage firm through which you purchased the shares or limited partnership interests, you are the Beneficial Owner and the third party is the record owner. Where a fund, trust, or similar investment vehicle was a registered shareholder or limited partner of record or otherwise invested in a Fund, the fund, trust or similar investment vehicle is the Beneficial Owner for purposes of this Settlement, not the underlying investors in the fund, trust or similar investment vehicle. Only one Proof of Claim or request for exclusion can be submitted with respect to each share or limited partnership interest in each of the Funds.

2. Use Part I of this form entitled "Claimant Identification" to identify each owner of record ("nominee"), if different from the Beneficial Owner of the Fund shares or limited partnership interests. THIS PROOF OF CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL OWNER, OR THE LEGAL REPRESENTATIVE OF SUCH OWNER OF THE SHARES OR PARTNERSHIP INTERESTS UPON WHICH THIS CLAIM IS BASED.

3. All joint owners must sign this Proof of Claim. Executors, administrators, guardians, conservators, or other legal representatives must complete and sign this Proof of Claim on behalf of Persons represented by them and documentation showing their authority must accompany this Proof of Claim and their titles or capacities must be stated. The actual name and last four digits of the Social Security (or other U.S. or foreign taxpayer identification) number and telephone number of the Beneficial Owner must be used to verify and avoid duplicative claims. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

III. INSTRUCTIONS FOR THE PROOF OF CLAIM FORM

1. In the space provided in Part II of this form entitled "Schedule of Transactions in Fund Common Shares or Limited Partnership Interests," supply all required details of your transaction(s) in Fund shares or partnership interests. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet. If you are a Beneficial Owner of more than one of the Funds in which you have a Net Loss of principal, make a copy (or copies) of the Schedule of Transactions and complete a Schedule separately for each Fund.

2. Please provide all of the requested information with respect to all of your transactions in the Fund from your first investment to the present date, inclusive, whether such transactions resulted in a profit or a loss. Failure to report all transactions may result in the rejection of your claim. List each transaction separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day and year of each transaction you list.

3. You must also submit supporting documentation concerning all of your transactions in the Fund. In most cases, confirmations of subscriptions and redemptions will be sufficient. If you do not have such documentation, you may also attach any documents or schedules that you attached to any tax return that reflect transactions in the Fund. Failure to provide this documentation will delay verification or result in rejection of your claim.

4. If you received any compensation in respect of your investments in the Fund other than through sales of shares or limited partnership interests in the Fund, such as through settlement of any legal claims, please identify that compensation in the Schedule of Transactions, with supporting documentation. If you have not received any such compensation, mark "None."

5. The above materials are designed to provide the minimum amount of information necessary to process many claims. Rust Consulting, Inc. (the "Claims Administrator") may request from you or any nominee, custodian or similar person who invested on your behalf additional information as required to efficiently and reliably verify your claims and calculate your Net Loss. In some cases where the Claims Administrator cannot perform the calculation accurately or at a reasonable cost to the Settlement Class with the information provided, the Claims Administrator may condition acceptance of the Proof of Claim upon the production of additional information that it may, in its discretion, require to process the claim.

MUST BE RECEIVED NO LATER THAN XXXXXXXXX XX, 2013	***Pasha Anwar et al. v. Fairfield Greenwich Limited, et al.*** Master File No. 09-cv-118 (VM) (FM) PROOF OF CLAIM **Please Type or Print - Use Blue or Black Ink Only**	For Official Use Only 01

0123456789

PART I. CLAIMANT IDENTIFICATION - Complete either Section A or B and then proceed to Section C.

A. Complete this Section ONLY if the Beneficial Owner is an individual, joint, UGMA, UTMA or IRA account. Otherwise, proceed to B.

Last Name (Beneficial Owner) | First Name (Beneficial Owner)

Last Name (Joint Beneficial Owner, if applicable) | First Name (Joint Beneficial Owner)

Name of Custodian, if applicable

If this account is an UGMA, UTMA or IRA, please include "UGMA", "UTMA", or "IRA" in the "Last Name" box above (e.g., Jones IRA).

B. Complete this Section ONLY if the Beneficial Owner is an entity; i.e., corporation, trust, estate, etc. Then, proceed to C.

Entity Name

Name of Representative (Executor, administrator, trustee, corporate officer, etc.)

C. Account/Mailing Information:

Specify one of the following:

☐ Individual(s) ☐ Corporation ☐ Private Pension Fund ☐ IRA, Keogh ☐ Partnership ☐ Estate ☐ Trust

☐ Other:

Number and Street or P.O. Box

City | State | Zip Code

Foreign Province and Postal Code | Foreign Country

Telephone Number (Day) | Telephone Number (Evening)

E-mail Address* | Account Number

**Email address is not required, but if provided, you authorize the Claims Administrator to use it in providing you with information concerning this claim.*

Enter Taxpayer Identification Number below for the Beneficial Owner(s)[1]

Social Security or Foreign Taxpayer Identification No. or Employer Identification No.

[1] The taxpayer identification number (TIN), consisting of a valid Social Security number (SSN) for individuals or employer identification number (EIN) for business entities, trusts, estates, etc., (or other foreign taxpayer identification number) and telephone number of the Beneficial Owner(s) may be used in verifying this claim.

XXXX *CF* *RLIST*

PART I. CLAIMANT IDENTIFICATION - Continued

I authorize you to contact, if necessary, the following record owner or nominee for the shares or limited partnership interests identified in this Proof of Claim to verify any of the information that I have provided:

Name of Record Owner or Nominee

Address of Record Owner or Nominee

City | State | Zip Code

Foreign Province and Postal Code | Foreign Country

Telephone Number (Day) | Telephone Number (Evening)

E-mail Address* | Account Number

**Email address is not required, but if provided, you authorize the Claims Administrator to use it in providing you with information concerning this claim.*

Responsible Person to Contact at Record Owner or Nominee

Telephone Number of Record Owner or Nominee | Email Address of Record Owner or Nominee

Wiring Instructions

If you would like your distribution of Settlement proceeds to be wired to your bank or custodian, please provide us with your wire instructions here

Bank Name | Bank City/St — Bank Country

Bank Contact | Bank Phone

Bank Account Name

Account Number/Iban Number

Routing Number/Swift Code

Further Credit To (If Applicable)

Special Instructions

PART II: SCHEDULE OF TRANSACTIONS IN FUND SHARES OR LIMITED PARTNERSHIP INTERESTS

Identify the Fund below that is the subject matter of this Proof of Claim. If you invested in and suffered a Net Loss in more than one Fund, you should submit multiple schedules of your transactions.

☐ Fairfield Sentry Limited ☐ Fairfield Sigma Limited ☐ Fairfield Lambda Limited

☐ Greenwich Sentry, L.P. ☐ Greenwich Sentry Partners, L.P.

A. Purchases or acquisitions of Fund Shares or Limited Partnership Interests:

Trade Date Month Day Year	Number of Shares/Interests Purchased or Acquired	Total Purchase or Acquisition Price/Currency
1. _____	1. _____	1. _____
2. _____	2. _____	2. _____
3. _____	3. _____	3. _____
4. _____	4. _____	4. _____
5. _____	5. _____	5. _____

B. Sales of Fund Shares or Limited Partnership Interests:

Trade Date Month Day Year	Number of Shares/Interests Sold	Total Sales Price/Currency
1. _____	1. _____	1. _____
2. _____	2. _____	2. _____
3. _____	3. _____	3. _____
4. _____	4. _____	4. _____
5. _____	5. _____	5. _____

C. Number of Fund Shares or Limited Partnership Interests currently held: _____.

I have already received the following compensation for the Net Loss that I incurred from my investments in Fund shares or limited partnership interests, such as through settlement of legal claims (or mark "None"):

☐ None

_____

_____

_____

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

YOU MUST READ AND SIGN THE RELEASE ON PAGE _____.

PART III. REPRESENTATIONS

I (We) _____ submit this Proof of Claim under the terms of the Order Preliminarily Approving Settlement filed November ----, 2012 (the "Order").

1. I (We) am (are) a Settlement Class Member (as defined in the Notice), that I am (we are) not one of the persons or entities excluded from the Settlement Class, that I am (we are) not acting on behalf of any such excluded person or entity, that I (we) have not requested to be excluded from the Settlement Class, that I (we) believe that I am (we are) eligible to receive a distribution under the terms and conditions of the Plan of Allocation as defined and set forth in the Notice, and that I (We) have not submitted any other Proof of Claim in this Action covering the same holdings in the Fund(s) and know of no other person having done so on my (our) behalf.

2. I (We) hereby acknowledge that I (we) submit to the jurisdiction of the United States District Court for the Southern District of New York with respect to my (our) claim as a Settlement Class Member (as defined in the Notice) and for purposes of enforcing the release set forth in any judgments or orders which may be entered in the Action.

3. I (We) hereby warrant and represent that I (we) have read the Notice and the Stipulation of Settlement ("Stipulation") and understand that, pursuant to ¶ 25 of the Stipulation and through operation of the final judgment to be entered by the Court, I (we) shall have fully, finally and forever released, relinquished and discharged claims against the Released Parties as set forth in ¶ 25 of the Stipulation and the defined terms set forth therein. I (We) further acknowledge and agree that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Action, including without limitation, the release of claims against the Released Parties as set forth in ¶ 25 of the Stipulation and the defined terms set forth therein.

4. I (We) hereby warrant and represent that as to any claim for Net Loss that I (we) are making, I (we) have included information about all of my (our) holdings in the Fund(s) and all of my (our) transactions relating to those holdings in the Fund(s). I (We) agree to furnish additional information to Plaintiffs' Lead Counsel (as defined in the Notice) or the Claims Administrator to support this Proof of Claim if required to do so. I (We) authorize any nominee, custodian or similar person who is the registered shareholder or limited partner of record with respect to the shares or limited partnership interest in a Fund for which I am (we are) the Beneficial Owner to disclose to the Claims Administrator my status as the Beneficial Owner and information regarding transactions related to my (our) holdings in the Fund.

PART VI. CERTIFICATION

Under penalty of perjury, I (we) hereby certify and represent that:

I (WE) am (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because: (i) the claimant(s) is (are) exempt from backup withholding; or (ii) the claimant(s) has (have) not been notified by the IRS that he/she/it/they is (are) subject to backup withholding as a result of a failure to report all interest or dividends; or (iii) the IRS has notified the claimant(s) that I (WE) am (are) no longer subject to backup withholding. ***If the IRS has notified the claimant(s) that he/she/it/they is (are) subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above***.

I (WE) DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT ALL OF THE FOREGOING INFORMATION SUPPLIED ON THIS PROOF OF CLAIM FORM BY THE UNDERSIGNED IS TRUE AND CORRECT. BY EXECUTING THIS CERTIFICATION, I (WE) ACKNOWLEDGE AND AGREE TO BE BOUND BY ANY FINAL JUDGMENT IN THE ACTION RELATING TO THE SETTLEMENT, INCLUDING WITHOUT LIMITATION ANY RELEASE CONTAINED THEREIN.

Signature of Claimant	Signature of Joint Claimant, if any
Print Name of Claimant	Print Name of Joint Claimant, if any
Date	Date

If claimant is other than an individual, or is not the person completing this form, the following also must be provided:

Signature of Person Completing Form	Print Name of Person Completing Form
Date	

Capacity of person signing on behalf of claimant, if other than an individual, *e.g.*, executor, president, custodian, etc.

Case 1:09-cv-00118-VM-FM Document 1052-1 Filed 02/19/13 Page 26 of 61

ACCURATE CLAIMS PROCESSING TAKES A
SIGNIFICANT AMOUNT OF TIME.

THANK YOU FOR YOUR PATIENCE.

REMINDER CHECKLIST:

1. Please sign the claim form on page __ above.

2. Remember to attach supporting documentation for all transactions in the Fund(s).

3. Keep a copy of your claim form and supporting documentation for your records.

4. The Claims Administrator will acknowledge receipt of your Proof of Claim by mail or email within 45 days of receipt. Your claim is not deemed filed until you receive such an acknowledgment. If you do not receive an acknowledgment within 45 days, please contact the Claims Administrator by telephone toll free at 888-265-0241 or, from non-United States telephones, at 1-xxx-yyy-zzzz or by email info@xxxxxxxxxxxxxxxx.com.

5. If you move or change your telephone number or email address, please submit the new information to the Claims Administrator, as well as any other information that will assist us in contacting you.

THIS PROOF OF CLAIM MUST BE RECEIVED BY THE CLAIMS ADMISTRATOR

NO LATER THAN --------, 2013 AT THE FOLLOWING ADDRESS:

Fairfield Greenwich Limited Litigation
c/o Rust Consulting, Inc.
P.O. Box xxxx
Faribault, MN 55021-xxxx

Telephone: 1-xxx-xxx-xxxx

Email: info@xxxxxxxxxxxx.com

Website: www.xxxxxxxxxxxxxx.com

EXHIBIT B

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants.	Master File No. 09-cv-118 (VM) (FM)

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court for hearing pursuant to the Order Preliminarily Approving Settlement and Providing for Notice of Proposed Settlement ("Preliminary Approval Order"), dated _____ ___, 2012, on the application of the Representative Plaintiffs for approval of the Settlement set forth in the Stipulation of Settlement dated as of November 6, 2012 (the "Stipulation"). Due and adequate notice having been given of the Settlement Class as required in said Preliminary Approval Order, and the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Final Judgment and Order of Dismissal With Prejudice (the "Final Judgment") incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

3. The distribution of the Notice and the publication of the Summary Notice, as provided for in the Preliminary Approval Order, constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort. Said notices fully satisfied the requirements of Federal Rule of Civil Procedure 23, Section 21D(a)(7) of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 (15 U.S.C. ¶78u-4(a)(7)), the requirements of due process, and any other applicable law.

4. The Court finds that the Settling Defendants have provided notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715.

5. The Court finds that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied for purposes of this Settlement in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law or fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Representative Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) the Representative Plaintiffs fairly and adequately represent the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of this Action.

6. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby certifies the Action as a class action for purposes of this Settlement only, and certifies as the Settlement Class all Persons who were Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record), and who suffered a Net Loss of principal invested in the Funds, excluding (i) those Persons who timely and validly request exclusion from the Settlement Class; (ii)

Fairfield Sigma Limited, (iii) Fairfield Lambda Limited, (iv) any Settlement Class Member who has been dismissed from this Action with prejudice; and (v) the FG Defendants and any entity in which the FG Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, immediate family members, heirs, successors, subsidiaries and/or assigns of any such individual or entity in their capacity as such.

7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement set forth in the Stipulation and finds that said Settlement is, in all respects, fair, reasonable and adequate to, and is in the best interests of, the Representative Plaintiffs, the Settlement Class and each of the Settlement Class Members. This Court further finds the Settlement set forth in the Stipulation is the result of good faith, arm's-length negotiations between experienced counsel representing the interests of the Representative Plaintiffs, Settlement Class Members and the Settling Defendants. Accordingly, the Settlement embodied in the Stipulation is hereby approved in all respects and shall be consummated in accordance with its terms and provisions. The Settling Parties are hereby directed to perform the terms of the Stipulation.

8. In accordance with Paragraph 1(h) of the Stipulation, for purposes of this Final Judgment, the term "Claims" shall mean: any and all manner of claims, demands, rights, actions, potential actions, causes of action, liabilities, duties, damages, losses, diminutions in value, obligations, agreements, suits, fees, attorneys' fees, expert or consulting fees, debts, expenses, costs, sanctions, judgments, decrees, matters, issues and controversies of any kind or nature whatsoever, whether known or unknown, contingent or absolute, liquidated or not liquidated, accrued or unaccrued, suspected or unsuspected, disclosed or undisclosed, apparent or not apparent, foreseen or unforeseen, matured or not matured, which now exist, or heretofore or previously existed, or may hereafter exist, (including, but not limited to, any claims arising under federal, state or foreign law,

common law, bankruptcy law, statute, rule, or regulation relating to alleged fraud, breach of any duty, negligence, fraudulent conveyance, avoidance, violations of the federal securities laws, or otherwise), whether individual, class, direct, derivative, representative, on behalf of others, legal, equitable, regulatory, governmental or of any other type or in any other capacity.

9. In accordance with Paragraph 1(n) of the Stipulation, for purposes of this Final Judgment, the term "FG Entity Defendants" shall mean: Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Limited, Fairfield Greenwich Group, Fairfield Greenwich Advisors LLC, Fairfield Risk Services Ltd., Fairfield Heathcliff Capital LLC, and Fairfield Greenwich (UK) Limited.

10. In accordance with Paragraph 1(o) of the Stipulation, for purposes of this Final Judgment, the term "FG Defendants" shall mean: FG Entity Defendants and the FG Individual Defendants.

11. In accordance with Paragraph 1(p) of the Stipulation, for purposes of this Final Judgment, the term "FG Individual Defendants" shall mean: Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko Della Schiava, Harold Greisman, Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya.

12. In accordance with Paragraph 1(ll) of the Stipulation, for purposes of this Final Judgment, the term "Released Claims" shall mean: any and all Claims, including Unknown Claims, that have been, could have been, or in the future can or might be asserted in any federal, state or foreign court, tribunal, forum or proceeding by on or behalf of any of the Releasing Parties against

any one or more of the Released Parties, whether any such Released Parties were named, served with process, or appeared in the Action, which have arisen, could have arisen, arise now, or hereafter arise out of or relate in any manner to the allegations, facts, events, matters, acts, occurrences, statements, representations, misrepresentations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, or set forth in, or referred to or otherwise related in any way, directly or indirectly, to: (i) the Action, (ii) marketing and/or selling of the Funds by one or more of the FG Defendants and/or the Released Parties, (iii) disclosures or failures to disclose, by one or more of the FG Defendants and/or the Released Parties, with respect to one or more of the Funds and/or the FG Defendants and/or BLMIS, (iv) fiduciary obligations of one or more of the FG Defendants and/or the Released Parties related to the marketing and/or selling of the Funds, (v) due diligence of one or more of the FG Defendants and/or the Released Parties related to the Funds and/or BLMIS, (vi) purchases of, sales of (or decisions not to sell), or fees paid in relation to, direct or indirect investments in one or more of the Funds, (vii) any direct or indirect investment in BLMIS, or (viii) any claims in connection with, based upon, arising out of, or relating to the Settlement (but excluding any claims to enforce the terms of the Settlement).

13. In accordance with Paragraph 1(mm) of the Stipulation, for purposes of this Final Judgment, the term "Released Parties" shall mean: (i) each of the FG Entity Defendants, their respective past, present and future, direct or indirect, parent entities, associates, affiliates, and subsidiaries, each and all of their respective past, present, and future directors, officers, partners, alleged partners, stockholders, predecessors, successors and employees, and in their capacity as such, each and all of their attorneys, advisors, consultants, trustees, insurers, co-insurers, reinsurers, representatives, and assigns; (ii) each of the FG Individual Defendants and their respective present, past and future spouses, parents, siblings, children, grandparents, and grandchildren, the present, past

and future spouses of their respective parents, siblings and children, and the present, past and future parents and siblings of their respective spouses, including step and adoptive relationships; (iii) any and all persons, firms, trusts, corporations, and other entities in which any of the FG Defendants has a financial interest or was a founder, settler or creator of the entity, and, in their capacity as such, any and all officers, directors, employees, trustees, beneficiaries, settlers, creators, attorneys, consultants, agents or representatives of any such person, firm, trust, corporation or other entity; and (iv) in their capacity as such, the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing. For avoidance of doubt, "Released Parties" does not include the Funds, or auditors, custodians or fund administrators, in their capacity as such, including without limitation PricewaterhouseCoopers International Ltd., PricewaterhouseCoopers LLP, PricewaterhouseCoopers Accountants Netherlands N.V., Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., Citco Fund Services (Bermuda) Ltd., The Citco Group Limited, and GlobeOp Financial Services LLC (the "Service Provider Defendants"), or any of the Service Provider Defendants' respective directors, officers, agents, employees or partners in their capacity as such.

14. In accordance with Paragraph 1(nn) of the Stipulation, for purposes of this Final Judgment, the term "Releasing Parties" shall mean: the Representative Plaintiffs, each and every member of the Settlement Class and each of their respective predecessors, successors, assigns, attorneys, heirs, representatives, administrators, executors, devisees, legatees, and estates.

15. In accordance with Paragraph 1(xx) of the Stipulation, for purposes of this Final Judgment, the term "Unknown Claims" shall mean: all claims, demands, rights, liabilities, and causes of action of every nature and description which any Settlement Class Member does not know

or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her or its decision not to opt-out or object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Representative Plaintiffs shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Final Judgment shall have waived, the provisions, rights and benefits of California Civil Code § 1542, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Representative Plaintiffs shall expressly waive and each of the Settlement Class Members shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state, territory, foreign country or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. Settlement Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but the Representative Plaintiffs shall expressly fully, finally and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent of non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into

existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of fiduciary duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Representative Plaintiffs acknowledge, and the Settlement Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

16. Except as to any individual claim of those Persons (identified in Exhibit 1 attached hereto), who pursuant to the Notice, timely requested exclusion from the Settlement Class before the [_____], deadline, the Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice as against each and all of the Settling Defendants and the FG Defendants. The parties are to bear their own costs, except as otherwise provided in the Stipulation.

17. The Releasing Parties, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the future) through or on behalf of them, regardless of whether any such Releasing Party ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim, any disbursement from the Settlement Fund or Escrow Fund, shall be deemed to have, and by operation of this Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims (including Unknown Claims) against the Released Parties and shall have covenanted not to sue the Released Parties with respect to all such Released Claims, and shall be permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claim, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties. Nothing

contained herein shall, however, bar the Releasing Parties from bringing any action or claim to enforce the terms of the Stipulation or this Final Judgment.

18. The FG Defendants and the Released Parties, on behalf of themselves, their heirs, executors, predecessors, successors and assigns, shall be deemed to have, and by operation of this Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and all of the Representative Plaintiffs, Settlement Class Members and Plaintiffs' Counsel from all Claims which arise out of, concern or relate to the institution, prosecution, settlement or dismissal of the Action (the "FG Defendant Released Claims"), and shall be permanently enjoined from prosecuting the FG Defendant Released Claims against the Representative Plaintiffs, Settlement Class Members and Plaintiffs' Counsel. Nothing contained herein shall, however, bar the FG Defendants and the Released Parties from bringing any action or claim to enforce the terms of the Stipulation or this Final Judgment.

19. To the fullest extent permitted by law, all Persons, including without limitation the Non-Dismissed Defendants, shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any claims, actions, or causes of action for contribution, indemnity or otherwise against any of the Released Parties seeking as damages or otherwise the recovery of all or any part of any liability, judgment or settlement which they pay or are obligated to pay or agree to pay to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning such Persons' participation in any acts, facts, statements or omissions that were or could have been alleged in the Action, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-party claims or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum.

20. To the fullest extent permitted by law, the Released Parties shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any claims, actions, or causes of action for contribution, indemnity or otherwise against any of the Non-Dismissed Defendants seeking as damages or otherwise the recovery of all or any part of any liability, judgment or settlement which they pay or are obligated to pay or agree to pay to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning such Released Parties' participation in any acts, facts, statements or omissions that were or could have been alleged in the Action, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-party claims or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum.

21. Any final verdict or judgment that may be obtained by one or more of the Representative Plaintiffs or one or more of the other Settlement Class Members, whether individually or on behalf of a class, against one or more of the Non-Dismissed Defendants or other Person barred from seeking contribution pursuant to this Final Judgment (a "Non-Dismissed Defendant Judgment") shall be reduced, to the extent permitted by applicable law, by the greater of (i) the amount that corresponds to the percentage of responsibility attributed to the Released Parties under the Non-Dismissed Defendant Judgment; and (ii) the gross monetary consideration provided to such Representative Plaintiff or other Settlement Class Member or Members pursuant to this Stipulation.

22. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members and directs that

Plaintiffs' Lead Counsel implement the Plan of Allocation in accordance with the terms of the Stipulation.

23. The Court hereby grants Plaintiffs' Lead Counsel attorneys' fees of _____% of the Settlement Fund and expenses in an amount of $_____ together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund. Said fees shall be allocated by Plaintiffs' Lead Counsel in a manner which, in their good-faith judgment, reflects each Plaintiff's Counsel's contribution to the institution, prosecution and resolution of the Action. The Court finds that the amount of fees awarded is fair and reasonable in light of the time and labor required, the novelty and difficulty of the case, the skill required to prosecute the case, the experience and ability of the attorneys, awards in similar cases, the contingent nature of the representation and the result obtained for the Settlement Class.

24. The Court hereby grants the Representative Plaintiffs reimbursement of their reasonable costs and expenses (including lost wages) directly related to their representation of the Settlement Class (including, where applicable, an incentive award), together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund.:

i. Pacific West Health Medical Center Employees Retirement Trust (in the amount of $_____);

ii. Harel Insurance Company Ltd. (in the amount of $_____);

iii. Martin and Shirley Bach Family Trust (in the amount of $_____);

iv. Natalia Hatgis (in the amount of $_____);

v. Securities & Investment Company Bahrain (in the amount of $_____);

vi. Dawson Bypass Trust (in the amount of $_____); and

vii. St. Stephen's School (in the amount of $_____).

25. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Plaintiffs' Lead Counsel and the Representative Plaintiffs from the Settlement Fund, together with interest accrued on such amount from the date of such order to the date of payment at the same rate as earned on the Settlement Fund, subject to the terms, conditions, and obligations of the Stipulation.

26. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission, concession, or evidence of, the validity or invalidity of any Released Claims, the truth or falsity of any fact alleged by the Representative Plaintiffs, the sufficiency or deficiency of any defense that has been or could have been asserted in the Action, or of any wrongdoing, liability, negligence or fault of the Settling Defendants, the FG Defendants, the Released Parties, or any of them; (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or misrepresentation or omission with respect to any statement or written document attributed to, approved or made by any of the Settling Defendants, FG Defendants or Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; (c) is or may be deemed to be or shall be used, offered or received against the Settling Parties, the FG Defendants or the Released Parties, or each or any of them, as an admission, concession or evidence of the validity or invalidity of the Released Claims, the infirmity or strength of any claim raised in the Action, the truth or falsity of any fact alleged by the Representative Plaintiffs, Named Plaintiffs or the Settlement Class, or the availability or lack of availability of meritorious defenses to the claims raised in the Action; and/or (d) is or may be deemed to be or shall construed as or received in evidence as an admission or concession against the Settling Parties, the FG Defendants, or the Released Parties, or each or any of them, that any of Representative Plaintiffs' or Settlement Class Members' claims are with or without merit, that a

litigation class should or should not be certified, that damages recoverable under the SCAC would have been greater or less than the Settlement Fund and Escrow Fund or that the consideration to be given pursuant to the Stipulation represents an amount equal to, less than or greater than the amount which could have or would have been recovered after trial.

27. The Released Parties may file the Stipulation and/or this Final Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

28. The Court finds that during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

29. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Settling Defendants in accordance with the terms of the Stipulation, then this Final Judgment shall be vacated and rendered null and void to the extent provided by and in accordance with the Stipulation and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

30. The foregoing orders solely regarding ¶¶ 19 - 21, the Plan of Allocation (¶ 22) or request for payment of fees and reimbursement of expenses, including, if applicable, a request for payment of an incentive award (¶¶ 23-25), shall in no way disturb or affect this Final Judgment and shall be separate and apart from this Final Judgment.

31. The Court expressly determines that there is no just reason for delay in entering this Final Judgment and directs the Clerk of the Court to enter this Final Judgment pursuant to Fed. R. Civ. P. 54(b).

32. Without affecting the finality of this Final Judgment in any way, exclusive jurisdiction is hereby retained over the Settling Parties, the FG Defendants, and the Settlement Class Members for all matters relating to the Action, including (i) the administration, interpretation, effectuation or enforcement of the Stipulation and this Final Judgment, (ii) disposition of the Settlement Fund and/or Escrow Fund; and (iii) any application for attorneys' fees, costs, interest, and reimbursement of expenses in the Action.

DATED: ________________ ____
The Honorable Victor Marrero
United States District Judge

EXHIBIT 1

List of Persons and Entities Excluded from the Settlement Class in
PASHA ANWAR, *et al.*, v. FAIRFIELD GREENWICH LIMITED, *et al.*
Master File No.: 09-cv-118 (VM) (FM)

The following persons and entities, and only the following persons and entities, properly excluded themselves from the Settlement Class by the _____, 201_ deadline pursuant to the Court's Order dated _____, 2012 in response to the Notice of Pendency of Class Action:

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2012, I caused true and correct copies of the foregoing to be served by ECF on all parties registered with the Court's ECF system under docket number 09-CV-118 (VM).

/s/ Eli J. Glasser
Eli J. Glasser

EXHIBIT 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants. This Document Relates To: 09-cv-118 (VM)	Master File No. 09-cv-118 (VM) (FM)

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR (I) PRELIMINARY APPROVAL OF PARTIAL SETTLEMENT, (II) PRELIMINARY CERTIFICATION OF THE CLASS FOR PURPOSES OF SETTLEMENT, (III) APPROVAL OF NOTICE TO THE CLASS, AND (IV) SCHEDULING OF A FINAL APPROVAL HEARING

BOIES, SCHILLER & FLEXNER LLP
David A. Barrett
Howard L. Vickery, II
575 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-2300
Facsimile: (212) 446-2350

WOLF POPPER LLP
Robert C. Finkel
James A. Harrod
Natalie M. Mackiel
845 Third Avenue
New York, NY 10022
Telephone: (212) 759-4600
Facsimile: (212) 486-2093

BOIES, SCHILLER & FLEXNER LLP
Stuart H. Singer
Carlos Sires
Sashi Bach Boruchow
401 East Las Olas Boulevard, #1200
Ft. Lauderdale, Florida 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022

LOVELL STEWART HALEBIAN JACOBSON LLP
Christopher Lovell
Victor E. Stewart
61 Broadway, Suite 501
New York, NY 10006
Telephone: (212) 608-1900

Interim Co-Lead Counsel for Plaintiffs and Lead Counsel for PSLRA Plaintiffs

TABLE OF CONTENTS

The Representative Plaintiffs in this putative class action (the "Action"),[1] move for: (i) preliminary approval of a proposed partial Settlement under which the Settling Defendants, funded by the FG Individual Defendants,[2] will pay $80,250,000, including a minimum of $50,250,000 that will be distributed to the Settlement Class (the "Settlement Fund") upon final approval and an additional $30,000,000 that will be distributed if not used to resolve other claims; (ii) preliminary certification of the requested Settlement Class[3] for purposes of the Settlement; (iii) approval of the form and manner of giving notice to Settlement Class Members; and (iv) the scheduling of a hearing (the "Final Settlement Hearing") on the Representative Plaintiffs' motion for final approval of the Settlement, and for an award of attorneys' fees and for reimbursement of litigation expenses, including incentive awards and reimbursement of lost wages to Representative Plaintiffs.

The proposed partial Settlement resolves the claims asserted in this Action against all defendants associated with Fairfield Greenwich Group, which established and managed the

---

[1] The "Representative Plaintiffs" are Pacific West Health Medical Center Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company Bahrain, Dawson Bypass Trust, and St. Stephen's School.

[2] The "Settling Defendants" are Fairfield Greenwich Limited ("FGL") and Fairfield Greenwich (Bermuda) Ltd. ("FGBL"). The "FG Defendants" are the Settling Defendants as well as Fairfield Greenwich Group, Fairfield Greenwich Advisors LLC, Fairfield Risk Services Ltd., Fairfield Heathcliff Capital LLC, and Fairfield Greenwich (UK) Limited (collectively, the "FG Entity Defendants"); and Walter M. Noel, Jr., Jeffrey H. Tucker, Andres Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d'Hendecourt, Yanko Della Schiava, Harold Greisman, Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya (collectively, the "FG Individual Defendants").

[3] Unless otherwise indicated, capitalized terms used in this Memorandum are defined in the accompanying Stipulation of Settlement. The "Settlement Class" is also defined at p. 12 below.

Funds. The settlement does not resolve Plaintiffs' claims against Defendants PwC Netherlands, PwC Canada, the Citco entities, or GlobeOp, which Plaintiffs continue to litigate vigorously.

INTRODUCTION

The FG Defendants comprised the sponsors, managers, and advisors to several feeder funds to Bernard L. Madoff Investment Securities ("BLMIS"), as well as individuals affiliated with Fairfield Greenwich Group. Plaintiffs' Second Consolidated Amended Complaint ("SCAC"), filed September 29, 2009 (ECF No. 273), asserts claims against the FG Defendants for common law fraud (Counts 1 and 2), federal securities fraud and control person liability (Counts 3 and 4), negligent misrepresentation (Counts 5 and 6), gross negligence (Count 7), breach of fiduciary duty (Count 8), third-party beneficiary breach of contract (Count 9), constructive trust (Count 10), mutual mistake (Count 11), and unjust enrichment (Count 33). Those claims were sustained in significant part by this Court in decisions of July 29, 2010, *Anwar v. Fairfield Greenwich Ltd.* ("*Anwar I*"), 728 F. Supp. 2d 354; and August 18, 2010 *Anwar v. Fairfield Greenwich Ltd.* ("*Anwar II*"), 728 F. Supp. 2d 372. The Court thereafter denied two separate motions to reargue *Anwar II* (*see* 800 F. Supp. 2d 571 and 2012 WL 3245478), except the Court, on the second motion to reargue, limited the claims against the PwC Defendants to subsequent investor and holder claims asserted by already existing investors in the Funds.

The Representative Plaintiffs and the Settling Defendants (the "Settling Parties") have reached agreement to settle and release all claims against the FG Defendants as provided in a Stipulation of Settlement dated as of November 6, 2012 (the "Stipulation") filed herewith. Under the proposed Settlement, the Settling Defendants, funded by the FG Individual Defendants, will pay a total of $80,250,000, as well as giving other consideration. The

Settlement provides a substantial, up-front monetary benefit to the Settlement Class of $50,250,000 in cash (the "Settlement Fund"). These funds, less administration expenses and attorneys' fees and expenses as may be awarded by the Court, will be distributed to Settlement Class Members as soon as the proposed Settlement is finally approved.

In addition to this guaranteed recovery of $50,250,000, the Settling Defendants, funded by the FG Defendants, also will transfer $30,000,000 into a separate account (the "Escrow Fund"), which will be distributed to the Settlement Class to the extent it is not used to pay certain other claims or judgments against the FG Defendants. *See* Stipulation ¶¶ 5, 18 and 30. In the event that the Escrow Fund is used to settle claims against the Settling Defendants that have been brought by the Trustee in the liquidation of BLMIS, the Settling Defendants must make an additional payment to the Settlement Fund of up to $5,000,000, measured by 50% of the amount, if any, by which such a settlement exceeds $50,125,000. *See* Stipulation ¶ 7.[4]

As additional consideration, the Settling Defendants have agreed to waive (i) indemnification claims they hold against the Funds for the $80,250,000 payments that they will make under the Settlement; and (ii) $20,000,000 of indemnification claims they hold against the Funds for legal fees and expenses incurred in defending the Action. *See* Stipulation, ¶ 6.

The Stipulation also contains provisions barring the remaining defendants in the Action, including without limitation various PricewaterhouseCoopers, Citco and GlobeOp entities (the "Non-Dismissed Defendants") from asserting claims against the FG Defendants for contribution and indemnification and providing for reduction of any judgment that may be entered against the

[4] Because a settlement of $50,125,000 with the Trustee would exhaust the Escrow Fund, the Settlement Fund ultimately may be enhanced either by the net amount of the Escrow Fund or the supplemental payment up to $5 million (or neither), but not both.

Non-Dismissed Defendants to account for Plaintiffs' recovery under the instant Settlement. *See* Stipulation, ¶¶ 26-27.

Further, in connection with the Settlement, Plaintiffs' Lead Counsel conducted informational interviews of FG Individual Defendants on matters relevant to the Settlement and to Plaintiffs' continued prosecution of claims against the remaining Non-Dismissed Defendants.

The Stipulation is subject to additional terms, including terms contained in a Supplemental Agreement dated as of November 6, 2012, which provides that if class members representing a Net Loss of principal in excess of a certain amount seek exclusion from the Settlement Class, the Settling Defendants may terminate the Settlement. *See* Stipulation, ¶ 47. In the event the Settling Defendants elect to terminate, but the Net Loss of opt-outs does not exceed a separate threshold specified in the Supplemental Agreement, the Settling Defendants shall incur a break-up fee in the amount of $1,000,000 which shall remain in the Settlement Fund. *Id.*

The Settling Parties reached this Settlement after strenuous and protracted negotiations at a time when the Settling Parties fully understood the strengths and weaknesses of their respective positions. Since Representative Plaintiffs filed this case in December 2008, the Settling Parties have engaged in substantial motion practice, including motions to dismiss, motions to reconsider rulings on motions to dismiss and a motion for class certification. The Settling Parties have conducted, and continue (with respect to the Non-Dismissed Defendants) to conduct, extensive discovery, including 20 depositions of persons associated with the Representative Plaintiffs or other Named Plaintiffs, 30 depositions of persons affiliated with the Defendants, with many more depositions scheduled in the next several months. The Settling Defendants and the Non-Dismissed Defendants produced, and Plaintiffs' Lead Counsel reviewed, more than six million

pages of documents with production still continuing; and Plaintiffs' Lead Counsel reviewed and produced to defense counsel more than 75,000 pages of documents on behalf of the Representative Plaintiffs and other Named Plaintiffs. In total, Plaintiffs' Counsel expended over 58,000 hours of attorney and paralegal in prosecuting the Action through July 31, 2012, and have incurred in excess of $1,450,000 in out-of-pocket expenses.

The Representative Plaintiffs and Plaintiffs' Lead Counsel believe that the proposed Settlement is an excellent result that is in the best interests of the Settlement Class. The Settlement must be considered in the context of the risk that protracted litigation, including a decision on class certification, motions for summary judgment, motion practice with respect to experts and trial evidence, trial itself, and likely appeals, could result in a lesser recovery against the FG Defendants, or no recovery at all. In this connection, the FG Defendants vigorously maintain that they did not know about wrongdoing at BLMIS until it was revealed to the public in December 2008, lost more than $72 million of their own and family members' money in the fraud, maintained a full-time professional staff to perform due diligence and risk monitoring, and were among many financial firms and regulators that were fooled by Madoff, including the Securities and Exchange Commission. They also point to the efforts to conceal the fraud by Madoff and seven others who pleaded guilty to crimes, including creating false trade blotters, trade confirmations and DTC reports which they were shown, and aspects of Madoff's activities that were not typical of a Ponzi scheme, including refusing new investments and redeeming billions of dollars upon request over many years.

Plaintiffs' Lead Counsel has conducted financial due diligence of the assets held by the Founding Shareholders of FGG – Walter Noel, Jeffrey Tucker and Andres Piedrahita – and of the remaining FG Individual Defendants. This included review of assets and liabilities and

written certifications by the Defendants of the material accuracy of the information provided. Plaintiffs' Lead Counsel are satisfied that the settlement consideration represents a substantial portion of the assets that might be recovered from these FG Defendants – but only if Plaintiffs were to prevail on dispositive motions, at trial, on appeal and in potentially long and hard-fought judgment enforcement proceedings.

The Stipulation anticipates entry of the accompanying Preliminary Approval Order approving forms of mailed and publication notice to members of the proposed Settlement Class. *See* Stipulation, ¶ 20. The proposed Notice (Ex. A-1 to the Stipulation) informs Settlement Class Members of the scheduling of the Final Settlement Hearing to consider final approval of the Settlement and the request for an award of attorneys' fees and reimbursement of expenses. The Notice also informs Settlement Class Members of the opportunity to request exclusion from the Settlement Class, to object to the terms of the proposed Settlement, and to file Proofs of Claim to share in the Settlement proceeds. Inasmuch as (i) the proposed Settlement is well within the range of approvable settlements; (ii) the request for certification of a proposed Settlement Class meets the requirements for certification under Rule 23; and (iii) the plan for giving notice of the Settlement complies with applicable law, including the Private Securities Litigation Reform Act and due process, the Representative Plaintiffs respectfully request that the proposed Preliminary Approval Order be entered by this Court.

ARGUMENT

I. The Proposed Partial Settlement Warrants Preliminary Approval

The settlement of complex class action litigation is favored by public policy and strongly encouraged. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005)

("We are mindful of the strong judicial policy in favor of settlements, particularly in the class action context. The compromise of complex litigation is encouraged by the courts and favored by public policy") (internal quotation marks and citation omitted). Approval of a proposed settlement is within the discretion of the district court, to be exercised in accordance with public policy strongly favoring pretrial settlement of class action lawsuits. *Karpus v. Borelli, (In re Interpublic Sec. Litig.)*, Nos. 02-6527, 03-1194, 2004 WL 2397190, at *7 (S.D.N.Y. Oct. 26, 2004); *see also Riltmaster v. PaineWebber Group (In re PaineWebber Ltd. P'ships Litig.)*, 147 F.3d 132, 138 (2d Cir. 1998).

"Review of a proposed class action settlement generally involves a two-step process: preliminary approval and a 'fairness hearing.' First, the court reviews the proposed terms of settlement and makes a preliminary determination on the fairness, reasonableness and adequacy of the settlement terms." *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005) (citation omitted). During this first step, a court must consider whether the settlement warrants preliminary approval, providing notice to the proposed class and the scheduling of a final settlement hearing. In the second step, after notice of the proposed settlement has been provided to the class and a hearing has been held to consider the fairness and adequacy of the proposed settlement, the court considers whether the settlement warrants "final approval." *Id.* at 200 n. 71.[5] *See also In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102

[5] A final approval determination is based on an analysis of nine factors established in *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). The *Grinnell* factors are: (1) the complexity, expense and likely duration of the litigation being settled; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) risks of establishing liability; (5) risks of establishing damages; (6) risks of maintaining the litigation as a class action through trial; (7) ability of defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best possible recovery; and (9) the range of reasonableness of the settlement to a possible recovery in light of the attendant risks of litigation. *Id.*

(S.D.N.Y. 1997) (citations omitted); *In re Initial Pub. Offering Sec. Litig.*, 243 F.R.D. 79, 87 (S.D.N.Y. 2007).

The terms of the proposed Settlement here are clearly "within the range of possible approval." *Initial Pub. Offering*, 243 F.R.D. at 87. Although the Representative Plaintiffs and Plaintiffs' Lead Counsel believe that the claims asserted in the Action against the FG Defendants are meritorious, continued litigation poses the real risk that, following the Court's decisions on contested motions, and a trial on the merits and likely subsequent appeals, a lesser recovery (or no recovery at all) would result, or that collection of the full amount of any judgment would be difficult, if not impossible, against these defendants.

The Settlement was negotiated at arm's length, by counsel who were well-informed of the facts and issues in the Action, and are experienced in complex securities litigation. Among the reasons the Representative Plaintiffs believe that the proposed Settlement is in the best interests of the Settlement Class are:

(i) The Settlement will result in simplifying the remaining discovery, motion practice and trial by enabling Plaintiffs' Lead Counsel to focus on the remaining defendants, PricewaterhouseCoopers, Citco and GlobeOp. Among other things, the Citco Defendants acted as administrators of the Funds and custodians of the Funds' assets and were responsible for monitoring BLMIS as subcustodian of those assets, and PwC Netherlands and PwC Canada were the auditors of the Funds' financial statements. These defendants are believed to have substantial assets that may through settlement or judgment provide significant additional compensation to the Settlement Class.

(ii) The FG Entity Defendants lack assets to fund a judgment in excess of the Settlement – indeed, they essentially are out-of-business and could not be a source of substantial recovery by judgment or settlement.

(iii) The FG Individual Defendants acted primarily through the FG Entity Defendants and the Representative Plaintiffs may have difficulty in successfully prosecuting individual claims against the FG Individual Defendants. For example, the Representative Plaintiffs' claims for third-party beneficiary breach of contract are against the FG Entity Defendants, and the claims for common law fraud, federal securities fraud, negligent misrepresentation, gross negligence, and breach of fiduciary duty may be limited to those FG Defendants that had a fiduciary duty to investors or to whom a false statement in an Offering Memorandum or marketing materials may be attributed.

(iv) There exist substantial risks in proving the Representative Plaintiffs' claims that the FG Defendants held out Fairfield Greenwich Group as a legal partnership and that the FG Individual Defendants should be held liable as individual partners of a Fairfield Greenwich Group partnership.

(v) The FG Individual Defendants have limited financial resources and are being sued by other parties with respect to the same or similar claims as those asserted in this Action; they are incurring substantial legal expenses to defend the Action and such other proceedings; and they could well be unable to pay a substantially greater judgment or settlement to the putative class at a later time.

(vi) Certain of the FG Individual Defendants reside overseas and/or had transferred assets to trusts and retirement accounts prior to discovery of the Madoff fraud and the BLMIS bankruptcy. The Representative Plaintiffs may not be successful in enforcing judgments,

even if obtained against these defendants, in amounts greater than provided in the Settlement.

(vii) The FG Defendants continue to assert significant defenses to the Representative Plaintiffs' claims, including in opposition to class certification, and substantive defenses to the merits under the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"); *Morrison v Nat'l Australia Bank Ltd.*, 130 S. Ct. 2869 (2010); *Janus Capital Grp. Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011); and other legal and factual defenses under federal and state law.

(viii) There is significant risk that the Representative Plaintiffs' claims could be dismissed or limited prior to or at trial, or on appeal from a jury verdict.

(ix) There exists a risk that no class will be certified and the Action would have to proceed through a series of individual trials.

(x) Continued litigation and delay would cause the FG Defendants to expend their limited resources on litigation fees and costs and otherwise result in dissipation of their assets.

(xi) The Funds are either in liquidation proceedings in the British Virgin Islands or bankruptcy proceedings in the U.S. and are actively marshaling assets and pursuing sources of recovery on their own behalf, including recovery on claims against the BLMIS estate. Investors are expected to receive recoveries in addition to those obtained in this Action and through the Settlement as a result of the Funds' liquidation proceedings.

The Settlement is proposed to be allocated among class members based on their Net Loss of principal, defined as, "the total cash investment made by a Beneficial Owner in a Fund, directly or indirectly through one or more intermediaries, less the total amount of any redemptions or withdrawals or recoveries by that Beneficial Owner in the same Fund." *See*

Notice, at 24 (Plan of Allocation). The Representative Plaintiffs cannot now determine the aggregate Net Losses that may be reflected in the claims that will be filed by Settlement Class Members. As described in the proposed Notice, estimates of the percentage recovery on the potential claims that may be filed vary depending on a number of factors including (i) the difference between losses at the Fund level (which are known and are estimated to equal approximately $1.33 billion) compared to losses at the beneficial owner level (which are not known), (ii) the number of Settlement Class Members who file claims and the aggregate Net Loss of those claims, and (iii) the ultimate amount distributed to the Settlement Class from the Escrow Fund, if any.

Based on the $1.33 billion in reported losses of investments in BLMIS at the Fund level (*i.e.*, the aggregate Net Loss of principal of the Sentry, Greenwich Sentry and Greenwich Sentry Partners funds[6]), distributions from the Settlement Fund, before deduction of Court-awarded attorneys' fees and expenses, are estimated at approximately 4% to 6% of the Funds' Net Loss of principal, depending on the amount distributed to the Settlement Class from the Escrow Fund, if any. That percentage recovery would be increased to the extent Settlement Class Members do not file claims and would be reduced to the extent the aggregate Net Losses of beneficial owners who file claims exceed $1.33 billion.[7]

---

[6] The Sigma and Lambda funds are not included in this analysis because they were investors in Sentry. Including their net losses or net gains would double count their impact on the Sentry fund.

[7] Information from the Liquidator of the Sentry, Lambda and Sigma funds in early 2011 indicated that aggregate Net Losses of beneficial owners could exceed $5 billion. *See* Declaration of Sashi Bach Boruchow In Support of Motion for Class Certification (ECF No. 777). More recent information suggests this estimate may be high, although the amount may be several billion dollars depending on the claims filed.

The total amounts recovered by Settlement Class Members in respect of their investments in the Funds will be increased, perhaps substantially, by any amounts (i) recovered from the Non-Dismissed Defendants in the continuing litigation of the Action; and (ii) paid in liquidation through the bankruptcy proceedings of the Funds, which have entered into settlements entitling them to distributions from the BLMIS Trustee, and also are pursuing legal actions for their own direct claims and other recoveries.

II. Certification of a Settlement Class Is Appropriate

The proposed Settlement Class consists of:

> All Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record), who suffered a Net Loss of principal invested in Fairfield Sentry Limited, Fairfield Sigma Limited, Fairfield Lambda Limited, Greenwich Sentry L.P. or Greenwich Sentry Partners, L.P.

Stipulation, ¶ 1(ss). Excluded from the Settlement Class are (i) those individuals who timely and validly opt out of the Settlement; (ii) Fairfield Sigma Limited, (iii) Fairfield Lambda Limited, (iv) any Settlement Class Member who has been dismissed from this Action with prejudice; and (v) the FG Defendants and any entity in which the FG Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, immediate family members, heirs, successors, subsidiaries and/or assigns of any such individual or entity in their capacity as such. *Id.* Fairfield Sigma Limited and Fairfield Lambda Limited are excluded to avoid potential double recovery because their shareholders are included as members of the Settlement Class.

Pursuant to the Stipulation, the parties have agreed to request certification under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, for settlement purposes only, of Plaintiffs' claims against the Settling Defendants, and that the Final Judgment would provide for the dismissal with prejudice and releases of all FG Defendants.

The Second Circuit recognizes the propriety of certifying a class solely for purposes of a class action settlement. *See In re Am. Int'l Group Inc. Sec. Litig.*, 689 F.3d 229, 238–39 (2d Cir. 2012); *Weinberger v. Kendrich*, 698 F.2d 61, 73 (2d Cir. 1982). *See also In re Marsh & McLennan Cos. Inc. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *8 (S.D.N.Y. Dec. 23, 2009). Indeed, certification of a settlement class "has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants." *In re Prudential Sec., Inc., Ltd. P'ships Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 2005). "[S]ettlement classes are favored when there is little or no likelihood of abuse, and the settlement is fair and reasonable and under the scrutiny of the trial judge." *Id.* (*quoting In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 174 (5th Cir. 1979)).

A settlement class, like other certified classes, must satisfy the requirements of Rule 23(a) and (b). *Am. Int'l Group Inc.*, 689 F.3d 229; *Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006). Nevertheless, the manageability concerns of Rule 23(b)(3) are not at issue with respect to the settlement class analysis. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 593 (1997) ("Whether trial would present intractable management problems... is not a consideration when settlement-only certification is requested."). Here, the proposed Settlement Class meets the requirements of Rule 23(a) and Rule 23(b)(3), there is no likelihood of abuse of the class action device, and the settlement is fair, reasonable, and subject to the Court's approval. In fact, this Court in denying in part Defendants' motions to dismiss the SCAC noted that "core facts [are] implicated in every cause of action in this lawsuit." *Anwar II*, 728 F. Supp. 2d at 400.

A. The Settlement Class Satisfies the Requirements of Rule 23(a)

Certification is appropriate under Rule 23(a) where: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the

class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Inasmuch as Plaintiffs have already filed opening and reply memoranda in support of class certification, with supporting Declarations (ECF Nos. 776-84 and 865). Plaintiffs will summarize the bases for certification of a settlement class.

1. The Settlement Class Members Are Too Numerous to Be Joined

Certification requires that the class be so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). Joinder need not be impossible, only difficult. *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993). "[T]here is no fixed number which either compels or precludes class certification," *Zupnick v. Thompson Parking Partners Ltd. P'ship III*, No. 89 Civ. 6607, 1990 WL 113197, at *3 (S.D.N.Y. Aug. 1, 1990), and even "the difficulty in joining as few as 40 class members should raise a presumption that joinder is impracticable." *Robidoux*, 987 F.2d at 936 (citations omitted). Here, there are in excess of 1,000 record owners of shares in the Funds and a larger number of Settlement Class Members are beneficial owners. The sheer number of potential Settlement Class Members coupled with their widely-dispersed locations in the United States and dozens of different countries around the world makes joinder impracticable and class treatment appropriate. *See, e.g., Zupnick*, 1990 WL 113197, at *3; *Allen v. Isaac*, 99 F.R.D. 45, 53 (N.D. Ill. 1993).

2. There Are Common Questions of Law or Fact

The commonality requirement of Rule 23(a) is met if the claims involve questions of law or fact that are common to the class. *See Robinson v. Metro-North Commuter R.R.*, 267 F.3d 147, 155 (2d Cir. 2001). Factual variations among class members' claims will not defeat the commonality requirement so long as the claims arise from a common nucleus of operative facts.

Teachers' Ret. Sys. of La. v. ACLN Ltd., No. 01 Civ. 11814, 2004 WL 2997957, at *4 (S.D.N.Y. Dec. 27, 2004). Because plaintiffs can "'identify some unifying thread among the members' claims,'" commonality is satisfied. *Cutler v. Perales*, 128 F.R.D. 39, 44 (S.D.N.Y. 1989) (citation omitted).

Consistent with this, "[t]he commonality requirement has been applied permissively in securities fraud litigation" and is easily met "where putative class members have been injured by similar material misrepresentations and omissions." *Fogarazzo v. Lehman Bros. Inc.*, 232 F.R.D. 176, 180 (S.D.N.Y. 2005) (footnotes omitted). Such "course of conduct cases" are particularly well suited to class treatment because the heart of plaintiffs' claim is that defendants withheld the same material information or made the same material misrepresentations to the entire class. *See Stott v. Capital Financial Services, Inc.*, 277 F.R.D. 316, 324 (N.D. Tex., 2011) (finding commonality where common questions included whether "a broker-dealer can be held liable for the misrepresentations in the PPMs [], [and] whether the PPMs contained misrepresentations or omissions of material facts..."); *In re Indep. Energy Holdings PLC Sec. Litig.*, 210 F.R.D. 476, 479 (S.D.N.Y. 2002); *In re Oxford Health Plans, Inc. Sec. Litig.*, 191 F.R.D. 369, 374 (S.D.N.Y. 2000).

The SCAC identifies numerous common issues of fact and law (SCAC at ¶ 353), including without limitation the following:

- Whether documents, including offering memoranda, annual reports, account statements, audit reports and other materials disseminated to Plaintiffs, including information on the FG Defendants' websites, misrepresented, omitted or were otherwise misleading with respect to material facts about the Funds.
- Whether the FG Defendants acted knowingly, recklessly or negligently in misrepresenting or omitting material facts about the Funds.
- Whether the FG Defendants breached duties owed to the Plaintiffs.

- Whether Plaintiffs' losses would have been prevented had the FG Defendants fulfilled their respective duties, and acted in accordance with their representations concerning due diligence.
- Whether the Settling Parties shared a mutual mistake that the assets of the Funds were in fact being invested by BLMIS.
- Whether the FG Defendants were unjustly enriched at Plaintiffs' expense.
- Whether a valid contract governed the relationship between Plaintiffs and each of the FG Defendants.

Because Plaintiffs' allegations implicate a common course of conduct that caused injury to all members of the putative Settlement Class, the commonality requirement of Rule 23(a)(2) is satisfied.

3. The Class Representatives' Claims Are Typical

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Like the test for commonality, "[t]he typicality requirement is 'not demanding.'" *In re Initial Public Offering Sec. Litig.*, 227 F.R.D. 65, 87 (S.D.N.Y. 2004) (citations omitted). Typicality is established where "'the claims of the named plaintiffs arise from same practice or course of conduct that gives rise to the claims of the proposed class members.'" *In re Vivendi Sec. Litig.*, 242 F.R.D. 76, 84-85 (S.D.N.Y. 2007) (citation omitted); *see also Oxford Health Plans*, 191 F.R.D. at 375.

The Representative Plaintiffs' claims are typical of the claims of other Settlement Class Members because their losses all derive from the same course of the FG Defendants' conduct. Where, as here, "the lead plaintiff alleges a common pattern of wrongdoing and will present the same evidence, based on the same legal theories, to support its claim as other members of the proposed class, courts have held the typicality requirement to be satisfied...." *Teachers' Ret. Sys. of La.*, 2004 WL 2997957, at *4. *See also In re WorldCom, Inc. Sec. Litig.*, 219 F.R.D. 267, 280

(S.D.N.Y. 2003) ("'When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met . . . .'") (citations omitted); *In re Blech*, 187 F.R.D. 97, 106 (S.D.N.Y. 1999) (typicality satisfied because "plaintiffs' claims of fraud arise from the same course of conduct" as the rest of the class); *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 511 (S.D.N.Y. 1996) (typicality shown where claims "all [arose] from the same price-fixing conspiracy").

4. The Class Representatives Will Fairly and Adequately Protect the Interests of the Settlement Class

Rule 23(a)(4) requires that the representative parties "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This requirement is met where: (1) the representative plaintiffs' interests are not antagonistic to those of the remainder of the class; and (2) class counsel is qualified, experienced and generally able to conduct the litigation. *See In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 291 (2d Cir. 1992).

The Representative Plaintiffs and the Settlement Class share the common objective of maximizing their recovery, and no conflict exists between Representative Plaintiffs and the members of the Settlement Class. *See Drexel*, 960 F.2d at 291; *In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members"). Plaintiffs' Lead Counsel (Boies Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian & Jacobson LLP) have extensive experience and expertise in complex securities litigation and class action proceedings throughout the United States, and are qualified and able to conduct this litigation. *See* Declarations attached as Exhibits B, C, and D to

Plaintiffs' Memorandum of Law in Support of Motion for Consolidation of All Actions and Appointment of Interim Co-Lead Counsel dated January 27, 2009 [ECF No. 22].

On January 27, 2009, Plaintiffs' Lead Counsel were appointed Interim Co-Lead Counsel for the putative class and on July 7, 2009 the firms were appointed Lead Counsel for the PSLRA Plaintiffs. In this capacity, Plaintiffs' Lead Counsel have (i) conducted an extensive investigation of public and non-public information with respect to the class' claims; (ii) prepared initial complaints, a Consolidated Amended Complaint, and the subsequent SCAC; (iii) overcome in large part Defendants' motions to dismiss the SCAC; (iv) secured entry of a case management plan and scheduling order; and (v) commenced discovery including serving and responding to demands, including third party subpoenas, and obtaining and producing documents. In all, Plaintiffs have produced approximately 75,000 pages of documents and have received and reviewed approximately six million pages of documents; (vi) conducted 30 depositions of persons affiliated with Defendants to date, with many more scheduled, and defended 20 depositions of Representative and other Named Plaintiffs; (vii) filed a Memorandum and Reply Memorandum in Support of Plaintiffs' motion for class certification, accompanied by 14 opening and reply certifications of foreign law experts and a compendium of 62 factual exhibits; (viii) briefed and defeated in part two motions by the PwC Defendants and others to reargue the denial of dismissal of the SCAC; (ix) participated with defense counsel in dozens of meet and confer sessions with respect to document, deposition, and other aspects of merits discovery; (x) prepared written letter-briefs and argued to Magistrate Judges Katz and Maas multiple discovery disputes; (xi) retained and consulted with experts on investment fund auditing and administration; (xii) protected the interests of putative class members even outside the confines of this Action by, among other things, initiating proceedings for the liquidation of

Fairfield Sentry Fund in the British Virgin Islands, succeeding in a motion before the High Court of the Eastern Caribbean to appoint a Liquidator for Sentry, and actively participating in the liquidation process through the Sentry Liquidation Committee; and (xiii) otherwise vigorously represented the interests of putative class members in this extraordinarily complex dispute. Plaintiffs' Lead Counsel are amply qualified, experienced and capable of prosecuting this litigation. Therefore, Rule 23(a)(4) is satisfied.

B. The Proposed Settlement Class Satisfies the Requirements of Rule 23(b)(3)

Rule 23(b)(3) requires that the common questions of law or fact predominate over any questions affecting only individual class members and that a class action is superior to other available methods of adjudication. Both of these requirements are met.

1. Common Questions Predominate

Rule 23(b)(3) does not require a complete absence of any individual issues. *See Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 99 ("To be sure, individual issues will likely arise in this as in all class action cases."). Rather, it requires predominance, which entails that "some of the legal or factual questions" can be resolved through "generalized proof" and that "these particular issues are more substantial than the issues subject only to individualized proof." *Moore v. PaineWebber, Inc.*, 306 F.3d 1247, 1252 (2d Cir. 2002).

In cases that involve a single, common scheme, the predominance requirement is met notwithstanding that there may be questions of individualized reliance. *See In re Beacon*, 2012 WL 1123728, at *8 (S.D.N.Y. Apr. 4, 2012) (Sand, J.); *Jenson v. Fiserv Trust Co.*, 256 Fed. App'x 924, 926 (9th Cir. 2007) (a Ponzi scheme presented a "center of gravity" for the fraud that predominated over individual issues); *In re HealthSouth Corp. Sec. Litig.*, 261 F.R.D. 616, 645 (N.D. Ala. 2009) ("individual issues of reliance do not predominate over questions common to

the class" where the class' claims are based on a "single, common fraudulent scheme"); *Walco Invs., Inc. v. Thenen*, 168 F.R.D. 315, 333 (S.D. Fla. 1996) (certifying a class in a case involving a Ponzi scheme, where (as here) defendants included third-party service providers because common issues predominated in spite of concerns over individualized reliance); *Bresson v. Thomson McKinnon Secs., Inc.*, 118 F.R.D. 339, 343 (S.D.N.Y. 1988) (same); *In re Home-Stake Prod. Co. Sec. Litig.*, 76 F.R.D. 351, 368 (N.D. Okla. 1977) (same). This is because such situations present an "overwhelming number of common factual and legal issues . . . common to the class" that "predominate over any questions affecting only individual members." *Walco*, 168 F.R.D. at 334.

Consistent with these decisions, class treatment is appropriate in this case. This case involves the type of "common nucleus of operative facts and issues with which the predominance inquiry is concerned." *In re Nassau County Strip Search Cases*, 461 F.3d 219, 228 (2d Cir. 2006). With respect to the claims against the FG Defendants, there are multiple common questions of law or fact that apply to the entire Settlement Class. Plaintiffs' claims of negligence, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, unjust enrichment and third-party breach of contract focus on the "the conduct of the defendants, not the plaintiffs." *Bunnion v. Consol. Rail Corp.*, No. 97-4877, 1998 WL 372644, at *6, (E.D. Pa. May 14, 1998). *See, e.g., Bruhl v. PriceWaterhouseCoopers Int'l.*, 257 F.R.D. 684, 698 (S.D. Fla. 2008) (granting class certification on breach of fiduciary duty claims where defendants owed same duty to each class member and breach could be established on class-wide basis); *Dupler v. Costco Wholesale Corp.*, 249 F.R.D. 29, 34 (E.D.N.Y. 2008) (granting class certification on unjust enrichment and breach of contract claims); *Westway World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 224 (C.D. Cal. 2003) (granting class certification on unjust enrichment claims);

In re Towers Fin. Corp. Noteholders Litig., 177 F.R.D. 167, 172 (S.D.N.Y. 1997) (granting class certification on pendent state claims including negligence and breach of fiduciary duty in securities fraud action). As the Court has recognized, "core facts [are] implicated in every cause of action in this lawsuit." *Anwar II*, 728 F.Supp.2d at 400.

2. A Class Action Is the Superior Method of Adjudication

Rule 23(b)(3) sets forth the following non-exhaustive factors to be considered in making a determination of whether class certification is the superior method of litigation: "(A) the class members' interests in individually controlling the prosecution…of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by … class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." Considering these factors, proceeding by means of a class action is clearly "superior to other available methods for fairly and efficiently adjudicating" the claims against the FG Defendants.

a. Any Individual Interest in Controlling the Prosecution of Separate Actions Is Limited

The sheer scope and complexity of this controversy would make individual litigation difficult for the vast majority of Settlement Class Members. This is particularly true because thousands of Settlement Class Members reside outside the United States and are unfamiliar with the U.S. court system. Separate actions would also "risk disparate results among those seeking redress, [] encourage a race to judgment given the limited funds available to fund recovery here, [] exponentially increase the costs of litigation for all, and [] be a particularly inefficient use of judicial resources." *Cromer Fin. Ltd. v. Berger*, 205 F.R.D. 113, 133 (S.D.N.Y. 2001) (footnote

omitted). Apart from a single action in this Court[8], there is no indication that Settlement Class Members – let alone a significant number of Settlement Class Members – are interested in individually controlling the prosecution of separate actions against the FG Defendants.

b. Litigating All of the Claims in this Forum Is the Most Desirable Course of Action

The third superiority factor considers "the desirability or undesirability of concentrating the litigation of the claims in the particular forum." Fed. R. Civ. P. 23(b)(3)(C). For a number of reasons, this litigation should continue to proceed in the Southern District of New York. First, litigating this dispute in one forum – rather than in numerous courts throughout the world – is the most efficient method of resolving these claims. *See Anwar II*, 728 F. Supp. 2d at 417-418 ("[O]f any forum in the world with connections to the underlying transactions, New York has the most contacts with the litigation."). Second, this Court has presided over this action for nearly four years and is already deeply involved in the legal issues and the factual circumstances, having written exhaustive opinions on Defendants' motions to dismiss and for reconsideration. Finally, all Defendants are subject to the Court's personal jurisdiction. These factors weigh strongly in favor of litigating Plaintiffs' claims in this Court as a class action.

c. Settlement-Only Class Certification Moots Manageability Analysis

The final factor asks the Court to consider "the difficulties likely to be encountered in the management of a class action." Fed. R. Civ. P. 23(b)(3)(D). Although management of this case as a class action is not so difficult as to render individual actions a better alternative, the Court need not address this factor. As the Supreme Court explained in *Amchem*, and the Second Circuit recently highlighted in *In re Am. Int'l Group Inc.*, "[c]onfronted with a request for

[8] *Headway Investment Corporation v. American Express Bank Ltd., et al.*, No. 09-27777.

settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial." 521 U.S. at 620; 2012 U.S. App. LEXIS 16911, at *22–23 (internal citation omitted). Accordingly, the requirements of Rule 23(b)(3) are satisfied.

III. Notice to the Settlement Class Should Be Approved

As set forth in the Preliminary Approval Order, Plaintiffs will notify Settlement Class Members of the Settlement by mailing the Notice and Proof of Claim to all potential Settlement Class Members who can be identified with reasonable effort. The Notice will advise Settlement Class Members of (i) the pendency of the class action; (ii) the essential terms of the Settlement; and (iii) information regarding the motion for attorneys' fees and reimbursement of litigation expenses by Plaintiffs' Counsel, as well as reimbursement of expenses including lost wages for Representative Plaintiffs.[9] The Notice also will provide specifics on the date, time and place of the Settlement Hearing and set forth the procedures for opting out of the Settlement Class and for objecting to the Settlement, the proposed Plan of Allocation and the motion for attorneys' fees and reimbursement of litigation expenses. The proposed Preliminary Approval Order further provides for the Summary Notice to be published twice in the global editions of *The Wall Street Journal* and to be issued globally over *PR*

[9] The Notice states that Plaintiffs' Counsel may seek an award of attorneys' fees of up to 25% of the Settlement Fund, and Plaintiffs and Plaintiffs' Counsel are seeking reimbursement of expenses of $1,450,000, and incentive awards and lost wages with respect to the Representative Plaintiffs of up to $225,000. *See* Notice (Ex. A-1 to the Stipulation) at 10. Although the PSLRA limits class representative plaintiffs to recovery of "reasonable costs and expenses (including lost wages)" (15 U.S.C. 78u-4(a)(4)), the SCAC contains, and Plaintiffs are settling, state law claims where incentive awards may be appropriate.

Newswire. Plaintiffs' Lead Counsel also will post the Notice on their websites and on a dedicated settlement website.[10]

The Preliminary Approval Order directs that the Settling Defendants, and the Citco and GlobeOp defendants (who served as Fund administrators) provide the Claims Administrator with the last known names and addresses of record owners of the Funds and known Beneficial Owners. The Claims Administrator will distribute copies of the Notice and Proof of Claim to all such persons, as well as to record and Beneficial Owners who are identified (i) as having filed proofs of interest in the U.S. Bankruptcy Court proceedings involving the Greenwich Sentry and Greenwich Sentry Partners funds, and (ii) are on lists of record owners with whom the BVI Liquidator of the Fairfield Sentry, Lambda and Sigma funds regularly communicates. The Preliminary Approval Order and Notice further direct that record owners either mail directly to Beneficial Owners or provide the Claims Administrator with the names and addresses of Beneficial Owners for the mailing of notice.

The form and manner of providing notice to the Settlement Class satisfy the requirements of due process, Rule 23, and Section 21D of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended by the PSLRA. The Notice and Summary Notice will "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings," *Wal-Mart*, 396 F.3d at 114 (internal quotation marks omitted). The manner of providing notice, which includes individual notice by mail to all Settlement Class Members who can be reasonably identified, as well as publication in worldwide press and on the internet, represents the best notice practicable

[10] In the event that the Court were to grant Plaintiffs' pending motion for class certification as to the Non-Dismissed Defendants, the Stipulation provides (¶ 23) that the Court may order a revised, combined Notice.

under the circumstances and satisfies the requirements of due process and Rule 23. *See In re Warner Chilcott Ltd. Sec. Litig.*, No. 06 Civ. 11515 (WHP), 2008 WL 5110904, at *3 (S.D.N.Y. Nov. 20, 2008); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 448-49 (S.D.N.Y. 2004).

Plaintiffs respectfully suggest that the following schedule may be appropriate for notice and final approval of the Settlement:

Wednesday, November 28, 2012 (estimated) – Court grants preliminary approval

Tuesday, December 18, 2012 (20 days after preliminary order) – Last date for mailing of Notice to record owners and known Beneficial Owners.

Thursday, January 10, 2012 (43 days after preliminary order) – Last date for publication of the Summary Notice in global editions of *The Wall Street Journal* and for issuance of the Summary Notice over *PR Newswire*.

Thursday, January 24, 2013 (35 days after mailing of Notice and at least 50 days prior to the Settlement Hearing) – Motion is filed for final approval of Settlement.

Wednesday, February 13, 2013 (56 days after mailing of Notice and at least 35 days prior to the Settlement Hearing) – Deadline for objections and opt-outs; Settling Defendants notified of opt-outs.

Wednesday, March 6, 2013 (at least 14 days before the Settlement Hearing) – Responses to objections and reply in further support of settlement are filed.

Wednesday, March 20, 2013 or thereafter (at least 35 days after opt-out deadline) – Final hearing.

CONCLUSION

Plaintiffs respectfully request that the Court enter the proposed Preliminary Approval Order submitted herewith.

November 6, 2012

Respectfully submitted,

By: /s/ David A. Barrett

Robert C. Finkel
James A. Harrod
WOLF POPPER LLP
845 Third Avenue
New York, NY 10022
Telephone: 212.759.4600
Facsimile: 212.486.2093

Christopher Lovell
Victor E. Stewart
LOVELL STEWART HALEBIAN JACOBSON LLP
61 Broadway, Suite 501
New York, NY 10006
Telephone: 212.608.1900

David A. Barrett
Howard L. Vickery, II
BOIES, SCHILLER & FLEXNER LLP
575 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-2300
Facsimile: (212) 446-2350

Stuart H. Singer
Carlos Sires
Sashi Bach Boruchow
BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Boulevard, #1200
Ft. Lauderdale, Florida 33301
Telephone: (954) 356-0011

Interim Co-Lead Counsel for Plaintiffs and Lead Counsel for PSLRA Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2012, I caused true and correct copies of the foregoing to be served by ECF on all parties registered with the Court's ECF system under docket number 09-CV-118 (VM).

/s/ Eli J. Glasser
Eli J. Glasser

EXHIBIT 8

Exhibit 8
STANTON E.

ORIGINAL

SECURITIES INVESTOR PROTECTION
CORPORATION
JOSEPHINE WANG (JW0674)
General Counsel
KEVIN H. BELL (KB2260)
Senior Associate General Counsel
805 Fifteenth Street, N.W., Suite 800
Washington, DC 20005-2207
Telephone: (202) 371-8300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BERNARD L. MADOFF, and BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendants.	Civ. 08-10791
SECURITIES INVESTOR PROTECTION CORPORATION, Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	

ORDER

On the Complaint and Application of the Securities Investor Protection Corporation ("SIPC"), it is hereby:

I. ORDERED, ADJUDGED and DECREED that the customers of the Defendant,

Bernard L. Madoff Investment Securities LLC, are in need of the protection afforded by the Securities Investor Protection Act of 1970, as amended ("SIPA", 15 U.S.C. §78aaa *et seq.*).

II. ORDERED that pursuant to 15 U.S.C. §78eee(b)(3), Irving H. Picard, Esquire is appointed trustee for the liquidation of the business of the Defendant with all the duties and powers of a trustee as prescribed in SIPA, and the law firm of Baker & Hostetler LLP is appointed counsel for the trustee. The trustee shall file a fidelity bond satisfactory to the Court in the amount of $250,000.00 LLS

III. ORDERED that all persons and entities are notified that, subject to the other provisions of 11 U.S.C. §362, the automatic stay provisions of 11 U.S.C. §362(a) operate as a stay of:

A. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other proceeding against the Defendant that was or could have been commenced before the commencement of this proceeding, or to recover a claim against the Defendant that arose before the commencement of this proceeding;

B. the enforcement against the Defendant or against property of the estate of a judgment obtained before the commencement of this proceeding;

C. any act to obtain possession of property of the estate or property from the estate;

D. any act to create, perfect or enforce any lien against property of the estate;

E. any act to create, perfect or enforce against property of the Defendant any lien to the extent that such lien secures a claim that arose before the commencement of this proceeding;

F. any act to collect, assess or recover a claim against the Defendant that arose before the commencement of this proceeding;

G. the setoff of any debt owing to the Defendant that arose before the commencement

of this proceeding against any claim against the Defendant; and

H. the commencement or continuation of a proceeding before the United States Tax Court concerning the Defendant's tax liability for a taxable period the Bankruptcy Court may determine.

IV. ORDERED that all persons and entities are stayed, enjoined and restrained from directly or indirectly removing, transferring, setting off, receiving, retaining, changing, selling, pledging, assigning or otherwise disposing of, withdrawing or interfering with any assets or property owned, controlled or in the possession of the Defendant, including but not limited to the books and records of the Defendant, and customers' securities and credit balances, except for the purpose of effecting possession and control of said property by the trustee.

V. ORDERED that pursuant to 15 U.S.C. §78eee(b)(2)(B)(i), any pending bankruptcy, mortgage foreclosure, equity receivership or other proceeding to reorganize, conserve or liquidate the Defendant or its property and any other suit against any receiver, conservator or trustee of the Defendant or its property, is stayed.

VI. ORDERED that pursuant to 15 U.S.C. §§78eee(b)(2)(B)(ii) and (iii), and notwithstanding the provisions of 11 U.S.C. §§362(b) and 553, except as otherwise provided in this Order, all persons and entities are stayed, enjoined and restrained for a period of twenty-one (21) days, or such other time as may subsequently be ordered by this Court or any other court having competent jurisdiction of this proceeding, from enforcing liens or pledges against the property of the Defendant and from exercising any right of setoff, without first receiving the written consent of SIPC and the trustee.

VII. ORDERED that, pursuant to 15 U.S.C. §78eee(b)(2)(C)(ii), and notwithstanding 15 U.S.C. §78eee(b)(2)(C)(i), all persons and entities are stayed for a period of twenty-one (21) days,

or such other time as may subsequently be ordered by this Court or any other court having competent jurisdiction of this proceeding, from foreclosing on, or disposing of, securities collateral pledged by the Defendant, whether or not with respect to one or more of such contracts or agreements, securities sold by the Defendant under a repurchase agreement, or securities lent under a securities lending agreement, without first receiving the written consent of SIPC and the trustee.

VIII. ORDERED that the stays set forth above shall not apply to:

A. any suit, action or proceeding brought or to be brought by the United States Securities and Exchange Commission ("Commission") or any self-regulatory organization of which the Defendant is now a member or was a member within the past six months; or

B. the exercise of a contractual right of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in 11 U.S.C. §§101, 741, and 761, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the Defendant, whether or not with respect to one or more of such contracts or agreements; or

C. the exercise of a contractual right of any securities clearing agency to cause the liquidation of a securities contract as defined in 11 U.S.C. §741(7); or

D. the exercise of a contractual right of any stockbroker or financial institution, as defined in 11 U.S.C. §101, to use cash or letters of credit held by it as collateral, to cause the liquidation of its contract for the loan of a security to the Defendant or

for the pre-release of American Depository Receipts or the securities underlying such receipts; or

E. the exercise of a contractual right of any "repo" participant, as defined in 11 U.S.C. §101, to use cash to cause the liquidation of a repurchase agreement, pursuant to which the Defendant is a purchaser of securities, whether or not such repurchase agreement meets the definition set forth in 11 U.S.C. §101(47); or

F. the exercise of a contractual right, as such term is used in 11 U.S.C. §555, in respect of (i) any extension of credit for the clearance or settlement of securities transactions or (ii) any margin loan, as each such term is used in 11 U.S.C. §741(7), by a securities clearing bank. As used herein, "securities clearing bank" refers to any financial participant, as defined in 11 U.S.C. §101(22A), that extends credit for the clearance or settlement of securities transactions to one or more Primary Government Securities Dealers designated as such by the Federal Reserve Bank of New York from time to time; or

G. any setoff or liquidating transaction undertaken pursuant to the rules or bylaws of any securities clearing agency registered under section 17A(b) of the Securities Exchange Act of 1934, 15 U.S.C.§78q-1(b), or by any person acting under instructions from and on behalf of such a securities clearing agency; or

H. any settlement transaction undertaken by such securities clearing agency using securities either (i) in its custody or control, or (ii) in the custody or control of another securities agency with which it has a Commission approved interface procedure for securities transactions settlements, provided that the entire proceeds thereof, without benefit of any offset, are promptly turned over to the trustee; or

I. any transfer or delivery to a securities clearing agency by a bank or other depository, pursuant to instructions given by such clearing agency, of cash, securities, or other property of the Defendant held by such bank or depository subject to the instructions of such clearing agency and constituting a margin payment as defined in 11 U.S.C. §741(5).

IX. ORDERED that pursuant to 15 U.S.C. §78eee(b)(4), this liquidation proceeding is removed to the United States Bankruptcy Court for the Southern District of New York.

X. ORDERED that the trustee is authorized to take immediate possession of the property of the Defendant, wherever located, including but not limited to the books and records of the Defendant, and to open accounts and obtain a safe deposit box at a bank or banks to be chosen by the trustee, and the trustee may designate such of his representatives who shall be authorized to have access to such property.

Date: December 15, 2008
4:08 PM

Louis L. Stanton
UNITED STATES DISTRICT JUDGE

EXHIBIT 9

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	
- against -	:	08 Civ. 10791 (LLS)
	:	ECF CASE
BERNARD L. MADOFF and BERNARD L. MADOFF INVESTMENT SECURITIES LLC,	:	
Defendants.	:	

ORDER ON CONSENT IMPOSING PRELIMINARY INJUNCTION, FREEZING ASSETS AND GRANTING OTHER RELIEF AGAINST DEFENDANTS

The Securities and Exchange Commission ("SEC") having filed a Complaint in this matter on December 11, 2008; the SEC that same day having filed an Application for Emergency Preliminary Relief Against Defendants Bernard L. Madoff ("Madoff") and Bernard L. Madoff Investment Securities LLC ("BMIS") (collectively, "Defendants"); Defendants that same day having entered a general appearance and consented to the Court's jurisdiction over the Defendants and the subject matter of this action; Defendants on December 12, 2008 having consented to the entry of a temporary restraining order, asset freeze, appointment of a receiver and other relief against Defendants; the Court that same day having entered such an Order; the Court on December 15, 2008 having issued an Order appointing Irving H. Picard, Esq. ("SIPC Trustee"), as trustee for the liquidation of the business of Defendants with all the duties and powers of a trustee described in the Securities Investor Protection Corporation ("SIPC"), and appointing the law firm of Baker & Hostetler LLP as appointed counsel for the trustee; and Defendants having consented to the entry of this Order On Consent Imposing Preliminary

Injunction, Freezing Assets And Granting Other Relief Against Defendants, waived findings of fact and conclusions of law, and waived any right to appeal from this P.I. Order:

I.

IT IS HEREBY ORDERED, pending a final disposition of this action, that Defendants, and each of their partners, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, telephonic notice, notice by e-mail or otherwise, are preliminarily enjoined from, directly or indirectly, singly or in concert, in the offer, purchase or sale of any security, by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails:

a. employing any device, scheme or artifice to defraud;

b. obtaining money or property by means of an untrue statement of material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and

c. engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

II.

IT IS FURTHER ORDERED, pending a final disposition of this action, that Defendants, and each of their partners, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by

personal service, facsimile service, telephonic notice, notice by e-mail or otherwise, are preliminarily enjoined from, directly or indirectly, singly or in concert, by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails:

a. employing any device, scheme or artifice to defraud any client or prospective client;

b. engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any client or prospective client,

in violation of Sections 206(1) and 206(2) of the Advisers Act.

III.

IT IS FURTHER ORDERED, pending a final disposition of this action, that Defendants, and each of their financial and brokerage institutions, agents, servants, employees, attorneys, and those persons in active concert or participation with either of them who receive actual notice of this Order by personal service, facsimile service, telephonic notice, notice by e-mail, or otherwise, and each of them, hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the direct or indirect control of, Defendants, whether held in the name of Madoff, BMIS, Madoff International or Madoff Ltd. or for the direct or indirect beneficial interest of one or both of them, wherever situated, in whatever form such assets may presently exist and wherever located, and directing each of the financial or brokerage institutions, debtors and bailees, or any other person or entity holding such assets, funds or other property of Defendants,

LLS

to hold or retain within its control and prohibit the withdrawal, removal, transfer or other disposal of any such assets, funds or other properties, including, but not limited to: (1) all assets, funds, or other properties held in the name of, held by, or under the control of one or both of the Defendants; (2) all accounts in the name of Madoff or BMIS or on which Madoff is a signatory, including the accounts listed on the attached Exhibit A; (3) all artwork, property, motor vehicles, jewelry and other items of personalty held in the name of, held by, or under the control of Madoff or BMIS; and (4) all real property held in the name of, held by, or under the control of Madoff or BMIS.

IV.

IT IS FURTHER ORDERED, pending a final disposition of this action, that Defendants, and any person or entity acting at their direction or on their behalf, are preliminarily enjoined from destroying, altering, concealing or otherwise interfering with, the access of the PIaintiff Commission and/or SPIC Trustee to any and all documents, books and records, that are in the possession, custody or control of Defendants, and each of their partners, agents, employees, servants, accountants, financial or brokerage institutions, attorneys-in-fact, subsidiaries, affiliates, predecessors, successors and related entities that refer, reflect or relate to the allegations in the Complaint, including, without limitation, documents, books, and records referring, reflecting or relating to Defendants' finances or business operations, or the offer or sale of securities by Defendants and the use of proceeds therefrom.

V.

IT IS FURTHER ORDERED that Defendants and their partners, agents, employees, attorneys, or other professionals, anyone acting in concert with them or on their behalf, and any

third party, are preliminarily enjoined from filing a bankruptcy proceeding against Defendants without filing a motion on at least three (3) days' notice to the Plaintiff, and approval of this Court after a hearing.

VI.

IT IS FURTHER ORDERED that:

1. Defendant Madoff shall serve upon Plaintiff, on or before December 31, 2008, a verified written accounting, under penalty of perjury, of:

a. All assets, liabilities and property currently held, directly or indirectly, by or for the benefit of Defendant Madoff, including, without limitation, bank accounts, brokerage accounts, investments, business interests, loans, lines of credit, and real and personal property wherever situated, describing each asset and liability, its current location and amount;

b. All money, property, assets and income received by Defendant Madoff, or for the direct or indirect benefit of Defendant Madoff, at any time through the date of such accounting, describing the source, amount, disposition and current location of each of the items listed;

c. The names and last known addresses of all bailees, debtors, and other persons and entities that currently are holding the assets, funds or property of Defendant Madoff; and

d. The names and locations of all entities where Defendant BMIS, or entities controlled by, or related to, BMIS, held, without limitation, bank accounts, brokerage accounts, investments, or assets.

Defendant Madoff shall serve such verified written accountings by hand delivery, facsimile transmission, email or overnight courier service on the Commission's counsel, Alex Vasilescu, Esq., Securities and Exchange Commission, 3 World Financial Center, Room 400, New York, NY 10281, vasilescua@sec.gov.

VII.

IT IS FURTHER ORDERED that Lee Richards, Esq., of Richards Kibbe & Orbe LLP, continues as the appointed receiver for the assets of Madoff Securities International Ltd. ("Madoff International"), Madoff Ltd., and any other broker-dealer, market making, or investment advisory businesses (the "Foreign Entities") not located in the United States of America that are owned or controlled, in whole or in part, by Madoff, BMIS and their partners, agents, employees, attorneys, or other professionals, anyone acting in concert with them or on their behalf, and any third party, to (i) preserve the status quo, (ii) ascertain the extent of commingling of funds between Madoff, BMIS and the Foreign Entities; (iii) ascertain the true financial condition of the Foreign Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the Foreign Entities; (v) prevent the encumbrance or disposal of property or assets of the Foreign Entities and the investors; (vi) preserve the books, records and documents of the Foreign Entities; (vii) respond to investor inquiries regarding the foreign entities; (viii) protect the assets of the Foreign Entities from further dissipation; (ix) determine whether the Foreign Entities should undertake bankruptcy filings; and (x) determine the extent to which the freeze should be lifted as to certain assets in the custody of the Foreign Entities.

To effectuate the foregoing, the receiver is empowered to:

(a) Take and retain immediate possession and control of all of the assets and property, and all books, records and documents of, the Foreign Entities;

(b) Have exclusive control of, and be made the sole authorized signatory for, all accounts at any bank, brokerage firm or financial institution that has possession or control of any assets or funds of the Foreign Entities;

(c) Conduct business, including making trades, and pay from available funds necessary business expenses, as required to preserve or maximize the value of the assets and property of the Foreign Entities, notwithstanding the asset freeze imposed by paragraph III, above;

(d) Locate assets that may have been conveyed to third parties or otherwise concealed by the Foreign Entities;

(e) Engage and employ persons, including accountants, attorneys and experts, to assist in the carrying out of the receiver's duties and responsibilities hereunder, including appointing a person or entity to manage any aspect of the business of the Foreign Entities, including any investment adviser business and market-making businesses of the Foreign Entities, and to use available funds as required to preserve the assets and property of the Foreign Entities, notwithstanding the asset freeze imposed by paragraph III, above;

(f) Report to the Court and the parties by January 26, 2009, subject to such reasonable extensions as the Court may grant, the following information:

1. All assets, money, funds, securities, and real or personal property then held directly or indirectly by or for the benefit of the Foreign Entities,

including, but not limited to, real property, bank accounts, brokerage accounts, investments, business interests, personal property, wherever situated, identifying and describing each asset, its current location and value;

2. A list of secured creditors and other financial institutions with an interest in the receivership assets of the Foreign Entities;

3. A list of customers and clients of the Foreign Entities, including investment advisory clients, and, to the extent practicable, the amounts received by Madoff from each such customer or client and the amounts withdrawn by each such customer or client;

(g) Develop a preliminary plan for the administration of the assets of the receivership of the Foreign Entities, including a recommendation regarding whether bankruptcy cases should be filed for all or a portion of the assets subject to the receivership and a recommendation whether litigation against third parties should be commenced on a contingent fee basis to recover assets of the Foreign Entities for the benefit of the receivership.

Defendants agree to provide any written authorizations necessary for the receiver to exercise the foregoing powers over the Foreign Entities.

As this Court has entered an Order (referenced above) appointing the SIPC Trustee, and as the SIPC Trustee has roles and responsibilities with respect to BMIS, the receiver will have no authority over BMIS, except to the extent that such authority is necessary to carry out his responsibilities with respect to the Foreign Entities and that such authority is exercised with the

prior consent and approval of the SIPC Trustee.

VIII.

IT IS FURTHER ORDERED that each of the Receiver and his advisors be, and they hereby are, indemnified by each of the Defendants, Madoff International and Madoff Ltd., except for gross negligence, willful misconduct, fraud, and breach of fiduciary duty determined by final order no longer subject to appeal or certiorari, for all judgments, losses, costs, and reasonable expenses including legal fees (which shall be paid under the indemnity after court approval as they arise), arising from or related to any and all claims of whatsoever type brought against any of them in their capacities as receiver or advisors to the receiver; provided, however, that nothing herein shall limit the immunity of the receiver and his advisors allowed by law or deprive the receiver and his advisors of indemnity for any act or omission for which they have immunity.

IX.

IT IS FURTHER ORDERED that no creditor or claimant against the Defendants, or any person acting on behalf of such creditor or claimant, shall take any action to interfere with the control, possession, or management of the assets subject to the receivership.

X.

IT IS FURTHER ORDERED that, pending final disposition of this action or such further order of the Court, Plaintiff may conduct expedited discovery, pursuant to Rules 26, 30, 31, 33, 34, 36 and 45 of the Federal Rules of Civil Procedure and without the requirement of a meeting pursuant to Fed. R. Civ. P. 26(f).

XI.

IT IS FURTHER ORDERED that this Order shall be, and is, binding upon Defendants and their partners, agents, servants, employees, attorneys, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, telephone, e-mail or otherwise.

XII.

IT IS FURTHER ORDERED that the Consent of Defendants to Preliminary Injunction Order filed herewith is incorporated herein with the same force and effect as if fully set forth herein, and that Defendants shall comply with all of the undertakings and agreements set forth therein.

Louis L. Stanton
UNITED STATES DISTRICT JUDGE

Issued at : 6:35 p.m.
December 18, 2008
New York, NY

Exhibit A

JP Morgan Chase Account No. 000000140081703
Account in the Name of: Bernard L. Madoff Investment Securities

JP Morgan Chase Account No. 0000000066709466
Account in the Name of: Bernard L. Madoff Investment Securities

The Bank of New York Mellon Account No. 890-0402-393
Account in the Name of: Benard L Madoff Investment Securities

The Bank of New York Mellon Account No. 030-0951050
Account in the Name of: Bernard L Madoff

The Bank of New York Mellon Account No. 866-1126-621
Account in the Name of: Bernard L Madoff Investment Securities LLC

EXHIBIT 10

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

BERNARD L. MADOFF and BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

Defendants.

08 Civ. 10791 (LLS)
ECF CASE

PARTIAL JUDGMENT ON CONSENT IMPOSING PERMANENT INJUNCTION AND CONTINUING OTHER RELIEF

The Securities and Exchange Commission ("SEC") having filed a Complaint in this matter on December 11, 2008; the SEC that same day having filed an Application for Emergency Preliminary Relief Against Defendants Bernard L. Madoff ("Madoff") and Bernard L. Madoff Investment Securities LLC ("BMIS") (collectively, "Defendants"); Defendants that same day having entered a general appearance and consented to the Court's jurisdiction over the Defendants and the subject matter of this action; Defendants on December 12, 2008 having consented to the entry of a temporary restraining order, asset freeze, appointment of a receiver and other relief against Defendants; the Court that same day having entered such an Order; the Court on December 15, 2008 having issued an Order appointing Irving H. Picard, Esq. ("SIPC Trustee"), as trustee for the liquidation of the business of Defendants with all the duties and powers of a trustee described in the Securities Investor Protection Corporation ("SIPC"), and appointing the law firm of Baker & Hostetler LLP as appointed counsel for the trustee; and the Court having entered on December 18, 2008, the Order On Consent Imposing Preliminary

Injunction, Freezing Assets And Granting Other Relief Against Defendants (the "P.I. Order"); and Defendant Madoff having consented to entry of this Partial Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction), waived findings of fact and conclusions of law, and waived any right to appeal from this Partial Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Madoff, and each of his partners, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, telephonic notice, notice by e-mail or otherwise, are permanently enjoined from, directly or indirectly, singly or in concert, in the offer, purchase or sale of any security, by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails:

a. employing any device, scheme or artifice to defraud;

b. obtaining money or property by means of an untrue statement of material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and

c. engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser, in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder, [17 C.F.R. § 240.10b-5].

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Madoff, and each of his partners, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, telephonic notice, notice by e-mail or otherwise, are permanently enjoined from, directly or indirectly, singly or in concert, by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails:

a. employing any device, scheme or artifice to defraud any client or prospective client; or

b. engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any client or prospective client, in violation of Sections 206(1) and 206(2) of the Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), (2)].

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Madoff shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9]. The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the SEC. Prejudgment interest shall be calculated from the date of the first violation, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with

the SEC's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant Madoff will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant Madoff may not challenge the validity of the Consent or this Partial Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the SEC's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

IV.

IT IS HEREBY FURTHER ORDERED that Sections III through XII of the Court's Order On Consent Imposing Preliminary Injunction, Freezing Assets And Granting Other Relief Against Defendants, entered on December 18, 2008, are incorporated into this Partial Judgment and shall remain in full force until this action is fully resolved or as otherwise ordered by this Court.

V.

IT IS FURTHER ORDERED that this Partial Judgment shall be, and is, binding upon Defendant Madoff and his partners, agents, servants, employees, attorneys, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, telephone, e-mail or otherwise.

VI.

IT IS FURTHER ORDERED that the Consent of Defendant Bernard L. Madoff to a Partial Judgment filed herewith is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant Madoff shall comply with all of the undertakings and agreements set forth therein.

Louis L. Stanton
UNITED STATES DISTRICT JUDGE

Issued at : 12 : 19 p.m.
February 9, 2009
New York, NY

EXHIBIT 11

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
Irving H. Picard
Email: ipicard@bakerlaw.com
David J. Sheehan
Email: dsheehan@bakerlaw.com
Marc Hirschfield
Email: mhirschfield@bakerlaw.com
Alissa M. Nann
Email: anann@bakerlaw.com

Attorneys for Irving H. Picard, Esq. Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC And 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.	Adv. Pro. No. 08-1789 (BRL) SIPA Liquidation (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	

TRUSTEE'S AMENDED THIRD INTERIM REPORT
FOR THE PERIOD ENDING MARCH 31, 2010

TABLE OF CONTENTS

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

Irving H. Picard, Esq. (the "Trustee"), trustee for the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff ("Madoff" and together with BLMIS, each a "Debtor" and collectively, the "Debtors"), respectfully submits his Amended Third Interim Report (this "Report") pursuant to section 78fff-1(c) of the Securities Investor Protection Act[1] and in accordance with the terms of the Order on Application for an Entry of an Order Approving Form and Manner of Publication and Mailing of Notices, Specifying Procedures For Filing, Determination, and Adjudication of Claims; and Providing Other Relief entered on December 23, 2008 (the "Housekeeping Order" or "Claims Procedures Order") [Dkt. No. 12]. Pursuant to the Housekeeping Order, the Trustee shall file additional interim reports at least every six (6) months hereafter. This Report covers the period ending March 31, 2010, or as otherwise indicated (the "Report Period").

I. INTRODUCTION

1. The Trustee and his counsel (including, but not limited to, B&H, various international special counsel retained by the Trustee as described in ¶ 110 below ("International Counsel"), Windels Marx Lane & Mittendorf, LLP ("Windels Marx"), special counsel to the Trustee, and together with International Counsel and B&H, collectively referred to herein as "Counsel"), have made significant headway into the investigation of Madoff's fraud. To date, the Trustee has filed fourteen (14) avoidance actions seeking to recover more than $14.8 billion in funds from various feeder funds, Madoff friends and family members and related parties. The Trustee anticipates filing extensive additional litigation based on investigation conducted by the Trustee's counsel and consultants. Because of efforts made by the Trustee and his counsel, as of

March 31, 2010, approximately $1.5 billion has been recovered for the benefit of customers. The Trustee hopes to make an initial *pro rata* distribution of the fund of customer property (the "Customer Fund"), which consists of funds already recovered and to be recovered by the Trustee, sometime before the end of 2010 to customers whose claims were allowed for amounts that exceed the $500,000 maximum that has been paid from advances made by the Securities Investor Protection Corporation ("SIPC"). The Trustee anticipates making subsequent *pro rata* distributions from the Customer Fund, the timing and amount of which will depend on future recoveries and the final and nonappealable determination of net equity. This proposed initial distribution is discussed in further detail in section IX *infra*.

2. During the Report Period, the Trustee and B&H also made substantial progress in processing and determining the claims of customers of BLMIS. As further described in section VII.A *infra*, as of March 31, 2010, the Trustee had determined 12,249 claims, allowed 2,011 customers claims in the total amount of $5.3 billion, and had committed to pay approximately $668 million in SIPC advances, leaving approximately $4.6 billion in over-the-limits claims.

3. Given the task of liquidating BLMIS, and in doing so, cooperating with those federal and state authorities investigating the criminal, civil and regulatory matters, the Trustee and his counsel have also dealt with issues spanning a broad spectrum of legal and administrative specialties and disciplines. The Trustee's ability to call on the resources of B&H in such areas as corporate, real estate, bankruptcy, securities, employment, tax, banking, litigation (and others) has been of material assistance in pursuing the Trustee's statutorily-mandated investigations, achieving results, establishing protocols, and directing the efforts of the Trustee's financial professionals.

[1] The Securities Investor Protection Act ("SIPA") is found at 15 U.S.C. 78aaa et seq. For convenience, subsequent references to SIPA will omit "15 U.S.C."

4. During the Report Period, the Trustee and his counsel and staff have met extraordinary challenges, in a manner beneficial to the customers, creditors, and other investors of BLMIS. This Report is meant to provide an overview of all the efforts engaged in by the Trustee and his team of professionals and to summarize all of the results achieved, as well as challenges faced by the Trustee during the Report Period.

II. BACKGROUND

5. BLMIS was founded by Madoff in 1960 and was a sole proprietorship until it became a limited liability company, of which Madoff was the sole member. BLMIS engaged in three primary types of business: market making, proprietary trading and investment advisory services. BLMIS was registered with the SEC as a broker-dealer and beginning in 2006 as an investment advisor. Pursuant to such registration as a broker-dealer, BLMIS was a member of SIPC. BLMIS was also a member of the Financial Industry Regulatory Authority ("FINRA"), formerly known as the National Association of Securities Dealers, Inc. ("NASD").

A. PROCEDURAL HISTORY

6. On December 11, 2008, Madoff was arrested by the FBI in his Manhattan home and was criminally charged with a multi-billion dollar securities fraud scheme in violation of 15 U.S.C. §§ 78j(b), 78ff, and 17 C.F.R. 240.10b-5 in the United States District Court for the Southern District of New York ("District Court"), captioned USA v. Madoff (No. 08-2735). That case number was terminated on March 10, 2009, and a new case number, USA v. Madoff (No. 09 CR 213) was opened and assigned to District Court Judge Denny Chin (the "Criminal Case").

7. Also on December 11, 2008 (the "Filing Date" for the SIPA liquidation proceeding), the SEC filed a complaint in the District Court against defendants Madoff and BLMIS, captioned Securities and Exchange Commission v. Madoff, et al. (No. 08 CV 10791)

(the "Civil Case"). The complaint alleged that the defendants engaged in fraud through the investment advisor (or "IA") activities of BLMIS.

8. Based on allegations brought by the SEC against Madoff and BLMIS in the Civil Case, on December 12, 2008, the Honorable Louis L. Stanton of the District Court entered an order which appointed Lee S. Richards, Esq. as receiver for BLMIS (the "Receiver").

9. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the SEC consented to a combination of the Civil Case with an application filed by SIPC. Thereafter, pursuant to section 78eee(a)(3) of SIPA, SIPC filed an application in the District Court alleging, inter alia, that the Debtor was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protection afforded by SIPA.

10. On that date, the District Court entered the Protective Decree (Civil Case Dkt. No. 4), to which BLMIS consented, which, in pertinent part:

(a) appointed the Trustee for the liquidation of the business of the Debtor pursuant to section 78eee(b)(3) of SIPA, therefore, effectively replacing the Receiver as to BLMIS;

(b) appointed Baker & Hostetler LLP ("B&H") as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and

(c) removed the case to the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court" or "Court") pursuant to section 78eee(b)(4) of SIPA.[2]

11. On December 18, 2008, the District Court entered the Order on Consent Imposing Preliminary Injunction, Freezing Assets and Granting Other Relief Against Defendants (the "Preliminary Injunction Order"). Among other things, the Preliminary Injunction Order clarified that the Receiver's authority was limited to assets of Madoff's U.K. entity, Madoff Securities International Ltd. ("MSIL").

12. On February 26, 2009, the Receiver submitted a report and application to Terminate the Receivership to the District Court. After receipt of submissions by the Trustee, the SEC, and the Department of Justice, and after a hearing on March 23, 2009, the District Court issued an order discharging the Receiver and terminating the receivership.

B. **MADOFF CHAPTER 7 LIQUIDATION**

13. On April 10, 2009, at the request of certain creditors of Madoff, the District Court entered an order in the Civil Case modifying Article V of the Preliminary Injunction Order to allow them (as defined below, the "Petitioning Creditors") to file an involuntary bankruptcy petition against Madoff [Civil Case Dkt. No. 46]. The District Court in its Order noted that:

> A Bankruptcy Trustee has direct rights to Mr. Madoff's individual property, with the ability to maximize the size of the estate available to Mr. Madoff's creditors through his statutory authority to locate assets, avoid fraudulent transfers, and preserve or increase the value of assets through investment or sale, as well as provide notice to creditors, process claims, and make distributions in a transparent manner under the procedures and preferences established by Congress, all under the supervision of the Bankruptcy Court.

14. On April 13, 2009, Blumenthal & Associates Florida General Partnership, Martin Rappaport Charitable Remainder Unitrust, Martin Rappaport, Marc Cherno and Steven Morganstern (collectively, the "Petitioning Creditors"), filed an involuntary chapter 7 bankruptcy petition against Madoff individually in the Bankruptcy Court (Case No. 09-11893 (BRL)) (the "Chapter 7 Case").

15. On April 21, 2009, pursuant to an Order of the Bankruptcy Court signed on April 20, 2009 directing the appointment of an interim chapter 7 trustee in the Chapter 7 Case, the

[2] Pursuant to section 78fff(b) of SIPA, "[t]o the extent consistent with [SIPA], [this] liquidation proceeding [is] be[ing] conducted in accordance with, and as though it [is] being conducted under chapter 1, 3, 5 and subchapters I and II of chapter 7 of [the Bankruptcy Code]."

United States Trustee's Office for the Southern District of New York appointed Alan Nisselson, Esq. as interim trustee for the Chapter 7 Case (the "Chapter 7 Trustee").

16. On May 5, 2009, the Trustee and SIPC filed a joint motion for entry of an order pursuant to section 105(a) of 11 U.S.C. §§ 101, *et seq*. (the "Bankruptcy Code") substantively consolidating the Madoff chapter 7 estate into the BLMIS SIPA Liquidation (the "Substantive Consolidation Motion").

17. On June 9, 2009, this Court approved and entered a Consent Order [Dkt. No. 252] which, among other things, approved the Substantive Consolidation Motion *nunc pro tunc* to December 11, 2008.

18. Windels Marx, which had previously been counsel to the Chapter 7 Trustee, was subsequently retained on behalf of the consolidated estate as special counsel to the Trustee and the Chapter 7 Trustee by order dated July 16, 2009, *nunc pro tunc* as of June 9, 2009 [Dkt. No. 327].

C. **MSIL AND JOINT PROVISIONAL LIQUIDATORS**

19. On June 9, 2009, the Bankruptcy Court approved two protocols between the Trustee and the Joint Provisional Liquidators ("JPLs") of MSIL. The protocols provide for cooperation between the Trustee and the JPLs. Specifically, the Trustee and the JPLs entered into the Cross-Border Insolvency Protocol for the Bernard Madoff Group of Companies (the "Cross Border Protocol") and an Information Sharing Protocol (the "Information Protocol").

20. The Cross Border Protocol provides that the Trustee and the JPLs will keep each other updated with respect to their activities, including any court proceedings and will work together regarding any assets that the representatives locate. The Information Protocol covers sharing of information regarding the affairs of BLMIS and MSIL, including by their respective agents.

21. On June 9, 2009, the MSIL proceeding also was recognized by the Bankruptcy Court as a foreign main proceeding pursuant to Chapter 15 of the Bankruptcy Code.

22. A winding up order was made by the English High Court in relation to MSIL on December 15, 2009. The JPLs were subsequently appointed as the Joint Liquidators ("JLs") of MSIL. The Trustee and his Counsel periodically communicate with the JLs and their counsel or consultants. The Cross Border Protocol and Information Protocol continue to apply.

D. **CRIMINAL AND CIVIL CASES**

USA v. Madoff, 09-cr-213, SDNY.

23. At a plea hearing (the "Plea Hearing") on March 12, 2009 in the Criminal Case, Madoff pled guilty to an 11-count criminal information, which counts included securities fraud, money laundering and theft and embezzlement, filed against him by the United States Attorney's Office for the Southern District of New York ("USAO"). At the Plea Hearing, Madoff admitted that he "operated a Ponzi scheme through the investment advisory side of [BLMIS]." (Plea Hr'g Tr. at 23:14-17.) Additionally, Madoff asserted "[a]s I engaged in my fraud, I knew what I was doing [was] wrong, indeed criminal." (Id. at 23:20-21.) Madoff filed a plea allocution describing some of the details of his fraud (the "Allocution") [Criminal Case Dkt. No. 50].

24. While operating BLMIS, Madoff represented to clients and prospective clients that he would invest their money in shares of common stock, options and other securities and would, at their request, return profit and principal. (*See* Allocution at pg. 1). As the world is now aware, no such securities were purchased by Madoff.

25. In pleading guilty to the crimes he committed, Madoff admitted that since at least the early 1990's the IA business of BLMIS was used to operate a Ponzi scheme. (*See* Allocution at p. 2). Madoff solicited billions of dollars under false pretenses and failed to invest investors' funds as promised. Instead, he deposited investors funds in a bank account at Chase Manhattan

Bank. (*See* Allocution at pg. 1). In his Allocution, Madoff also described how he moved funds between this account and other BLMIS accounts in an attempt to conceal the fraud. (*See* Allocution at pg. 4).

26. On June 29, 2009, Madoff was sentenced by the District Court to serve, in consecutive terms, the maximum term of incarceration recommended under the U.S. Federal Sentencing Guidelines on each count to which Madoff pled guilty. The sentence totals 150 years in prison. Madoff is currently serving his sentence at a federal correctional facility in North Carolina.

<u>SEC v. Madoff</u>, No. 08-cv-10791, SDNY.

27. As described above in ¶ 7, on December 11, 2008, the SEC filed the Civil Case against Madoff and BLMIS. The complaint alleged that the defendants engaged in fraud through investment advisor activities of BLMIS.

<u>USA vs. DiPascali</u>, 09-cr-764, SDNY.

28. In 1975, Frank DiPascali, Jr. ("DiPascali"), who was eighteen (18) years old at the time, began working at BLMIS as a stock researcher and as Peter Madoff's assistant. DiPascali quickly rose within the company ranks to became Director of Options Trading in 1986, and Chief Financial Officer in 1996. DiPascali eventually became a key lieutenant in Madoff's operation and oversaw the day-to-day operations of Madoff's investment-advisory business. DiPascali frequently interacted with investors as they were told that he was the one who executed their trades.

29. In August 2009, DiPascali plead guilty in the District Court to ten criminal counts, including: conspiracy, securities fraud, mail fraud, wire fraud, investment fraud, two counts of falsifying the books of a broker dealer, international money laundering, perjury and federal income tax evasion. He faces a maximum of 125 years in prison. In his statement to the

court, DiPascali said that he helped Madoff defraud investors from as early as the late 1980's until December 2008. DiPascali admitted that, during this time period, BLMIS did not buy or sell securities through its investment advisory business, and that he had fabricated account statements, knowingly lied to investors and committed perjury before the SEC. Said DiPascali:

> From at least the early 1990s through December of 2008, there was one simple fact that Bernie Madoff knew, that I knew, and that other people knew but that we never told the clients nor did we tell the regulators like the SEC. No purchases of sales of securities were actually taking place in their accounts. It was all fake. It was all fictitious. It was wrong and I knew it was wrong at the time, sir.

Plea Hr'g Tr. at 46:9-15.

30. According to media reports, DiPascali has been cooperating with federal investigators looking into the Madoff fraud since February. Upon DiPascali's guilty plea, U.S. District Judge Richard Sullivan denied the federal prosecutor's request that DiPascali be released on $2.5M bail. On February 23, 2010 an order was entered by Judge Sullivan setting forth the conditions for release on bail pending sentencing; conditions include a $10 million personal recognizance bond to be secured by at least $2 million in cash or property. DiPascali will remain on house arrest prior to his sentencing.

31. On February 1 and 2, 2010, stipulations were entered with respect to the surrender of certain DiPascali property to the U.S. Marshal Service in partial satisfaction of the criminal forfeiture money judgment in the amount of $170.25 billion entered against DiPascali. Personal items to be seized and sold include DiPascali's residence in Bridgewater, New Jersey, a speed boat and a jetski.

SEC v. DiPascali, 09-cv-7085, SDNY.

32. On August 11, the SEC filed civil charges against DiPascali, citing securities fraud related to his overseeing of a fictitious investment strategy and the creation of millions of

fake documents and trading records. The SEC charges indicate that DiPascali sustained the fraud from at least the 1980's all the way up to firm's December 2008 collapse. The complaint also states that this level of fraud took great effort due to DiPascali's ability to hide thousands of BLMIS investor advisory accounts from SEC registration. To continue the deception, DiPascali prepared a "cooked" set of books and records to provide regulators false information upon a review of the true scope and size of BLMIS. Finally, the SEC complaint states that DiPascali misappropriated investor funds for his personal gain – from which he withdrew more than $5M between 2002 and 2008.

33. The SEC complaint seeks financial penalties and a court order requiring DiPascali to return all ill-gotten gains.

USA v. Friehling, 09-cr-700, SDNY.

34. Since the late 1970's, Friehling & Horowitz, a little-known accounting office in New York City's northern suburb of New City, New York, conducted the independent accounting and auditing work for BLMIS. At the time it began working with BLMIS, the firm consisted of one partner, Jerome Horowitz, an accountant and a secretary. In 1991, Jerome Horowitz began to work part-time and handed the majority of the firm's accounts to his son-in-law, David Friehling. Friehling held his post until Madoff's 2008 arrest. From 2004 to 2007, Friehling was paid about $13,500 per month by BLMIS - despite never verifying the firm's sources of revenue, assets, bank account statements or alleged stock purchases.

35. On November 3, 2009, Friehling pled guilty in District Court for his role as independent BLMIS auditor. Friehling told District Judge Alvin Hellerstein that he (a) did not conduct an independent investigation of BLMIS (b) did not follow the generally accepted accounting rules required of his profession and (c) accepted Madoff's claims about the firm's finances at "face value". Friehling pled guilty to nine counts including securities fraud,

investment-advisor fraud and obstructing tax law administration. Friehling also admitted that he prepared false returns for Madoff and "others". It is possible that Friehling is cooperating with federal law enforcement authorities.

36. Friehling was released on a $2.5 million bond. His sentencing was adjourned to September 3, 2010. He faces up to 114 years in prison.

SEC v. Friehling, 09-cv-2467, SDNY.

37. On March 18, 2009, the SEC charged Friehling with committing securities fraud by falsely representing that he had conducted a legitimate audits of BLMIS, when, in fact, he had not. The SEC's complaint alleges that Friehling enabled the Ponzi scheme by falsely stating in annual audit reports that his accounting firm, Friehling and Horowitz, had conducted annual audit reports pursuant to the Generally Accepted Auditing Standards (GAAP) required by the profession. These statements were materially false as Friehling never performed a meaningful audit nor did he ever perform any auditing procedures to confirm that the securities being held on behalf of BLMIS investors even existed. Finally, in an effort to absolve himself from peer review, Friehling openly lied to the American Institute of Certified Public Accountants by denying that he conducted any audit work whatsoever.

38. The SEC's complaint seeks permanent injunctions, civil penalties and a court ordering requiring Friehling to return all ill-gotten gains.

USA v. O'Hara and Perez, 10-cr-00228 SDNY.

39. On November 13, 2009, Jerome O'Hara and George Perez, two BLMIS computer programmers, were arrested and appeared in District Court on federal charges for their role in helping Madoff cover up his fraudulent Ponzi scheme. The USAO complaint alleged that, for over a fifteen-year period, Madoff and DiPascali routinely asked O'Hara and Perez to, among other things, create records that combined the actual positions and activity from BLMIS' market-

Case 1:12-cv-09408-VM Document 1-24 Filed 12/27/12 Page 15 of 84
Pg 14 of 83

making and proprietary trading business with the fictional balances on customer accounts. The programmers used this data to manipulate and create false trading documents, DTC reports, trade blotters and stock records. Furthermore, O'Hara and Perez used an out-dated and technologically insufficient computer on the 17th floor (known internally as "House 17") to print millions of phony customer statements and trade records.

40. The complaint further alleged that, in 2006, O'Hara and Perez had a crisis of conscience and attempted to delete 218 of the 225 special programs on the House 17 computer. The programmers allegedly decided afterward to cash out hundreds of thousands of dollars from their BLMIS accounts and promptly tell Madoff that they would refuse to create any more false records for BLMIS. Madoff responded by offering them as much money necessary to keep them quiet on the matter and not expose the fraud. Madoff ended up paying both Perez and O'Hara a 25% salary increase and a one-time bonus of more than $60,000 each. In exchange, the programmers modified the House 17 computer so that the trading statements could be easily manipulated by DiPascali.

41. On March 17, 2010, O'Hara and Perez were indicted by a federal grand jury on charges that they assisted in covering up the Ponzi scheme. The three-count indictment includes charges of falsifying the books and records of a broker-dealer and of an investment advisor, and conspiracy. If convicted, they each face up to thirty (30) years in prison on conspiracy, twenty (20) years for falsifying books and records of a broker-dealer, and five (5) years for falsifying books and records of an investment adviser. On March 25, 2010, both men pled not guilty to the charges.

SEC v. O'Hara and Perez, 09-cv-9425 SDNY.

42. On November 13, 2009, the SEC filed civil charges against O'Hara and Perez for their role in helping Madoff cover up his fraudulent Ponzi scheme. The SEC's complaint is

seeking financial penalties and a court order requiring the programmers return their ill-gotten gains. The defendants currently have until May 14, 2010 to answer the SEC's complaint.

USA v. Bonventre, 10-mj-385 SDNY.

43. On February 25, 2010, Daniel Bonventre, former operations director at BLMIS, was arrested and appeared in District Court on federal charges for his role in the Madoff Ponzi scheme. Bonventre joined BLMIS in 1968 and served as its director of operations, overseeing the back-office record-keeping staff, since at least 1978.

44. Bonventre was indicted by a federal grand jury on March 24, 2010 on nine (9) counts of securities fraud, conspiracy, and other charges related to his role in Madoff's firm. If convicted, Bonventre could face up to eighty-two (82) years in prison and a fine. The USAO complaint alleged that Bonventre participated in doctoring records to conceal for at least a decade that the firm was being propped up with money illegally siphoned from investor accounts and had borrowed money to cover withdrawals from the Ponzi scheme during a cash shortage that began in late 2005.

45. According to the USAO complaint, Madoff preserved his fraud, in part, by using funds from government agency bonds from an unidentified investor as collateral for $145 million in loans to his brokerage firm, which he used to cover redemptions from his corrupt investment advisory business. Bonventre allegedly arranged the loans and created the false paper trail that concealed the bailout of the Ponzi scheme. According to the complaint, the scheme got so low on cash during the crisis that Madoff also had to draw on his firm's operating accounts to meet four separate investor redemption requests totaling nearly $262 million from January 30 to April 13, 2006. Prosecutors say that Bonventre created the fictional ledger entries that concealed the illicit use of the funds and the repayment of the money from the Ponzi scheme's cash account

after the crisis was over. Bonventre is also accused of personally pocketing nearly $2 million from the scheme through fake transactions in his own Madoff accounts.

46. On March 25, 2010, Bonventre pled not guilty to the charges brought against him. SEC v. Bonventre, 10-cv-1576 SDNY.

47. Also on February 25, 2010, the SEC separately brought civil securities and accounting fraud charges against Bonventre, alleging he helped disguise Madoff's fraud and financial losses at BLMIS by misusing and improperly recording investor money to create the false appearance of legitimate income.

III. LIQUIDATION PROCEEDING

48. On December 23, 2008, this Court approved the Trustee's Bond (Dkt. No. 11). Pursuant to an application of the Trustee dated December 21, 2008 (Dkt. No. 8), this Court entered the Housekeeping Order (Dkt. No. 12), which directed, among other things, that on or before January 9, 2009 (a) a notice of the commencement of this SIPA proceeding be published in all editions of *The New York Times, The Wall Street Journal, The Financial Times, USA Today, Jerusalem Post* and *Ye'diot Achronot*; (b) notice of the liquidation proceeding and claims procedure be given to persons who appear to have been customers of BLMIS by mailing to each such person, at the last known address appearing on the books of BLMIS, a copy of the notice, proof of claim form and instructional materials approved by the Court; (c) notice of the liquidation proceeding and a claim form be mailed to all known general creditors of the Debtor; and (d) notice be given of the hearing on disinterestedness of the Trustee and his counsel (see section 78eee(b)(6) of SIPA) scheduled for February 4, 2009 and the meeting of creditors, scheduled for February 20, 2009.

49. As discussed in further detail in ¶ 74 below, the required notice was published on January 2, 2009, in all required publications [Dkt. No. 57], and a mailing to customers and

general creditors of BLMIS was completed on January 9, 2009 [Dkt. No. 76].[3] Potential claimants were advised of the Court-approved and statutory time limits for filing claims.

50. On February 4, 2009, this Court entered the Order Regarding Disinterestedness of the Trustee and Counsel to the Trustee [Dkt. No. 69], finding that the Trustee and B&H are disinterested pursuant to section 78eee(b)(6) of SIPA, section 327(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 2014(a) and therefore met the disinterestedness standard required by section 78eee(b)(3) of SIPA, section 327(a) of the Bankruptcy Code, and Bankruptcy Rule 2014(a). Accordingly, the Trustee is duly qualified to serve and act on behalf of the Debtor's estate.

51. On February 20, 2009, a meeting of creditors under section 341(a) of the Bankruptcy Code was held. No representative of the Debtor appeared for examination at that meeting. The Trustee and his counsel, as well as the SIPC staff, attended the meeting of creditors and reported on the then current state of affairs as well as the process for filing and determining customer claims. The Trustee and counsel then responded to inquiries made by over 150 customers and creditors who attended the meeting and to questions received via email prior to the meeting. In addition, the Trustee made over 1,000 phone lines available for those customers and creditors who could not attend the 341 meeting to listen in live, and also posted a video link to the 341 meeting on the Trustee website.

IV. **ADMINISTRATION OF THE ESTATE**

52. The Trustee has made every effort to keep customers and other interested parties informed of his ongoing efforts to administer the BLMIS estate, including responding to

[3] In addition, materials were mailed in response to requests from customers or general creditors. Furthermore, all claims packages were made available for download on the Trustee's website, www.madofftrustee.com, and on SIPC's website, www.sipc.org.

hundreds of phone calls, emails, and letters, establishing a telephone call center to respond to inquiries from claimants and their representatives (see discussion on customer claims process *infra* at Section VII.A), creating a website to serve as a clearinghouse for information (www.madofftrustee.com), and meeting with representatives of customers, creditors, regulatory authorities and other interested parties.

A. RETENTION OF PROFESSIONALS

53. In addition to the professionals already retained by the Trustee as described in ¶ 23 of the Trustee's First Interim Report, dated July 9, 2009 (the "First Interim Report") [Dkt. No. 314] and ¶ 49 of the Trustee's Second Interim Report, dated November 23, 2009 (the "Second Interim Report") [Dkt. No. 1011], the Trustee has retained the firm of Kugler Kandestin, L.L.P. as counsel in Quebec, Canada. The Trustee has also retained, with the approval of SIPC, a number of consultants and expert witnesses.[4]

B. MARSHALLING AND LIQUIDATION OF ESTATE ASSETS

54. The Trustee and his counsel have worked diligently to investigate, examine and evaluate the Debtor's activities, assets, rights, liabilities, customers and other creditors. Thus far, the Trustee has been successful in recovering a significant number of assets and in liquidating some of those assets for the benefit of customers, totaling approximately 1.5 billion.[5] These asset recoveries include: the sale of the Debtor's market making operations; the settlement of BLMIS' trades and open positions; cash recoveries from banks and brokerage accounts that held BLMIS' funds; class action settlement recoveries; the sale of sports tickets; insurance refunds; refunds of political contributions; tax recoveries; the sale of BLMIS loan participations; the sale

---

[4] A SIPA trustee has authority, subject to approval from the Securities Investor Protection Corporation ("SIPC") but without need for Court approval, among other things, to "hire and fix the compensation of all personnel (including officers and directors of the debtor and of its examining authority) and other persons (including accountants) that are deemed necessary for all or any purposes of the liquidation proceeding." 15 U.S.C. §78fff-1(a)(1). Each of the Trustee's hiring decisions to date has been reviewed and approved by SIPC.

[5] This number for recoveries was as of the end of the Report Period.

of BLMIS DTCC shares; pre-litigation settlements with various funds and entities for the return of customer property (see Section X.H *infra*); and various other miscellaneous recoveries. For a more detailed discussion of these recoveries, see Section V.B. of the First Interim Report and Section IV of the Second Interim Report. During the current Report Period, the Trustee has made recoveries from the following estate assets:

Trustee's Various Accounts and Recoveries From BLMIS Accounts.

55. The Trustee maintains a regular operating account at Citibank, which is primarily funded by SIPC advances, and from which he pays administrative expenses and customer claims. As of March 31, 2010, the balance of this account was $51,666,191.65. On December 21, 2009, the Trustee opened an Insured Money Market account maintained by Citibank. As of March 31, 2010, the balance of this account was $60,083,317.49.

56. The Trustee maintains a preferred custody interest-bearing account at Citibank. As of March 31, 2010, the total balance of the preferred custody account was $1,029,603,320.06, which consisted of $929,488,946.43 in short term investments comprised of U.S. Treasury Bills with maturities between May 27, 2010 and December 16, 2010 and $100,114,373.63 in U.S. Treasury Notes dated November 30, 2009 and maturing November 30, 2011.

57. The Trustee has a brokerage account with Morgan Joseph & Co., Inc., clearing through J.P. Morgan Clearing Corp. As of March 31, 2010, the total value of the Trustee's Morgan Joseph account was $305,181,432.12, consisting of a money market position of $22,140,115.12, equity securities of $10,417.00 and fixed income securities of $283,030,900.00. The fixed income securities include U.S. Treasury Bills of $179,802,018.00 with maturities between June 17, 2010 and December 16, 2010, and two U.S. Treasury Notes, which total $103,149,906.00 with maturities on April 30, 2010 and November 30, 2011, respectively.

58. As described in the First Interim Report, the Trustee had recovered a significant amount of cash from financial institutions at which BLMIS maintained accounts (see First Interim Report, ¶¶ 35-37). The Trustee has received an additional $1,452.39 from CIBC in the current Report Period.

Class Action Settlement Recoveries.

59. The Trustee has identified claims that BLMIS had made before his appointment in at least six (6) class action suits. The Trustee received distributions from five (5) of the six (6) class action settlements totaling $91,830.34. The Trustee was notified that no distribution would be forthcoming from the sixth class action settlement as the claim filed by BLMIS pre-liquidation was missing required documentation.

60. In addition, the Trustee has identified additional claims that BLMIS may have in forty-eight (48) other class action suits. The Trustee has filed proofs of claim in thirty (30) of these cases, and, subject to the completion of a review of relevant records, intends to file claims in the other eighteen (18). The Trustee has recovered $65,800.20 from one of those class action settlements. The Trustee continues to review this area.

Miscellaneous Recoveries.

61. In addition to the above, the Trustee has recovered $228,749.27 in miscellaneous recoveries from sources such as cancellation of various subscriptions and memberships.

C. **WIND-DOWN OF ESTATE OPERATIONS**

Termination of BLMIS Employees.

62. As was described in ¶ 52 of the First Interim Report and ¶ 68 of the Second Interim Report, as of December 12, 2008, 140 individuals were on the BLMIS payroll. The two largest termination stages took place at the end of January and March 2009, which accounted for 80% of the individuals on payroll. The remaining employees on the Trustee's payroll who were

needed to assist in winding down certain aspects of the business were terminated as of June 30, 2009.

Termination and Liquidation of BLMIS-Sponsored Benefit Plans.

63. As part of the process of winding down the business operations of BLMIS and dismissing its many managers and employees in an orderly and equitable fashion, the Trustee (through counsel) reviewed the many employee benefit plans BLMIS sponsored and maintained for its employees and their dependents, incident to terminating those plans and providing for the orderly resolution and liquidation of all affected individuals' and vendors' plan-related rights and claims. Initial efforts by the Trustee, B&H and AlixPartners LLP, the Trustee's consultant and claims agent ("AlixPartners"), consisted of identifying all such plans; investigating the extent to which those plans had been administered, funded, invested and maintained; identifying and rectifying any problems associated with the communication of terms, the payment or denial of benefits, and the arrangements made with plan fiduciaries and third party service providers; identifying any circumstances under which claims might be made, or actions could be taken by federal or state regulators, against the estate; and protecting the privacy rights of BLMIS' current and former employees and dependents.

64. As a result of the initial efforts of B&H and AlixPartners, BLMIS was found to have provided health, accident and sickness benefits, retirement-related benefits, and life insurance, disability income and accidental death and dismemberment benefits under as many as six (6) identifiable employee benefit plans; some of those benefits were provided through group insurance contracts and policies, while others were provided on a self-insured basis (including a group health plan which covered substantially all of BLMIS' former employees and their respective dependents) or were provided through a separately-established trust fund (such as the BLMIS-sponsored 401(k) plan). Substantially all of the benefit plans needed to be brought into

compliance with relevant law, including the Employee Retirement Income Security Act ("ERISA") prior to termination, and several of the contractual arrangements made with third parties, including third party administrators, trustees and insurance companies, needed to be modified or replaced.

65. On May 27, 2009, the Bankruptcy Court entered an order confirming the Trustee's authority to modify, then terminate effective May 31, 2009, and finally liquidate and wind down, all of the BLMIS-sponsored health and welfare plans by collecting and adjudicating all plan-related claims made by employees, covered dependents and third parties; negotiating agreements with vendors to provide for the handling, storage and disposal of plan records (including medical records subject to federal and state privacy laws); notifying all affected individuals and third parties of their plan-held or plan-related rights; and providing for the payment of meritorious claims and the denial and discharge of ineligible or untimely claims. The liquidation and wind-down process was completed during the Report Period. No claims for plan benefits were received after the published August 2009 cut-off date, and all claims received on or prior to the cutoff date were completely processed and adjudicated. The submission of final reports prepared by the Trustee and tax reports to the federal authorities responsible for plan oversight, including the Internal Revenue Service and the United States Department of Labor ("DOL") were timely filed (taking into account a permitted extension), on March 15, 2010.

66. The Trustee also completed a number of steps to terminate the BLMIS-sponsored 401(k) plan and liquidate and distribute its assets. On November 3, 2009, the Trustee notified the remaining 401(k) plan participants of the upcoming termination of the plan. On November 24, 2009, the Court approved the Trustee's motion to terminate the 401(k) plan as of December 15, 2009. The Trustee then entered into an agreement with Millennium Trust Company to serve as an individual retirement account ("IRA") custodian for any account balances remaining after

December 15, 2009. Winding down the 401(k) plan was completed during the Report Period; however, the time required to compile and submit final reports and returns to the federal authorities responsible for plan oversight is expected to be completed after the date of this report.

V. FINANCIAL CONDITION OF ESTATE

67. A summary of the financial condition of the estate as of February 28, 2010 is provided on Exhibit A attached hereto.[6] To date, the Trustee has incurred significant administrative expenses in maintaining the BLMIS office, including rent payments (although since the sale of the market making operation, this has decreased substantially), monthly payment of legal fees and consultant fees (all approved by SIPC), the digitizing of records and costs associated with determining customer claims. All administrative costs to date associated with the liquidation proceeding have been paid from SIPC administrative advances. Since they are chargeable to the general estate, payment has no impact on recoveries that the Trustee has obtained and will obtain, and that will be allocated to the fund of customer property.

68. As detailed on Exhibit A, as of February 28, 2010, the Trustee had requested and SIPC had advanced a total of $744,260,386.34, of which $141,819,540.89 was for administrative expenses and the balance of $602,440,845.45 was to pay allowed customer claims up to the maximum SIPA limit ($500,000 per account). During March 2010, the Trustee requested additional SIPC advances totaling $65,059,630.73, of which $16,638,534.07 was for administrative expenses and $48,421,096.66 was to pay allowed customer claims.[7]

[6] A report of the financial condition of the estate ending March 31, 2010, was not available in time for the filing of this Report. As stated in ¶ 55 above, as of March 31, 2010, the Trustee had $51,666,191.65 in his regular operating account at Citibank.

[7] As of the end of the Report Period, the Trustee had determined and allowed 2,011 claims, which amounts to $668,102,200.32 in SIPC advances (see ¶ 85 below). As described below in ¶ 84, the Trustee must receive an executed assignment and release form before he obtains an advance of funds from SIPC. Thus, the amount of SIPC advances requested by the Trustee to pay allowed customer claims that have been determined during the Report Period is less than the amount of SIPC advances received by the Trustee during the Report Period for such purpose.

VI. GOVERNMENT FORFEITURE

69. On April 20, upon an ex parte application by the USAO, Judge Chin issued a post-indictment restraining order in the Criminal Action (the "Restraining Order"). In pertinent part, the Restraining Order restrained Madoff and Ruth Madoff from the transfer or dissipation of assets subject to forfeiture. The Restraining Order exempts the USAO from the restraining provisions, and further states that the USAO may provide specific written authorization to third parties to take actions otherwise prohibited by the Restraining Order.

70. In connection with its criminal investigation of Madoff's fraudulent scheme and the resulting guilty pleas of several co-conspirators, the USAO has criminally forfeited proceeds pursuant to consent orders from Bernard and Ruth Madoff, Frank DiPascali, and David Friehling.

71. On September 21, 2009, the USAO filed a motion in the District Court pursuant to Title 18, United States Code, Section 3663A(c)(3) for a finding that restitution would be impracticable in light of the large number of identifiable victims and the complex factual analysis required to assess the victims' losses. Accordingly, the USAO requested that it be able to proceed through the process of remission as authorized under the forfeiture statutes at Title 21, United States Code, Section 853(9) and the regulations promulgated thereunder. Among other options to maximize the efficiencies of the remission process and return the most value to the victims, the USAO stated in its motion papers that it would consider the possibility of appointing the SIPA Trustee, Irving Picard, as a special master to assess victim claims and distribute the forfeited proceeds in accordance with provisions of 28 CFR Part 9. [Criminal Case Dkt. No. 105]

72. By order dated September 24, 2009, Judge Chin granted the USAO's motion, finding that restitution is impracticable and the government would be permitted to proceed by

remission [Criminal Case Dkt. No. 106]. Upon a motion dated September 29, 2009, certain victims of Madoff requested that Judge Chin reconsider his order and condition any order of remission on a net equity calculation based on the November 30, 2008 customer statements [Criminal Case Dkt. No. 110]. The victims also objected to the appointment of Mr. Picard to assist in the remission process. In an order dated October 27, 2009, Judge Chin denied the motion for reconsideration and ruled that any objections to the resolution of customer claims or appointment and retention of the Trustee should be filed with the Bankruptcy Court [Criminal Case Dkt. No. 119].

VII. CLAIMS ADMINISTRATION

A. CUSTOMER CLAIMS

The Claims Processing Order and Notices of the Bar Date.

73. The Trustee sought Court approval for and implemented a customer claims process in accordance with SIPA. As discussed in ¶ 48 above, the Claims Procedures Order approved (i) the form and manner of publication of the notice of the commencement of the liquidation proceeding (the "Notice") and (ii) specified the procedures for filing, determining and adjudicating customer claims.

74. On January 2, 2009, the Trustee mailed a copy of the Notice and claims filing information to (i) all persons and entities that are or appear from available records to have been a customer of BLMIS at any time, (ii) creditors other than customers or broker-dealers and (iii) broker-dealers who were identified as BLMIS customers based on a review of BLMIS' books and records. More than 16,000 potential customer, general creditor and broker-dealer claimants were included in the mailing of the Notice. The Trustee published the Notice in all editions of The New York Times, The Wall Street Journal, The Financial Times, USA Today, Jerusalem Post and Ye-diot Achronot by January 2, 2009. The Trustee also posted claim forms and claims

filing information on the Trustee's website (www.madofftrustee.com) ("Trustee Website"), and SIPC's website (www.sipc.org) ("SIPC Website").

75. Under the Claims Procedures Order, claimants were to mail their claims to the Trustee at the following address: Irving H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC, Claims Processing Center, 2100 McKinney Avenue, Suite 800, Dallas, Texas 75201. All customers and creditors were notified of the mandatory statutory bar date for filing of claims under section 78fff-2(a)(3) of SIPA, which was July 2, 2009 (the "Bar Date"). Any claims received after July 2, 2009 are deemed untimely and will not be allowed. The Notice published in the newspapers, mailed to claimants and posted on the Trustee's and SIPC's websites, stated in boldface that "[n]o claim of any kind will be allowed unless received by the trustee within six (6) months after the date of this Notice." The Instructions for completing the Customer Claim and general creditor claim forms also included that information.

76. On May 21, 2009, the Trustee mailed a reminder notice to customers who had not yet filed a claim that the statutory bar date was July 2, 2009.

77. On June 22, 2009, the Trustee mailed over 7,700 final bar date reminder notices (the "Final Reminder Notice") relating to over 4,200 past and present customer account holders of BLMIS from whom a claim had not yet been received. In addition, the Trustee posted the Final Reminder Notice on the Trustee Website. In the Final Reminder Notice, the Trustee acknowledged that certain litigation had been filed regarding the Trustee's definition of "net equity" under SIPA and that this Court's decision on this issue may affect whether or not certain customers have an allowed claim in this proceeding (such litigation is discussed in Section X.A, *infra*). The Trustee urged all customers to file a claim by July 2, 2009 in order to ensure that the Trustee considers their claim. The mailing of the Final Reminder Notice was unprecedented in SIPA proceedings and represented an extraordinary effort by the Trustee.

78. As noted above, the Bar Date for the filing of claims under section 78fff-2(a)(3) of SIPA was July 2, 2009. As of March 31, 2010, the Trustee had received 16,314 customer claims, including those filed both timely and untimely, and duplicate and supplemental claims. The books and records of BLMIS reflect that there were 8,095 non-administrative IA accounts. As of December 11, 2008, 4,903 accounts were active, i.e, either a monthly customer statement was generated for the account for the period ending November 30, 2008 or the account was opened in December 2008. The Trustee has received multiple claims for many accounts.

<u>Claims Processing</u>.

79. In compliance with the Claims Procedures Order, the Trustee has developed a comprehensive claims administration process for the intake, reconciliation, and resolution of customer claims. The Trustee's dedicated team of professionals including business consultants, forensic accountants, and attorneys work together through the various levels of review a claim must undergo before it can be determined and allowed.

80. At the initial intake stage, AlixPartners, the Trustee's claims agent, receives and reviews each filed claim to insure they are filled out properly and all relevant information is included. If any information is missing, the claims agent sends a request for supplemental information. As of March 31, 2010, AlixPartners had mailed over 670 requests for supplemental information.

81. In the next stage - the research stage - FTI, the Trustee's forensic accountants, review each claim, information gathered from BLMIS' books and records regarding the account at issue and information submitted directly by the claimant. The results of this review are noted on each account and are ultimately used by the Trustee in assessing his determination of the claim.

82. At the third review stage, the claims are moved to SIPC where a SIPC claims review specialist provides a recommendation to the Trustee regarding how each claim should be determined. Once a recommendation has been made by a SIPC reviewer, the Trustee and his counsel then review the recommendation and legal or other issues that have been raised in prior review stages. Once the Trustee has decided upon a resolution of a claim, the Trustee issues a determination letter to the claimant.

83. The Trustee has or will mail a determination letter to every claimant when that claimant's claim is determined. The determination letter explains how the customer's claim has been determined by the Trustee, states the amount of the allowed or denied claim, based on the net equity of the customer's account on a cash in/cash out basis, and sets forth the amount of SIPC protection available to the customer, if such claim is allowed. Pursuant to the Claims Procedures Order, if the claimant does not object to the Trustee's determination within 30 days of the date on which the Trustee mailed the determination letter, the Trustee's determination will be deemed confirmed by the Court and binding on the claimant.

84. Together with the determination letter, the Trustee mails either a full or partial assignment and release to customers with allowed claims. This agreement states that the claimant agrees with the Trustee's determination and treatment of the claim as set forth in the determination letter. This agreement must be executed and notarized by the claimant and received by the Trustee before the Trustee seeks a SIPC advance to fully or partially satisfy the claim within SIPA limits.

Interim Results of the Claims Process During the Report Period.

85. Notwithstanding the monumental and unprecedented task faced by the Trustee, the Trustee has made substantial progress in reviewing and determining customer claims. As of March 31, 2010, the Trustee had determined 12,249 claims. Out of those determined, the

Trustee allowed 2,011 claims and committed to pay approximately $668 million in cash advances from SIPC. This is the largest commitment of SIPC funds in any one SIPA liquidation proceeding and exceeds the total aggregate payments made in all SIPA liquidations to date. As of March 31, 2010, the total amount of customer claims allowed was $5,310,849,986.29. The total over-the-limits claim amount on these claims – the amount by which allowed customer claims exceed the committed SIPC advances – was $4,642,747,785.97.

86. As of March 31, 2010, the Trustee had also determined and denied 10,238 claims on the basis that (i) those accounts had withdrawn more money out of the accounts than was deposited to the accounts, applying the net equity investment method (cash in/cash out) to all account transactions over the life of the account or (ii) the claims were filed by claimants who did not have accounts at BLMIS and/or were indirect investors through feeder funds or other financial institutions. On March 19, 2010, the Trustee filed a motion to approve and set a briefing schedule for issues relating to the denial of claims of indirect investors, as further discussed in section X.C *infra*.

The Hardship Program.

87. In an effort to speed relief to those BLMIS customers who had been hardest hit by the BLMIS Ponzi scheme, the Trustee implemented a Hardship Program in early May 2009 to expedite the determination of eligible customer claims and, therefore, payment of SIPC protection to those individuals facing severe hardship. The types of hardship considered includes, among others, the inability to pay for necessary living expenses (food, housing, utilities and transportation); inability to pay for necessary medical expenses; necessity to return to work, at the age of 65 or older, after having previously retired from former employment; declaring personal bankruptcy; and inability to pay for the care of dependents.

88. The Trustee's counsel has evaluated each hardship application to determine whether or not the application should be approved for inclusion in the Hardship Program and provided written notification of the decision within 20 days of receipt of the application. In some instances, rather than deny the application, the Trustee requested further information from the applicants in an effort to make sure the applicants receive full consideration of their hardship status.

89. Once the Trustee accepts an applicant into the Hardship Program, the Trustee endeavors to determine the claim within 20 days of the customer's entry into the Hardship Program <u>if</u> the claimant's account was opened at BLMIS after January 1, 1996. For claims on accounts that were opened at BLMIS prior to 1996, the Trustee is currently working to reconstruct the records for these years (most of which have been completed). The Trustee is committed to determining these accounts as soon as the records are available. As of March 31, 2010, the Trustee had received 317 Hardship Program applications and approved 212 applications. Most of the remaining Hardship applications were ineligible for the program, either because the account had a negative net equity (meaning the investor had withdrawn more than they had deposited) or the application was from a third-party investor. As of March 31, 2010, of those applicants who filed Hardship applications, 232 applicants have had their claims determined, 83 applicants have not had their claims determined and 2 applicants have had their claims partially determined. The applicants whose claims have not yet been determined are under various stages of review.

90. The Trustee has departed from the practice in past SIPC proceedings and has committed to paying the undisputed portion of any disputed or objected-to claims, including Hardship Claims, even if there is a dispute over the full amount of the claim. The purpose of this

procedure is to expedite payment of SIPC protection to claimants while preserving their rights to dispute the total amount of their claim.

<u>Settlement of Preferences</u>.

91. The Trustee has engaged in settlement negotiations with customers who withdrew funds from their BLMIS Accounts within ninety (90) days of the Filing Date. Such withdrawals are preferential transfers recoverable by the Trustee under sections 547(b) and 550(a) of the Bankruptcy Code, which sections are applicable in this proceeding pursuant to sections 78fff(b) and 78fff-2(c)(3) of SIPA. To settle potential preference actions against these customers, the Trustee has proposed that the customers agree to authorize the Trustee to deduct the preferential amount from the initial payment advanced by SIPC pursuant to section 78fff-3(a)(1) of SIPA. The allowed claim is thus calculated based on the amount of money the customer deposited with BLMIS for the purchase of securities, <u>less</u> subsequent withdrawals, <u>plus</u> the preferential amount. The customer will be entitled to receive an additional distribution from the fund of customer property based on the total amount of the allowed claim.

92. The Trustee has been working to reach settlements in connection with claims resolution in accordance with the provisions of the Claims Procedures Order. As of March 31, 2010, the preference team has reached agreements with 83 customers to settle the Trustee's claims against them in connection with preferential transfers. These account-holders agreed to return to the Trustee a combined total of $31,367,888.29 to be added to the fund of customer property and be available for future distribution. These settlements allow the Trustee to avoid the costly litigation that would be necessary to obtain and collect judgments from each of these individual customers.

The Trustee Has Worked to Keep Customers Informed of the Status of the Claims Process.

93. Throughout the liquidation proceeding, the Trustee has kept customers, other interested parties and the public informed of his efforts by maintaining the Trustee Website, a customer hotline, holding a Section 341(a) meeting of creditors on February 20, 2009, holding various press conferences regarding the status of customer claims and he and his counsel responding to the multitude of phone calls, e-mails and letters he receives on a daily basis.

94. The Trustee established the Trustee Website for centralized distribution of as much information as possible, including (i) regular press releases and statements on the status and progress of the proceedings; (ii) statistics on the number of claims determined, the dollar amount of the proposed allowed claims, the dollar amount of SIPC protection provided on such claims and the dollar amount by which the proposed allowed claims exceed the statutory limits of SIPC protection (which statistics are generally updated twice a week); (iii) copies of Bankruptcy Court filings; (iv) claims-related information and claim forms; (v) details regarding the Hardship Program, including Hardship Program application forms; and (vi) other news directly or indirectly related to the liquidation proceeding.

95. The Trustee Website also allows claimants to e-mail their questions directly to the Trustee's representatives, who follow up with a return e-mail or telephone call to the claimants. As of March 31, 2010, the Trustee and his professionals have received and responded to more than 2,820 e-mails from BLMIS customers as well as their representatives.

96. In addition, the Trustee established a toll-free hotline for BLMIS customers to call for information. As of March 31, 2010, the Trustee's professionals have fielded more than 6,450 hotline calls from claimants as well as their representatives, and have provided status updates on claims, addressed claimants' questions or concerns and offered confirmation to claimants that

their claims were received. In addition, the Trustee and B&H have responded to hundreds of phone calls.

97. In sum, the Trustee and his team have endeavored to respond timely to every customer inquiry and to ensure that the customers are as informed as possible about various aspects of the BLMIS proceeding.

Contingencies.

98. As discussed above, the Trustee has made progress in determining claims. Nevertheless, substantial contingencies remain, and the Trustee must reserve for these contingencies in determining what distributions can be made immediately to customers with allowed net equity claims. The total universe of allowed claims against customer property cannot be determined with precision until all claims have been fully analyzed, a process that will take time, given the complexity of many claims.

99. In addition, as discussed below, as the analysis of the claims population has progressed, disputes have arisen with claimants over the Trustee's definition of "net equity" as being measured by money deposited, less money withdrawn. As noted in section X.A *infra*, the Court issued an opinion on March 1, 2010 upholding the methodology being used by the Trustee. This issue is currently on appeal to the Second Circuit

100. It is the Trustee's intent, at the earliest practicable time, to seek, pursuant to §78fff-2(c)(1) and related provisions of SIPA, Bankruptcy Court approval for the allocation of all recoveries already obtained and to be obtained to the "fund of customer property." The Trustee anticipates making applications seeking approval for interim allocations and pro rata distributions.

B. **CLAIMS OF GENERAL CREDITORS**

101. As of March 31, 2010, the Trustee had received 378 timely and 11 untimely filed secured and priority and non-priority general unsecured claims totaling approximately $1,708,165,815.01. The claimants include vendors, taxing authorities, employees, and customers filing claims on non-customer proof of claim forms. As of March 31, 2010, the Trustee had received 50 general unsecured broker dealer claims totaling approximately $29,081,878.41.

102. The Trustee does not currently believe that there will be sufficient funds in the Debtor's estate from which to make distributions to priority, non-priority general creditors and/or broker dealers. Accordingly, the Trustee believes that "[no] purpose would be served, [to] examine [such] proofs of claim and to object to the allowance of any [such] claim that is improper" (*see* Bankruptcy Code § 704(5)). Further, the Trustee does not expect that there will be sufficient funds in the general estate for SIPC to recoup its advances for administrative expenses.

VIII. TRUSTEE INVESTIGATION

103. As required by SIPA, the Trustee is obligated to, among other things, (i) investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and any other matter, to the extent relevant to the liquidation proceeding, and report thereon to the Court; and (ii) report to the court any facts ascertained by the trustee with respect to fraud, misconduct, mismanagement, and irregularities, and to any causes of action available to the estate. Section 78fff(1)(d) of SIPA.

104. Pursuant to these obligations, during the Report Period the Trustee and his professionals have extensively investigated the Debtor's financial affairs both inside and outside of the United States. In furtherance of such investigation, the Trustee has sent more than 660 subpoenas pursuant to Bankruptcy Rule 2004 seeking documents from many individuals, funds

and banks. Additionally, the Trustee has sent hundreds of letters to these and similar entities, informing them that they may be in possession of BLMIS customer property and demanding the return of such customer property.

105. As a result of the Trustee's investigation, the Trustee has to date filed fourteen (14) avoidance actions against funds and individuals who withdrew funds from their IA accounts during the relevant time periods (as further described in Section X.G *infra*). Collectively, these fourteen (14) actions seek to recover more than $14.8 billion in principal and fictitious profits.

106. In addition, after extensive investigative efforts and due diligence, the Trustee settled preference claims involving the Optimal Funds, based in the Bahamas, for $235 million, which was an 85% recovery. The Trustee was also able to settle avoidance actions against the Levy Family for $220 million. (*See* section X.H *infra* for further discussion regarding these settlements). Several other parties are currently in settlement discussions with the Trustee and others are producing documents to the Trustee without the need to resort to formal process.

107. The Trustee is also providing information to and coordinating efforts with the SEC, Federal Bureau of Investigation ("FBI"), USAO and other regulators on an on-going basis.

108. In addition, as further described below, through B&H and International Counsel, the Trustee has been monitoring all domestic and international third-party actions filed outside of the Bankruptcy Court that may be related to Madoff, BLMIS, any insiders thereof, or any other related parties and/or assets of the estate.

A. **INTERNATIONAL PROCEEDINGS**

109. The Trustee's international investigation and recovery of BLMIS estate assets involves, among other things: (i) identifying the location and movement of estate assets and retaining international counsel where necessary; (ii) becoming involved where appropriate, whether by appearance in a foreign court or otherwise, to prevent dissipation of funds properly

belonging to the estate; and (iii) bringing actions before U.S. and foreign courts and government agencies to recover customer property for the benefit of the customers and creditors of the BLMIS estate. These investigations, which are assisted by voluntary requests for information and the use of subpoena power, both in the U.S. and abroad, have focused primarily on international feeder funds, banks, related financial services entities and certain individuals.

110. Since the Filing Date, the Trustee has been actively investigating and seeking to recover assets for the BLMIS estate in no fewer than a dozen different jurisdictions including, but not limited to, England, Gibraltar, Bermuda, the British Virgin Islands ("BVI"), the Cayman Islands, the Bahamas, Ireland, France, Luxembourg, Switzerland, Canada, Austria and Spain. Accordingly, the Trustee has retained the following International Counsel to assist him in further investigations and to represent him and the BLMIS estate in any foreign proceedings that have arisen or may arise in connection with BLMIS: (i) Lovells - England, Wales and other European jurisdictions; (ii) Higgs Johnson Truman Bodden - Cayman Islands; (iii) Williams Barristers & Attorneys – Bermuda; (iv) Attias & Levy – Gibraltar; (v) E.F. Collins – Ireland; (vi) Schiltz & Schiltz – Luxembourg; (vii) Schifferli – Switzerland; (viii) SCA Creque – BVI; and (ix) Kugler Kandestin – Quebec, Canada. The Trustee will continue to seek court approval to retain professionals to investigate and represent him wherever estate assets may be found across the globe.

111. The Trustee's international investigations have to date revealed a complex web of tangled investment structures that fed money into the Ponzi Scheme, involving several billion dollars and myriad actors. In connection with that investigation, the Trustee, through B&H and International Counsel are monitoring and/or participating in over 260 pending and 81 potential international third-party proceedings involving Madoff and/or BLMIS. Furthermore, the Trustee has served more than 75 subpoenas against more than 65 entities in 20 jurisdictions. The

investigation is made even more challenging by the broad array of anti-discovery laws, bank secrecy statutes, and other foreign legislation designed to limit discovery by U.S. entities. However, the Trustee is working closely with International Counsel to use local laws to obtain necessary discovery.

112. To date the Trustee has received significant documentation in response to the many subpoenas and other requests for information that have been filed and the Trustee is actively pursuing legal remedies against those entities and/or persons that have refused to timely respond to the Trustee's requests for information. Where the Trustee has been able successfully to discover the location of customer property, the Trustee is taking steps to freeze or otherwise secure such assets. Below is a brief summary by jurisdiction of the international efforts currently being undertaken by the Trustee. For a further discussion of the actions commenced in the Bankruptcy Court by the Trustee against certain of the international entities mentioned below, *see* section X.G *infra*.

<u>England</u>.

113. In England, the Trustee, who was granted recognition as a foreign representative for the purpose of gathering evidence, continues to investigate MSIL, a Madoff-affiliated entity and in so doing continues to work with MSIL's JLs. The Trustee has filed at least one, and is preparing to file additional, disclosure order applications in England to further his investigations.

<u>Gibraltar</u>.

114. As noted in the Trustee's prior Interim Reports, the Trustee's investigations into the business and operation of BLMIS revealed numerous Gibraltar-related funds and banks with accounts and affiliations with BLMIS including an account held by Vizcaya Partners Limited ("Vizcaya"), a BVI fund with approximately $75 million located in Gibraltar. On April 9, 2009, the Trustee filed a complaint in the Bankruptcy Court against Vizcaya and Banque Jacob Safra

(Gibraltar) Ltd. ("Safra"), seeking the return of $150,000,000 under SIPA and the Bankruptcy Code as a preferential transfer and also for turnover and accounting in connection with a transfer from BLMIS to Safra for the benefit of Vizcaya. For a further discussion of the Vizcaya litigation in the Bankruptcy Court, *see* section X.G *infra*.

115. On October 28, 2009, the Supreme Court of Gibraltar (the "Gibraltar Court") ordered the payment into the Gibraltar Court of $63,244,490.06 previously held in various accounts at Safra. In addition, the Gibraltar Court also recognized the Trustee as the U.S. court-appointed Trustee for the liquidation of the business of BLMIS "with such rights as such recognition by the Supreme Court of Gibraltar affords him and entitles him to apply for" and further ordered Bank Safra to produce documents to the Trustee, which documents have been produced.

116. On October 29, 2009, Vizcaya, Zeus and Asphalia filed a notice of appeal in respect of the disclosure order. On November 3, 2009 Vizcaya, Zeus and Asphalia made an application for a stay of execution against the disclosure order pending appeal (the "Gibraltar Appeal") to the Court of Appeal. This was granted by the Court on condition that security for costs in a sum to be agreed or if in default set by the Court were paid by Vizcaya, Zeus and Asphalia. The Trustee was also awarded his costs for the stay of execution application.

117. On November 18, 2009, there was a further hearing given that it had been impossible to reach an agreement on the sum of security for costs of the appeal. As a result of that hearing the Court ordered that Vizcaya, Zeus and Asphalia deposit the sum of £30,000 ($50,400.00) as security for the Trustee's costs of the appeal. The hearing of the Appeal was scheduled for February 9-10, 2010. On February 18, 2010, the Gibraltar Appeal was dismissed, and the Trustee was awarded his costs, in the amount of £30,000, associated with that appeal.

Bermuda.

118. Following months of investigation, the Trustee on July 15, 2009 filed a complaint in the Bankruptcy Court against Alpha Prime Fund Ltd. ("Alpha Prime") as well as HSBC Bank plc and HSBC Securities Services (Luxembourg) S.A. Alpha Prime is a Bermuda-based feeder fund that received more than $49 million in preference payments. Alpha Prime failed to file an answer to the complaint and on August 19, 2009 the Trustee filed a request for an Entry of Default against Alpha Prime, which request was granted on September 1, 2009

119. The Trustee has also been able to freeze approximately $111,000,000.00 of funds held at the Bank of Bermuda Limited in Bermuda over which the Trustee maintains a claim and which funds have been claimed by other entities and authorities.

<u>British Virgin Islands</u>.

120. In BVI the Trustee has discovered and is actively investigating the involvement of no fewer than 20 feeder funds that funneled money into the Ponzi scheme. The Trustee is currently engaged in settlement talks with a number of funds and has filed seven actions in the U.S. Bankruptcy Court against BVI funds, as further discussed in Section X.G *infra*. In addition, the Trustee has served no fewer than 16 subpoenas against BVI-based funds.

121. Kingate Euro Fund Ltd. and Kingate Global Fund Ltd. (collectively, "Kingate") are BVI-based feeder funds that received, collectively, more than $250 million in preference payments. An action was commenced in the Bankruptcy Court against Kingate on April 14, 2009, with a second amended complaint being filed on July 21, 2009. The parties have undertaken settlement negotiations which are on-going.

122. Thybo Asset Management Ltd, Thybo Global Fund Ltd., Thybo Return Fund Ltd. and Thybo Stable Fund Ltd. (collectively, the "Thybo Funds"), are BVI-based funds that, considered collectively, have received approximately $6 million in preference payments. A complaint was filed against the Thybo Funds on July 15, 2009 asserting preference and

fraudulent transfer causes of action. On or about August 25, 2009, an amended complaint was filed to include a count objecting to the SIPA claim filed by the Thybo Funds in the amount of $217,163,851. Since filing the Amended Complaint, the parties have undertaken settlement negotiations, which are ongoing.

123. For discussion of proceedings commenced against Vizcaya, *see* ¶ 114 *infra*.

Cayman Islands.

124. In the Cayman Islands the Trustee has discovered and is actively investigating the involvement of no fewer than four feeder funds that fueled the Ponzi scheme. Complaints have been filed against three funds in the Bankruptcy Court and the Trustee was recently granted leave to file a Complaint in the Cayman Islands against another. *See* Section X.G *infra*.

125. Harley International (Cayman) Ltd. ("Harley") is a Cayman Islands-based feeder fund. The Trustee's investigation has revealed that Harley has received no less than $425 million in 90-day preference payments. A complaint was filed on May 12, 2009 in the Bankruptcy Court asserting preference and fraudulent transfer causes of action. The clerk entered a default on July 8, 2009. On January 21, 2010, leave was granted by the Grand Court of the Cayman Islands, Financial Services Division to the Trustee to proceed with an action against Harley in the Cayman Islands.

126. Herald USA Segregated Portfolio One is the sole fund of Herald Fund SPC ("Herald"), a Cayman Islands-based feeder fund. The Trustee's investigation has revealed that Herald received at least $537 million in preference payments. The Trustee filed a complaint against Herald initiating an adversary proceeding in the Bankruptcy Court. On October 13, 2009, the Trustee filed a second amended complaint. Herald filed a motion to dismiss the case, to which the Trustee has responded; an argument on the motion to dismiss is scheduled for May 25, 2010.

127. Primeo Fund ("Primeo") is a Cayman Islands-based feeder fund that is currently in liquidation in the Cayman Islands. A complaint was filed against Primeo in the Bankruptcy Court on July 15, 2009. Primeo failed to respond to the suit papers, and the Clerk entered a Default against Primeo on Sept. 1, 2009.

Ireland.

128. In Ireland, the Trustee has discovered two feeder funds, which collectively received more than $380 million in preference payments. The Trustee is continuing to investigate these funds and related entities and has issued several subpoenas in connection with that investigation.

Luxembourg.

129. In Luxembourg, the Trustee's investigation has revealed the existence of two feeder funds that collectively fed more than $1.5 billion into BLMIS. One of these funds, Luxalpha SICAV, is currently in liquidation under Luxembourg law and the Trustee is in discussions with Luxalpha SICAV's liquidators concerning the disposition of its assets and access to information.

Other Jurisdictions.

130. In addition to the jurisdictions and entities identified above, the Trustee is also actively investigating other feeder funds and related institutions connected to BLMIS in Panama, St. Lucia, Canada, Austria and Switzerland.

B. DOMESTIC PROCEEDINGS

Related Civil Third Party Actions.

131. Since the Filing Date, the Trustee has been monitoring legal proceedings filed by various third parties who allege to have suffered losses and incurred damages resulting from Madoff's Ponzi scheme and their direct or indirect investments with BLMIS (the "Third Party

Actions"). At present, there at least 178 Third Party Actions filed in state and federal courts across the country. The plaintiffs in the Third Party Actions generally consist of: (i) investors whose funds were invested with BLMIS indirectly through feeder funds and other investment vehicles; (ii) investors who were direct customers of BLMIS who invested with BLMIS through Madoff, Madoff family members and other BLMIS insiders; and (iii) state governmental bodies which seek the return of investment losses by their respective state's residents.

132. The plaintiffs in the Third Party Actions brought against feeder funds generally allege that these entities negligently – and even fraudulently, and in a breach of their fiduciary duty, convinced them to invest their money in a fund that was invested either fully or partially with BLMIS. Many of these lawsuits, which generally are either private party actions, securities class actions or derivative actions, seek damages against feeder funds and management companies against which the Trustee has also asserted claims in this Court. A majority of these Third Party Actions are pending in the Southern District of New York, although there are many cases pending nationwide. To date, there have been a handful of decisions by both state and federal courts on motions to dismiss by defendants in these actions.

Domestic Feeder Funds Investigations.

133. The Trustee is also continuing his investigation of the domestic feeder funds that were customers of BLMIS, perhaps facilitated the fraud, or received preferences and fraudulent transfers. Some of the domestic feeder funds investigations are discussed below.

Tremont Group.

134. The Tremont Group Holdings companies, based in Rye, New York, comprised both multi manager proprietary funds under the Tremont name and single manager funds under the Rye Select brand name. Five of the Rye Select funds were either entirely or significantly invested through BLMIS.

135. After the Trustee sent a demand letter for the return of preferential transfers and fictitious profits, of Tremont, through its counsel, entered into a "standstill" agreement with the Trustee pursuant to which it agreed not to release or distribute any of the monies in the accounts of the Rye Select, and subsequently, Tremont, funds, until the Trustee had concluded its investigation. In this regard, the Trustee and his Counsel have interviewed several members of management and issued subpoenas to various third parties.

138. There have been a series of meetings and negotiations with Tremont in an effort to resolve the Trustee's claims. The Trustee is presently evaluating the latest settlement proposal received from Tremont.

Maxam Capital.

136. The Trustee has issued demand letters seeking the return of preferential and fraudulent transfers, and Rule 2004 subpoenas for documentation to Maxam Capital. Based upon restrictions placed upon Maxam's Bank of America bank account as to the use of funds which the Trustee deemed to be customer property, Maxam instituted a court action in May 2009 against Bank of America in Connecticut state court for relief and unrestricted use of the Bank of America accounts monies. Shortly thereafter, Bank of America commenced an interpleader action in this Court against the Trustee and Maxam seeking, among other things, a declaration as to the right to the bank account monies and a stay of the Connecticut action. The Trustee joined in seeking a stay of the Connecticut action, the state where Maxim conducted its business. Following oral argument, this Court issued an Order, dated June 17, 2009, staying the Connecticut action and ordering the deposition of Maxam's founder and the former co-founder of Tremont. Such deposition occurred on July 7, 2009, at which time questions seeking the identities and financial information of foreign investors was objected to based on claims of statutory privacy obligations under Cayman Islands law.

137. Maxam made an application in August 2009 to the court in the Cayman Islands for relief from the local privacy laws to comply with our subpoena and request for foreign investor information. On September 14, 2009, the Cayman Islands court, after submission of a supporting affidavit by the Trustee, granted the application and allowed the disclosure of the information to the Trustee.

138. After review of the information obtained as a result of the Cayman court decision, the Trustee served an additional Rule 2004 subpoena upon Citco Global Custody NV in December 2009, seeking financial and other information about a number of the foreign investors. Citco cooperated in seeking to provide the information about several of the investors. However, two of them, located in Jersey, Maxima Alpha Bomaral and Maxima Alpha Strategy Funds, commenced an action in early February 2010 in the Netherlands seeking an injunction to prohibit Citco from complying with the Trustee's subpoena. In support of Citco's attempted compliance, the Trustee submitted a supporting affidavit to the Dutch court. On February 11, 2010, the Dutch court denied the application of the funds noting, among other things, that if they wanted to contest the subpoena, they could do so in the Bankruptcy Court in the SDNY. The Trustee is in the process of receiving and reviewing the information from Citco in its further investigation to trace the monies.

Beacon/Andover.

139. Rule 2004 subpoenas were issued in the summer of 2009 to Beacon and Andover funds and their management companies. Based upon the Trustee's independent investigation and information received pursuant to bank subpoenas, it was determined that only a portion of these funds' investments were placed with BLMIS. The Trustee obtained a "standstill" agreement with the funds' management regarding segregating certain funds while an

investigation as to potential liability for the fraudulent transfers predicated upon their lack of good faith was concluded.

140. The investigation of the funds and its sub-advisers, including Ivy Asset Management (currently owned by Bank of New York) and JP Jeannerett, is continuing. In this regard, the Trustee's Counsel has recently interviewed recently several of the members and principals of the management companies. The conclusion of the investigation should occur shortly.

<u>P&S Partnership/S&P Partnership</u>.

141. These two funds were formed shortly after the 1992 SEC enforcement action against Avellino and Bienes. In light of the amount of monies involved in these funds, it was determined no further investigation of these funds was necessary or cost effective. Settlement proposals are being considered.

C. **BANKS & OTHER FINANCIAL INSTITUTIONS**

142. During the Report Period, and primarily as a result of international and domestic feeder fund investigations, the Trustee has identified and commenced investigations of numerous banks and other financial institutions involved with various feeder funds and BLMIS. The Trustee's investigation of these banks and financial institutions is continuing. As mentioned above and as further described in Section X.G *infra*, the Trustee has brought suit against various feeder funds to date.

143. Various banks and financial institutions were involved with the feeder funds in a number of different capacities. For example, some were custodians of the funds, others were administrative agents charged with calculating the net asset value of the funds, others were involved in transactions associated with the BLMIS account at J.P. Morgan Chase. Some banks and financial institutions wore multiple hats, assuming a number of roles. Third party actions

have been brought in both the United States and abroad that charge the banks, for instance, with some degree of complicity, money laundering or negligence in connection with the Madoff fraud. The Trustee continues to monitor these actions as he investigates the roles of various banks and financial institutions.

D. **POTENTIAL INSIDERS AND CORPORATE ASSETS**

144. During the Report Period, the Trustee and his professionals have continued their investigatory efforts into potential insiders of BLMIS and Madoff to ascertain whether they were the unlawful recipients of BLMIS customer property or corporate assets.

145. The work of the Trustee and his professionals has greatly expanded as the insider investigations have progressed. Many more document requests and subpoenas have been drafted and issued, and there has been an exponential increase in the number of documents reviewed and business transactions analyzed.

146. The knowledge gained to date has greatly progressed the investigations into particular insiders. In addition, the Trustee's professionals have gained an advanced understanding of the transactions between BLMIS and select individuals with whom Madoff appears to have had a special relationship.

147. The cumulative effect of the investigatory efforts to date has uncovered a number of inter-relationships among many of the potential insiders. In addition, the Trustee's professionals have also been able to detect a series of patterns of financial dealings and/or transactions between BLMIS and at least some of Madoff's preferred investors. This has enabled the Trustee's professionals to identify additional targets for investigation, to locate additional suspect transactions, and in some instances, to identify potential motives underlying particular suspect transactions.

148. Upon completion of the insider investigation, the Trustee intends to seek through litigation recovery of any customer property or corporate assets that were improperly transferred to insiders.

E. **<u>EVIDENCE GATHERING</u>**

149. Within hours of the appointment of the Receiver, AlixPartners began certain efforts to identify and preserve BLMIS paper documents, microfilm, microfiche and electronic data (hereinafter referred to as "documents") at the three (3) facilities used by BLMIS – the main office at 885 Third Avenue in Manhattan, the disaster recovery site at the Bulova Building in Astoria, Queens and a warehouse in Long Island City, Queens. Starting on December 15, 2008, at the direction of the Trustee, AlixPartners coordinated efforts with the FBI to identify and provide forensic images and server data for review and analysis and conducted numerous forensic analysis of electronic data.

150. In addition, AlixPartners engaged in the following activities to gather and preserve evidence: coordinated the recovery of data from hard drives and other media that were physically damaged or had failed during the normal course of use; conducted a site survey of the 885 3rd Avenue and Bulova facilities to identify and preserve loose media (i.e. floppy disks, DVD/CDs, etc.); previewed each collected computer hard drive to document all user profiles; and extracted for analysis and review data identified for particular custodians, including certain Madoff family members and employees.

151. With the assistance of AlixPartners, the Trustee has identified and preserved various items of electronic media. The preserved data have been forensically imaged allowing analysis and future use as evidence. AlixPartners has identified and collected server data from BLMIS facilities and equipment and has coordinated the preservation of BLMIS data. These

data have been loaded into a secure web-based document review program to accommodate the B&H attorneys review.

152. The Trustee has engaged AlixPartners to retain BLMIS documents which were obtained from the main BLMIS office at 885 Third Avenue in Manhattan, the BLMIS Disaster Recovery site at the Bulova Building in Astoria, Queens and a warehouse in Long Island City, Queens.

153. Through Counsel and Consultants, the Trustee has organized within a warehouse approximately seven thousand boxes of BLMIS' paper documents, reviewed those documents to develop an index of boxes containing paper documents at the folder level and to identify approximately 8.3 million pages of those documents to scan, a significant portion of which have been processed so as to enable full-text searching. In addition, through Counsel and Consultants, the Trustee has continued to inventory and selectively assess the contents of more than 4,000 reels of microfilm and 87 transfile boxes of microfiche.

154. In addition, the Trustee has accumulated and stored in secure and forensically sound formats more than 1.4 million emails, and more than 1,500 types of electronically stored information which include but are not limited to desktop computers, laptop computers, AS/400 computers, back-up tapes, hard drives, network storage, PDAs, floppy disks, compact discs and memory cards.

155. Beyond identifying and analyzing BLMIS documents, the Trustee has issued to more than 600 parties subpoenas and has received documents from more than 150 parties, consisting of approximately 6 million documents. The Trustee receives these documents in a variety of formats. Like the BLMIS documents, responses to subpoenas are processed and imported into a litigation support database to accommodate attorney and consultant review.

156. Under the Trustee's direction, Counsel and Consultants have assessed many of these responses to subpoenas and have indexed them with respect to various investigations and current and prospective law suits. Consequently, the Trustee's understanding of BLMIS' relationships with BLMIS' investor, employees, vendors and others has grown substantially.

157. As a result of this work and under the Trustee's direction, Counsel and Consultants have indexed, organized and extracted information pertaining to BLMIS' operations, communications, books and records. This enabled B&H, AlixPartners and FTI to assess many of BLMIS' documents. Consequently, the Trustee has assembled in substantial detail and for extensive periods of time BLMIS' financial history and relationships with BLMIS' investors, employees, vendors and others.

IX. INITIAL ALLOCATION OF FUNDS AND DISTRIBUTION TO CUSTOMERS.

158. As noted in ¶ 1 *supra*, the Trustee expects to file a motion with the Bankruptcy Court seeking the Court's approval of (i) the Trustee's allocation of recovered property to the Customer Fund and (ii) the Trustee's proposed interim *pro rata* distribution of the Customer Fund to over-the-limits customers. The Trustee hopes to file such motion for an initial allocation and distribution of funds to customers during the summer of 2010 and to make an interim distribution before year end.

159. In view of the fact that "customer property is not sufficient to pay in full the claims [of customers entitled to SIPA protection and SIPC, as subrogee]," in reliance on section 78fff-2(c)(3) of SIPA and other statutory authority and common law, the Trustee commenced the adversary proceedings described in section X.G *infra*, as well as engaging in various other investigations as described above in section VIII aimed at gathering assets for liquidation and eventual distribution.

160. Any other recoveries from the defendants referred to in the below-referenced adversary proceedings, as well as additional recoveries from any other sources, will, with the Court's approval, be allocated to the Customer Fund and be subject to a supplemental pro rata distribution to the remaining over-the-limits customer-claimants and SIPC, as subrogee for its cash advances to the Trustee to satisfy allowed customer claims.

X. **BANKRUPTCY COURT PROCEEDINGS**

A. **NET EQUITY DISPUTE**

161. As discussed in Section VII.A *supra*, as of March 31, 2010 the Trustee had issued 12,249 customer claim determinations in accordance with SIPA and the Claims Procedures Order. For purposes of determining each customer's "net equity," as that term is defined under SIPA, the Trustee has credited the amount of cash deposited by the customer into his BLMIS account, less any amounts already withdrawn by him from his BLMIS customer account (the "cash in/cash out approach").

162. Various customers have filed adversary proceedings, *see infra*, and objections to the Trustee's determination of their claims, in which they argue that the Trustee's cash in/cash out approach is contrary to the statutory definition of "net equity" (the "Net Equity Dispute"). These customers argue instead that the Trustee is required to allow customer claims in the amount shown on the November 30, 2008 BLMIS customer statements.

163. Because the Net Equity Dispute is an issue of comprehensive application in this SIPA liquidation, the Trustee filed a motion for a scheduling order on the Net Equity Dispute. On September 16, 2009, the Court issued an order scheduling adjudication of the "net equity" issue (the "Scheduling Order"), setting forth a briefing schedule and hearing date that permitted customers and other interested parties to participate in the adjudication of this issue. [Dkt. No.

437] In addition, the Court limited the briefing to be submitted pursuant to the Scheduling Order solely to the Net Equity Dispute. Briefing of issues ancillary to that dispute have been deferred.

164. In accordance with the Claims Procedures Order and the Scheduling Order, on October 16, 2009, the Trustee submitted his memoranda of law and other papers in support of his motion for an order (a) upholding the Trustee's determinations denying 78 customer claims for the amounts listed on the last customer statement,[8] (b) affirming the Trustee's determination of "net equity," and (c) expunging those objections with respect to the determinations relating to "net equity." [Dkt. No. 525] The Trustee argues that the cash in/cash out approach to calculating "net equity" is the only one consistent with SIPA, bankruptcy law, principles of equity, and common sense.

165. Over thirty briefs and twenty *pro se* submissions were filed in response to the Trustee's Net Equity Motion. Two customers and SIPC filed papers in support of the Trustee's Net Equity Motion. Briefing was concluded on January 15, 2010 and a hearing was held on February 2, 2010.

166. On March 1, 2010, the Court issued a decision upholding the Trustee's Net Investment Method as the only one consistent with the plain meaning and legislative history of the statute, controlling Second Circuit precedent, and considerations of equity and practicality. [Dkt. No. 2020].

167. Numerous notices of appeal have been filed on behalf of claimants. Counsel for the Trustee conferred with counsel for certain claimants, SIPC, and the SEC regarding the possibility of certifying the appeal directly to the Second Circuit. All were in agreement that the speediest resolution of the Net Equity Dispute was in the best interests of the customers and the estate. A joint application was made to the Court requesting that the Court certify the Net Equity

Order for immediate appeal to the Second Circuit. On March 8, 2010, the Court entered an order certifying the appeal [Dkt. No. 2022].

B. **OBJECTIONS TO CLAIMS DETERMINATIONS**

168. In connection with the determination of customer claims, as of March 31, 2010, 2,619 objections had been filed by claimants with the Bankruptcy Court to the Trustee's determination of such claims. As required by the Claims Procedures Order, and as described in each Determination Letter sent by the Trustee, claimants of BLMIS have thirty (30) days from the receipt of the Determination Letter to object to the Trustee's determination of their claim. Notice of and reasons for such objection must be provided to the Trustee and to the Bankruptcy Court.

169. The objectors have cited, among others, the following reasons for objecting to the Trustee's determination of their claims: (i) the use of the "cash in, cash out" method for calculating the value of claims is inappropriate and claims should be valued based on the BLMIS November 30, 2008 statement; (ii) claimants should receive interest on deposited amounts; (iii) the Trustee is required to commence an adversary proceeding as the Trustee is attempting to avoid gains on claimants' investments; (iv) there is no legal basis for requiring execution of a Partial Assignment and Release prior to payment of SIPC advance; and (v) claimants are entitled to immediate payment of the $500,000 SIPC advance; (vi) claimants also argue that there is no statutory requirement that a "customer" must have an account directly with the debtor and that Congress intended for "customer" to be broadly interpreted; and/or (viii) other claimants argue that as a result of their joint account status, each named account holder should be entitled to payment of a SIPC advance.

---

[8] As of the date of the Trustee's Motion, 78 customer claimants had filed an objection to the Trustee's determination of their claim on the basis of the Net Equity Dispute.

170. As described in ¶ 90 *supra*, the Trustee has departed from the practice in past SIPC proceedings and has committed to paying the undisputed portion of any disputed or objected-to claim, even if there is a dispute over the full amount of the claim. The purpose of this procedure is to expedite payment of SIPC protection to claimants while preserving their rights to dispute the total amount of their claim.

C. **CLAIMANTS WITHOUT ACCOUNTS**

171. The Trustee has taken the position for purposes of determining customer claims that only those claimants who had an account at BLMIS constitute "customers" of BLMIS (as defined in section 78*lll*(2) of SIPA). Where it appears that a claimant did not have an account in his/her/its name at BLMIS ("Claimant Without An Account"), he/she/it is not a customer of BLMIS under SIPA and the Trustee has denied his/her/its claims for securities and/or a credit balance.

172. On or about December 8, 2009, the Trustee issued approximately 8,500 claims determinations in which the Trustee denied the claims of Claimants Without An Account who invested with intermediary entities, which in turn may have directly or indirectly invested with BLMIS. Approximately 2,000 objections have been filed in response to the Trustee's claims determinations and the construction of the term "Customer," and how that term should be applied to determine the validity of their claim. Claimants Without An Account have asserted that they are customers of BLMIS, and as such, they are each entitled to receive up to $500,000.00 of SIPC protection.

173. On March 19, 2010, the Trustee filed a motion for a scheduling order on the issue of deciding who constitutes a customer under SIPA and resolving the claims objections of the Claimants Without An Account [Dkt. No. 2052]. A hearing on the motion is scheduled for April 13, 2010.

174. The motion proposes the following briefing schedule: (i) on or before June 11, 2010, the Trustee shall file a motion and supporting papers (the "Motion") to affirm certain claims determinations as to which objections have been filed, specifically with regard to the Trustee's determinations that the claimants did not have accounts at BLMIS and therefore were not customers of BLMIS; in accordance with the Claims Procedures Order, the Motion shall identify those claimants who have filed objections to his determination of their claims for which he intends to schedule a hearing (the "Objecting Claimants"); (ii) SIPC shall file any brief with reference to the Motion on or before June 11, 2010; (iii) the Objecting Claimants shall file their responses to the Motion on or before July 12, 2010; (iv) any Interested Parties (as further defined below in paragraph) who wish to file a brief in opposition to the Trustee's Motion shall file their briefs on or before July 12, 2010; (v) any Interested Parties who wish to file a brief in support of the Trustee's Motion shall file their briefs on or before August 10, 2010; (vi) to the extent that Interested Parties who filed briefs in accordance with clause (v) above raise issues, factual or legal, that have not been previously raised, Interested Parties who filed a brief in opposition to the Trustee's Motion in accordance with paragraph F above may file a reply brief addressing such issues on or before August 20, 2010; (vi) the Trustee and SIPC shall file any reply papers on or before September 20, 2010; and (vii) the Court shall hold a hearing on the Motion on October 19, 2010, at 10:00 a.m., or such other time as the Court determines. The Court will only consider the Trustee's construction of the term "Customer" as it relates to the Claimants Without An Account. All other issues raised by the Objecting Claimants will be resolved in subsequently scheduled hearings.

D. THIRD-PARTY ACTIONS AGAINST THE TRUSTEE

Rosenman Family LLC v. Picard, et al., Adv. Pro. No. 09-1000 (BRL).

175. On January 1, 2009, Rosenman Family LLC, a BLMIS customer, filed an adversary proceeding seeking the return of $10 million dollars it deposited mere days before BLMIS collapsed. The Trustee moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6), arguing that Rosenman Family LLC was a "customer," as that term is defined under SIPA, and could thus only recover through the customer claims process set forth in that statute. This Court granted the Trustee's motion, and Rosenman Family LLC appealed the decision to the United States District Court for the Southern District of New York. The appeal was assigned to the Honorable Naomi R. Buchwald. After full briefing, oral argument was held on October 26, 2009.

176. On November 30, 2009, the District Court issued an opinion affirming the Bankruptcy Court's dismissal of the complaint. The District Court agreed that Rosenman Family LLC was a "customer" as that term is defined under SIPA, and that the funds he deposited with BLMIS were part of the fund of customer property such that they could not be returned to him outright. Rather, Rosenman Family LLC must participate in the claims process as set forth in SIPA.

177. On December 23, 2009, Rosenman Family LLC filed a notice of appeal of the District Court's decision to the Second Circuit. Rosenman Family LLC's appellate brief is due on April 15, 2010.

<u>Hadleigh Holdings LLC v. Picard, et. al</u>., Adv. Pro. No. 09-1005 (BRL).

178. A similar complaint was filed on January 7, 2009 against the Trustee by Hadleigh Holdings LLC ("Hadleigh"), a BLMIS customer which deposited $1 million dollars just a few days before the collapse of BLMIS. The Trustee filed a motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). While the motion was pending, Hadleigh Holdings LLC filed an amended complaint. After the Trustee filed a motion to dismiss the amended

complaint, the case was voluntarily dismissed by Hadleigh. The customer claim of Hadleigh has been determined and partially satisfied by the Trustee.

Albanese, et al. v. Picard, Adv. Pro. No 09-1265 (BRL).

179. On June 5, 2009, a class action ("Class Action") complaint was filed by several BLMIS customers on behalf of a prospective class against the Trustee regarding the Net Equity Dispute. Plaintiffs sought a declaratory judgment that the Trustee's cash in/cash out approach to "net equity," as that term is defined under SIPA, is invalid. Instead, they allege that the Trustee should allow claims based on the November 30, 2008 BLMIS customer account statements. The Class Action seeks to certify a class of customers who "are adversely affected by the Trustee's definition of 'net equity' under SIPA."

180. The Trustee answered the complaint on July 17, 2009. As discussed above, the Court issued a Scheduling Order on the Net Equity Dispute on September 16, 2009. Thereafter, the parties entered into a stipulation staying the pendency of the Class Action until a final, non-appealable order regarding the Net Equity Dispute is issued.

Peskin, et al. v. Picard, Adv. Pro. No. 09-1272 (BRL).

181. On June 10, 2009, three BLMIS customers filed an adversary proceeding seeking declarations that the Trustee must allow their customer claims in the amounts shown on their November 30, 2008 customer statement and that the Trustee is not permitted to deduct preference monies from their SIPC advances. Plaintiffs also sought compensatory damages for breach of fiduciary duty, alleging that the Trustee breached his duties to them by failing to promptly determine their customer claims and by "inventing" a new definition of "net equity."

182. On July 17, 2009, the Trustee moved to dismiss the Complaint in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the alternative, to strike certain portions thereof. The Trustee moved on several bases, including: (i) Plaintiffs failed to adhere to

the Claims Procedures Order; (ii) Plaintiffs lacked standing because the harm they alleged – the Trustee's interpretation of "net equity" – would benefit them rather than harm them; and (iii) that, in the alternative, certain paragraphs should be stricken pursuant to Federal Rule of Civil Procedure 12(f). On August 17, 2009, Plaintiffs filed an opposition to the Trustee's motion to dismiss the Complaint. (*Peskin*, Dkt. No. 30). The Trustee filed a reply on August 28, 2009 and this Court heard oral argument on September 9, 2009.

183. The following day, this Court issued a memorandum decision and order granting the Trustee's motion to dismiss the complaint. This Court held that the Plaintiffs' action violated the Claims Procedures Order and that permitting Plaintiffs to litigate their case was fundamentally unfair to other customers. In addition, the Court found that permitting such a course of action would lead to an unwieldy process of adjudicating claims. In light of the Trustee's motion for a scheduling order regarding the Net Equity Dispute in which Plaintiffs and all other customers may participate, the Court dismissed the portion of the complaint concerning the Net Equity Dispute.

184. The Court also dismissed the remaining causes of action in Plaintiffs' complaint. With regard to the preference issue, the Court held that the dispute was not ripe because the Trustee did not deduct preference monies from Plaintiffs' SIPC advances. As for the breach of fiduciary duty claim, the Court found that whether the Trustee breached a fiduciary duty cannot be decided until the appropriateness of the "net equity" methodology is resolved. Thus, the Court dismissed that portion of the complaint without prejudice with leave to re-file pending the outcome of the Net Equity Dispute.

185. On September 18, 2009, Plaintiffs filed a notice of appeal from the order dismissing their complaint. The appeal was assigned to the Honorable John G. Koeltl in the

Southern District of New York. The parties completed briefing before the District Court on January 4, 2010, and are waiting for the District Court to schedule oral argument.

E. **OBJECTIONS TO FEE APPLICATIONS**

186. During the First Fee Period, the Peskin plaintiffs filed a fifty-one page objection (the "First Fee Objection") in the Bankruptcy Court to the first fee applications of B&H and the Trustee (the "Fee Applications"). Raising issues ancillary to the services and compensation of the Trustee and B&H, the Objection was essentially a reiteration of the Complaint the Peskin plaintiffs filed. In short, it raised the very same arguments and allegations previously raised by the Peskin plaintiffs regarding the Net Equity Dispute and certain factual allegations relating to their particular customer accounts. The Objection attempted to use the Peskin plaintiffs' prior arguments about the Net Equity Dispute as a basis for alleging that the Trustee and B&H have a conflict of interest and should be disqualified from serving.

187. SIPC and the Trustee filed replies to the First Fee Objection, and at a hearing before the Bankruptcy Court on August 6, 2009, the Court stated that the Net Equity Dispute was raised in the context of the adversary proceeding, and was not properly before the Court at that time. The Court further stated that it found "no merit to the objections," and approved the Fee Applications. On August 14, 2009, the Peskin plaintiffs moved for leave to appeal seeking seeking interlocutory review of the Bankruptcy Court's order granting the Fee Applications.

188. The Trustee filed a memorandum and supporting documents in opposition to the motion for leave detailing multiple grounds as to why the motion was improper and should be denied, including that the Peskin plaintiffs lack standing to appeal and that they failed to meet the necessary requirements for leave to appeal an interlocutory order. The matter thereafter was submitted to the District Court and was assigned to the Honorable George B. Daniels. On January 11, 2010, Judge Daniels issued an order denying the Peskin plaintiffs' motion.

189. On November 24, 2009, the Trustee and B&H filed their Second Fee Applications. Once again, the Peskin plaintiffs filed an objection (the "Second Fee Objection"), raising virtually the identical issues as they did in their First Fee Objection, and the Trustee and B&H filed responsive papers. At a hearing on the Second Fee Applications held on December 17, 2009, the Court found that there was nothing in the objection that raised issues that the Court had not previously dealt with. The Court further found that the Peskin plaintiffs' Rule 2004 argument was "bordering on frivolous," and overruled the objection and entered an order approving the Second Fee Applications on December 17, 2009.

190. On December 23, 2009, the Peskin plaintiffs filed another motion for leave ("Second Motion for Leave") seeking interlocutory review of the December 17, 2009 order. Once again, the Peskin plaintiffs' motion and supporting papers filed contained the same allegations - alleged bad acts of the Trustee, his alleged improper interpretation and implementation of SIPA with regard to "net equity," spurious allegations regarding the purposes and history of SIPA and SIPC, as well as ad hominem attacks against the Trustee and SIPC. On January 5, 2010, the Trustee and B&H filed a memorandum and supporting documents in opposition to the Second Motion for Leave. As of the date of this Report, no judge has yet been assigned to the matter.

F. COMMENCEMENT OF BLM AIR CHARTER LLC CHAPTER 11 CASE

191. During the Report Period, the Trustee and the Chapter 7 Trustee also caused an entity related to BLMIS, BLM Air Charter LLC ("BLM Air"), to file a chapter 11 petition in the United States Bankruptcy Court for the Southern District of New York (*In re BLM Air Charter LLC*, Case No. 09-16757 (BRL)). The commencement of the BLM Air bankruptcy case was necessary to preserve, and ultimately to recover for the benefit of the BLMIS estate, a significant asset in the form of an ownership interest in a private aircraft worth millions of dollars.

192. BLM Air was an entity formed by Madoff to own and manage his various interests in private aircraft. Madoff assigned 100% of BLM Air's economic interest to BLMIS, and he retained legal title and was its sole Manager. From 2001 through 2008, virtually all of the funds used by BLM Air to purchase and maintain its various aircraft assets were transferred from BLMIS to BLM Air.

193. BLM Air's primary remaining asset is a 50% undivided tenant-in-common interest in an Embraer Legacy 600, Model EMB-135 BJ aircraft (the "Aircraft"), which was purchased in 2007 for $24 million. The other co-owner of the Aircraft is BDG Aircharter, Inc. ("BDG").

194. BLM Air and BDG are jointly and severally obligated to make payments due under two warranty and maintenance service agreements for the Aircraft and its engines with Embraer Aircraft Customer Services, Inc. ("EACS") and Rolls-Royce Corporation ("Rolls-Royce"). BDG has for an extended period of time failed to make its share of payments due to EACS or Rolls-Royce, and since the BLMIS and Madoff bankruptcy proceedings, BLM Air no longer had funds available to make its share of payments EACS and Rolls-Royce.

195. As of October 2009, Rolls-Royce threatened to terminate the agreement in the event full payment of all amounts due was not received by November 13, 2009. Because the continued existence of the Rolls-Royce agreement significantly enhances the value of the Aircraft, the Trustee and the Chapter 7 Trustee commenced on BLM Air's behalf a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on November 12, 2009.

196. The Trustees believe that a sale of the entire Aircraft will yield a greater recovery than would a sale of only BLM Air's 50% interest in the Aircraft. Accordingly, on December 3, 2009, BLM Air filed a complaint commencing an adversary proceeding against the Aircraft's co-owner BDG, and its lender, Valley Commercial Capital, LLC, seeking among other things,

authority pursuant to Bankruptcy Code § 363(h) to sell the entire Aircraft free and clear of BDG's interest. BDG and ValCom filed responsive pleadings in January 2010. The parties have agreed to an expedited discovery schedule in the adversary proceeding, pursuant to which summary judgment motions are to be submitted to the Court by August 2, 2010.

197. In the meanwhile, BLM Air has retained Guardian Jet, Inc. ("Guardian") as aircraft broker in order to maximize the value obtained for the estate through either a sale of the entire Aircraft or through a sale of BLM Air's 50% interest in the Aircraft. BLM Air submitted an application to the court for approval of the retention on March 19, 2010, and BDG and ValCom filed limited objections in opposition to the application. The parties have subsequently come to an agreement pursuant to which BDG and ValCom will withdraw their limited objections, and expect to submit an agreed-upon consent order to the Court for approval of Guardian's retention promptly.

G. AVOIDANCE ACTIONS BY THE TRUSTEE

Picard v. Vizcaya Partners Limited and Banque Jacob Safra (Gibraltar) Ltd. Adv. Pro. No 09-1154 (BRL).

198. On April 9, 2009, the Trustee filed a complaint in the Bankruptcy Court for the Southern District of New York against Vizcaya Partners Limited ("Vizcaya") and Banque Jacob Safra (Gibraltar) Ltd. ("Bank Safra"), seeking return of $150,000,000 under SIPA §§ 78*lll*(4) and 78fff-2(c)(3), and sections 542, 547, 550(a)(1), and 551 of the Bankruptcy Code as a preferential transfer and also for turnover and accounting in connection with a transfer from BLMIS to Safra for the benefit of Vizcaya.

199. Of that $150 million, approximately $75 million was held in various accounts at Bank Safra or in a Gibraltar Court, which money was frozen by the Gibraltar authorities and which the Trustee is claiming for the benefit of the estate. The Trustee was added as an

interested party to a Gibraltar-based Judicial Review Action, which was filed by Vizcaya against the Gibraltar Attorney General and Bank Safra in order to regain control over frozen funds held in its account at Bank Safra.

200. There are several related matters pending before the Gibraltar Supreme Court. One of these is a Judicial Action, Claim No. 2009-Misc-13, that was filed by Vizcaya Partners, Limited on February 18, 2009 and includes interested parties Bank J. Safra (Gibraltar) Limited and Irving H. Picard. Another is a claim filed by the Trustee on July 9, 2009, Claim No. 2009-P-193, against Vizcaya, Bank Safra, and related parties Siam Capital Management ("Siam"), Asphalia Fund Limited ("Asphalia"), and Zeus Partners Limited ("Zeus") for an injunction or freezing order, disclosure, and other relief. The Gibraltar Supreme Court has ordered approximately $75 million at Bank Safra to be turned over to the Gibraltar court. Judge Lifland has requested that the Gibraltar court turn over all funds under its control that were derived from the transfer from BLMIS to Bank Safra, for the benefit of Vizcaya, to the Bankruptcy Court.

201. On September 30, 2009, the Trustee filed an amended complaint in the Bankruptcy Court that identifies as defendants Vizcaya, Bank Safra, Siam, Asphalia, and Zeus, and seeks the return of $180,000,000 transferred from BLMIS to Bank Safra for the benefit of Vizcaya. The Trustee seeks relief pursuant to SIPA §§ 78*lll*(4) and 78fff-2(c)(3), and sections 542, 547, 548, 550, and 551 of the Bankruptcy Code. $150,000,000 is sought as a preferential transfer and $30,000,000 is sought as a fraudulent transfer. The Trustee also seeks turnover and accounting in connection with the transfers.

202. Bank Safra and the Trustee are engaged in discovery. Vizcaya, Siam, Asphalia, and Zeus have failed to appear in the Bankruptcy Court.

Picard v. Kingate Global Fund Ltd., Kingate Euro Fund Ltd. and Bank of Bermuda Limited, Adv. Pro. No 09-1161 (BRL).

203. On April 17, 2009, the Trustee filed a complaint against Kingate Global Fund Ltd. ("Kingate Global") and Kingate Euro Fund Ltd. ("Kingate Euro"), seeking return of $395 million under SIPA §§ 78*lll*(4) and 78fff-2(c)(3), and Bankruptcy Code sections 542, 547, 550(a)(1), and 551 and other applicable law for turnover, accounting, preferences, fraudulent conveyances and damages in connection with certain transfers of property by BLMIS to or for the benefit of the defendants.

204. On July 21, 2009, the Trustee filed a second amended complaint against Kingate Global and Kingate Euro, seeking return of $874 million under SIPA §§ 78*lll*(4) and 78fff-2(c)(3), and Bankruptcy Code sections 105(a), 502(d), 542, 544, 547, 548(a), 550(a), and 551, the New York Fraudulent Conveyance Act (N.Y. Debt. & Cred. §§ 270 *et seq.* (McKinney 2001)) and other applicable law for turnover, accounting, preferences, fraudulent conveyances and objection to claim in connection with certain transfers of property by BLMIS to or for the benefit of Kingate Global and Kingate Euro. The complaint also named Bank of Bermuda Limited as a defendant. The defendants' answers are currently due on May 11, 2010 and a pretrial conference has been scheduled for May 25, 2010.

205. Kingate Global and Kingate Euro are in liquidation in BVI. The Trustee and the BVI Court-appointed liquidators have been diligently engaged in negotiations regarding a settlement agreement since July 2009. Any final settlement agreement would have to be approved by the Bankruptcy Court and the BVI Court.

<u>Picard v. Stanley Chais, et al</u>., Adv. Pro. No 09-1172 (BRL).

206. On May 1, 2009, the Trustee filed an adversary complaint against Stanley Chais, Pamela Chais (the "Chais Defendants") and a number of related entities (collectively, the "Chais-related entities") seeking return of more then $1.1 billion under SIPA §§ 78fff(b) and 78fff-2(c)(3), sections 105(a), 542, 544, 547, 548(a) and 551 of the Bankruptcy Code, N.Y. Debt &

Cred. § 270 et seq. (the "New York Fraudulent Conveyance Act"), and other applicable law, for turnover, accounting, preferences, fraudulent conveyances and damages in connection with certain transfers of property by BLMIS to or for the benefit of the defendants.

207. On September 29, 2009, the Chais Defendants filed a motion with the Bankruptcy Court seeking a declaration that the Chais Defendants should be free to use certain funds held at Goldman Sachs. The Trustee had previously requested that Goldman Sachs freeze such assets and not permit the Chais Defendants to withdraw any such amounts. In response to such motion, the Trustee filed a motion seeking a temporary restraining order and preliminary injunction formally freezing all assets of the Chais Defendants. Following a Chambers conference on October 6, 2009, the Chais Defendants consented to the entry of a temporary restraining order that formally froze their assets but made certain amounts available to them for living and other expenses. After two extensions of the October 7, 2009 order, the Chais Defendants and the Trustee entered into a stipulation which extends the asset freeze indefinitely.

208. Certain of the Chais-related entities filed motions to dismiss the Trustee's complaint. Stanley and Pamela Chais, and certain entities they control, answered the Trustee's complaint and filed counterclaims against the Trustee in connection with a letter that the Trustee wrote to Goldman Sachs last year. The Trustee moved to dismiss the counterclaims and opposed the motions to dismiss. A hearing on all of these motions is scheduled for May 5, 2010.

Picard v. J. Ezra Merkin, et al., Adv. Pro. No. 09-1182 (BRL).

209. On May 7, 2009, the Trustee filed an adversary complaint against Gabriel Capital, L.P., Ariel Fund, Ltd., Ascot Partners, L.P., Gabriel Capital Corporation and J. Ezra Merkin (collectively, the "Merkin Funds") seeking return of more then $557 million under SIPA §§ 78fff(b) and 78fff-2(c)(3), sections 105(a), 542, 544, 547, 548(a) and 551 of the Bankruptcy Code, the New York Fraudulent Conveyance Act, and other applicable law, for turnover,

accounting, preferences, fraudulent conveyances and damages in connection with certain transfers of property by BLMIS to or for the benefit of the defendants.

210. In late June 2009, pursuant to an action commenced by the New York State Attorney General in the Supreme Court of New York, New York County, Receivers were appointed over each of the funds. Bart Schwartz, Esq., was appointed Receiver of Ariel Fund Ltd. and Gabriel Capital, L.P., and is utilizing his law firm of Reed Smith. David Pitosky, Esq. was appointed Receiver over Ascot Partners, L.P. and is utilizing his firm of Goodwin Procter.

211. On or about August 6, 2009, the Trustee filed an Amended Complaint. On or about September 4, 2009, Defendants Ariel Fund Ltd. and Gabriel Capital, L.P., through their above-mentioned state court appointed Receiver, filed a Motion to Dismiss the Amended Complaint. On that same date, J. Ezra Merkin and Gabriel Capital Corporation filed a Motion to Dismiss the Amended Complaint. On November 2, 2009, the Trustee filed his Memoranda in Opposition to the foregoing motions to dismiss the Amended Complaint. On December 1, 2009 the Trustee filed a motion for leave to file a Second Amended Complaint, seeking to add a count for general partner liability against Merkin personally. On December 14, 2009, Merkin filed his opposition to that motion. On December 16, 2009, the Trustee filed a reply in further support. On December 17, 2009, the Court held a hearing on the motions in which it granted the motion for leave and deferred a hearing on the motions to dismiss the Amended Complaint, indicating that the defendants should refile their motions after the Second Amended Complaint was filed. The Trustee has had ongoing negotiations with the court appointed Receiver for Ascot Partners, L.P., and has extended the time for Ascot Partners, L.P. to respond to the Amended Complaint while those negotiations continue.

212. On December 23, 2009, the Trustee filed his Second Amended Complaint. On January 25, 2010, defendants Ariel Fund, Ltd., Gabriel Capital, L.P., Gabriel Capital Corp. and J.

Ezra Merkin all moved to dismiss the Second Amended Complaint. On February 24, 2010, the Trustee filed his oppositions to those motions. Defendants' reply briefs were filed on March 17, 2010. The motions are scheduled for hearing on April 15, 2010.

<u>Picard v. Harley International (Cayman) Limited</u>, Adv. Pro. No. 09-1187 (BRL).

213. On May 12, 2009, the Trustee filed a complaint against Harley International (Cayman) Limited ("Harley"), seeking return of approximately $1.1 billion pursuant to SIPA §§ 78fff(b) and 78fff-2(c)(3), sections 105(a), 542, 544, 547, 548(a), 550(a) and 551 of the Bankruptcy Code, the New York Fraudulent Conveyance Act, and other applicable law, for turnover, accounting, preferences, fraudulent conveyances and damages in connection with certain transfers of property by BLMIS to or for the benefit of Harley. As Harley failed to answer the Trustee's complaint, a default was entered against Harley on July 8, 2009 by the Clerk of the Bankruptcy Court. On January 21, 2010, leave was granted by the Grand Court of the Cayman Islands, Financial Services Division to the Trustee to proceed with an action against Harley in the Cayman Islands.

<u>Picard v. Jeffry Picower, et al</u>., Adv. Pro. No. 09-1179 (BRL).

214. On May 12, 2009, the Trustee filed an adversary complaint against Jeffry M. Picower, individually and as trustee for the Picower Foundation, Barbara Picower, individually and trustee for the Trust FBO Gabrielle H. Picower and the Picower Foundation, Capital Growth Company, Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Company, JLN Partnership, JMP Limited Partnership, Jeffry M. Picower Special Co., Jeffry M. Picower, P.C., Decisions Incorporated, The Picower Foundation, The Picower Institute For Medical Research, The Trust FBO Gabrielle H. Picower and Does 1-25 (collectively, the "Picower-related entities") seeking return of more then $6.7 billion under SIPA §§ 78fff(b) and 78fff-2(c)(3), sections

105(a), 542, 544, 547, 548(a) and 551 of the Bankruptcy Code, the New York Fraudulent Conveyance Act, and other applicable law, for turnover, accounting, preferences, fraudulent conveyances and damages in connection with certain transfers of property by BLMIS to or for the benefit of the defendants. The defendants filed a partial motion to dismiss certain claims and parties on July 31, 2009. The Trustee filed his opposition to the defendants' motion on September 30, 2009. In his opposition the Trustee, among other things, notified the defendants that the Trustee's continuing investigation has determined that the fictitious profit withdrawn by the Picower-related entities was in excess of $7.2 billion, which correspondingly increases the recovery sought by the Trustee in this matter. The Trustee also confirmed that the Picower-related entities had withdrawn more of other investors' money than any other customer of BLMIS.

215. On October 25, 2009, Mr. Picower was found dead in the swimming pool of his home in Florida. An estate representative was appointed on January 5, 2010 pursuant to the issuance of letters testamentary. A hearing on defendants' motion to dismiss is scheduled to be heard on May 25, 2010. In the meantime, settlement discussions are on-going.

Picard v. Fairfield Sentry Limited, et al., Adv. Pro. No 09-1239 (BRL).

216. On May 18, 2009, the Trustee filed a complaint against Fairfield Sentry Limited, Greenwich Sentry Limited, L.P., and Greenwich Sentry Partners, L.P., (collectively, "the Fairfield Funds") seeking return of approximately $3.5 billion pursuant to SIPA §§ 78fff(b) and 78fff-2(c)(3), sections 105(a), 542, 544, 547, 548(a) and 551 of the Bankruptcy Code, the New York Fraudulent Conveyance Act, and other applicable law, for turnover, accounting, preferences, fraudulent conveyances, damages and objection to claim in connection with certain transfers of property by BLMIS to or for the benefit of the Fairfield Funds.

217. Since the commencement of this adversary proceeding, extensive additional investigation pursuant to 2004 subpoenas has focused on subsequent transferees, including certain financial institutions.

218. No answers or motions have been filed in the adversary proceeding to date. There have been a series of discussions with the liquidators, who are represented by both BVI counsel and counsel in New York, to seek to work cooperatively and most advantageously in the filing of claims against various responsible parties, the individual principals of the Fairfield Greenwich Group, and the management companies.

219. The individual principals are represented by counsel, who have met with the Trustee also to discuss settlement. Thus far, their proposed resolution is deemed inadequate as forming a realistic basis for a settlement at this juncture. Accordingly, it is the Trustee's intention to vigorously investigate and litigate this matter. He also intends to amend his complaint, or file a new complaint, as appropriate, as further investigative information develops.

Picard v. Cohmad Securities Corporation, et al., Adv. Pro. No. 09-1305 (BRL).

220. On June 22, 2009, the Trustee filed a complaint in the Bankruptcy Court against Cohmad Securities Corporation ("Cohmad"), Maurice "Sonny" J. Cohn, Marcia B. Cohn, Robert Jaffe, Alvin "Sonny" Delaire, Jr., Milton S. Cohn, Stanley Berman, Jonathan Greenberg, Cyril Jalon, Morton Kurzrok, Linda McCurdy, Richard Spring, Rosalie Buccellato, Marilyn Cohn, Jane M. Delaire a/k/a Jane Delaire Hackett, Carole Delaire, Gloria Kurzrok, Joyce Berman, S & J Partnership, Janet Jaffin Revocable Trust, The Spring Family Trust, Jeanne T. Spring Trust, The Estate of Elena Jalon, The Joint Tenancy of Phyllis Guenzburger and Fabian Guenzburger, The Joint Tenancy of Robert Pinchou and Fabian Guenzburger and Elizabeth M. Moody.

221. The following defendants filed motions to dismiss the complaint, or portions thereof, pursuant to Fed. R. Civ. P. 12(b)(6): (1) Cohmad, Maurice "Sonny" J. Cohn, Marcia B.

Cohn, Milton Cohn and Marilyn Cohn; (2) Robert Jaffe; (3) Richard Spring, The Spring Family Trust, Jeanne T. Spring Trust (collectively, the "Spring Defendants"); and (4) Jane M. Delaire a/k/a Jane Delaire Hackett. The following defendants joined in the motion filed by the Spring Defendants: (1) Cyril Jalon and the Estate of Elana Jalon; (2) Alvin "Sonny" Delaire, Jr. and Carole Delaire; and (3) Stanley Berman, Joyce Berman, S & J Partnership. These motions were all rendered moot by the Trustee's amended complaint, discussed in further detail below.

222. The following defendants answered the complaint: Jonathan Greenberg, Linda McCurdy, Rosalie Buccellato, Moton Kurzrok, Gloria Kurzrok, the Janet Jaffin Revocable Trust, and Elizabeth M. Moody. Gloria Kurzrock also filed a counterclaim seeking recognition of her SIPA claim.

223. The following defendants moved to dismiss for lack of personal jurisdiction and improper service: The Joint Tenancy of Phyllis Guenzburger and Fabian Guenzburger, The Joint Tenancy of Robert Pinchou and Fabian Guenzburger (collectively, the "Tenancy Defendants"). The Trustee opposed these motions, and indicated that it was in the process of serving the complaint on the Tenancy Defendants under the Hague Convention. Oral argument was held on October 22, 2009, and the on October 26, 2009, the Court issued an order denying the motion filed by the Tenancy.

224. The Trustee filed a motion to dismiss Gloria Kurzrok's counterclaim. The counterclaim was dismissed without prejudice by stipulation of the parties on November 23, 2009.

225. The following defendants also moved to have the reference to Bankruptcy Court withdrawn as to the Trustee's case against them: (1) Cohmad, Maurice Cohn and Marcia Cohn; and (2) Robert Jaffe. The Trustee opposed these motions, and on December 9, 2009, Judge

Stanton of the United States District Court issued an opinion denying defendants' motions to withdraw the reference to Bankruptcy Court.

226. The Trustee continued its investigation against the various defendants, and filed an amended complaint on October 8, 2009. The amended complaint seeks to avoid, pursuant to SIPA §§ 78fff(b) and 78fff-2(c)(3), sections 105(a), 542, 544, 547, 548(a) and 551 of the Bankruptcy Code, the New York Fraudulent Conveyance Act, and other applicable law, decades worth of transactions through which BLMIS paid more than approximately $114 million to Cohmad, Sonny Cohn and other Cohmad related individuals in exchange for Sonny Cohn, Marcia Cohn, Robert Jaffe and other Cohmad employees introducing victims to BLMIS and knowingly helping Madoff create, fund and maintain his massive Ponzi scheme. Over 90% or more of the income to Cohmad and others came from the referral of customers to Madoff.

227. The amended complaint portrays the unique relationships between Madoff, Cohmad, Cohn, Jaffe and other Cohmad individuals, who, though ostensibly at different companies, acted as a single enterprise. According to the amended complaint, while Madoff shrouded himself with an unapproachable, Wizard of Oz-like aura eschewing unknown investors, the reality is that Cohn, Jaffe and others were actively recruiting more than 1,000 customer accounts and infusing the Ponzi scheme with billions of dollars. The amended complaint also adds M/A/S Capital, Inc., a company owned by Robert Jaffe, as a defendant to the action.

228. In addition, the amended complaint seeks to recover all of the fictitious profits that the Cohmad representatives, and their family members, received over the years from their investment advisory accounts at BLMIS, an amount greater than $100 million.

229. The following defendants filed motions to dismiss the amended complaint, or portions thereof, pursuant to Fed. R. Civ. P. 12(b)(6): (1) Cohmad, Maurice “Sonny” J. Cohn,

Marcia B. Cohn, Milton Cohn and Marilyn Cohn; (2) Robert Jaffe and M/A/S Capital, Inc.; (3) Richard Spring, The Spring Family Trust, Jeanne T. Spring Trust (collectively, the "Spring Defendants"); (4) Alvin "Sonny" Delaire, Jr. and Carole Delaire; (5) Gloria Kurzrok; and (6) Jane M. Delaire a/k/a Jane Delaire Hackett. The following defendants joined in the motion filed by the Spring Defendants: (1) Cyril Jalon and the Estate of Elana Jalon; and(2) Stanley Berman, Joyce Berman, S & J Partnership.

230. The following defendants answered the amended complaint: Jonathan Greenberg, Linda McCurdy, Rosalie Buccellato, Morton Kurzrok, the Janet Jaffin Revocable Trust, and Elizabeth M. Moody.

231. The following defendants moved to dismiss the amended complaint for lack of personal jurisdiction: The Joint Tenancy of Phyllis Guenzburger and Fabian Guenzburger, The Joint Tenancy of Robert Pinchou and Fabian Guenzburger (collectively, the "Tenancy Defendants").

232. The Trustee opposed all of these motions in an omnibus opposition filed on March 1, 2010. The Cohmad Defendants filed their reply briefs by April 8, 2010 (the return date was March 31, 2010; however, the Trustee stipulated to filing extensions for several of the Cohmad Defendants) and a hearing will be scheduled to consider the motions.

Picard v. Peter B. Madoff, Mark D. Madoff, Andrew H. Madoff and Shana D. Madoff,
Adv. Pro. No. 09-1503 (BRL).

233. On October 2, 2009, the Trustee filed an adversary complaint against Peter B. Madoff, Mark D. Madoff, Andrew H. Madoff, and Shana D. Madoff (the "Family Defendants"). Through the complaint, the Trustee is seeking the return of nearly $200 million under SIPA §§ 78fff(b), 78fff-2(c)(3), sections 105(a), 502(d), 541, 542, 544, 548(a), 550(a), and 551 of the Bankruptcy Code, the New York Fraudulent Conveyance Act (N.Y. Debt. & Cred. § 270 et seq.),

and common law. The relief sought includes turnover of and accounting for BLMIS funds, property, and assets, the recovery of preferential and fraudulent transfers—both discovered and undiscovered—of BLMIS funds, property, and assets from BLMIS to the Family Defendants, the recovery of subsequent transfers of BLMIS funds, property, and assets from the Family Defendants to others, the disallowance, or, alternatively, the equitable subordination of the Family Defendants' claims against the estate, as well as seeking damages for breach of fiduciary duty, conversion, unjust enrichment, negligence, and the imposition of a constructive trust.

234. Each of the Family Defendants held senior supervisory or compliance roles at BLMIS: Peter B. Madoff was the Company's Senior Managing Director and Chief Compliance Officer, Mark D. Madoff and Andrew H. Madoff were Co-Directors of Trading, and Shana D. Madoff was Compliance Counsel. The Trustee alleges that the Family Defendants ignored their responsibilities to BLMIS and instead each improperly received tens of millions of dollars in customer funds to which they were not entitled.

235. On February 5, 2010, the Court entered Consent Orders restricting each of Peter, Mark, Andrew, and Shana's ability to transfer or dispose of any of their assets, and requiring each of them to provided the Trustee with financial disclosures listing all of their significant assets. Those financial disclosures were provided to the Trustee on March 8, 2010.

236. On March 15, 2010, the Family Defendants moved to dismiss the Trustee's complaint. The Trustee's reply papers to the motion to dismiss are due on May 21, 2010 and a hearing on the motion to dismiss is scheduled for July 22, 2010.

Picard v. Ruth Madoff, Adv. Pro. No. 09-1391 (BRL).

237. On July 29, 2009, the Trustee filed an adversary complaint against Ruth Madoff. In this action the Trustee is seeking the return of more than $44 million under SIPA §§ 78fff(b), 78fff-1(a), and 78fff-2(c)(3), sections 105(a), 502(d), 541, 542, 544, 548(a), 550(a), and 551 of

the Bankruptcy Code, the New York Fraudulent Conveyance Act (N.Y. Debt. & Cred. § 270 et seq.), and New York common law. The relief sought includes turnover of and accounting for BLMIS funds, property, and assets, the recovery of fraudulent transfers and subsequent transfers, disallowance of Mrs. Madoff's claims against the estate, as well as damages and the imposition of a constructive trust.

238. On July 31, 2009, the Court entered an Order restricting Mrs. Madoff's ability to transfer or dispose of any of her assets, and requiring her to provide monthly reports to the Trustee describing all income and expenditures. Mrs. Madoff's answer currently is due on May 10, 2010. A pre-trial conference is scheduled to take place before Judge Lifland on May 25, 2010. The Trustee and B&H have been engaged in settlement discussions with counsel for Ms. Madoff.

Picard v. Alpha Prime Fund Limited, HSBC Bank PLC and HSBC Securities Services (Luxembourg) S.A., Adv. Pro. No. 09-1364 (BRL).

239. On July 15, 2009, the Trustee filed a complaint against Alpha Prime Fund Limited ("Alpha Prime") seeking return of $86 million under SIPA §§ 78*lll*(4) and 78fff-2(c)(3), and Bankruptcy Code sections 105(a), 502(d), 542, 544, 547, 548(a), 550(a), and 551, the New York Fraudulent Conveyance Act (N.Y. Debt. & Cred. §§ 270 *et seq.* (McKinney 2001)) and other applicable law for turnover, accounting, preferences, fraudulent conveyances and objection to claim in connection with certain transfers of property by BLMIS to or for the benefit of Alpha Prime. The complaint also named HSBC Bank PLC and HSBC Securities Services (Luxembourg) S.A. (collectively "HSBC") as defendants. HSBC answered the complaint on August 28, 2009. Alpha Prime failed to answer or move to dismiss before its deadline and the Clerk of the Court entered a default against Alpha Prime on September 1, 2009. A pretrial conference is scheduled for May 5, 2010.

Picard v. Herald Fund SPC, HSBC Bank PLC and HSBC Securities Services (Luxembourg) S.A., Adv. Pro. No. 09-1359 (BRL).

240. On July 14, 2009, the Trustee filed a complaint against Herald Fund SPC ("Herald") and HSBC Bank PLC and HSBC Securities Services (Luxembourg) S.A. (collectively "HSBC") as defendants, seeking return of $578 million under SIPA §§ 78*lll*(4) and 78fff-2(c)(3), and Bankruptcy Code sections 105(a), 502(d), 542, 544, 547, 548(a), 550(a), and 551, the New York Fraudulent Conveyance Act (N.Y. Debt. & Cred. §§ 270 *et seq.* (McKinney 2001)) and other applicable law for turnover, accounting, preferences, actual fraudulent conveyances and constructive fraudulent conveyances in connection with certain transfers of property by BLMIS to or for the benefit of Herald. On August 14, 2009, the Trustee filed an amended complaint to add an objection to Herald's SIPA claim. On October 13, 2009, the Trustee filed a second amended complaint. The parties filed a case management plan, which the Court entered on October 21, 2009.

241. HSBC answered the second amended complaint on October 26, 2009. Herald moved to dismiss the second amended complaint for failure to state a claim on October 26, 2009. The Trustee's opposition to that motion was filed on November 13, 2009. A hearing on the motion to dismiss is scheduled for May 25, 2010.

Picard v. Primeo Fund, HSBC Bank PLC and HSBC Securities Services (Luxembourg) S.A., Adv. Pro. No. 09-1366 (BRL).

242. On July 15, 2009, the Trustee filed a complaint against Primeo Fund ("Primeo") seeking return of $145 million under SIPA §§ 78*lll*(4) and 78fff-2(c)(3), and Bankruptcy Code sections 105(a), 542, 544, 548(a), 550(a), and 551, the New York Fraudulent Conveyance Act (N.Y. Debt. & Cred. §§ 270 et seq. (McKinney 2001)) and other applicable law for turnover, accounting and fraudulent conveyances in connection with certain transfers of property by BLMIS to or for the benefit of Primeo. The complaint also named HSBC Bank PLC and HSBC

Securities Services (Luxembourg) S.A. (collectively "HSBC") as defendants. HSBC answered the complaint on August 28, 2009. Primeo failed to respond to the suit papers before its deadline and the Clerk of the Court entered a default against Primeo on September 1, 2009. A pretrial conference is scheduled for May 5, 2010. Primeo is in liquidation in the Cayman Islands. The Trustee and the Cayman Islands court-appointed liquidators (the "Liquidators") are in negotiations regarding a partial settlement. Any final settlement agreement would have to be approved by the Bankruptcy Court and the Cayman Islands Court.

Picard v. Thybo Asset Management Limited, Thybo Global Fund Limited, Thybo Return Fund Limited, Thybo Stable Fund Ltd., Adv. Pro. No. 09-1365 (BRL).

243. On July 15, 2009, the Trustee filed a complaint against Thybo Asset Management Limited; Thybo Global Fund Limited; Thybo Return Fund Limited; and Thybo Stable Fund Ltd. (collectively, the "Thybo Funds"), seeking return of approximately $63 million pursuant to SIPA §§ 78fff(b) and 78fff-2(c)(3), sections 105(a), 542, 544, 547, 548(a), 550(a) and 551 of the Bankruptcy Code, the New York Fraudulent Conveyance Act, and other applicable law, for turnover, accounting, preferences, fraudulent conveyances and damages in connection with certain transfers of property by BLMIS to or for the benefit of the Thybo Funds. The Trustee filed an amended complaint on August 25, 2009, adding a claim objecting to Thybo Stable Fund's SIPA claim. Since then, the parties have been engaged in settlement discussions, which are ongoing, and have agreed to an extension of time for the Thybo Funds to respond to the amended complaint. The Thybo Funds' answers are due on May 13, 2010 and a pretrial conference is scheduled for May 27, 2010.

H. **SETTLEMENTS**

Optimal Companies.

244. On May 22, 2009, the Trustee reached an agreement (the "Optimal Settlement Agreement") with Optimal Strategic U.S. Equity Limited and Optimal Arbitrage Limited (collectively the "Optimal Companies") to settle the Trustee's claims against them in connection with the liquidation of BLMIS. The Optimal Companies are indirectly owned by Banco Santander, S.A., a Spanish banking corporation ("Santander" and together with the Optimal Companies, collectively "Optimal"). On May 26, 2009, the Trustee filed a motion seeking approval of the Optimal Settlement Agreement pursuant to section 105(a) of the Bankruptcy Code and Fed. R. Bankr. P. 2002 and 9019. This Court approved the Optimal Settlement Agreement at a hearing held on June 16, 2009.

245. Pursuant to the Optimal Settlement Agreement, Optimal agreed to pay $235 million to settle potential litigation claims by the Trustee. This settlement is significant because it is the first instance where a "feeder fund" has agreed to settle with the Trustee. The Optimal Companies withdrew about $275 million within 90 days before the collapse of BLMIS. The $275 million in withdrawals were therefore considered preferences, recoverable by the Trustee pursuant to sections 547 and 550 of the Bankruptcy Code. Optimal agreed to return approximately $235 million, which is 85% of what the Trustee would have sought from Optimal as a 90-day preference claim. The settlement is considered to be a major success because it allows the Trustee to avoid (1) the anticipated legal battles over determining the judicial plausibility of a US court holding jurisdiction over a foreign bank in Spain and (2) the costly litigation that would be necessary to collect a judgment from the funds.

246. The Trustee conducted a confirmatory investigation, including a review of documents made available to the Trustee by the Optimal Companies that related to, among other

things, due diligence conducted by the Optimal Companies and their affiliates on BLMIS. On the basis of that review, the Trustee concluded that the Optimal Companies and their affiliates were not complicit in the fraud perpetrated by BLMIS and Bernard Madoff on BLMIS's customers and did not have actual knowledge of the fraud, and based on the review, the Trustee did not believe that the conduct, acts and omissions of the Optimal Companies and their affiliates provide grounds to assert any claim against the Optimal Companies or any affiliates (other than avoiding preference claims), or to disallow any claim that the Optimal Companies may have against BLMIS or its estate. If the Trustee obtains new information relating to the BLMIS accounts of the Optimal Companies that materially affects the Trustee's decision to enter into the Settlement Agreement, the Trustee may declare the Optimal Settlement Agreement void and return the amounts paid by the Optimal Companies.

Levy Family.

247. In January 2010, the Trustee reached an agreement (the "Levy Settlement Agreement") with Jeanne Levy-Church and Francis N. Levy (collectively, the "Levys") to settle the Trustee's claims against them regarding certain accounts held by the Levys and their family members in connection with the liquidation of BLMIS. Prior to his death, Norman F. Levy, established a number of accounts at BLMIS in his name, the names of the Levys, and for family trusts and charitable trusts, including the Betty and Norman F. Levy Foundation (the "Foundation") (collectively, the "Levy BLMIS Account Holders"). In the spring of 2009, the Levys came forward and approached the Trustee regarding the possible negotiation of a settlement agreement. On January 27, 2010, the Trustee filed a motion seeking approval of the Levy Settlement Agreement pursuant to section 105(a) of the Bankruptcy Code and Fed. R. Bankr. P. 2002 and 9019. This Court approved the Levy Settlement Agreement by order dated February 18, 2010.

248. Pursuant to the Levy Settlement Agreement, the Levys agreed to pay $220 million to settle potential litigation claims by the Trustee, which represents nearly one hundred percent of the transfers of fictitious profits to the Levy BLMIS Account Holders during the six years prior to the Filing Date, less the transfers of fictitious profits to the Foundation. The settlement funds were received by the Trustee on March 5, 2010, and represents the largest settlement to date with individual account holders at BLMIS.

249. The Levys also agreed to reasonably cooperate with the Trustee in his efforts to recover funds for the BLMIS estate and also agreed to deem withdrawn the claims filed by Francis N. Levy's children. This settlement is significant because the Levys were among the first group of former BLMIS customers to approach the Trustee to discuss settlement in the spring of 2009 and engaged in good faith negotiations, sharing information and documents about themselves and the Levy BLMIS accounts with the Trustee and his counsel. The Levys' cooperation has sped resolution and minimized Trustee expenses.

I. **<u>TRUSTEE'S INJUNCTIONS</u>**

<u>Fox v. Picower</u>, Adv. Pro. No. 10 CV 80252 (KLR) / <u>Marshall v. Picower</u>, Adv. Pro. No. 10 CV 80254 (KLR)

250. On February 16, 2010,[9] Adele Fox ("Fox"), a BLMIS customer, commenced a putative class action against Estate of Jeffry M. Picower and related entities (the "Picower Defendants") in the United States District Court for the Southern District of Florida, West Palm Beach Division (the "Florida District Court") on her own behalf and on behalf of a similarly situated class of plaintiffs (the "Fox Action"). The complaint describes the class as "persons or entities who have maintained customer accounts with BLMIS who are not SIPA Payees and who

[9] The complaint was amended on March 15, 2010.

have not received the net account value scheduled in their BLMIS accounts as of the day before the commencement of the SIPA Liquidation."

251. Similarly, on February 17, 2010,[10] Susanne Marshall ("Marshall," and together with Fox, the "Florida Plaintiffs"), a BLMIS customer, commenced a putative class action against the Picower Defendants in the Florida District Court, on her own behalf and on behalf of a similarly situated class of plaintiffs (the "Marshall Action," and together with the Fox Action, the "Florida Actions"). The complaint describes the class the plaintiff seeks to certify as "all SIPA Payees, but only with respect to claims, or portions thereof, not assigned to the Trustee."

252. Apart from representing different putative classes, the Marshall complaint is identical to the Fox complaint and plaintiffs in both Florida Actions are represented by the same counsel. Further, both complaints rely heavily on the allegations in the complaint filed by the Trustee in this Court on May 13, 2009 (*Picard v. Picower, et al.*, Adv. Pro. No. 09-1197 (BRL)). Plaintiffs in the Florida Actions allege damages based on conspiracy, conversion, unjust enrichment and violations of the Florida RICO statute.

253. On March 24, 2010, Fox moved for entry of an initial order regarding consolidation of the Marshall Action and of potential later-filed actions related to the Florida Actions. On March 25, 2010, both Florida Plaintiffs filed Civil Rico case statements.

254. On April 1, 2010, the Trustee moved by way of Order to Show Cause for a Temporary Restraining Order, Enforcement of the Automatic Stay and Preliminary Injunction, enjoining and restraining the Florida Plaintiffs and any related parties from pursuing the Florida Actions and commencing or proceeding with any other actions or proceedings against the Picower Defendants, among other reasons, because the Florida Actions impinge on the Bankruptcy Court's jurisdiction and the orderly administration of the BLMIS proceedings and

Case 1:12-cv-02947-JSR Document 11 Filed 04/12/12 Page 80 of 83
Pg 80 of 83

interfere with the Trustee's imminent settlement with the Picower Defendants. A conference was held before the Court on April 1, 2010, with counsel for the parties in the Florida Actions present, and a temporary retraining order was granted. A hearing is scheduled for April 27, 2010, at which time the Court will determine whether the Florida Actions are in violation of the automatic stay provisions of § 362 of the Bankruptcy Code and hence, *void ab initio*, and whether to issue a preliminary injunction enjoining the Florida Plaintiffs and related parties from proceeding with the Florida Actions or commencing any other action against the Picower Defendants. Meanwhile, the Florida Plaintiffs have until May 3, 2010 to answer the Trustee's complaint against them, made in connection with the injunctive relief sought, and a pre-trial conference with the Court is set for May 12, 2010.

<u>Canavan v. Harbeck</u>, Adv. Pro. No. 10-cv-00954 (FSH) (PS)

255. On February 24, 2010, three BLMIS customers[11] (the "New Jersey Plaintiffs") filed an action in the United States District Court for the District of New Jersey ("New Jersey District Court") against SIPC's Board of Directors and CEO/President (the "SIPC Defendants"), on behalf of a similarly situated prospective class of customers (the "New Jersey Action"). The purported class action seeks to certify a class of "customers of Madoff who are not entitled to their full SIPC insurance under SIPC's Net Investment Policy." The New Jersey Plaintiffs' causes of action claim: (1) bad faith failure to pay insurance claims; (2) fraud; (3) violation of the New Jersey Consumer Fraud Act; and (4) promissory estoppel.

256. On March 18, 2010, following a request by counsel for five of SIPC's Board members and its CEO/President for leave of court to file a motion to transfer venue of the New Jersey Action to the Bankruptcy Court and a related teleconference, New Jersey Magistrate

---

[10] The complaint was amended on March 15, 2010.

[11] One plaintiff holds a 20% interest in a limited liability company that had an account with BLMIS; one has a BLMIS account in her own name and one has a BLMIS account in the name of herself and another individual as tenants in common.

Judge Patty Shwartz issued an order under which, inter alia, the New Jersey Plaintiffs would have until April 6, 2010 to decide whether to dismiss certain federal employee defendants, in which case, she would allow the transfer motion to be made. By a letter dated March 31, 2010, New Jersey Plaintiffs' counsel informed the New Jersey District Court that she did not intend to dismiss the New Jersey Action as to the federal defendants. The court then held a conference on April 5, 2010 to discuss, among other things, the New Jersey Plaintiffs' decision not to dismiss the federal defendants from the case. The court set a briefing schedule on the issue pursuant to an order dated April 5, 2010, with a return date of May 3, 2010, and the SIPC Defendants were given permission to file their transfer motion by April 23, 2010, with their answer or motion to dismiss due ten days after the resolution of that motion. The court denied the SIPC Defendants' request for a stay of discovery pending resolution of the motion to transfer.

J. MOTIONS TO INTERVENE

257. The Trustee and his counsel successfully opposed an attempt by Ade Ogunjobi, Toks, Inc. and its related companies (collectively, "Toks") to intervene in the BLMIS proceedings. Toks proposed to purchase BLMIS through what it described as a purported "global transaction all stock tax free $100,000,000,000 ($100 Trillion) or 400,000,000,000 shares of Class A Common shares that will be registered with the [SEC] during the closing of the proposed exchange tender offers," pursuant to which clients of BLMIS purportedly would receive $75 billion or more in stock, and it proposed to use the funds recovered by the Trustee to fund the plan. The offer was unsolicited, and more importantly, completely unsupported.

258. Based on papers filed by the Trustee, and after a hearing on the matter held on June 2, 2009, the Bankruptcy Court found that Toks was not a party in interest, and that Toks failed to demonstrate any ability to complete its proposed tender offer. The Bankruptcy Court

denied Toks' motion to intervene [Dkt. No. 234],[12] and Toks appealed to the District Court. The matter was assigned to Judge Chin (Civil Case No. 09 CV 5877) (the "District Court Appeal").

259. Counsel for the Trustee filed a joint appellate brief with SIPC, which together with Toks' appellate brief, was submitted without oral argument. By order dated October 30, 2009, the District Court dismissed the appeal based on Toks' failure to provide information required pursuant to a prior order issued by the District Court. [District Court Appeal Dkt. No. 12].

260. Toks appealed the District Court's decision to the United States Court of Appeals for the Second Circuit. In connection therewith, Toks filed an Emergency Motion seeking an expedited appeal, which was denied by the Second Circuit. Thereafter, Toks filed a brief in support of its appeal. Because the Trustee believes that the appeal should be dismissed for multiple reasons, including that the appeal is frivolous, the Trustee filed a motion to dismiss on February 16, 2010. The motion has been submitted to the Second Circuit, and no decision on the motion to dismiss has been issued as of this date.

[12] Mr. Ogunjobi's and Tok's emergency motion seeking a stay of the liquidation proceeding [Dkt. No. 304] was denied by the Bankruptcy Court on July 6, 2009 [Dkt. No. 306].

XI. CONCLUSION

The foregoing report represents a summary of the status of this proceeding and the material events that have occurred through February 28, 2010 unless otherwise indicated. This Report will be supplemented and updated with further interim reports.

Dated: New York, New York
April 14, 2010

Respectfully submitted,

/s/ Irving H. Picard
Irving H. Picard
c/o Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

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

OF COUNSEL[13]

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Marc Hirschfield
Email: mhirschfield@bakerlaw.com
Alissa M. Nann
Email: anann@bakerlaw.com

Attorneys to Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC And Bernard L. Madoff

[13] The Trustee would like to recognize the following B&H attorneys and team members who contributed to this Report: Fritz Chockley, Elizabeth Scully, Lauren Resnick, Brian Bash, Gonzalo Zeballos, Mark Kornfeld, Ona Wang, Marc Powers, Lou Colombo, Timothy Pfeifer, Adam Oppenheim, Keith Murphy, Bik Cheema, Deborah Kaplan, Courtni Thorpe, Seanna Brown, Tatiana Markel and Bill Speros. Denis O'Connor, William Kingsford, Meaghan Schmidt, Vineet Sehgal and Matt Layton of AlixPartners also contributed to this Report, as well as Regina Griffin of Windels Marx.

EXHIBIT 12

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David Sheehan (DS 4818)
Email: dsheehan@bakerlaw.com
Douglas E. Spelfogel (DS 7097)
Email: dspelfogel@bakerlaw.com
Richard J. Bernard (RB 6371)
Email: rbernard@bakerlaw.com

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

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC Defendant.	Adversary Proceeding No. 08-01789-JMP

TRUSTEE'S EX-PARTE APPLICATION FOR ENTRY OF AN ORDER APPROVING FORM AND MANNER OF PUBLICATION AND MAILING OF NOTICES, SPECIFYING PROCEDURES FOR FILING, DETERMINATION, AND ADJUDICATION OF CLAIMS; AND PROVIDING OTHER RELIEF

Irving H. Picard, Esq. ("Trustee"), as Trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("Debtor"), by and through his undersigned counsel, respectfully requests, on an ex-parte basis, entry of an order approving the form and manner of the publication and mailing of required notices, specifying the procedures for the

filing, determination, and adjudication of claims, and providing other relief based on the following:

1. On December 11, 2008 (the "Filing Date"), the Securities and Exchange Commission ("SEC") filed a Complaint in the United States District Court for the Southern District of New York against defendants Bernard L. Madoff and the Debtor (together, the "Defendants") (No. 08 CV 10791). The Complaint alleged that the Defendants engaged in fraud through investment advisor activities of the Debtor. On December 12, 2008, the Honorable Louis A. Stanton of the United States District Court for the Southern District of New York, entered an order which, inter alia, appointed Lee S. Richards, Esq., as receiver for the Debtor. On December 15, 2008, Judge Stanton entered an order pursuant to the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA")[1], which, in pertinent part:

(a) Appointed Irving H. Picard, Esq. as Trustee for the liquidation of the business of the Debtor, pursuant to §78eee(b)(3) of SIPA;

(b) Appointed Baker & Hostetler, LLP ("B&H") as counsel to the Trustee pursuant to §78eee(b)(3) of SIPA; and

(c) Removed the case to this Bankruptcy Court pursuant to §78eee(b)(4) of SIPA.

2. Section 78fff-2(a)(1) of SIPA provides that promptly after appointment, a trustee shall cause notice of the commencement of the proceeding to be mailed to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the twelve (12) months prior to the Filing Date, to the address of such person as it appears from the debtor's books and records. The Trustee requests that this Court enter an order directing the Trustee to effect such mailing of the notice in the form attached as Exhibit A on or before January 9, 2009.

[1] For convenience, reference to SIPA will not include "15 U.S.C."

3. Section 78fff-2(a)(1) of SIPA further provides that promptly after appointment, a trustee shall cause notice of the commencement of the proceeding to be published in one or more newspapers of general circulation in the form and manner determined by the Court. During the twelve months prior to the Filing Date, the Debtor, which maintained its primary office in New York, New York and had additional offices in London, U.K., had customers across the United States and in various foreign nations. Accordingly, the Trustee requests that this Court enter an order directing the Trustee to publish notice substantially in the form attached as Exhibit A on or before January 9, 2009 in the following newspapers:

(a) *The New York Times*, all editions;

(b) *The Wall Street Journal*, all editions;

(c) *The Financial Times*, all editions;

(d) *USA Today*, all editions;

(e) *Jerusalem Post*, all editions; and

(f) *Ye'diot Achronot*, all editions.

4. Section 78fff-2(a)(l) of SIPA states that notice to creditors other than customers shall be given by a trustee in the manner prescribed by the Bankruptcy Code. Section 342 of the Title 11 of the United States Code (the "Bankruptcy Code") states that there shall be given such notice as is appropriate of an order for relief. The Trustee requests that this Court enter an order directing him to mail notice to creditors other than customers in the form attached as Exhibit A on or before January 9, 2009.

5. The Trustee requests that this Court enter an order approving the form of the following documents, and directing the Trustee to mail such documents, substantially in the forms attached hereto, to customers and other creditors:

(a) Exhibit A - Notice of Commencement of Proceeding

(b) Exhibit B - Explanatory Letter to Customers

(c) Exhibit C - Customer Claim Form (and instructions)

(d) Exhibit D - Explanatory Letter to Broker-Dealers (with Series 300 Rules)

(e) Exhibit E - Explanatory Letter to Other Creditors

(f) Exhibit F - General Creditor Claim Form

(g) Exhibit G - Notice of Trustee's Determination of Claim Form

(h) Exhibit H - Proposed Order

6. Section 78fff-2(a)(3) of SIPA provides that no claim of a customer or other creditor of the debtor which is received by a trustee after the expiration of the six (6) month period beginning on the date of publication of notice of the commencement of proceedings under SIPA shall be allowed, except that the Court may, upon application within such period and for cause shown, grant a reasonable fixed extension of time for the filing of a claim by the United States, by a state or political subdivision thereof, or by an infant or incompetent person without a guardian. Any claim of a customer for net equity which is received by a trustee after the expiration of such period of time as may be fixed by the Court need not be paid or satisfied in whole or in part out of customer property, and, to the extent such claim is satisfied from monies advanced by the Securities Investor Protection Corporation ("SIPC"), it shall be satisfied in cash or securities (or both) as a trustee determines is most economical to the estate. The Trustee requests that the Court enter an order fixing a six-month period from the date of publication and mailing of notice for filing of such customer claims for net equity.

7. Section 78fff-2(a)(2) of SIPA provides that claims against the debtor shall be filed with a trustee. The Trustee requests that this Court enter an order directing that claims against the Debtor in this proceeding be filed with **Irving H. Picard, Esq., Trustee for Bernard L. Madoff**

Investment Securities LLC, Claims Processing Center, 2100 McKinney Ave., Suite 800, Dallas, TX 75201.

8. Section 78eee(b)(3) of SIPA specifies that no person shall be appointed as trustee or as attorney for the trustee in a liquidation under SIPA if such person is not "disinterested" within the meaning of Section 78eee(b)(6) of SIPA. As for the trustee and counsel to the trustee, Section 78eee(b)(6)(B) of SIPA requires that the Court fix a time for hearing on disinterestedness (and that at least ten (10) days notice of such hearing be given by mail to the parties specified in said section) for the purpose of considering objections to the retention of trustee and counsel to the trustee based upon lack of disinterestedness in the proceedings. Accordingly, the Trustee requests that this Court enter an order setting February 4, 2009, at 10:00 a.m., as the date and time for the hearing of disinterestedness objections to the retention in office of Irving H. Picard, Esq. as Trustee and Baker & Hostetler LLP as counsel to the Trustee. The Trustee requests that any objections to the retention of counsel be filed with this Court, with a copy served on the Trustee's attorney at: Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, New York 10111, Attention: Douglas E. Spelfogel, Esq.; and SIPC, 805 Fifteenth Street, N.W., Suite 800, Washington, D.C. 20005-2215, Attention: Kevin H. Bell, Esq., so as to be filed and received not less than five (5) days prior to such hearing.

9. Section 341(a) of the Bankruptcy Code requires that a meeting of creditors be held within a reasonable time after the order for relief in a case under the Bankruptcy Code. Section 343 of the Bankruptcy Code requires that the debtor appear and submit to examination under oath at such meeting. The Trustee requests that this Court enter an order designating the Trustee to preside at a meeting of creditors to permit the examination of the Debtor and its officers by the Trustee, creditors or other parties in interest, and further to conduct such business as may properly come before such meeting. The Trustee further requests that this Court enter an order

setting February 18, 2009, at 1:30 p.m., at the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004, as the time and place for such meeting of creditors.

10. Pursuant to Bankruptcy Rule 9007, which authorizes the combination of notices whenever feasible, the Trustee requests that this Court enter an order directing that notice of the meeting of creditors and notice of the "disinterestedness" hearing be combined with notice of the commencement of proceedings, and that such notice, in the form and content as set forth in attached Exhibit A, be published and customers and creditors be notified by mail in the manner provided in paragraphs 2, 3, and 4 above.

11. The Trustee requests that this Court enter an order directing the Debtor to comply with SIPA and the pertinent sections of the Bankruptcy Code, including the requirements of the Debtor to (a) designate an officer to appear and submit to examination under oath at the meeting of creditors under section 343 of the Bankruptcy Code, and (b) comply with the Debtor's duties enumerated in section 521 of the Bankruptcy Code, i.e., by (i) by timely filing the schedules of assets and liabilities, of executory contracts, of pending litigations and information about any other pertinent matters; (ii) timely filing a list of creditors, a schedule of assets and liabilities and a statement of financial affairs, (iii) cooperating with the Trustee as necessary to enable the Trustee to perform his duties; and (iv) surrendering forthwith to the Trustee all property of the Debtor's estate and any and all recorded information, including, but not limited to, books, documents, records, papers and computer disks or tapes constituting or relating to the Debtor or property of the Debtor's estate.

12. To the extent consistent with the provisions of SIPA, a liquidation proceeding is to be conducted in accordance with, and as though it were being conducted under Chapters 1, 3, and 5, and subchapters I and II of Chapter 7 of the Bankruptcy Code. *See* Section 78fff(b) of SIPA.

Section 704(5) of the Bankruptcy Code, which appears in Subchapter I of Chapter 7 of the Bankruptcy Code, requires a Trustee to examine proofs of claims and object to the allowance of any claim that is improper.

13. The Trustee, by his staff and counsel, will analyze the customer claims and accounts. They will compare the claims against the books and records of the Debtor and other sources. The Trustee requests that this Court authorize him, as provided in Section 78fff-2(b) of SIPA, to satisfy customer claims as far as the claims agree with the Debtor's books and records or are otherwise established to the Trustee's satisfaction.

14. The Trustee will satisfy customer claims by (i) delivering "customer name securities," as defined in Section 78*lll*(3) of SIPA; and (ii) satisfying a customer's "net equity" claim, as defined in Section 78*lll*(11) of SIPA, by distributing on a ratable basis securities of the same class or series of an issuer on hand as "customer property," as defined in Section 78*lll*(4) of SIPA, and, if necessary, by distributing cash from such customer property or cash advanced by SIPC, or purchasing securities for customers as provided in Section 78fff-2(d) of SIPA.

15. In order to expedite the protection of customers of the Debtor under SIPA, the Trustee requests the approval of the Court of the procedures prescribed in Section 78fff-2(b) of SIPA which provides that:

> [T]he court shall, among other things –
>
> (1) with respect to net equity claims, authorize the trustee to satisfy claims out of moneys made available to the trustee by SIPC notwithstanding the fact that there has not been any showing or determination that there are sufficient funds of the debtor available to satisfy such claims; and
>
> (2) with respect to claims relating to, or net equities based upon, securities of a class and series of an issuer which are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, authorize the trustee to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee.

16. The Trustee anticipates that individuals may file claims seeking "customer" protection that the Trustee may disallow completely, disallow as a protected customer claim, or disallow in part. The Trustee proposes this Court order a procedure for the expeditious resolution of disputes that may arise between the Trustee and claimants for protection as customers. The Trustee suggests the following procedures for those claims for protection as a customer of the Debtor, as defined in SIPA, which it does not allow as filed:

(1) The Trustee will notify the claimant by certified mail that the Trustee has determined that the claimant's claim has been disallowed in whole or in part or has otherwise not been approved for satisfaction as filed. Notification shall be in a form similar to Exhibit G attached hereto. If a claimant is aggrieved by the determination of the Trustee, the claimant shall be afforded the opportunity to have the matter heard by the Court as a contested matter under Rule 9014 of the Bankruptcy Rules.

(2) The claimant shall request a hearing before this Court by filing a request in accordance with the instructions included with the Trustee's determination, Exhibit G hereto. The claimant shall file the request for a hearing within thirty days of the date on which the Trustee mailed his determination. The request shall include a detailed statement of the reasons for the claimant's objection to the Trustee's determination and the claimant shall attach copies of any documents or other writing upon which the claimant relies.

(3) The Trustee shall ask the Court to set a time and date for a hearing and shall notify the claimant in writing of the time, date and place of the hearing.

(4) If a claimant fails to request a hearing within thirty days of the mailing of the Trustee's determination in accordance with the procedures established by this Court's order, or if the claimant fails to appear at the hearing, then the Trustee's determination shall be final.

(5) The Trustee requests authority to compromise and settle any disputed customer claim at any time, without further order of this Court.

17. Section 78fff-1(c) of SIPA requires that a trustee report progress to this Court. The Trustee requests the Court enter an order directing the Trustee to file his first report within six (6) months after publication of the Notice of Commencement, and shall file interim reports every six (6) months thereafter.

18. No previous application for the relief requested herein has been made to this or any other court.

19. The relief requested in this application is not novel, and the Trustee has incorporated his legal authority under SIPA and the Bankruptcy Code. Accordingly, the Trustee requests that the Court waive the requirements of Local Bankruptcy Rule 9013-1(B) to the extent applicable.

WHEREFORE, the Trustee requests that the Court grant this application and approve and enter the procedural order in substantially the form requested.

Dated: New York, New York
December 21, 2008

Respectfully submitted,

OF COUNSEL:

SECURITIES INVESTOR
PROTECTION CORPORATION
805 Fifteenth Street, N.W., Suite 800
Washington, DC 20005
Telephone: (202) 371-8300

Josephine Wang (JW 0674)
General Counsel
jwang@SIPC.org

Kevin H. Bell (KB 2260)
Senior Associate General Counsel
kbell@SIPC.org

/s/ David J. Sheehan
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David Sheehan (DS 4818)
Email: dsheehan@bakerlaw.com
Douglas E. Spelfogel (DS 7097)
Email: dspelfogel@bakerlaw.com
Richard J. Bernard (RB 6371)
Email: rbernard@bakerlaw.com

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

EXHIBIT 13

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adversary Proceeding No. 08-01789-BRL

ORDER ON APPLICATION FOR AN ENTRY OF AN ORDER APPROVING FORM AND MANNER OF PUBLICATION AND MAILING OF NOTICES, SPECIFYING PROCEDURES FOR FILING, DETERMINATION, AND ADJUDICATION OF CLAIMS; AND PROVIDING OTHER RELIEF

An order having been entered on consent by the Honorable Louis L. Stanton, United States District Judge, on December 15. 2008 (the "Protective Order") (1) finding that the customers of Bernard L. Madoff Investment Securities LLC (the "Debtor") are in need of the protection afforded by the Securities Investor Protection Act, 15 U.S.C. §78aaa et seq. ("SIPA"), (2) appointing Irving H. Picard as Trustee (the "Trustee") and Baker & Hostetler LLP as counsel for the Trustee, and (3) removing the liquidation proceeding to this Court; and it appearing, as set forth in the Trustee's Application dated December 21, 2008 (the "Application"), that this Court is required by SIPA and the Bankruptcy Code to direct the giving of notice regarding, among other things, the commencement of this liquidation proceeding, the appointment of the Trustee and his counsel; the hearing on disinterestedness of the Trustee and his counsel; the meeting of creditors; and the Trustee having recommended procedures for

resolution of customer claims and distributions; and it appearing that notice of the Application has been given to the Securities Investor Protection Corporation ("SIPC") and that no other notice need be given; no adverse interest having been represented, and sufficient cause appearing therefor, it is:

ORDERED, that the Application is granted; and it is further

ORDERED, that the Notice, explanatory letters, claim forms, and instructions appearing as Exhibits A, B, C, D, E, F, G and H to the Application, or substantially in that form, be, and they hereby are, authorized and approved, and shall be mailed by the Trustee to all former customers, broker-dealers, and other creditors of the Debtor, in conformance with this Order and in substantially the form appearing in those Exhibits, on or before January 9, 2008; and it is further

ORDERED, that the Trustee shall have the authority, on the advice and consent of SIPC, to amend these forms without further order of this Court; and it is further

ORDERED, that under 15 U.S.C. §78fff-2(a)(1), the Trustee be, and he hereby is, authorized and directed to cause the notice annexed as Exhibit A to the Application (the "Notice") to be published once in ***The New York Times***, all editions; ***The Wall Street Journal***, all editions; ***The Financial Times***, all editions; ***USA Today***, all editions; ***Jerusalem Post***, all editions; ***Ye'diot Achronot***, all editions, on or before January 9, 2008; and it is further

ORDERED, that under 15 U.S.C. §78fff-2(a)(1), the Trustee be, and he hereby is, authorized and directed to mail (a) a copy of the Notice, explanatory information, and claim form to each person who, from the books and records of the Debtor, appears to have been a

customer of the Debtor with an open account during the twelve (12) month period prior to December 11, 2008, (b) a copy of the Notice, explanatory letter, and claim form to creditors other than customers, and (c) a copy of the Notice, explanatory letter and Series 300 Rules to broker-dealers, at the addresses of such customers, broker-dealers, and creditors as they appear on available books and records of the Debtor, and finding that such mailing complies with the Notice Provision; and it is further

ORDERED, that under 15 U.S.C. §78fff-2(a)(3), any claim of a customer for a net equity which is received by the Trustee after the expiration of sixty (60) days from the date of publication of the Notice need not be paid or satisfied in whole or in part out of customer property, and, to the extent such claim is satisfied from monies advanced by SIPC, it shall be satisfied in cash or securities (or both) as the Trustee may determine to be most economical to the estate; and it is further

ORDERED, that, pursuant to 15 U.S.C. §78fff-2(a)(2), all claims against the Debtor shall be filed with the Trustee; and it is further

ORDERED, that all claims against the Debtor shall be deemed properly filed only when received by the Trustee at Irving H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC, Claims Processing Center, 2100 McKinney Ave., Suite 800, Dallas, TX 75201; and it is further

ORDERED, that February 4, 2009, at 10:00 a.m., at Courtroom 601 of the United States Bankruptcy Court, One Bowling Green, New York, New York, is fixed as the time and place for a hearing on the disinterestedness of the Trustee and his counsel, as required by 15 U.S.C. §78eee(b)(6)(B); and it is further

ORDERED, that objections, if any, to the appointment and retention of the Trustee or his counsel shall be in the form prescribed by the Federal Rules of Civil Procedure and shall be filed with the Court, preferably electronically (with a courtesy hard copy for Chambers) and a hard copy personally served upon Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, NY 10111, Attention: David J. Sheehan, Esq. and Douglas E. Spelfogel, Esq., and the Securities Investor Protection Corporation, 805 Fifteenth Street, N.W., Suite 800, Washington, D.C. 20005-2215, Attention: Kevin Bell, on or before 12:00 noon on January 30, 2009; and it is further

ORDERED, that (a) the meeting of creditors required by Section 341(a) of the Bankruptcy Code, 11 U.S.C. §341(a), shall be held on February 20, 2009, at 10:00 a.m., at the Auditorium at the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004 and (b) the Trustee shall preside at such meeting of creditors for the purpose of examining the Debtor and any of its officers, directors or stockholders and conducting such other business as may properly come before such meeting; and it is further

ORDERED, that the Debtor, by any of its officers, directors, employees, agents or attorneys, shall comply with SIPA and the pertinent sections of the Bankruptcy Code, including, without limiting the generality of the foregoing, (a) by designating a person to appear and submit to examination under oath at the meeting of creditors under Section 341(a) of the Bankruptcy Code, and (b) by complying with the Debtor's duties under Section 521 of the Bankruptcy Code, 11 U.S.C. §521, i.e., (i) by timely filing the schedules of assets and liabilities, of executory contacts, of pending litigations and information about any other pertinent matters; (ii) timely filing a list of creditors, a schedule of assets and liabilities and a statement of financial

affairs, (iii) cooperating with the Trustee as necessary to enable the Trustee to perform his duties; and (iv) surrendering forthwith to the Trustee all property of the Debtor's estate and any and all recorded information, including, but not limited to, books, documents, records, papers and computer; and it is further

ORDERED, that the Trustee be, and he hereby is, authorized to satisfy, within the limits provided by SIPA, those portions of any and all customer claims and accounts which agree with the Debtor's books and records, or are otherwise established to the satisfaction of the Trustee pursuant to 15 U.S.C. §78fff-2(b), provided that the Trustee believes that no reason exists for not satisfying such claims and accounts; and it is further

ORDERED, that the Trustee be, and he hereby is, authorized to satisfy such customer claims and accounts (i) by delivering to a customer entitled thereto "customer name securities," as defined in 15 U.S.C. §78***lll***(3); (ii) by satisfying a customer's "net equity" claim, as defined in 15 U.S.C. §78***lll***(11), by distributing on a ratable basis securities of the same class or series of an issue on hand ***as*** "customer property," as defined in 15 U.S.C. §78***lll***(4), and, if necessary, by distributing cash from such customer property or cash advanced by SIPC, or purchasing securities for customers as set forth in 15 U.S.C. §78fff-2(d) within the limits set forth in 15 U.S.C. §78fff-3(a); and/or (iii) by completing contractual commitments where required pursuant to 15 U.S.C. §78fff-2(e) and SIPC's Series 300 Rules, 17 C.F.R. §300.300 et seq., promulgated pursuant thereto; and it is further

ORDERED, that with respect to claims for "net equity," as defined in 15 U.S.C. § 78***lll***(11), the Trustee be, and he hereby is, authorized to satisfy claims out of funds made available to the Trustee by SIPC notwithstanding the fact that there has not been any showing or

determination that there are sufficient funds of the Debtor available to satisfy such claims; and it is further

ORDERED, that with respect to claims relating to, or net equities based upon, securities of a class and series of an issuer which are ascertainable from the books and records of the Debtor or are otherwise established to the satisfaction of the Trustee, the Trustee be, and he hereby is, authorized to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the Trustee; and it is further

ORDERED, that with respect to any customer claim in which there is disagreement between such claimant and the Trustee with regard to satisfaction of a claim, the Trustee be, and he hereby is, authorized to enter into a settlement with such claimant with the approval of SIPC, and without further order of the Court, provided that any obligations incurred by the Debtor estate under the settlement are ascertainable from the books and records of the Debtor or are otherwise established to the satisfaction of the Trustee; and it is further

ORDERED, that with respect to customer claims which disagree with the Debtor's books and records and which are not resolved by settlement, the following procedures shall apply to resolve such controverted claims:

A. The Trustee shall notify such claimant by mail of his determination that the claim is disallowed, in whole or in part, and the reason therefor, in a written form substantially conforming to Exhibit G to the Application.

B. If the claimant desires to oppose the determination, the claimant shall be required to file with this Court, preferably electronically, and a hard copy with

the Trustee a written statement setting forth in detail the basis for the opposition, together with copies of any documents in support of such opposition, within thirty (30) days of the date on which the Trustee mails his determination to the claimant. If the claimant fails to file an opposition as hereinabove required, the Trustee's determination shall be deemed approved by the Court and binding on the claimant.

C. Following receipt by the Trustee of an opposition by a claimant, the Trustee shall obtain a date and time for a hearing before this Court on the controverted claim and shall notify the claimant in writing of the date, time, and place of such hearing.

D. If a claimant or his counsel fails to appear at the hearing on the controverted claim, then the Trustee's determination may be deemed confirmed by this Court and binding on the claimant.

ORDERED, that the bar date for all claims is six (6) months from the date of publication of Notice and mailing that complies with the Notice Provisions ("Publication Date"), and the bar date for receiving the maximum possible protection for customer claims under SIPA is sixty (60) days from the Publication Date; and it is further

ORDERED, that under 15 U.S.C. §78fff-1(c) the Trustee shall file a progress report with this Court within six (6) months after publication of the Notice of Commencement, and shall file interim reports every six (6) months thereafter; and it is further

ORDERED, that the requirement of Local Bankruptcy Rule 9013-1(b) regarding the filing of a separate memorandum of law is waived.

Dated: December 23, 2008
New York, New York

/s/Burton R. Lifland
BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRICKLAYERS AND ALLIED CRAFTSMEN LOCAL 2 ANNUITY FUND; BRICKLAYERS AND ALLIED CRAFTWORKERS LOCAL 2, ALBANY, NEW YORK, HEALTH BENEFIT FUND; BRICKLAYERS & ALLIED CRAFTWORKERS, LOCAL NO. 2, AFL-CIO; BUILDING TRADE EMPLOYERS INSURANCE FUND; CENTRAL NEW YORK LABORERS' ANNUITY FUND; CENTRAL NEW YORK LABORERS' HEALTH AND WELFARE FUND; CENTRAL NEW YORK LABORERS' PENSION FUND; CENTRAL NEW YORK LABORERS' TRAINING FUND; CONSTRUCTION EMPLOYERS ASSOCIATION OF CNY, INC.; CONSTRUCTION AND GENERAL LABORERS' LOCAL NO. 633, AFL-CIO; ENGINEERS JOINT WELFARE FUND; ENGINEERS JOINT TRAINING FUND; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NO. 43 AND ELECTRICAL CONTRACTORS PENSION FUND; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL NO. 43 AND ELECTRICAL CONTRACTORS WELFARE FUND; I.B.E.W. LOCAL 241 WELFARE BENEFITS FUND; I.B.E.W LOCAL 910 WELFARE FUND; LABORERS' LOCAL 103 ANNUITY FUND; LABORERS' LOCAL 103 WELFARE FUND; NEW YORK STATE LINEMAN'S SAFETY TRAINING FUND; OSWEGO LABORERS' LOCAL NO. 214 PENSION FUND; PLUMBERS, PIPEFITTERS AND APPRENTICES LOCAL NO. 112 HEALTH FUND; ROOFERS' LOCAL 195 ANNUITY FUND; ROOFERS' LOCAL 195 HEALTH & ACCIDENT FUND; SYRACUSE BUILDERS EXCHANGE, INC./CEA PENSION PLAN; SERVICE EMPLOYEES BENEFIT FUND; SERVICE EMPLOYEES PENSION FUND OF UPSTATE NEW YORK; S.E.I.U. LOCAL 200UNITED, AFL-CIO; SYRABEX, INC., SYRACUSE BUILDERS EXCHANGE, INC.; U.A. LOCAL 73, PLUMBERS & FITTERS, AFL-CIO; LOCAL 73 RETIREMENT FUND; UPSTATE UNION HEALTH AND WELFARE FUND,

Appellants,

v.

SECURITIES INVESTOR PROTECTION CORPORATION, and IRVING H. PICARD,

Appellees,

NOTICE OF APPEAL IN A CIVIL CASE

Civil Action No. 11-CV-6355-DLC

IN RE:

BERNARD L. MADOFF INVESTMENT SECURITIES, LLC,

Debtor.

Notice is hereby given that the above named Appellants hereby appeal to the United States Court of Appeals for the Second Circuit from the Judgment entered in this action on the 6th day of January, 2012, pursuant to the Opinion and Order, dated January 4, 2012, of the Honorable Denise Cote, which affirmed the decision of the United States Bankruptcy Court for the Southern District of New York (Lifland, J.) issued on June 28, 2011, dismissed Appellants' appeals, and closed Appellants' cases.

DATED: Syracuse, New York
January 31, 2012

BLITMAN & KING LLP

s/ Jennifer A. Clark

Jennifer A. Clark (JC5102)
Attorneys for Appellants
Franklin Center, Suite 300
443 North Franklin Street
Syracuse, New York 13204-5412
Telephone: (315) 422-7111
Facsimile: (315) 471-2623
Email: jaclark@bklawyers.com

EXHIBIT 15

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (BRL) SIPA Liquidation (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	

ORDER (1) UPHOLDING TRUSTEE'S DETERMINATION DENYING CUSTOMER CLAIMS FOR AMOUNTS LISTED ON LAST CUSTOMER STATEMENT; (2) AFFIRMING TRUSTEE'S DETERMINATION OF NET EQUITY; AND (3) EXPUNGING THOSE OBJECTIONS WITH RESPECT TO THE DETERMINATIONS RELATING TO NET EQUITY

This matter came before the Court on February 2, 2010 on the motion (the "Motion") of Irving H. Picard, Esq. (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, ***et seq***. ("SIPA"), and as trustee for the estate of Bernard L. Madoff ("Madoff"), for entry of an order (1) upholding the Trustee's determinations denying the claims in question for the securities and credit balances listed on the claimants' last BLMIS customer statement; (2) affirming the Trustee's "cash in/cash out" determinations of net equity with respect to each customer claim; and (3) expunging the objections to the Trustee's determinations to the customer claims in question insofar as they relate to net equity; and the Court having considered:

1. That the Trustee's Motion concerns the proper interpretation and application of net equity ("Net Equity"), as that term is defined in section 16(11) of SIPA, 15 U.S.C. § 78***lll***(11); and

2. That as delineated in the Motion papers, it is the Trustee's position that for purposes of determining customer claims, each BLMIS customer's Net Equity should be determined by crediting the amount of cash deposited by the customer into his BLMIS account, less any amounts already withdrawn by him from his BLMIS customer account (the "Net Investment Method"); and

3. That certain customer claimants ("Objecting Claimants") asserted that Net Equity should be determined on the basis of each claimant's balance as shown on their November 30, 2008 account statement provided by BLMIS ("Final Customer Statements"); and

4. The responses and oppositions filed in this Court to the Motion, as listed in Appendix 1 to the Memorandum Decision Granting Trustee's Motion For An Order (1) Upholding Trustee's Determination Denying Customer Claims For Amounts Listed On Last Customer Statement; (2) Affirming Trustee's Determination Of Net Equity; and (3) Expunging Objections to Determinations Relating To Net Equity ("Net Equity Decision"), dated March 1, 2010.

Due notice of the Motion has been given, and it does not appear that other or further notice need be given, and after a hearing and the proceedings before the Court, and after due

deliberation, having determined the Motion is in the best interests of BLMIS, its creditors and the estate, it is hereby:

ORDERED, that the relief requested in the Motion is granted as set forth in the Net Equity Decision, fully incorporated herein; and it is further

ORDERED, that the Trustee's determination of Net Equity using the Net Investment Method is upheld; and it is further

ORDERED, that each customer's Net Equity with respect to their customer claims in this SIPA liquidation proceeding shall be calculated using the Net Investment Method rather than the balances listed on the Final Customer Statements; and it is further

ORDERED, that the oppositions submitted by the Objecting Claimants, as listed in Appendix 1 of the Net Equity Decision, are overruled; and it is further

ORDERED, that the objections to the determinations of customer claims, as listed on Exhibit A to the Trustee's Motion [Dkt. No. 530], are expunged insofar as those objections are based upon using the Final Customer Statements rather than the Net Investment Method to determine Net Equity; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to the remainder of the claimants' objections in accordance with the order entered by this Court on December 23, 2008 (the "Claims Procedures Order"); and it is further

ORDERED, that the Trustee shall in due course schedule a hearing or hearings regarding the remainder of the claimants' objections in accordance with the Claims Procedures Order; and it is further

ORDERED, that with regard to the Net Equity Dispute, this Order is a final order as that term is defined in 28 U.S.C. § 158(a)(1), and there is no just reason for delay; and it is further

ORDERED, that in view of the factors contained in 28 U.S.C § 158(d)(2)(A)(i) - (iii), this Court will upon appropriate request or motion consider favorably a request to certify a direct appeal to the United States Court of Appeals for the Second Circuit; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: New York, New York
March 8, 2010

/s/Burton R. Lifland
HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 16

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (BRL) SIPA Liquidation (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	

COURT'S CERTIFICATION OF NET EQUITY ORDER OF MARCH 8, 2010 FOR IMMEDIATE APPEAL TO THE UNITED STATES COURT OF APPEALS PURSUANT TO 28 U.S.C. § 158(d)(2)

The Court having issued its Memorandum Decision Granting Trustee's Motion for an Order (1) Upholding Trustee's Determination Denying Customer Claims for Amounts Listed on Last Customer Statement; (2) Affirming Trustee's Determination of Net Equity; and (3) Expunging Objections to Determinations Relating to Net Equity (the "Net Equity Decision") on March 1, 2010; and having entered an order on March 8, 2010 implementing the Decision (the "Net Equity Order"); and because the Net Equity Decision and Order impact with finality on the interests of the parties to the above-captioned proceeding, the Court, on its own motion, joined by the annexed request of the law firms of Becker & Poliakoff, LLP, Davis Polk & Wardwell LLP, Lax & Neville, LLP, Milberg LLP, and Shearman & Sterling LLP, on behalf of the BLMIS claimants represented by the same, setting forth the bases for certification pursuant to 28 U.S.C. § 158(d)(2), which request the Court treats as a motion for certification; and the United

States Securities & Exchange Commission and the Securities Investor Protection Corporation having indicated that they have no objection to this request; and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iii) the legal and factual issues presented establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The relief sought in the request is GRANTED.
2. The Court certifies that an immediate appeal of the Net Equity Order is appropriate because this proceeding involves a matter of public importance, and an immediate appeal may materially advance the progress of this proceeding.
3. The Court therefore certifies the Net Equity Order for immediate appeal to the United States Court of Appeals pursuant to 28 U.S.C. § 158(d)(2).

Dated: New York, New York
March 8, 2010

/s/ Burton R. Lifland
United States Bankruptcy Judge

Baker Hostetler

Baker&Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111

T 212.589.4200
F 212.589.4201
www.bakerlaw.com

David J. Sheehan
direct dial: 212.589.4616
dsheehan@bakerlaw.com

March 8, 2010

VIA EMAIL AND FIRST CLASS MAIL

Honorable Burton R. Lifland
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC, 08-1789 (BRL) (Substantively Consolidated)

Dear Judge Lifland:

Baker & Hostetler LLP, as counsel to Irving H. Picard ("Trustee"), the Trustee for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff, and the law firms of Becker & Poliakoff, LLP, Davis Polk & Wardwell LLP, Lax & Neville, LLP, Milberg LLP, and Shearman & Sterling LLP, on behalf of the BLMIS claimants represented by the same, jointly write to request that this Court certify its order of March 8, 2010 (the "Net Equity Order"), granting the Trustee's motion ("Motion") for an order: (1) upholding the Trustee's determinations denying the claims in question for the securities and credit balances listed on the claimants' last BLMIS customer statement; (2) affirming the Trustee's "cash in/cash out" determinations of net equity with respect to each customer claim; and (3) expunging the objections to the Trustee's determinations to the customer claims in question insofar as they relate to net equity, for immediate appeal to the United States Court of Appeals for the Second Circuit, pursuant to 28 U.S.C. § 158(d)(2).

The Trustee's Motion sought a final order to be issued by this Court relating to the proper interpretation and application of net equity ("Net Equity"), as that term is defined in section 16(11) of SIPA, 15 U.S.C. § 78*lll*(11). As delineated in the Motion, it is the Trustee's position that for purposes of determining customer claims, each BLMIS customer's Net Equity should be determined by crediting the amount of cash deposited by the customer into his BLMIS account, less any amounts already withdrawn by him from his BLMIS customer account (the "Net Investment Method"). Certain customer claimants asserted that Net Equity should be determined on the basis of each claimant's balance as shown on their November 30, 2008 account statement provided by BLMIS ("Final Customer Statements").

After notice and a hearing, and after due consideration of all responses and oppositions filed in this Court to the Motion, as listed in Appendix 1 to the Memorandum Decision Granting Trustee's Motion For An Order (1) Upholding Trustee's Determination Denying Customer Claims For Amounts Listed On Last Customer Statement; (2) Affirming Trustee's Determination Of Net Equity; and (3) Expunging Objections to Determinations Relating To Net Equity ("Net Equity Decision"), dated March 1, 2010, this Court entered the Net Equity Order on March 8, 2010, fully incorporating therein the Net Equity Decision.

Under the terms of 28 U.S.C. § 158(d)(2), a bankruptcy court may certify an order for immediate appeal to a circuit court of appeal where the order "involves a matter of public importance," or where an appeal from the order "may materially advance the progress of the case." 28 U.S.C. § 158(d)(2)(A)(i) and (iii). Certification is mandatory where the Court determines that these circumstances exist. *Id.* § 158(d)(2)(B) ("If the bankruptcy court . . . determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists . . . then the bankruptcy court shall make the certification described in subparagraph (A)").

As the Court is well-aware, this SIPA liquidation proceeding arises out of the infamous and massive Ponzi scheme perpetrated by Bernard L. Madoff. Under any calculation, billions of dollars are at stake, and over 15,000 customer claims have been filed in this liquidation. *See* Net Equity Decision, at 5. The calculation of Net Equity vis-à-vis each customer claim dictates the distribution, if any, that each customer will receive from the fund of customer property under section 8(c)(1)(B) of SIPA, 15 U.S.C. § 78fff-2(c)(1)(B), as well as each customer's entitlement to receive an advance from SIPC against that payment from the fund of customer property. Thus, the result of the Net Equity Dispute impacts the determination and calculation of every customer claim filed in this proceeding.

As this liquidation proceeding affects a large number of customer claimants, and has generated Congressional hearings, proposed amendments to the United States Code, and sustained press coverage, we submit that this proceeding, and particularly the Net Equity Dispute, is a matter of public importance appropriate for certification to the Court of Appeals.

Moreover, as described above, whether the Trustee has properly determined all customer claims in this proceeding is a question that hinges on the Net Equity Dispute. All parties – both customer claimants and the Trustee – would benefit from the speediest resolution of this issue consistent with the law. The entry of a final, non-appealable order regarding the Net Equity Dispute will provide finality and closure to those who were victimized as a result of Madoff's fraudulent scheme. Under these circumstances, an immediate appeal from the order will materially advance the progress of the case, making certification appropriate. *See* 28 U.S.C. § 158(d)(2)(A)(iii).

The United States Securities & Exchange Commission and the Securities Investor Protection Corporation have indicated that they have no objection to this request.

Accordingly, we respectfully request that this appeal be certified to the Court of Appeals pursuant to 28 U.S.C. § 158(d)(2)(A).

Respectfully submitted,

/s/ David J. Sheehan

David J. Sheehan

/s/ Helen Chaitman
Becker & Poliakoff, LLP

/s/ Karen Wagner
Davis Polk & Wardwell LLP

/s/ Brian Neville
Lax & Neville, LLP

/s/ Matthew Gluck
Milberg LLP

/s/ Stephen Fishbein
Shearman & Sterling LLP

cc: Irving H. Picard, Esq.
Josephine Wang, Esq.
Katharine B. Gresham, Esq.

EXHIBIT 17

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Mark A. Kornfeld
Thomas L. Long
Marc E. Hirschfield
Keith R. Murphy
Jessie M. Gabriel
Melissa L. Kosack

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

Hearing Date: June 7, 2011 at 10:00 a.m.
Objection Deadline: May 26, 2011

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Debtor.	Adv. Pro. No. 08-01789 (BRL) SIPA LIQUIDATION (Substantively Consolidated)
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FAIRFIELD SENTRY LIMITED, et al., Defendants.	Adv. Pro. No. 09-1239 (BRL)

MOTION FOR ENTRY OF ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND RULES 2002(a)(3) AND 9019(a) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE APPROVING AN AGREEMENT BY AND BETWEEN THE TRUSTEE AND KENNETH KRYS AND JOANNA LAU, SOLELY IN THEIR RESPECTIVE CAPACITIES AS THE FOREIGN REPRESENTATIVES FOR AND JOINT LIQUIDATORS OF FAIRFIELD SENTRY LIMITED, FAIRFIELD SIGMA LIMITED, AND FAIRFIELD LAMBDA LIMITED

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

Irving H. Picard (the "Trustee"), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") and 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, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), and Rules 2002(a)(3) and 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving an agreement (the "Agreement")[1] by and among the Trustee and Kenneth Krys and Joanna Lau (together with their predecessors, the "Liquidators" or the "Joint Liquidators"), solely in their respective capacities as the Foreign Representatives for, and Joint Liquidators of, Fairfield Sentry Limited, a British Virgin Islands company ("Fairfield Sentry"), Fairfield Sigma Limited, a British Virgin Islands company ("Fairfield Sigma"), and Fairfield Lambda Limited, a British Virgin Islands company ("Fairfield Lambda" and, together with Fairfield Sentry and Fairfield Sigma, the "Fairfield Funds"), and, in support of the Motion, the Trustee respectfully represents as follows:

---

[1] The form of Agreement is annexed hereto as Exhibit "A."

PRELIMINARY STATEMENT

Fairfield Sentry was the largest BLMIS Feeder Fund[2] and one of the largest BLMIS customers. Fairfield Sigma and Fairfield Lambda were separate funds whose sole purpose was to invest all of their funds in Fairfield Sentry. The Fairfield Funds are currently in liquidation in the British Virgin Islands. All three funds were named as defendants, along with other entities and persons, in the present adversary proceeding. The Trustee and the Fairfield Funds Joint Liquidators have agreed to settle the Trustee's claims against the Fairfield Funds on terms set forth in the Agreement. Under the Agreement judgments will be entered against Fairfield Sentry in the amount of Three Billion Fifty Four Million Dollars ($3,054,000,000); against Fairfield Sigma in the amount of Seven Hundred Fifty Two Million Three Hundred Thousand Dollars ($752,300,000); and against Fairfield Lambda in the amount of Fifty Two Million Nine Hundred Thousand Dollars ($52,900,000). These judgments are the largest entered to date against any BLMIS Feeder Fund. In addition, Fairfield Sentry will pay Seventy Million Dollars ($70,000,000) to the BLMIS Fund of Customer Property. The Agreement also incorporates a cooperative approach to pursue legal claims against entities or persons which redeemed Fairfield Fund shares. Finally, Fairfield Sentry's customer claim is reduced by nearly One Billion Dollars ($1,000,000,000).

The Agreement represents a good faith, complete, and total compromise between the Trustee and the Liquidators as to any and all claims the Trustee asserted against the Fairfield Funds for avoidable initial and recoverable initial and subsequent transfers by BLMIS

---

[2] BLMIS Feeder Funds were investment vehicles, which invested assets with BLMIS via direct customer accounts with BLMIS's investment advisory business (the "IA Business").

within the ninety days before the Filing Date and during the period greater than ninety days, but within six years before the Filing Date, and other claims the Trustee had asserted against the Fairfield Funds. The Agreement will greatly benefit victims of the Madoff Ponzi scheme and the total and percentage allocation of the Fund of Customer Property. The Trustee respectfully requests the Court approve the Agreement.

BACKGROUND AND RELEVANT PROCEDURAL HISTORY IN THIS AND IN RELATED PROCEEDINGS

1. On December 11, 2008 (the "Filing Date"),[3] the Securities and Exchange Commission ("SEC") filed a complaint in the United States District Court for the Southern District of New York (the "District Court") against the Debtors (Case No. 08 CV 10791). The complaint alleged that the Debtors engaged in fraud through the investment advisor activities of BLMIS.

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:

(i) appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA;

---

[3] In this case, the Filing Date is the date on which the Securities and Exchange Commission commenced its suit against BLMIS, December 11, 2008, which resulted in the appointment of a receiver for the firm. *See* Section 78*lll*(7)(B) of SIPA.

(ii) appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and

(iii) removed the case to this Court pursuant to section 78eee(b)(4) of SIPA.

4. At a plea hearing (the "Plea Hearing") on March 12, 2009 in the criminal action filed against him by the United States Attorney's Office for the Southern District of New York, Madoff pled guilty to an 11-count criminal information, which counts included securities fraud, money laundering, theft and embezzlement. At the Plea Hearing, Madoff admitted that he "operated a Ponzi scheme through the investment advisory side of [BLMIS]." (Plea Hr'g Tr. at 23:14-17.) On June 29, 2009, Madoff was sentenced to a term of imprisonment of 150 years.

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

THE TRUSTEE'S CLAIMS AGAINST THE FAIRFIELD FUNDS

6. Fairfield Sentry was a customer of BLMIS and maintained four direct customer accounts with BLMIS, Accounts 1FN012, 1FN045, 1FN069, 1FN070 with BLMIS commencing in or about 1990 (the "Fairfield Sentry Accounts"). The Fairfield Sentry Accounts are listed on Attachment A to the Agreement.

7. On or about May 18, 2009, the Trustee commenced an adversary proceeding against Fairfield Sentry, Fairfield Sigma, Fairfield Lambda, and other defendants in the Bankruptcy Court under the caption *Picard v. Fairfield Sentry Ltd. et al.*, Adv. Pro. No. 09-01239 (BRL), as later amended on July 20, 2010 (the "Adversary Proceeding"). In the Adversary Proceeding, the Trustee asserts that the Fairfield Funds are liable to the BLMIS Estate under sections 544, 547, 548, 550 of the Bankruptcy Code, SIPA § 78fff-2(c)(3) and

the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 270-281) for the withdrawals made by Fairfield Sentry from BLMIS, of One Billion One Hundred Thirty Thousand Dollars ($1,130,000,000) from the Fairfield Sentry Accounts within ninety days before the Filing Date ("90 Day Withdrawals") and an additional One Billion, Nine Hundred Twenty Four Million Dollars ($1,924,000,000) from the Fairfield Sentry Accounts, during the period more than 90 days, but within six years, before the Filing Date (the "Pre 90-Day Withdrawals" and, together with the 90 Day Withdrawals, the "Withdrawals"), and Fairfield Sentry's subsequent transfer of approximately Seven Hundred Fifty Two Million Three Hundred Thousand Dollars ($752,300,000) of the Withdrawals to Fairfield Sigma and Fifty Two Million Nine Hundred Thousand Dollars ($52,900,000) of the Withdrawals to Fairfield Lambda, (collectively, the "Transfers"). Specifically, the Trustee seeks, inter alia, recovery from the Fairfield Funds of an amount totaling Three Billion Fifty Four Million Dollars ($3,054,000,000). The Trustee also has asserted claims for turnover and accounting of the Withdrawals, and for disallowance of the claims filed by the Fairfield Funds.

8. All claims of the Trustee against the Fairfield Funds under sections 544, 547, 548 or 550 of the Bankruptcy Code, applicable provisions of SIPA, including 78fff-2(c)(3), and the New York Debtor and Creditor Law §§ 270-281 shall be referred to herein as the "Avoiding Power Claims."

9. The Trustee believes that all of the initial Transfers described in the Adversary Proceeding are avoidable and the subsequent transfers are recoverable. The Liquidators, on behalf of each of the Fairfield Funds, have disputed any liability to the BLMIS Estate in connection with the Adversary Proceeding and the Avoiding Power Claims

alleged therein.

FAIRFIELD FUNDS' CLAIMS AGAINST THE BLMIS ESTATE

10. Prior to July 2, 2009, the bar date for filing claims in the BLMIS bankruptcy case, and prior to the appointment of the Liquidators, Fairfield Sentry filed three customer claims in the SIPA Proceeding (assigned claim numbers 008037, 007898 and 11251, later amended by claim numbers 011234 and 011429 (such claims, collectively, the "Sentry SIPA Claim") alleging aggregate losses from the Fairfield Sentry Accounts of Six Billion Two Hundred Eighty Four Million Three Hundred Twenty One Thousand Five Hundred Eighty One Dollars ($6,284,321,581) (the "Last Statement Amount"). The Sentry SIPA Claim, including the relevant BLMIS Account Numbers 1FN012, 1FN045, 1FN069, 1FN070, is included as Attachment B to the Agreement.

11. The Trustee has disputed that Fairfield Sentry is entitled to allowance of a customer claim in the amount reflected on its November 30, 2008 BLMIS account statement. On March 1, 2010 this Court issued an opinion applying the Trustee's "net equity" calculation of customer claims as the difference between amounts deposited into BLMIS and amounts withdrawn (the "Net Equity Method"). Appeal of the March 1, 2010 order is currently pending before the Untied States Court of Appeals for the Second Circuit. According to the Trustee, the amount of the Sentry SIPA Claim based on the Net Equity Method is One Billion One Hundred Ninety Two Million Five Hundred Thirty Six Thousand Three Hundred Forty Two Dollars ($1,192,536,342) (the "Sentry SIPA Net Equity Claim").

12. Prior to July 2, 2009, the bar date for filing claims in the BLMIS bankruptcy case, and prior to the appointment of the Liquidators, Fairfield Sigma filed four customer

claims in the SIPA Proceeding (assigned claim numbers 011250, 011744, 011240 and 011249) claiming aggregate losses of Seven Hundred Seventy Three Million Six Hundred Thirty Five Thousand One Hundred Eighty Eight Dollars ($773,635,188) (such claims, collectively, the "Sigma SIPA Claim"). On or about December 8, 2009, the Trustee issued a notice of denial of the Sigma SIPA Claim on the asserted basis that Sigma is not a customer of BLMIS within the meaning of 11 U.S.C. § 78*lll*(2) (the "Sigma Denial Notice"). On or about January 7, 2010, the Liquidators filed a timely objection to the Sigma Denial Notice in the SIPA Proceeding, and that objection remains pending. The Sigma SIPA Claim, the Sigma Denial Notice and the Liquidators' objection to the Sigma Denial Notice are included as Attachment C to this Agreement.

13. Prior to July 2, 2009, the bar date for filing claims in the BLMIS bankruptcy case, and prior to the appointment of the Liquidators, Fairfield Lambda filed four customer claims in the SIPA Proceeding (assigned claim numbers 014661, 014761, 014762 and 014795) claiming aggregate losses of Thirty Six Million Six Hundred Seventy Six Thousand Two Hundred and Five Dollars ($36,676,205) (such claims, collectively, the "Lambda SIPA Claim" and, together with the Sentry SIPA Claim and the Sigma SIPA Claim, the "Fairfield SIPA Claims"). On or about December 8, 2009, the Trustee issued a notice of denial of the Lambda SIPA Claim on the asserted basis that Lambda is not a customer of BLMIS within the meaning of 11 U.S.C. § 78*lll*(2) (the "Lambda Denial Notice"). On or about January 7, 2010, the Liquidators filed a timely objection to the Lambda Denial Notice in the SIPA Proceeding, and that objection remains pending. The Lambda SIPA Claim, the Lambda Denial Notice and the Liquidators' objection to the Lambda Denial Notice are included as Attachment D to this Agreement.

14. Pursuant to an Order entered on April 23, 2009, the Eastern Caribbean Supreme Court in the High Court of Justice of the Virgin Islands (the "BVI Court") appointed Christopher Stride to be the Liquidator for Fairfield Lambda, which appointment commenced the winding up of Fairfield Lambda pursuant to the British Virgin Islands Insolvency Act 2003 (the "Lambda Proceeding").

15. Pursuant to an Order entered on July 21, 2009, the BVI Court (i) permitted the commencement of the winding up of Fairfield Sentry in accordance with the British Virgin Islands Insolvency Act 2003 (the "Sentry Proceeding"), and (ii) appointed Kenneth Krys and Christopher Stride as the Joint Liquidators for Fairfield Sentry.

16. Pursuant to an Order entered on July 21, 2009, the BVI Court (i) permitted the commencement of the winding up of Fairfield Sigma in accordance with the British Virgin Islands Insolvency Act 2003 (the "Sigma Proceeding" and, together with the Lambda Proceeding and the Sentry Proceeding, the "BVI Proceedings"), and (ii) appointed Kenneth Krys and Christopher Stride to be the Joint Liquidators for Fairfield Sigma.

17. On July 22, 2009, in proceedings commenced by the Liquidators pursuant to Chapter 15 of the Bankruptcy Code (the "Chapter 15 Proceedings"), the Bankruptcy Court entered an order recognizing the BVI Proceedings as foreign main proceedings and granting related relief to the Liquidators.

18. On or about September 6, 2010, the BVI Court issued notices acknowledging Christopher Stride's resignation and Joanna Lau's appointment as Joint Liquidator with Kenneth Krys of each of the Fairfield Funds.

SETTLEMENT DISCUSSIONS AND TRUSTEE'S INVESTIGATION

19. During 2010 and 2011, the Liquidators, on behalf of each of the Fairfield Funds, engaged in good faith discussions with the Trustee aimed at resolving the Trustee's claims. While the Liquidators, on behalf of each of the Fairfield Funds, informed the Trustee they disputed they had any liability to the Trustee, the Liquidators, on behalf of each of the Fairfield Funds, nevertheless engaged in good faith negotiations with the Trustee that yielded the settlement set forth in the Agreement.

20. The Trustee has conducted a comprehensive investigation of the Fairfield Funds' direct and indirect investments through BLMIS, the Fairfield Sentry BLMIS Accounts, and the dealings between the Fairfield Funds and other BLMIS Feeder Funds, and BLMIS customers. The Liquidators and the Fairfield Funds have cooperated with the Trustee and facilitated the investigation by providing information the Trustee has requested. This investigation includes, but is not limited to: the review and analysis of both the Fairfield Funds' BLMIS-related transactional histories as reflected in the BLMIS account statements, correspondence and other records and documents available to the Trustee; interviews with third-party witnesses; meetings with the Liquidators and their counsel, on behalf of each of the Fairfield Funds; and a substantial review of third-party records and documents.

21. After a review of the relevant records and a thorough and deliberate consideration of the uncertainty and risks inherent in all litigation, the Trustee, in the exercise of his business judgment, has determined that it is appropriate to reach a business resolution in this matter rather than continue the litigation.

OVERVIEW OF THE AGREEMENT

22. The principal terms and conditions of the Agreement are generally as follows (as stated above, the form of Agreement is attached as Exhibit "A" and should be reviewed for a complete account of its terms):[4]

- The Trustee and the Liquidators agree they shall jointly request the Bankruptcy Court to: (i) enter a judgment against Fairfield Sentry in the amount of Three Billion Fifty Four Million Dollars ($3,054,000,000), representing the settled amount of the Trustee's Avoiding Power Claims against Fairfield Sentry (the "Sentry Judgment"), (ii) enter a judgment against Fairfield Sigma in the amount of Seven Hundred Fifty Two Million Three Hundred Thousand Dollars ($752,300,000), representing the settled amount of the Trustee's Avoiding Power Claims against Fairfield Sigma (the "Sigma Judgment") and (iii) enter a judgment against Fairfield Lambda in the amount of Fifty Two Million Nine Hundred Thousand Dollars ($52,900,000), representing the settled amount of the Trustee's Avoiding Power Claims against Fairfield Lambda (the "Lambda Judgment" and, together with the Sentry Judgment and the Sigma Judgment, the "Judgments").

- The Liquidators shall pay to the Trustee for the benefit of the Fund of Customer Property a total of Seventy Million Dollars ($70,000,000) (the "Settlement Payment"). On the Closing, the Liquidators shall pay to the Trustee the sum of Twenty Four Million Dollars ($24,000,000) by wire transfer. The Liquidators shall pay to the Trustee the balance of the Settlement Payment totaling Forty Six Million Dollars ($46,000,000) three (3) Business Days following the first to occur of: (a) the first date when Fairfield Sentry's account at Citco Bank Nederland N.V.-Dublin branch (the "Citco Account") is no longer subject to an order of attachment; (b) the sale by the Liquidators of any Allowed Claim as defined in the Agreement; or (c) the aggregate receipt by the Liquidators of funds belonging to Fairfield Sentry equal to Forty Six Million Dollars ($46,000,000) from any source, other than from recoveries shared between the Parties under the Agreement, after the Closing.

---

[4] Terms not otherwise defined in this section shall have the meaning ascribed in the Agreement. In the event of any inconsistency between the summary of terms provided in this section and the terms of the Agreement, the Agreement shall prevail.

- The Fairfield Sentry Customer Claim will upon the receipt of the Settlement Payment be allowed in the final amount of Two Hundred Thirty Million Dollars ($230,000,000), which represents a mutually agreed reduction of the claim in the amount of Nine Hundred Sixty Two Million Five Hundred Thirty Six Thousand Four Hundred Thirty Two Dollars ($962,536,432).

- The Trustee shall prosecute all claims and causes of action he has asserted in the Adversary Proceeding against the Fairfield Funds' former investment managers, investment advisors, managing entities, directors, partners, and officers, including but not limited to Fairfield Greenwich Group, Fairfield Greenwich (Bermuda) Limited, Fairfield Greenwich Advisors, LLC, Fairfield Risk Services Limited, Fairfield Greenwich Limited, Fairfield International Managers, Inc., Walter M. Noel, Jr., Jeffrey Tucker, and all other individual persons named as defendants in the Adversary Proceeding (the "Adversary Proceeding Claims"). The Liquidators shall unconditionally and irrevocably assign to the Trustee any and all claims asserted by, or on behalf of, the Fairfield Funds against Fairfield Greenwich Group, Fairfield Greenwich (Bermuda) Limited, Fairfield Greenwich Advisors, LLC, Fairfield Greenwich Limited, Fairfield Investment Mangers, Inc., Walter M. Noel, Jr., Jeffrey Tucker, Andres Piedrahita, Amit Vijayvergiya, Brain Francouer, Lourdes Barrenche, Cornelius Boele, Philip Toub, Richard Landsberger, Charles Murphy, Andrew Smith, Daniel Lipton, Mark McKeefry, Harold Greisman, Santiago Reyes, Jacqueline Harrary, Robert Blum, Corina Noel-Piedrahita and Maria Teresa Pulido Mendoza in the action entitled *Fairfield Sentry Limited v. Fairfield Greenwich Group, et al.*, currently pending in the Bankruptcy Court, Adv. Pro. No. 10-03800 (BRL) (the "Liquidators' New York Action"), including but not limited to the Fairfield Funds' claims for Breach of Fiduciary Duty, Breach of Contract, Unjust Enrichment, Constructive Trust, Rescission of Investment Manager Contract based on Mutual Mistake, and Accounting (the "Assigned Claims" and, together with the Adversary Proceeding Claims, the "Management Claims").

- The Trustee will release, acquit, and forever discharge each of the Fairfield Funds, the Liquidators, individually and in their capacities as Liquidators, and all of the Liquidators' agents, representatives, attorneys, employees and professionals on the specific terms set forth therein. The release becomes effective upon Trustee's actual receipt of the Settlement Payment at the Closing as defined in the Agreement without any further action by any of the Parties.

- The Trustee and the Liquidators agree to provide reasonable access to the other's documents, data, and other information relating to, or beneficial to the pursuit of, the Sharing Claims. The Trustee and the

Liquidators each agree to provide reasonable cooperation and assistance to the other Party in connection with the prosecution of the Sharing Claims, provide the other with a reasonable opportunity to consider the terms for resolving any Sharing Claims and confer in good faith regarding such terms.

- The Trustee and the Liquidators shall share recoveries under the Agreement for certain groups of additional claims already filed or to be filed, as set forth and defined by the Agreement as "Sharing Claims."

- The Releasees will release, acquit, and forever discharge the Trustee and all his agents on the specific terms set forth in the Agreement. The release becomes effective upon the Trustee's actual receipt of the Settlement Payment at the Closing as defined in the Agreement without any further action by any of the Parties.

- All agreements between Fairfield Sentry and BLMIS (other than the Settlement Agreement) will be terminated as of the date of the Settlement Payment.

- If the Bankruptcy Court and/or the BVI Court have not entered the order approving the Agreement by Three Hundred Sixty (360) days after the date of the Agreement, then, at the option of either the Trustee or the Liquidators and the Fairfield Funds and upon written notice to the other parties to the Agreement, the Agreement will terminate and be null and void.

The Agreement is subject to the approval of both this Court (on behalf of the BLMIS estate) and the BVI Court (on behalf of the Fairfield Funds' estates administered in the BVI Proceedings). A hearing before the BVI Court to consider approval of the Agreement will be scheduled soon. Any stakeholder of the Fairfield Funds seeking information regarding those proceedings should contact Charlotte Caulfield of the British Virgin Islands office of KRyS Global (phone: 1-284-494-9644; e-mail: charlotte.caulfield@krys-global.com) or William Hare of the British Virgin Islands office of Forbes Hare (phone: 1-284-494-1890; e-mail: william.hare@forbeshare.com), the Liquidators' general counsel.

23. The agreed upon settlement, described below and set forth in the Agreement, resolves any and all claims the Trustee asserted in the Adversary Proceeding against the

Fairfield Funds, including, but not limited to, claims the Trustee had against the Fairfield Funds for direct and indirect transfers by BLMIS within the ninety days before the Filing Date and during the period more than ninety days, but within six years, before the Filing Date, and other claims the Trustee had against the Fairfield Funds. The Agreement provides for judgments for one hundred percent (100%) of the Trustee's Avoiding Power Claims against the Fairfield Funds. The Agreement will return Seventy Million Dollars ($70,000,000) from Fairfield Sentry's cash to the Fund of Customer Property for ultimate distribution to defrauded customers in accordance with SIPA, reduces Fairfield Sentry's claim before the Trustee by nearly $1 Billion, and provides a cooperative mechanism for the future recoveries to the Fund of Customer Property from proceedings, including but not limited to claims against Fairfield Sentry management entities and individuals, to be jointly pursued by the Trustee and the Liquidators.

RELIEF REQUESTED

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

LEGAL BASIS

25. 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." Courts have held that 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 interests of a debtor's estate. *In re Ionosphere Clubs, Inc.*, 156 BR 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994) (citing *Protective Comm. for Index. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424

(1968)).

26. 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.'" *Liu v. Silverman (In re Liu)*, 1998 U.S. App. LEXIS 31698, at *3 (2d Cir. Dec. 18, 1998) (quoting *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)); *see also Masonic Hall & Asylum Fund v. Official Comm. Of Unsecured Creditors (In re 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; *In re Purified Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993) ("[T]he court need not conduct a 'mini-trial' to determine the merits of the underlying litigation"); *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991).

27. In deciding whether a particular compromise falls within the "range of reasonableness," courts consider 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 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 Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992), *cert. denied*, 506 U.S. 1088 (1993)).

28. 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 Group, Inc.*, 134

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

29. The Trustee believes that the settlement is fair and equitable and the terms of the Agreement fall well above the lowest point in the range of reasonableness. Accordingly, the Agreement should be approved by this Court. The Agreement memorializes a settlement that resolves all issues regarding the Trustee's claims asserted in the Adversary Proceeding against the Fairfield Funds without the need for protracted and costly litigation, the outcome of which is uncertain in light of the circumstances in this matter. As part of the Agreement, the Trustee on the one hand, and the Liquidators and the Fairfield Funds, on the other hand, have reached a good faith, complete, and total compromise as to any and all claims the Trustee asserted in a lawsuit for Three Billion Fifty Four Million Dollars ($3,054,000,000) against the Fairfield Funds for avoidable initial and recoverable initial and subsequent transfers by BLMIS during the ninety day, two year, and six year periods prior to the Filing Date, and other claims the Trustee had against the Fairfield Funds. (Affidavit of the Trustee in Support of the Motion (the "Picard Affidavit") ¶¶ 4-5. A true and accurate copy of the Picard Affidavit is attached hereto as Exhibit "C.")

30. While the Trustee believes that he would ultimately prevail in an action against the Fairfield Funds, he has determined, in an exercise of his business judgment, that litigation of the issues in a litigation against the Fairfield Funds would undoubtedly be extremely complex, create significant delay, and would involve both litigation risk and difficulties associated with collection. *Id.* ¶ 4.

31. The Liquidators, on behalf of each of the Fairfield Funds, have described a number of defenses and have contested the allegations that the Trustee asserted in a lawsuit against the Fairfield Funds, including, but not limited to, the Fairfield Sentry, Fairfield Sigma, and Fairfield Lambda. While the Trustee is confident of his factual and legal position, there is risk involved in complex litigation. The certain nature of the settlement also allows the Trustee to avoid the complications and defenses necessarily associated with attempting to collect a judgment from a variety of domestic and foreign entities.

32. As outlined above, the Agreement greatly furthers the interests of the customers of BLMIS by, among other things: (i) obtaining judgments in the amount of Three Billion Fifty Four Million Dollars ($3,054,000,000) against Fairfield Sentry, Seven Hundred Fifty Two Million Three Hundred Thousand Dollars ($752,300,000) against Fairfield Sigma, and Fifty Two Million Nine Hundred Thousand Dollars ($52,900,000) against Fairfield Lambda; (ii) adding Seventy Million Dollars to the Fund of Customer Property in the very near term, (iii) reducing the Fairfield Sentry Net Equity Claim from One Billion One Hundred Ninety Two Million Five Hundred Thirty Six Thousand Three Hundred Forty Two Dollars ($1,192,536,432) to an allowed SIPA Claim of Two Hundred Thirty Million Dollars ($230,000,000); and (iv) increasing the Trustee's ability to recover substantially greater sums for the Fund of Customer Property through cooperative efforts and marshalling of resources of the Trustee and the Liquidators. *Id.* ¶ 6.

33. Given the complexities involved in proceeding with litigation, including, but not limited to, multiple bankruptcy proceedings, collectability issues associated therewith, and the time value of money, the Trustee has determined that the proposed settlement with the Liquidators and the Fairfield Funds represents a fair compromise of the Avoiding Power

Claims. The Agreement allows the Trustee to avoid protracted litigation and resolves all of the defenses the Liquidators, on behalf of each of the Fairfield Funds, raised during good-faith negotiations with the Trustee. The ability to avoid the time and expense associated with continuing to litigate this matter, combined with the fact that the Agreement will result in a very substantial recovery, makes the settlement embodied by the Agreement extremely beneficial to BLMIS customers.

CONCLUSION

34. In sum, the Trustee submits that the Agreement should be approved because it: (a) will avoid lengthy, burdensome, and expensive litigation; (b) represents a fair and reasonable compromise of the Avoiding Power Claims that greatly benefits the estate and the customers of BLMIS; and (c) is well within the "range of reasonableness" and confers a substantial benefit on the estate. For these reasons, the Trustee respectfully requests that the Court enter an Order approving the Agreement.

NOTICE

35. 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; (v) Forbes Hare, Palm Grove House, P.O. Box 4649, Tortola VG 1110, British Virgin Islands, Attn: William Hare; (v) KRyS Global, Clarence Thomas Building, Pasea Estate, Road Town, Tortola VG 1110, British Virgin Islands, Attn: Kenneth M. Krys and Joanna Lau; and (vi) Brown Rudnick LLP, Seven Times Square, New York, New York 10036, Attn: David J. Molton. The Trustee has also provide notice to all interested parties by email or regular U.S. mail.

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

Dated: New York, New York
May 9, 2011

Respectfully submitted,

/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
Email: dsheehan@bakerlaw.com
Mark A. Kornfeld
Email: mkornfeld@bakerlaw.com
Thomas L. Long
Email: tlong@bakerlaw.com
Marc E. Hirschfield
Email: mhirschfield@bakerlaw.com
Keith R. Murphy
Email: kmurphy@bakerlaw.com
Jessie M. Gabriel
Email: jgabriel@bakerlaw.com
Melissa L. Kosack
Email: mkosack@bakerlaw.com

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

EXHIBIT 18

BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Mark A. Kornfeld
Email: mkornfeld@bakerlaw.com
Thomas L. Long
Email: tlong@bakerlaw.com
Marc E. Hirschfield
Email: mhirschfield@bakerlaw.com
Keith R. Murphy
Email: kmurphy@bakerlaw.com
Jessie M. Gabriel
Email: jgabriel@bakerlaw.com
Melissa L. Kosack
Email: mkosack@bakerlaw.com
Amy E. Vanderwal
Email: avanderwal@bakerlaw.com

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

Hearing Date and Time: June 21, 2011 at 10:00 a.m.
Objection Deadline: June 14, 2011

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	No. 08-01789 (BRL) SIPA Liquidation (Substantively Consolidated)
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC	Adv. Pro. No. 09-01239

Plaintiff,

v.

FAIRFIELD SENTRY LTD. *et al,*

Defendants.

TRUSTEE'S MOTION FOR ENTRY OF AN ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND RULES 2002(a)(3) AND 9019(a) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE APPROVING AGREEMENTS BY AND BETWEEN THE TRUSTEE, GREENWICH SENTRY, L.P. AND GREENWICH SENTRY PARTNERS, L.P.

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

Irving H. Picard, Esq. (the "Trustee"), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA"), and 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, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and Rules 2002(a)(3) and 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving of (i) an agreement by and between the Trustee and Greenwich Sentry, L.P., debtor and debtor-in-possesion ("Greenwich Sentry"), (the "Greenwich Sentry Agreement")[1] and (ii) an agreement by and between the Trustee and Greenwich Sentry Partners, L.P., debtor and debtor-in-possession ("GSP" and together with Greenwich Sentry, the "Greenwich Debtors") (the "GSP

[1] The form of Greenwich Sentry Agreement is annexed hereto as Exhibit "A."

Agreement" and together with the Greenwich Sentry Agreement, the "Agreements")[2] and in support thereof, the Trustee respectfully represents as follows:

BACKGROUND AND RELEVANT PROCEDURAL HISTORY IN THIS AND IN RELATED PROCEEDINGS

1. On December 11, 2008 (the "Filing Date"), the Securities and Exchange Commission ("SEC") filed a complaint in the United States District Court for the Southern District of New York (the "District Court") against the Debtors (Case No. 08 CV 10791). The complaint alleged that the Debtors engaged in fraud through investment advisory 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 section 78eee(b)(4) of SIPA.

[2] The form of GSP Agreement is annexed hereto as Exhibit "B."

4. At a plea hearing (the "Plea Hearing") on March 12, 2009 in the criminal action filed against him by the United States Attorney's Office for the Southern District of New York, Madoff pled guilty to an 11-count criminal information, which counts included securities fraud, money laundering, theft and embezzlement. At the Plea Hearing, Madoff admitted that he "operated a Ponzi scheme through the investment advisory side of [BLMIS]." (Plea Hr'g Tr. at 23:14-17.) On June 29, 2009, Madoff was sentenced to a term of imprisonment of 150 years.

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

THE TRUSTEE'S CLAIMS AGAINST THE GREENWICH DEBTORS

6. Greenwich Sentry was a customer of BLMIS and maintained Customer Account 1G0092 with BLMIS (the "Greenwich Sentry Account") commencing in or about November, 1992. Greenwich Sentry withdrew $23 million from the Greenwich Sentry Account within ninety days before the Filing Date ("90 Day Withdrawals") and an additional $183,038,654 from the Greenwich Sentry Account during the period more than 90 days, but less than six years, before the Filing Date (the "Pre 90-Day Withdrawals" and, together with the 90 Day Withdrawals, (the "Greenwich Sentry Withdrawals").

7. GSP was a customer of BLMIS and maintained Customer Account 1G0371 with BLMIS (the "GSP Account") commencing in or about May 1, 2006. GSP withdrew $5,985,000 from the GSP Account during the period more than 90 days, but less than six years, before the Filing Date (the "GSP Withdrawals" and together with the Greenwich Sentry Withdrawals, the "Withdrawals").

8. The Trustee commenced this adversary proceeding and asserted, *inter alia*, that the Greenwich Debtors are liable to the BLMIS Estate under 11 U.S.C. §§ 544, 547, 548, 550, SIPA, and the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 270-281) for the Withdrawals made by them from BLMIS ("the Avoiding Power Claims"); specifically, the Trustee sought, *inter alia*, recovery from Greenwich Sentry in an aggregate amount totaling $206,038,654 and recovery from GSP in an aggregate amount totaling $5,985,000. The Trustee has also asserted claims for turnover and accounting of the Withdrawals, and for disallowance of the Greenwich Sentry and GSP SIPA Claims. The Greenwich Debtors have disputed any liability to the BLMIS Estate in connection with the Adversary Proceeding and the Avoiding Power Claims alleged therein.

GREENWICH DEBTORS' CLAIMS AGAINST THE BLMIS ESTATE

9. Between the opening of the account and the Filing Date, on an overall basis, Greenwich Sentry deposited into the Greenwich Sentry Account a total of $140,439,146 in excess of the amount of withdrawals that Greenwich Sentry made from the account. Greenwich Sentry filed a customer claim in the SIPA Proceeding (assigned claim number 7897) alleging aggregate losses from the Greenwich Sentry Accounts of $314,053,923 (the "Greenwich Sentry SIPA Claim"). The Greenwich Sentry SIPA Claim, as filed, asserts that Greenwich Sentry is entitled to the allowance and distribution of a customer claim in the SIPA proceeding in an amount reflected on the Greenwich Sentry BLMIS account statement for the period ending November 30, 2008.

10. The GSP Account was on opened on May 1, 2006, through the transfer of $5,762,560 from the Greenwich Sentry Account into the GSP Account. At the time of the May 1 transfer, although Greenwich Sentry's account statement showed a positive balance,

in reality, the Greenwich Sentry Account had a negative cash balance. On June 30, 2006, $1,207,344, was transferred back to the Greenwich Sentry Account from the GSP Account. As a result of these transfers and later cash deposits and withdrawals, between the opening of the account and the Filing Date, on an overall basis, GSP deposited into the GSP Account a total of $2,540,000 in excess of the amount of withdrawals that GSP made from the account. GSP filed a customer claim in the SIPA Proceeding (assigned claim number 7896) alleging aggregate losses from the GSP Account of $10,426,182 (the "GSP SIPA Claim"). The GSP SIPA Claim, as filed, asserts that GSP is entitled to the allowance and distribution of a customer claim in the SIPA proceeding in an amount reflected on the GSP BLMIS account statement for the period ending November 30, 2008.

11. The Trustee has disputed that the Greenwich Debtors are entitled to allowance and distribution of customer claims in the amount reflected on their November 30, 2008 BLMIS account statements. On March 1, 2010 this Court issued an opinion applying the Trustee's "net equity" calculation of customer claims as the difference between investment into BLMIS and amounts withdrawn (the "Net Equity Method"). On March 8, 2010 this Court entered an order implementing the decision and certifying it for immediate appeal for the United States Court of Appeals for the Second Circuit.

12. On November 19, 2010, the Greenwich Debtors filed a voluntary petition for relief under the Bankruptcy Code in the Bankruptcy Court and have continued in the possession of their property as debtors and debtors-in-possession.

13. The Trustee and the Greenwich Debtors have agreed to settle their disputes regarding the matters described above in accordance with the terms of the Agreements.

SETTLEMENT DISCUSSIONS AND OVERVIEW OF TRUSTEE'S INVESTIGATION

14. The Greenwich Debtors engaged in good faith discussions with the Trustee aimed at resolving the Trustee's claims. While the Greenwich Debtors informed the Trustee they disputed they had any liability to the Trustee, the Greenwich Debtors nevertheless engaged in good faith negotiations with the Trustee that yielded the settlement set forth in the Agreement.

15. The Trustee has conducted a comprehensive investigation of the Greenwich Debtors' investments through BLMIS, the Greenwich Debtors' BLMIS Accounts, and the dealings between the Greenwich Debtors and other BLMIS Feeder Funds, and BLMIS customers. The Greenwich Debtors have cooperated with the Trustee and facilitated the investigation by providing information the Trustee has requested. This investigation includes, but is not limited to: the review and analysis of both the Greenwich Debtors' BLMIS-related transactional histories as reflected in the BLMIS account statements, correspondence and other records and documents available to the Trustee; interviews with third-party witnesses; meetings with the Greenwich Debtors and some limited partners thereof and their counsel; and a substantial review of third-party records and documents.

16. After a review of the relevant records and a thorough and deliberate consideration of the uncertainty and risks inherent in all litigation, the Trustee, in the exercise of his business judgment, has determined that it is appropriate to reach a business resolution in this matter rather than continue the litigation.

OVERVIEW OF THE AGREEMENT

17. The material terms of the Agreements include:[3]

a. Judgment will be entered against Greenwich Sentry in the amount of $206,038,654 and against GSP in the amount of $5,985,000 (the "Judgments"), which will be memorialized by judgments that confirm the avoidance of the transfers from BLMIS to the Greenwich Debtors. The Judgments will be treated as set forth under plans of reorganization that the Greenwich Debtors intend to file in the near future (the "Plans"). The Trustee will hold allowed general unsecured claims in the amount of the Judgments (the "Trustee's Allowed Claims"). Except for the interests in the property to be conveyed, assigned to, or shared with the Trustee under the Agreements, the Trustee will not have any right to be paid from the Retained Assets in the Greenwich Debtors' estates.

b. The Greenwich Debtors will assign all of their claims against their general partners, former investment managers, investment advisors (excluding the Service Providers), managing entities, directors, alleged partners, partners, employees and officers, their relative and affiliates ("Claims Against Management") to the Trustee, and under the Pla ns all persons other than the Trustee shall be barred from prosecuting Claims Against Management. If the Trustee recovers a gross amount of $200 million from the Claims Against Management, the Trustee will then credit towards a portion of the Trustee's Allowed Claim against Greenwich Sentry ten percent (10%) of gross consideration received in excess of $200 million and six tenths of one percent (.6%) toward the Trustee's Allowed Claim against GSP.

c. Greenwich Sentry will retain the first $50 million in recoveries from Service Provider Claims, and will pay to the Trustee twenty percent (20%) of Net Recoveries from Service Provider Claims in excess of $50 million up to a cap, after which Greenwich Sentry will retain one hundred percent (100%) of the Net Recoveries from Service Provider Claims.

d. Greenwich Sentry Partners will retain the first $2.8 million in recoveries from Service Provider Claims, and will pay to the Trustee twenty percent (20%) of Net Recoveries from Service Provider

[3] Only a summary of the Agreements is provided herein. The form of the Agreements attached as Exhibit "A" and Exhibit "B" hereto should be reviewed for a complete account of their terms. Any capitalized term not otherwise defined herein shall have the meaning ascribed in the Agreements.

Claims in excess of $2.8 million up to a cap, after which Greenwich Sentry Partners will retain one hundred percent (100%) of the Net Recoveries from Service Provider Claims.

e. The Trustee has agreed to pay to the Greenwich Debtors twenty percent (20%) of amounts recovered by the Trustee from subsequent transferees of property initially transferred from BLMIS to the Greenwich Debtors ("Subsequent Transferee Claims") up to a cap, after which the Greenwich Debtors will be paid 100% of the amounts recovered from Subsequent Transferee Claims.

f. The Greenwich Debtors will assign to the Trustee any state common law or statutory claims against persons who redeemed funds from the Greenwich Debtors ("Redeemer Claims"), and shall retain all of the estate's rights and claims under Chapter 5 of the Bankruptcy Code against such redeemers who are not members of Management.

g. Any recoveries on account of Redeemer Claims, Subsequent Transferee Claims or Service Provider Claims received by the Trustee will be used to reduce the Judgments.

h. Greenwich Sentry will be granted an allowed customer claim against the BLMIS estate in the amount of $35 million. GSP will be granted an allowed customer claim against the BLMIS estate in the amount of $2,011,304. The Greenwich Debtors will be entitled to the benefits of any SIPC advance with respect to such claims.

h. The Plans shall provide that certain members of Management holding the claims and interests in the Greenwich Debtors identified in Section 10 of the Agreement shall not receive or retain anything of value on account of those claims and interests, except for rights of set-off or counterclaim on Claims Against Management.

i. The transactions contemplated by the Agreements will take effect on the effective date of the Plans. The filing of a motion for approval of the Plans will be filed concurrently with the filing of the motion for approval of the Agreements.

RELIEF REQUESTED

18. By this Motion, the Trustee respectfully requests that the Court enter an order substantially in the form of the proposed Order annexed hereto as Exhibit "C" approving the Agreement.

LEGAL BASIS

I. The Agreement is Fair, Equitable and in the Best Interests Of the Debtors, their Estates and Customers of BLMIS

19. 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." Courts have held that 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 interests of a debtor's estate. *In re Ionosphere Clubs, Inc.*, 156 BR 414, 426 (S.D.N.Y. 1993), *accord*, 17 F.3d 600 (2d Cir. 1994) (citing *Protective Comm. for Index. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)).

20. 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.'" *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir.), *cert. denied sub nom. Cosoff v. Roman*, 464 U.S. 822 (1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.), *cert. denied sub nom. Benson v. Newman*, 409 U.S. 1039 (1972)); *accord Nellie v. Shugrue*, 165 BR 115, 121-22 (S.D.N.Y. 1994); *In re Ionosphere Clubs*, 156 BR at 426; *In re Purified Down Prods. Corp.*, 150 BR 519, 522 (S.D.N.Y. 1993) ("[T]he court need not conduct a 'mini-trial' to determine the merits of the underlying litigation"); *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991).

21. In deciding whether a particular compromise falls within the "range of reasonableness," courts consider 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.

Nellis v. Shugrue, 165 B.R. at 122 (citing *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992), *cert. dismissed*, 506 U.S. 1088 (1993)).

22. 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 Purofied Down Prods.*, 150 B.R. at 522; *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. at 505. The competency and experience of counsel supporting the settlement may also be considered. *Nellis v. Shugrue*, 165 B.R. at 122. Finally, the court should be mindful of the principle that "the law favors compromise." *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. at 505 (quoting *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)).

23. The Trustee believes that the terms of the Agreements fall well above the lowest point in the range of reasonableness and, accordingly, the Agreements should be approved by this Court. The Agreements resolve all claims among the parties and avoids the necessity of what could otherwise be lengthy and contentious litigation. (Affidavit of the Trustee in Support of the Motion (the "Picard Affidavit") ¶¶ 4,5. A true and accurate copy of the Picard Affidavit is attached hereto as Exhibit "C.")

24. Further, the Agreements allow the Trustee to pursue actions against entities, including subsequent transferees, that have more resources that the debtor-in-possession, which increases the likelihood of a significant return of funds to the BLMIS estate. Subject

to the terms of the Agreements, the Trustee will be able to pursue these actions as he deems appropriate to recover funds for the benefit of customers of BLMIS. Picard Affidavit, ¶ 6.

25. Finally, pursuant to the terms of the Agreements, Greenwich Sentry has agreed to reduce its claim against the estate by almost ninety percent, from the approximately $314 million claim initially asserted by Greenwich Sentry to $35 million. Similarly, GSP has agreed to reduce its claim from approximately $10.4 million to $2.011 Million. These reductions not only decrease the ultimate amount that could potentially be distributed to the Greenwich Debtors but also reduces the funds that the Trustee must reserve in upcoming distributions to BLMIS customers. Picard Affidavit, ¶ 6.

26. In sum, the Trustee submits that the Agreements should be approved because they allow the Trustee to (i) maximize recovery from insolvent transferees, and (ii) avoid participating in potentially burdensome and expensive litigation regarding his Avoiding Power Claims. Accordingly, since the Agreements are well within the "range of reasonableness" and confer a substantial benefit on the estate, the Trustee respectfully requests that the Court enter an Order approving the Agreements.

NOTICE

27. 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; (v) Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110, Attn: Paul R. DeFilippo. The Trustee has also provided notice to all interested parties by email or regular U.S. Mail.

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

Dated: New York, New York
May 18, 2011

Respectfully submitted,

/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
Email: dsheehan@bakerlaw.com
Mark A. Kornfeld
Email: mkornfeld@bakerlaw.com
Thomas L. Long
Email: tlong@bakerlaw.com
Marc E. Hirschfield
Email: mhirschfield@bakerlaw.com
Keith R. Murphy
Email: kmurphy@bakerlaw.com
Jessie M. Gabriel
Email: jgabriel@bakerlaw.com
Melissa L. Kosack
Email: mkosack@bakerlaw.com
Amy E. Vanderwal
Email: avanderwal@bakerlaw.com

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

EXHIBIT 19

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT SECURITIES, LLC,

Defendant.

No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

----------X

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

Plaintiff,

v.

FAIRFIELD SENTRY LTD., et al.,

Defendants.

Adv. Pro. No. 09-01239

----------X

ARGUING ON THE MOTION:

BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
By: David Sheehan
Mark A. Kornfeld
Thomas L. Long
Marc E. Hirschfield
Keith R. Murphy
Jessie M. Gabriel
Melissa L. Kosack

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

BROWN RUDNICK LLP
Seven Times Square
New York, New York 10036
Telephone: (212) 209-4800
By: David J. Molton
May Orenstein

Daniel J. Saval
Kerry L. Quinn

Attorneys for the Foreign Representatives

MILBERG LLP
One Pennsylvania Plaza
New York, New York 10119
Telephone: (212) 594-5300
By: Robert A. Wallner
Kent A. Bronson
Kristi Stahnke McGregor

-and-

SEEGER WEISS LLP
One William Street
New York, New York 10004
Telephone: (212) 584-0700
By: Stephen A. Weiss
Christopher M. Van de Kieft
Parvin Aminolroaya

Attorneys for Morning Mist Holdings Limited and Miguel Lomeli

Before: Hon. Burton R. Lifland
United States Bankruptcy Judge

BENCH MEMORANDUM AND ORDER GRANTING TRUSTEE'S MOTION FOR ENTRY OF ORDER APPROVING AGREEMENT

Before the Court is the Motion of the Trustee of the SIPA liquidation of BLMIS seeking approval of a Settlement of the Trustee's instant adversary proceeding (the "Action") as against Fairfield Sentry, Sigma and Lambda (the "Fairfield Funds") pursuant to, *inter alia*, Bankruptcy Rule 9019.[1] While the Fairfield Funds are currently the subject of separate proceedings before this Court under chapter 15 of the Code, the court administering the Fairfield Funds' foreign main insolvency proceedings in the British Virgin Islands (the "BVI Court"), and not this Court,

[1] A proposed settlement of the Trustee's adversary proceeding as against a second group of defendants is scheduled to be heard before this Court, in the context of this adversary proceeding as well as the separate chapter 11 case of Greenwich Sentry, L.P., on June 21, 2011. *See In re Greenwich Sentry, L.P.*, Case No. 10-16229 (BRL), Dkt. No. 118.

has been called upon to evaluate the Settlement from the perspective of the Fairfield Funds' foreign estates (the "Fairfield Estate"), and is scheduled to do so tomorrow, June 8, 2011. *See* Notice of Hearing, Case No. 10-13164 (BRL), Dkt. No. 411.

Thus, the issue presented by this Motion is solely whether the proposed Settlement is fair and equitable, above "the lowest point in the range of reasonableness," and in the best interests of *the BLMIS estate*. *Liu v. Silverman (in re Liu)*, 166 F.3d 1200, at *1 (2d Cir. 1998) (citing *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)). In determining reasonableness, courts consider a number of factors, including (i) the probability of success in the litigation; (ii) the difficulties associated with collection; (iii) the complexity of the litigation and attendant expense, inconvenience, and delay; and (iv) the paramount interests of creditors. *In re Refco, Inc.*, No. 06-CIV-5596, 2006 WL 3409088, at *7 (S.D.N.Y. Nov. 16, 2006), *aff'd*, 505 F.3d 109 (2d Cir. 2007); *Air Line Pilots Assoc., Int'l v. Am. Nat'l Bank & Trust Co. (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414, 428 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994); *see also In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992).

The Court finds that the Settlement represents a complete, good faith compromise of the Trustee's claims, is well above the lowest rung in a range of reasonableness, and in fact offers significant value to the BLMIS estate for distribution to victims of the Madoff Ponzi scheme. The Trustee has submitted, in his good faith business judgment, that continued multi-jurisdictional litigation would be costly and complex, collection of any potential award from the domestic and foreign entities involved would be difficult, and the outcome of the litigation is uncertain. *See* Affidavit of Irving H. Picard, Dkt. No. 69, ¶ 4. The proposed Settlement, on the other hand, ensures judgments against the largest Madoff feeder funds in favor of the BLMIS

estate totaling over $4 billion,[2] and a cash infusion of $70 million into the customer property fund. The customer claims asserted by the Fairfield Funds have been reduced by south of $1 billion. Moreover, the Trustee's and Foreign Representatives' proposed joint litigation strategies provide for the assignment of claims, and allocation of recoveries, to the BLMIS estate, enhancing the Trustee's ability to achieve substantially greater sums from third parties for ultimate distribution to creditors and customers of the BLMIS estate.

The only objection before the Court was raised not by creditors of the BLMIS estate, but by certain plaintiffs (the "Objectors") in a self-styled derivative action on behalf of Fairfield Sentry, which has been stayed before this Court since recognition of the Fairfield foreign proceedings on July 22, 2010. *See Morning Mist Holdings Ltd. v. Fairfield Greenwich Group, et al.*, 10-03765 (BRL). In a transparent, backdoor attempt to usurp causes of action belonging to the Fairfield Estate, the Objectors present hypothetical, self-serving arguments that the Foreign Representatives and/or Trustee would be less effective than themselves in prosecuting such claims. They therefore argue that the Settlement is prejudicial to the Fairfield Estate. They additionally request that enforcement of the Settlement be stayed pending resolution of their appeal of this Court's order recognizing the Fairfield proceedings and triggering the stay of their action.

As the Objectors' arguments and speculative pecuniary interests relate only to the Fairfield Estate, they lack standing to be heard with respect to the Motion before this Court. As the Second Circuit found, "[b]ankruptcy courts are primarily courts of equity, but they are not empowered to address *any* equitable claim tangentially related to the bankruptcy proceeding." *In*

[2] According to the proposed Settlement, with respect to the Trustee's judgment against Sentry, the Trustee agrees to forbear exercising any right to collect $1.13 billion, leaving a judgment against Sentry not subject to forbearance in the amount of $1.924 billion. The Trustee has an admitted claim in Fairfield Sentry's estate provable in the Fairfield proceedings for the full amount of the judgment. Mot., Dkt. No. 69, Ex. A (Form of Agreement), ¶ 1.

re Refco Inc., 505 F.3d at 118. The Objectors do not purport to be customers or creditors of the BLMIS estate, but rather hold a *de minimis* stake in Fairfield Sentry. They have not raised their objection before the BVI Court, which will evaluate the Settlement as it relates to the Objectors' interests. While the Objectors contend that the Settlement damages their derivative action on behalf of Fairfield Sentry, they are "not directly and adversely affected pecuniarily . . . because they do not hold a direct interest in the Debtor, [BLMIS]," and therefore lack standing to object to the Trustee's Motion. *In re Refco Inc.*, 2006 WL 3409088, at *2, *6 (holding that "interest holders in and, perhaps, creditors of the non-debtor parties to the settlement" lacked standing to object to the settlement under Bankruptcy Rule 9019).

Assuming, *arguendo*, that the Objectors have standing, they have not established any basis for denying the Settlement or staying its enforcement. The objection on its merits does not challenge the Settlement's value to the BLMIS estate or, for that matter, any ground relevant to its approval. A hypothetical harm to the Objectors' right, which itself is legally uncertain, to pursue derivative actions on behalf of Fairfield Sentry, is insufficient to find the Settlement unreasonable as to the BLMIS estate. The Objectors' request to stay the enforcement of the Settlement pending resolution of their independent appeal is also unwarranted and inappropriate. While Bankruptcy Rule 8005 allows a party to seek a stay of the enforcement of a judgment pending appeal of that judgment, the Objectors have made a novel request, without legal support, that "the proposed stay . . . remain in effect pending determination of the appeal of the Recognition Order – *not* the appeal (if any) from any order approving the Settlement." Obj., Dkt. No. 76, p. 5. The Objectors have not established a basis under Bankruptcy Rule 8005 for a stay of the Settlement pending an appeal of an independent decision, entered over 10 months ago, in a separate case, involving separate parties. Indeed, the Trustee and the BLMIS estate

would be unfairly prejudiced, and the goals of the Settlement thwarted, if this Court were to indefinitely stay the enforcement of an agreement promising substantial value to the BLMIS estate and customers and victims of the Madoff Ponzi scheme. The merits of the Settlement as to the Fairfield Estate are left to the expertise of the BVI Court.

Accordingly, as approval of the Settlement is in the best interests of the BLMIS estate and the Objectors have not established otherwise, the Trustee's Motion is hereby GRANTED, and the objection is overruled.

The Trustee is directed to submit an order consistent with this record.

IT IS SO ORDERED.

Dated: New York, New York
June 7, 2011

/s/ Burton R. Lifland
United States Bankruptcy Judge

EXHIBIT 20

BROWN RUDNICK LLP
Seven Times Square
New York, New York 10036
(212) 209-4800
David J. Molton
May Orenstein
Daniel J. Saval
Kerry L. Quinn

Attorneys for the Foreign Representatives

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	**Chapter 15 Case**
Fairfield Sentry Limited, et al.,	)	
	)	**Case No. 10-13164 (BRL)**
Debtors in Foreign Proceedings.	)	
	)	**Jointly Administered**
	)	

NOTICE OF ENTRY OF ORDERS BY THE COMMERCIAL DIVISION OF THE HIGH COURT OF JUSTICE, BRITISH VIRGIN ISLANDS, APPROVING THE AGREEMENT BY AND AMONG KENNETH KRYS AND JOANNA LAU, SOLELY IN THEIR RESPECTIVE CAPACITIES AS THE FOREIGN REPRESENTATIVES FOR AND JOINT LIQUIDATORS OF FAIRFIELD SENTRY LIMITED, FAIRFIELD SIGMA LIMITED, AND FAIRFIELD LAMBDA LIMITED, AND IRVING PICARD, AS TRUSTEE FOR THE SUBSTANTIVELY CONSOLIDATED LIQUIDATIONS OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC AND BERNARD L. MADOFF

Kenneth Krys and Joanna Lau (together with their predecessors, the "Foreign Representatives" or "Liquidators"), in their capacities as the duly appointed foreign representatives for, and joint liquidators of, Fairfield Sentry Limited (in liquidation), Fairfield Sigma Limited (in liquidation), and Fairfield Lambda Limited (in liquidation) (collectively, the "Debtors"), debtors in these jointly administered Chapter 15 cases, through their United States attorneys Brown Rudnick LLP, hereby provide notice of the following:

1. On or about May 9, 2011, the Foreign Representatives and the Debtors, on the one hand, and Irving H. Picard, as trustee for the substantively consolidated liquidations (the "SIPA Proceeding") of Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff, on the other hand, entered into an agreement (the "Settlement Agreement") resolving their respective claims against one another according to the terms set forth in the Settlement Agreement.

2. The Settlement Agreement was subject to the approval of the Commercial Division of the High Court of Justice, British Virgin Islands (the "BVI Court"), on behalf of the Debtors' estates, and this Court, on behalf of the BLMIS estate in the SIPA Proceeding.[1] On May 13, 2011, the Foreign Representatives filed applications before the BVI Court, on behalf of each of the Debtors, seeking approval of the Settlement Agreement (the "Applications").

3. On June 8, 2011, the BVI Court considered the Applications.

4. On June 24, 2011, the BVI Court entered an order approving the Settlement Agreement for each of the Debtors (the "BVI Approval Orders"). True and accurate copies of the BVI Approval Orders are attached hereto as Exhibit A.

[1] On June 10, 2011, this Court entered an order approving the Settlement Agreement with respect to the BLMIS estate. See *Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9019(a) of the Federal Rules of Bankruptcy Procedure Approving an Agreement by and Among the Trustee and Kenneth Krys and Joanna Lau, Solely in their Respective Capacities as the Foreign Representatives for and Joint Liquidators of Fairfield Sentry Limited, Fairfield Sigma Limited, and Fairfield Lambda Limited* [Adv. Pro. No. 09-01239 (BRL), Dkt. 95].

EXHIBIT A

FOR REGISTRATION ORIGINAL 25-6

REGISTRAR HIGH COURT COMMERCIAL DIVISION 24/6/11 VIRGIN ISLANDS

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE (CIVIL)
VIRGIN ISLANDS

CLAIM NO. BVIHC (COM) 2009/136

IN THE MATTER OF FAIRFIELD SENTRY LIMITED (IN LIQUIDATION)

KENNETH KRYS AND JOANNA LAU
(As Liquidators of Fairfield Sentry Limited)

Applicants

ORDER

BEFORE: The Honourable Justice Edward Bannister Q.C.

DATED: 8 June 2011

ENTERED: 24th June 2011

UPON reading the Applicants' application dated 13 May 2011 for permission, on behalf of Fairfield Sentry Limited ("**Sentry**"), to enter into a settlement agreement (the "**Agreement**") with Irving H. Picard, the Trustee, pursuant to the United States Securities Investor Protection Act, of the estate of Bernard L. Madoff Investment Securities LLC;

AND UPON reading and considering the letters of objection dated 2 June 2011 and 7 June 2011 sent to the Court on behalf of Banco Bilbao Vizcaya Argentaria S.A;

AND UPON reading and considering the letter of objection dated 7 June 2011 sent to the Court by Walkers on behalf of Safra National Bank of New York and Banque Safra-Luxembourg;

AND UPON hearing William Hare of Forbes Hare, counsel for the Applicants;

AND UPON no other legal practitioner attending on behalf of any other shareholder or person who wished to be heard by the Court or make any representations in relation to Applicants' request for permission to enter into the Agreement;

IT IS ORDERED THAT:

1. The Applicants be permitted, on behalf of Sentry, to enter the Agreement in the form appended to this Order;

2. The Applicants be authorised to take any and all actions to comply with and carry out the terms of the Agreement; and

3. Costs be in the liquidation of Sentry.

BY THE COURT

Penc

REGISTRAR

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE (CIVIL)
VIRGIN ISLANDS

CLAIM NO. BVIHC (COM) 2009/136

IN THE MATTER OF FAIRFIELD SENTRY LIMITED (IN LIQUIDATION)

KENNETH KRYS AND JOANNA LAU
(As Liquidators of Fairfield Sentry Limited)
Applicants

ORDER

Forbes Hare

P.O. Box 4649
Road Town, Tortola
British Virgin Islands
Tel: (284) 494 1890
Fax: (284) 494 1316

Legal Practitioners for the Applicants

REGISTRAR HIGH COURT COMMERCIAL DIVISION VIRGIN ISLANDS

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE (CIVIL)
VIRGIN ISLANDS

CLAIM NO. BVIHC (COM) 2009/139

FEE STAMPS ON ORIGINAL $ 25 00

IN THE MATTER OF FAIRFIELD SIGMA LIMITED (IN LIQUIDATION)

KENNETH KRYS AND JOANNA LAU
(As Liquidators of Fairfield Sigma Limited)

Applicants

ORDER

BEFORE: The Honourable Justice Edward Bannister Q.C.

DATED: 8 June 2011

ENTERED: 24th June 2011

UPON reading the Applicants' application dated 13 May 2011 for permission, on behalf of Fairfield Sigma Limited ("**Sigma**"), to enter into a settlement agreement (the "**Agreement**") with Irving H. Picard, the Trustee, pursuant to the United States Securities Investor Protection Act, of the estate of Bernard L. Madoff Investment Securities LLC;

AND UPON reading and considering the letters of objection dated 2 June 2011 and 7 June 2011 sent to the Court on behalf of Banco Bilbao Vizcaya Argentaria S.A;

AND UPON reading and considering the letter of objection dated 7 June 2011 sent to the Court by Walkers on behalf of Safra National Bank of New York and Banque Safra-Luxembourg;

AND UPON hearing William Hare of Forbes Hare, counsel for the Applicants;

AND UPON no other legal practitioner attending on behalf of any other shareholder or person who wished to be heard by the Court or make any representations in relation to Applicants' request for permission to enter into the Agreement;

IT IS ORDERED THAT:

1. The Applicants be permitted, on behalf of Sigma, to enter the Agreement in the form appended to this Order;

2. The Applicants be authorised to take any and all actions to comply with and carry out the terms of the Agreement; and

3. Costs be in the liquidation of Sigma.

BY THE COURT

REGISTRAR

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE (CIVIL)
VIRGIN ISLANDS

CLAIM NO. BVIHC (COM) 2009/139

IN THE MATTER OF FAIRFIELD SIGMA LIMITED (IN LIQUIDATION)

KENNETH KRYS AND JOANNA LAU
(As Liquidators of Fairfield Sigma Limited)
Applicants

ORDER

Forbes Hare

P.O. Box 4649
Road Town, Tortola
British Virgin Islands
Tel: (284) 494 1890
Fax: (284) 494 1316

Legal Practitioners for the Applicants

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE (CIVIL)
VIRGIN ISLANDS

CLAIM NO. BVIHC (COM) 2009/74

IN THE MATTER OF FAIRFIELD LAMBDA LIMITED (IN LIQUIDATION)

KENNETH KRYS AND JOANNA LAU
(As Liquidators of Fairfield Lambda Limited)

Applicants

ORDER

BEFORE: The Honourable Justice Edward Bannister Q.C.

DATED: 8 June 2011

ENTERED: 24th June 2011

UPON reading the Applicants' application dated 13 May 2011 for permission, on behalf of Fairfield Lambda Limited ("**Lambda**"), to enter into a settlement agreement (the "**Agreement**") with Irving H. Picard, the Trustee, pursuant to the United States Securities Investor Protection Act, of the estate of Bernard L. Madoff Investment Securities LLC;

AND UPON reading and considering the letters of objection dated 2 June 2011 and 7 June 2011 sent to the Court on behalf of Banco Bilbao Vizcaya Argentaria S.A;

AND UPON reading and considering the letter of objection dated 7 June 2011 sent to the Court by Walkers on behalf of Safra National Bank of New York and Banque Safra-Luxembourg;

AND UPON hearing William Hare of Forbes Hare, counsel for the Applicants;

AND UPON no other legal practitioner attending on behalf of any other shareholder or person who wished to be heard by the Court or make any representations in relation to Applicants' request for permission to enter into the Agreement;

IT IS ORDERED THAT:

1. The Applicants be permitted, on behalf of Lambda, to enter the Agreement in the form appended to this Order;

2. The Applicants be authorised to take any and all actions to comply with and carry out the terms of the Agreement; and

3. Costs be in the liquidation of Lambda.

BY THE COURT

REGISTRAR

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE (CIVIL)
VIRGIN ISLANDS

CLAIM NO. BVIHC (COM) 2009/74

IN THE MATTER OF FAIRFIELD LAMBDA LIMITED (IN LIQUIDATION)

KENNETH KRYS AND JOANNA LAU
(As Liquidators of Fairfield Lambda Limited)
Applicants

ORDER

Forbes Hare

P.O. Box 4649
Road Town, Tortola
British Virgin Islands
Tel: (284) 494 1890
Fax: (284) 494 1316

Legal Practitioners for the Applicants

Dated: June 27, 2011
New York, New York

BROWN RUDNICK LLP

By: _/s/ David J. Molton____
David J. Molton
May Orenstein
Daniel J. Saval
Kerry L. Quinn

Seven Times Square
New York, New York 10036
(212) 209-4800

Attorneys for the Foreign Representatives

EXHIBIT 21

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: GREENWICH SENTRY, L.P. and GREENWICH SENTRY PARTNERS, L.P., Debtors and Debtors-in-Possession.	Case No: 10-16229 (BRL) Chapter 11 (Jointly Administered)[1]
SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Case No: 08-01789 (BRL) SIPA Liquidation (Substantively Consolidated)
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC Plaintiff, v. FAIRFIELD SENTRY LTD. *et al*, Defendants.	Adv. Pro. No.: 09-01239

ORDER APPROVING SETTLEMENTS BETWEEN THE DEBTORS AND THE BLMIS TRUSTEE

Upon (I) the motion (the "Motion") [Docket No. 118] of Greenwich Sentry, L.P. ("GS") and Greenwich Sentry Partners, L.P. ("GSP"), debtors and debtors-in-possession (each a "Debtor" and sometimes collectively the "Debtors"), filed in the Debtors' above captioned

[1] Pursuant to the Order Granting the Debtors' Motion for an Order Directing Joint Administration of Related Chapter 11 Cases Pursuant to Fed. R. Bankr. P. 1015 [Docket No. 14], the Chapter 11 proceeding of Greenwich Sentry Partners, L.P., Case No.: 10-16230 (BRL), is to be jointly administered under the above-captioned Chapter 11 proceeding of Greenwich Sentry, L.P., Case No.: 10-16229 (BRL).

Chapter 11 proceeding, seeking entry of an order approving agreements between Irving H. Picard (the "BLMIS Trustee"), in his capacity as trustee for the liquidation under the Securities Investor Protection Act of 1970, as amended ("SIPA"), of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the substantively consolidated Chapter 7 case pending before the United States Bankruptcy Court for the Southern District of New York of Bernard L. Madoff ("Madoff"), on the one hand, and each of the Debtors on the other hand, each in substantially the form annexed to the Motion as Exhibits A (the "GS Settlement Agreement") and B (the "GSP Settlement Agreement", together with the GS Settlement Agreement, each a "Settlement Agreement" and collectively, the "Settlement Agreements"), and (II) the Trustee's Motion For Entry of an Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002(a)(3) and 9019(a) of the Federal Rules of Bankruptcy Procedure Approving Agreements By and Between the Trustee, Greenwich Sentry, L.P. And Greenwich Sentry Partners, L.P. (the "BLMIS Trustee's Motion", and together with the Motion, collectively, the "Motions") [Docket No. 71], filed by the BLMIS Trustee in the above-captioned adversary proceeding; and in consideration of all objections filed in response to the Motions (collectively, the "Objections"); and in consideration of the revised proposed order submitted in connection with the Motions and the amended agreements between the BLMIS Trustee, on the one hand, and each of the Debtors on the other hand, each in substantially the form annexed hereto as Exhibits A (the "Amended GS Settlement Agreement") and B (the "Amended GSP Settlement Agreement", together with the Amended GS Settlement Agreement, each an "Amended Settlement Agreement" and collectively, the "Amended Settlement Agreements")[2]; and it appearing that due and sufficient notice of the Motions has been given to all parties in interest as required by Rules 2002 and 9019

[2] Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the respective Amended Settlement Agreements.

of the Federal Rules of Bankruptcy Procedure; and due consideration having been given to any responses to the Motions; and the Objections are withdrawn pursuant to this Order; and it further appearing that the legal and factual bases set forth in the Motions established just cause for the relief requested; and it further appearing that this Court has jurisdiction to consider the Motions and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and after due deliberation; and sufficient cause appearing therefor;

IT IS, on this 7th day of July, 2011,

ORDERED that:

1. The Motions are granted to the extent set forth herein.

2. The Objections are hereby withdrawn in consideration of the Settlement Agreements having been amended to provide for the following:

a. The Plan and the Confirmation Order shall include an injunction barring the applicable Debtor's present and former limited partners and holders of any limited partner interest in the applicable Debtor from prosecuting any claims that (a) the applicable Debtor owns or holds whether or not such claims have been asserted by, or on behalf of, the applicable Debtor against Management and (b) are to be assigned by the applicable Debtor to the Trustee pursuant to the Settlement Agreement. Such injunction shall not bar the prosecution of any direct claims against Management that are or could be asserted by past or present limited partners in the applicable Debtor (collectively, "Direct LP Claims") in their respective individual capacities, whether such claims are brought individually by such limited partners or as part of a class action against Management.

b. The foregoing is without prejudice to the right of the BLMIS Trustee to seek an injunction against prosecution by limited partners of Direct LP Claims against Management in connection with any future settlement of claims against Management and without prejudice to the right of limited partners to oppose any such injunction that may be sought by the BLMIS Trustee.

3. The Amended Settlement Agreements are hereby approved and authorized.

4. The BLMIS Trustee and the Debtors shall each comply with and carry out the terms of each of the Amended Settlement Agreements.

5. In the event of any inconsistency between the language of this Order, on the one hand, and the language of either of the Amended Settlement Agreements on the other hand, the language of the Amended Settlement Agreements shall govern.

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

7. No further or additional notice of the Motions or this Order is required.

Dated: July 7, 2011
New York, New York

/s/ Burton R. Lifland
THE HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 22

Wollmuth Maher & Deutsch LLP
500 Fifth Avenue
New York, NY 10110
Tel.: (212) 382-3300
Fax: (212) 382-0050
Frederick R. Kessler
(fkessler@wmd-law.com)
Paul R. DeFilippo
(pdefilippo@wmd-law.com)
Michael P. Burke
(mburke@wmd-law.com)

Attorneys for Defendants
Chester Global Strategy Fund Limited,
Chester Global Strategy Fund, LP,
Irongate Global Strategy Fund Limited,
Fairfield Greenwich Fund (Luxembourg),
Fairfield Investment Fund Limited,
Fairfield Investors (Euro) Ltd., and
Stable Fund LP

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Debtor. --- IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FAIRFIELD SENTRY LIMITED, et al., Defendants.	Adv. Pro. No. 08-01789 (BRL) SIPA LIQUIDATION (Substantively Consolidated) Adv. Pro. No. 09-1239 (BRL) **ORAL ARGUMENT REQUESTED**

THE NON-FEEDER-FUND DEFENDANTS' MOTION TO WITHDRAW THE REFERENCE PURSUANT TO 28 U.S.C. § 157(d)

TO THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK:

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law in Support of the Non-Feeder-Fund Defendants' Motion to Withdraw the Reference Pursuant to 28 U.S.C. § 157(d), dated April 2, 2012, the Declaration of Frederick R. Kessler and exhibit thereto, and all the papers filed and proceedings had herein, Defendants Chester Global Strategy Fund Limited, Chester Global Strategy Fund, LP, Irongate Global Strategy Fund Limited, Fairfield Greenwich Fund (Luxembourg), Fairfield Investment Fund Limited, Fairfield Investors (Euro) Ltd., and Stable Fund LP (collectively, the "Non-Feeder-Fund Defendants"), respectfully hereby move the United States District Court for the Southern District of New York for an order, pursuant to 28 U.S.C. § 157(d), withdrawing the reference to the United States Bankruptcy Court for the Southern District of New York of the above-captioned adversary proceeding.

The Non-Feeder-Fund Defendants have made no prior request to this Court or to any other court for the relief requested by this Motion.

The Non-Feeder-Fund Defendants respectfully request oral argument on this motion.

Dated: April 2, 2012
New York, New York

Respectfully Submitted,

WOLLMUTH MAHER & DEUTSCH LLP

/s/ Frederick R. Kessler

Frederick R. Kessler
(fkessler@wmd-law.com)
Paul R. DeFilippo
(pdefilippo@wmd-law.com
Michael P. Burke
(mburke@wmd-law.com)

500 Fifth Avenue
New York, New York 10110
Tel.: (212) 382-3300
Fax: (212) 382-0050

Attorneys for Defendants
Chester Global Strategy Fund Limited,
Chester Global Strategy Fund, LP,
Irongate Global Strategy Fund Limited,
Fairfield Greenwich Fund (Luxembourg),
Fairfield Investment Fund Limited,
Fairfield Investors (Euro) Ltd., and
Stable Fund LP

EXHIBIT 23

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Debtor.	Adv. Pro. No. 08-01789 (BRL) SIPA LIQUIDATION (Substantively Consolidated)
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FAIRFIELD SENTRY LIMITED, et al., Defendants.	Adv. Pro. No. 09-1239 (BRL)

NOTICE OF MOTION FOR WITHDRAWAL OF THE BANKRUPTCY REFERENCE

PLEASE TAKE NOTICE that pursuant to Federal Rule of Bankruptcy Procedure 5011, and Rule 5011-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York, upon the accompanying Memorandum of Law in support of Defendants' Motion for Withdrawal of the Bankruptcy Reference, the Declaration of Mark G. Cunha, Esq., and the exhibits attached thereto; Defendants Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Limited, Fairfield Greenwich Advisors LLC, Fairfield Heathcliff Capital LLC, and Fairfield International Managers, Inc., Chester Management Cayman Limited, Fairfield Greenwich (UK) Limited, Walter Noel, Jeffrey Tucker, Andrés Piedrahita, Corina Noel Piedrahita, Mark McKeefry, Daniel Lipton, Amit Vijayvergiya, Gordon McKenzie, Richard Landsberger, Philip Toub, Charles Murphy, Robert Blum, Andrew Smith, Harold Greisman, Gregory Bowes, Lourdes Barreneche, Cornelis Boele, Santiago Reyes, and Jacqueline Harary respectfully move the United States District Court for the Southern District of New York for the

entry of an order, pursuant to 28 U.S.C. § 157(d), withdrawing the reference to the United States Bankruptcy Court for the Southern District of New York of the above-captioned adversary proceeding.

Defendants have made no prior request to this Court or to any other court for the relief requested by this Motion.

WHEREFORE, Defendants respectfully request that the Court enter an order granting the relief requested herein and grant such other and further relief as the Court deems just and appropriate.

Dated: New York, NY
April 2, 2012

Respectfully submitted,

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Telephone: 212-455-2000
Mark G. Cunha
Email: mcunha@stblaw.com
Peter E. Kazanoff
Email pkazanoff@stblaw.com

Counsel to Defendants Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Limited, Fairfield Greenwich Advisors LLC, Fairfield Heathcliff Capital LLC, Fairfield International Managers, Inc., Fairfield Greenwich (UK) Limited, Mark McKeefry Daniel Lipton, Gordon McKenzie, Richard Landsberger, Philip Toub, Charles Murphy, Andrew Smith, Harold Greisman, Lourdes Barreneche, Santiago Reyes, Jacqueline Harary, Chester Management Cayman Limited, and Corina Noel Piedrahita

Dated: New York, NY
April 2, 2012

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Telephone: 212-909-6000
Mark P. Goodman
Email: mpgoodman@debevoise.com
Counsel to Defendant Amit Vijayvergiya

Dated: New York, NY
April 2, 2012

O'Shea Partners LLP
521 Fifth Avenue, 25th Floor
New York, NY 10175
Telephone: 212-682-4426
Sean F. O'Shea
Email: soshea@osheapartners.com
Michael E. Petrella
Email: mpetrella@osheapartners.com
Counsel to Defendant Cornelis Boele

Dated: New York, NY
April 2, 2012

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036-2787
Telephone: 212-819-8200
Glenn M. Kurtz
Email: gkurtz@whitecase.com
Andrew W. Hammond
Email: ahammond@whitecase.com
Counsel to Defendant Walter Noel

Dated: New York, NY
April 2, 2012

Covington & Burling LLP
1201 Pennsylvania Ave, NW
Washington, DC 20004-2401
Telephone: 202-662-6000
Bruce A. Baird
Email: bbaird@cov.com
Counsel to Defendant Gregory Bowes

Dated: New York, NY
April 2, 2012

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Telephone: 212-909-6000
Mark P. Goodman
Email: mpgoodman@debevoise.com
Counsel to Defendant Amit Vijayvergiya

Dated: New York, NY
April 2, 2012

O'Shea Partners LLP
521 Fifth Avenue, 25th Floor
New York, NY 10175
Telephone: 212-682-4426
Sean F. O'Shea
Email: soshea@osheapartners.com
Michael E. Petrella
Email: mpetrella@osheapartners.com
Counsel to Defendant Cornelis Boele

Dated: New York, NY
April 2, 2012

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036-2787
Telephone: 212-819-8200
Glenn M. Kurtz
Email: gkurtz@whitecase.com
Andrew W. Hammond
Email: ahammond@whitecase.com
Counsel to Defendant Walter Noel

Dated: New York, NY
April 2, 2012

Covington & Burling LLP
1201 Pennsylvania Ave, NW
Washington, DC 20004-2401
Telephone: 202-662-6000
Bruce A. Baird
Email: bbaird@cov.com
Counsel to Defendant Gregory Bowes

New York, NY
April 2, 2012

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Telephone: 212-909-6000
Mark P. Goodman
Email: mpgoodman@debevoise.com
Counsel to Defendant Amit Vijayvergiya

Dated: New York, NY
April 2, 2012

O'Shea Partners LLP
521 Fifth Avenue, 25th Floor
New York, NY 10175
Telephone: 212-682-4426
Sean F. O'Shea
Email: soshea@osheapartners.com
Michael E. Petrella
Email: mpetrella@osheapartners.com
Counsel to Defendant Cornelis Boele

Dated: New York, NY
April 2, 2012

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036-2787
Telephone: 212-819-8200
Glenn M. Kurtz
Email: gkurtz@whitecase.com
Andrew W. Hammond
Email: ahammond@whitecase.com
Counsel to Defendant Walter Noel

Dated: New York, NY
April 2, 2012

Covington & Burling LLP
1201 Pennsylvania Ave, NW
Washington, DC 20004-2401
Telephone: 202-662-6000
Bruce A. Baird
Email: bbaird@cov.com
Counsel to Defendant Gregory Bowes

Dated: New York, NY
April 2, 2012

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Telephone: 212-909-6000
Mark P. Goodman
Email: mpgoodman@debevoise.com
Counsel to Defendant Amit Vijayvergiya

Dated: New York, NY
April 2, 2012

O'Shea Partners LLP
521 Fifth Avenue, 25th Floor
New York, NY 10175
Telephone: 212-682-4426
Sean F. O'Shea
Email: soshea@osheapartners.com
Michael E. Petrella
Email: mpetrella@osheapartners.com
Counsel to Defendant Cornelis Boele

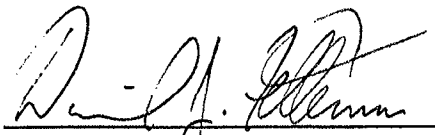
Dated: New York, NY
April 2, 2012

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036-2787
Telephone: 212-819-8200
Glenn M. Kurtz
Email: gkurtz@whitecase.com
Andrew W. Hammond
Email: ahammond@whitecase.com
Counsel to Defendant Walter Noel

Dated: New York, NY
April 2, 2012

Covington & Burling LLP
1201 Pennsylvania Ave, NW
Washington, DC 20004-2401
Telephone: 202-662-6000
Bruce A. Baird
Email: bbaird@cov.com
Counsel to Defendant Gregory Bowes

Dated: New York, NY
April 2, 2012



Kasowitz, Benson, Torres & Friedman LLP
1301 Avenue of the Americas
New York, NY 10019
Telephone: 212-506-1700
Daniel J. Fetterman
Email: dfetterman@kasowitz.com
Counsel to Defendant Jeffrey Tucker

Dated: New York, NY
April 2, 2012

Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C.
565 Fifth Avenue
New York, NY 10017
Telephone: 212-856-9600
Edward M. Spiro
Email: espiro@maglaw.com
Counsel to Defendant Robert Blum

Dated: New York, NY
April 2, 2012

Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
Telephone: 212-698-3500
Andrew J. Levander
Email: andrew.levander@dechert.com
David S. Hoffner
Email: david.hoffner@dechert.com
Counsel to Defendant Andres Piedrahita

Dated: New York, NY
April 2, 2012

Kasowitz, Benson, Torres & Friedman LLP
1301 Avenue of the Americas
New York, NY 10019
Telephone: 212-506-1700
Daniel J. Fetterman
Email: dfetterman@kasowitz.com
Counsel to Defendant Jeffrey Tucker

Dated: New York, NY
April 2, 2012

[signature]

Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C.
565 Fifth Avenue
New York, NY 10017
Telephone: 212-856-9600
Edward M. Spiro
Email: espiro@maglaw.com
Counsel to Defendant Robert Blum

Dated: New York, NY
April 2, 2012

Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
Telephone: 212-698-3500
Andrew J. Levander
Email: andrew.levander@dechert.com
David S. Hoffner
Email: david.hoffner@dechert.com
Counsel to Defendant Andres Piedrahita

Dated: New York, NY
April 2, 2012

Kasowitz, Benson, Torres & Friedman LLP
1301 Avenue of the Americas
New York, NY 10019
Telephone: 212-506-1700
Daniel J. Fetterman
Email: dfetterman@kasowitz.com
Counsel to Defendant Jeffrey Tucker

Dated: New York, NY
April 2, 2012

Morvillo, Abramowitz, Grand, Iason, Anello
& Bohrer, P.C.
565 Fifth Avenue
New York, NY 10017
Telephone: 212-856-9600
Edward M. Spiro
Email: espiro@maglaw.com
Counsel to Defendant Robert Blum

Dated: New York, NY
April 2, 2012

Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
Telephone: 212-698-3500
Andrew J. Levander
Email: andrew.levander@dechert.com
David S. Hoffner
Email: david.hoffner@dechert.com
Counsel to Defendant Andres Piedrahita

EXHIBIT 24

BOIES, SCHILLER & FLEXNER LLP

575 LEXINGTON AVENUE • 7TH FLOOR • NEW YORK, NY 10022 • PH. 212 446 2300 • FAX 212 446 2350

November 14, 2012

VIA FACSIMILE

Judge Victor Marrero
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: ***Anwar, et al. v. Fairfield Greenwich Limited, et al.***
Master File No. 09-CV-00118 (VM) (THK)

Dear Judge Marrero:

We are writing to schedule a date for the hearing on Plaintiffs' motion for preliminary approval of the settlement with the Fairfield Greenwich Defendants. After consultation with Chambers and all parties, we can report that –

- All parties are available at 11 a.m. on both Tuesday, November 27 and Thursday, November 29.

- While all other parties are available at 11:30 a.m. on Friday, November 30, the PwC Defendants requested that we convey the following to the Court:

> PwC Netherlands and PwC Canada request that the Court consider holding its preliminary approval hearing on a different date, such as the following Friday, December 7th. The parties have arranged to conduct the deposition of a senior partner of PwC Netherlands on November 30th, who, at the plaintiffs' insistence and at PwC Netherlands' expense, is traveling to New York from Amsterdam expressly for that purpose. Lead counsel for both PwC Netherlands and PwC Canada would appreciate being able to attend both this significant deposition and the Court's hearing on the motion to preliminarily approve the settlement.

We very much appreciate the Court's consideration of the preliminary approval motion at the earliest convenient time.

Request GRANTED. The preliminary approval conference herein is rescheduled to 11-30-12 at 9:00 a.m.

SO ORDERED.

11-16-12
DATE

VICTOR MARRERO, U.S.D.J.

Respectfully yours,

David A. Barrett

cc: All counsel in *Anwar* (by email)

EXHIBIT 25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

'09 CIV 00118

PASHA S. ANWAR and JULIA ANWAR, on behalf of themselves and all other similarly situated investors in the Greenwich Sentry, L.P. private investment limited partnership,

Plaintiffs,

- against -

FAIRFIELD GREENWICH GROUP, FAIRFIELD GREENWICH LIMITED, a Cayman Islands company, FAIRFIELD GREENWICH (BERMUDA) LTD., FAIRFIELD GREENWICH ADVISORS LLC, WALTER M. NOEL, JR., ANDRES PIEDRAHITA, JEFFREY TUCKER, BRIAN FRANCOUER, and AMIT VIJAYVERGIYA,

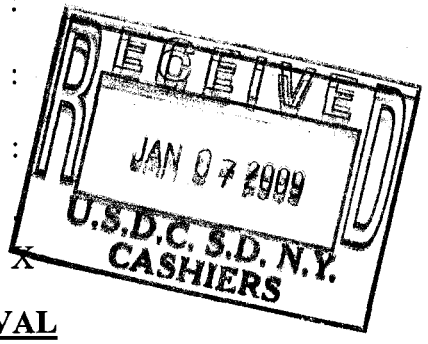
Defendants.

No. 09-cv-_____ (__)

Removed from:

Supreme Court of the State of New York, New York County

Index No. 08/08603769



NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332 and 1441, as amended in relevant part by the Class Action Fairness Act of 2005 ("CAFA"), and authorized by 28 U.S.C. § 1453, Defendants Fairfield Greenwich Group, Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Ltd., and Fairfield Greenwich Advisors LLC, (collectively, the "Removing Defendants"), by their undersigned attorneys, Simpson Thacher & Bartlett LLP, hereby remove the above-captioned civil action, and all claims and causes of action therein, from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York. Removing Defendants appear for the purpose of removal only and for no other purpose and reserve all rights, claims and defenses of any nature whatsoever, including but not limited to defenses related to service of process, jurisdiction, and venue, and state as follows:

1. On December 19, 2008, Pasha S. Anwar and Julia Anwar purported to initiate this putative class action by filing a complaint against the various Defendants in the Supreme Court of the State of New York, County of New York, under Index No. 08/08603769, on behalf of themselves and all other investors in the Greenwich Sentry, L.P. private investment limited partnership and the Fairfield Sentry Fund (collectively, "Plaintiffs"). Pursuant to Rule 81.1(b) of the Local Civil Rules of the United States Courts for the Southern and Eastern Districts of New York and 28 U.S.C. §1446(a), a true and correct copy of the summons and complaint (hereinafter "Complaint"), which is the only pleading thus far served upon any of the Defendants, is attached hereto as Exhibit A.

2. A copy of the Complaint was left with the receptionist for Fairfield Greenwich Group on December 22, 2008. To the best of Defendants' knowledge, Plaintiffs have not attempted any other service of the Complaint on any Defendant.

3. Plaintiffs allege breach of fiduciary duty, negligence, and unjust enrichment arising out of Defendants' alleged mismanagement of Plaintiffs' investments.

4. This action may be removed to this Court under 28 U.S.C. § 1332, as amended by CAFA. Pursuant to 28 U.S.C. § 1332(d), a putative class action commenced after February 18, 2005 may be removed to the appropriate federal district court if: (a) any member of the putative class is a citizen of a state different from any defendant; (b) the putative class action consists of at least 100 putative class members; and (c) the amount in controversy exceeds the sum or value of $5,000,000, exclusive of interests of costs. *See* 28 U.S.C. §§ 1332(d) & 1453. All of these requirements are met here.

5. CAFA is applicable to this action because it was commenced on or about December 19, 2008, i.e., after the effective date of CAFA. 28 U.S.C. §§ 1332, 1453.

6. This action is a "class action" within the meaning of CAFA, because Plaintiffs seek to represent a class of persons in a civil action filed under C.P.L.R. § 901, *et seq.*, *i.e.*, a "rule of judicial procedure authorizing an action to be brought by one or more representative persons as a class action." 28 U.S.C. §§ 1332(d)(1)(B), 1453(a); Complaint ¶¶ 1, 14.

7. The requisite diversity of citizenship exists under 28 U.S.C. §§ 1132(d)(2) and (d)(7). To establish diversity jurisdiction under CAFA, it is sufficient that any one member of the putative class is a citizen of a state different from any one defendant, in contrast to the complete diversity requirement of typical diversity jurisdiction. 28 U.S.C. § 1332(d)(2)(A).

8. Among Removing Defendants, there are citizens of New York. For example, Defendant Fairfield Greenwich Advisors LLC is a Delaware limited liability company with its principal place of business in New York.

9. Plaintiffs Pasha S. Anwar and Julia Anwar are, on information and belief, citizens of Illinois. Complaint ¶ 3. Accordingly, the requisite diversity of citizenship exists between Plaintiffs and Defendants and the minimal diversity requirements of CAFA are satisfied. *See* 28 U.S.C. § 1332(d)(2)(C).

10. This action is removable under CAFA notwithstanding the fact that certain defendants are citizens of New York, the state in which the action was brought. *See* 28 U.S.C. § 1453(b) ("A class action may be removed ... without regard to whether any defendant is a citizen of the State in which the action is brought ....").

11. There are also more than 100 members of the putative class as required by 28 U.S.C. § 1332(d)(5)(B). The Complaint alleges Plaintiffs' belief that "[t]he number of purchasers who are eligible to participate in the Class is estimated to be in the thousands." (Complaint ¶ 16).

12. There is more than $5,000,000 in controversy in this action. Under 28 U.S.C. § 1332(d), as amended by CAFA, the amount in controversy in a putative class action is determined by aggregating the amount at issue in the claims of all members of the putative class. 28 U.S.C. § 1332(d)(6). Here, while Defendants deny that Plaintiffs are entitled to recover any amount, the Complaint alleges that Plaintiffs and the Class have suffered damages "in an amount estimated to be no less than $7.5 billion." Complaint ¶ 41. This allegation plainly makes the amount in controversy in this class action more than $5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2).

13. No Removing Defendant was served prior to December 22, 2008, and this notice is being filed within 30 days of service on any of the Removing Defendants and thus is timely filed under 28 U.S.C. § 1446(b).

14. Defendants promptly will serve a copy of this Notice of Removal on counsel for Plaintiffs, and will file a copy of this Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of New York, pursuant to 28 U.S.C. §1446(d).

WHEREFORE, Defendants, under 28 U.S.C. §§ 1332 and 1441, as amended in relevant part by CAFA, and authorized by 28 U.S.C. § 1453, remove this action in its entirety from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

Dated: New York, New York
January 7, 2009

SIMPSON THACHER & BARTLETT LLP

By: Michael J Chepiga

Michael J. Chepiga
Mark G. Cunha
Members of the Firm

425 Lexington Avenue
New York, New York 10017-3954
(212) 455-2000
mchepiga@stblaw.com
mcunha@stblaw.com

Attorneys for Fairfield Greenwich Group, Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Ltd., and Fairfield Greenwich Advisors LLC

EXHIBIT 26

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants. This Document Relates To: All Actions	Master File No. 09-cv-118 (VM)

SECOND CONSOLIDATED AMENDED COMPLAINT

BOIES, SCHILLER & FLEXNER LLP
575 Lexington Avenue
New York, NY 10022
(212) 446-2300

WOLF POPPER LLP
845 Third Avenue
New York, NY 10022
(212) 759-4600

LOVELL STEWART HALEBIAN LLP
61 Broadway, Suite 501
New York, NY 10006
(212) 608-1900

Interim Co-Lead Counsel for Plaintiffs

TABLE OF CONTENTS

GLOSSARY OF DEFINED TERMS

Defined Term	**Definition**
AICPA	American Institute of Certified Public Accountants
Barreneche	Defendant Lourdes Barreneche
BMIS	Bernard L. Madoff Investment Securities, Inc.
Blum	Defendant Robert Blum
Boele	Defendant Cornelis Boele
Bowes	Defendant Gregory Bowes
BVI	Territory of the British Virgin Islands
CFSB	Defendant Citco Fund Services (Bermuda) Limited
Citco Bank	Defendant Citco Bank Nederland, N.V., Dublin Branch
Citco Canada	Defendant Citco (Canada) Inc.
Citco	Defendants Citco Group, Citco Fund Services, Citco Canada, Citco Global, CFSB, and Citco Bank
Citco Fund Services	Defendant Citco Fund Services (Europe) B.V.
Citco Global	Defendant Citco Global Custody N.V.
Citco Group	Defendant Citco Group Limited

Defined Term	Definition
Class	All shareholders or partners of Fairfield Sentry, Fairfield Sigma, Greenwich Sentry, L.P., and Greenwich Sentry Partners, L.P., as of December 10, 2008 who suffered a net loss of principal invested in the Funds
COM	Confidential Offering Memoranda/Memorandum
Corina Piedrahita	Defendant Corina Noel Piedrahita
Della Schiava	Defendant Yanko Della Schiava
d'Hendecourt	Defendant Vianney d'Hendecourt
FΣ PPM-02/06	Fairfield Sigma February 21, 2006 PPM
FΣ PPM-12/08	Fairfield Sigma December 1, 2008 PPM
F&H	Friehling & Horowitz
Fairfield Defendants	FGG, FGL, FGBL, FGA, FRS, FHC, LFCM, Noel, Tucker, Piedrahita, Vijayvergiya, Lipton, McKeefry, Landsberger, Smith, and Murphy
Fairfield Fee Claim Defendants	Della Schiava, Toub, Barrenche, Boele, d'Hendencourt, Harary, Reyes, Pulido Mendoza, Luongo, Greisman, Horn, Blum, and Corina Piedrahita
Fairfield Fraud Claim Defendants	FGG, FGL, FGBL, FGA, FRS, Noel, Tucker, Piedrahita, Vijayvergiya, Lipton, and McKeefry
Fairfield Sentry	Fairfield Sentry Limited

Defined Term	Definition
Fairfield Sigma	Fairfield Sigma Limited
FGA	Defendant Fairfield Greenwich Advisors LLC
FGBL	Defendant Fairfield Greenwich (Bermuda) Ltd.
FGG	Defendant Fairfield Greenwich Group
FGG Partners	All FGG entities, including FGBL, FGL, and FGA, and partners in FGG including Defendants Noel, Tucker, and Piedrahita, the individual Fairfield Defendants and the Fairfield Fee Claim Defendants
FGL	Defendant Fairfield Greenwich Limited
FHC	Defendant Fairfield Heathcliff Capital LLC
Francoeur	Defendant Brian Francoeur (Director of FGBL)
FRS	Defendant Fairfield Risk Services Ltd.
FS PPM-10/03	Fairfield Sentry July 1, 2003 Private Placement Memorandum
FS PPM-10/04	Fairfield Sentry October 1, 2004 Private Placement Memorandum
FS PPM-8/06	Fairfield Sentry August 14, 2006 Private Placement Memorandum
Funds or Fairfield Funds	Fairfield Sentry Limited, Fairfield Sigma Limited, Greenwich Sentry, L.P., and Greenwich Sentry Partners, L.P.

Defined Term	Definition
GlobeOp	Defendant GlobeOp Financial Services, LLC
Greenwich Sentry	Greenwich Sentry, L.P.
Greenwich Sentry Partners	Greenwich Sentry Partners, L.P.
Greisman	Defendant Harold Greisman
GS COM-1994	Greenwich Sentry 1994 Confidential Offering Memorandum
GS COM-5/06	Greenwich Sentry May 2006 Confidential Offering Memorandum
GS COM-8/06	Greenwich Sentry August 2006 Confidential Offering Memorandum
GSP COM-8/06	Greenwich Sentry Partners August 2006 Confidential Offering Memorandum
Harary	Defendant Jacqueline Harary
Horn	Defendant David Horn
Landsberger	Defendant Richard Landsberger
LFCM	Defendant Lion Fairfield Capital Management Ltd.
Lipton	Defendant Daniel E. Lipton
Luongo	Defendant Julia Luongo
Madoff	Bernard L. Madoff and BMIS

Defined Term	**Definition**
Massachusetts Proceeding	*In the Matter of Fairfield Greenwich Advisors LLC and Fairfield Greenwich (Bermuda) Ltd.*, Docket No. 2009-0028, (Commonwealth of Massachusetts, Securities Division), complaint filed Apr. 1, 2009
McKeefry	Defendant Mark McKeefry
Murphy	Defendant Charles Murphy
NASD	National Association of Securities Dealers
NAV	Net Asset Value
NNI	Northern Navigation International Limited
Noel	Defendant Walter M. Noel, Jr.
Piedrahita	Defendant Andres Piedrahita
Pilgrim	Defendant Ian Pilgrim
Placement Memoranda	Private Placement Memoranda and Confidential Offering Memoranda for the Funds
PPM	Private Placement Memoranda/ Memorandum
Pulido Mendoza	Defendant Maria Teresa Pulido Mendoza
PwC	Defendants PwC Canada, PwC Netherlands, and PwC International
PwC Canada	Defendant PricewaterhouseCoopers LLC

Defined Term	Definition
PwC Netherlands	Defendant PricewaterhouseCoopers Accountants Netherlands N.V.
PwC International	Defendant PricewaterhouseCoopers International Limited
Reyes	Defendant Santiago Reyes
Sentry Administrative Agreement	Administrative Agreement between Fairfield Sentry Limited and Citco Fund Services (Europe) B.V., dated February 20, 2003
Sentry 2003 Custodian Agreement	Brokerage & Custody Agreement between Fairfield Sentry Limited, Citco Bank Nederland N.V. Dublin Branch, and Citco Global Custody N.V., dated July 17, 2003
Sentry 2006 Custodian Agreement	Custodian Agreement between Fairfield Sentry Limited, Citco Bank Nederland N.V. Dublin Branch, and Citco Global Custody N.V., dated July 3, 2006
Sigma Administration Agreement	Administration Agreement between Fairfield Sigma Limited and Citco Fund Services (Europe) B.V., dated February 20, 2003
Sigma 2003 Custodian Agreement	Brokerage & Custody Agreement between Fairfield Sigma Limited, Citco Bank Nederland N.V. Dublin Branch, and Citco Global Custody N.V., dated August 12, 2003
SIPC	Securities Investor Protection Corporation
Smith	Defendant Andrew Smith

Defined Term	Definition
SSC	Split-strike conversion/split-strike conversion strategy
Toub	Defendant Philip Toub
Tucker	Defendant Jeffrey H. Tucker
Vijayvergiya	Defendant Amit Vijayvergiya

Plaintiffs, through undersigned Interim Co-Lead Counsel and Lead Counsel for the PSLRA Plaintiffs, pursuant to the Court's January 30, 2009, and July 7, 2009 Orders, file their Second Consolidated Amended Complaint against Defendants and allege, upon personal knowledge as to matters relating to themselves and upon information and belief obtained during the course of their counsel's investigation as to all other matters, as follows:

NATURE OF THE ACTION

1. This suit arises out of the largest and longest running "Ponzi scheme" in history – a fraud orchestrated by Bernard Madoff, and facilitated by the reckless, grossly negligent, and fraudulent conduct of others. This class action seeks recovery on behalf of investors who lost billions of dollars in the largest group of so-called "feeder funds" into Madoff's fraudulent operations, the funds marketed and operated by the Fairfield Greenwich Group ("FGG").

2. Plaintiffs and the members of the class (collectively, "Plaintiffs") are shareholders and/or equity holders of the four FGG/Madoff feeder funds – Fairfield Sentry Limited, Fairfield Sigma Limited, Greenwich Sentry, L.P., and Greenwich Sentry Partners, L.P. (collectively, the "Funds") – who suffered a net loss of principal invested in the Funds.

3. The Defendants in this action are all responsible for Plaintiffs' massive losses. Defendants solicited Plaintiffs' investments; they oversaw and

controlled the investments; they handed Plaintiffs' assets over to Madoff; they reported fictitious account values to investors; and they purported to, but did not, monitor Madoff or perform proper audits. As detailed below, Defendants directly owed duties to Plaintiffs, including fiduciary duties, to conduct due diligence on Madoff; to verify Madoff's transactions; to monitor any third parties that Defendants chose to carry out the Funds' investment strategy, including Madoff; to provide accurate and complete information to Plaintiffs about their investments in the Funds, both before and after the initial investment; and to audit the Funds to assure their financial statements represented fairly in all material respects their financial condition. The loss of Plaintiffs' assets in the Madoff Ponzi scheme is a direct and proximate result of Defendants' false representations and omissions and failure to fulfill their duties to Plaintiffs.

4. Moreover, as detailed below, certain of the Defendants wrongfully collected hundreds of millions of dollars in unearned fees based on the fictitious assets supposedly managed by, and profits supposedly generated by, Madoff for FGG's investors. These fees were wrongly paid out of the Funds, as a result of false representations and breaches of fiduciary duties owed by Defendants. The fees must be returned to Plaintiffs, or a constructive trust imposed for the benefit of investors against those now holding such fees.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78a, and the Class Action Fairness Act of 2005, codified at 28 U.S.C. § 1332(d)(2)(B). The amount in controversy exceeds $5,000,000. The Plaintiff class consists of more than 100 individuals; at least one Plaintiff is a citizen of a foreign state and one Defendant is a citizen of New York.

6. The Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(3), as one or more of the Defendants resides in this District and the principal place of business of one or more Defendants is in this District.

PARTIES

8. Due to the wrongful conduct alleged herein, the Plaintiffs identified below have lost all, or substantially all, of their investments in the Funds as of December 11, 2008, and also have paid substantial investment, placement, management, and performance fees that were wrongfully charged based on fraudulent investment returns.

A. Plaintiffs

1. Fairfield Sentry Limited Investors

1. Plaintiff **Inter-American Trust** is a Cayman Islands settlor-directed trust that invested assets in Fairfield Sentry on October 8, 2002.

2. Plaintiff **Elvira 1950 Trust** is a Cayman Islands settlor-directed trust that invested assets in Fairfield Sentry beginning March 6, 2002, and made subsequent investments on January 4, 2001, March 30, 2001, June 30, 2002, December 27, 2007, and January 31, 2008.

3. Plaintiff **Bonaire Limited** is a Cayman Islands private investment holdings company that invested assets in Fairfield Sentry on May 5, 2006.

4. Plaintiff **Pacific West Health Medical Center Inc. Employees Retirement Trust**, located in Los Angeles, California, invested assets in Fairfield Sentry in approximately January 2008.

5. Plaintiff **20/20 Investments** is a Panamanian company that invested assets in Fairfield Sentry beginning November 27, 2002, and made subsequent investments on December 1, 2003, February 1, 2004, October 1, 2004 and June 1, 2005 .

6. Plaintiff **ABN AMRO LIFE S.A.** is a Luxembourg-based life insurance company that invested assets in Fairfield Sentry on September 23, 2003.

7. Plaintiff **Aldeneik B.V.B.A.** is Belgian company that invested assets in Fairfield Sentry on March 13, 2003.

8. Plaintiff **Alejandro Flores** is an individual residing in Mexico who invested assets in Fairfield Sentry on November 14, 2008.

9. Plaintiff **Alejandro López de Haro** is an individual residing in Spain who invested assets in Fairfield Sentry on August 18, 2005.

10. Plaintiff **Alexander Richardson** is an individual residing in Bahrain who invested assets in Fairfield Sentry in approximately September 2000.

11. Plaintiff **Alfonso Villanova Torres** is an individual residing in Spain who invested assets in Fairfield Sentry on December 20, 2007.

12. Plaintiffs **Arie Gruber** and **Dafna Gruber** are individuals residing in Israel who invested assets in Fairfield Sentry on January 2, 2007.

13. Plaintiff **Bahraini Saudi Bank** is a Bahraini financial institution that invested assets in Fairfield Sentry beginning September 27, 2006, and made a subsequent investment on February 2, 2008.

14. Plaintiff **Banca Arner, S.A.** is a Swiss corporation that invested assets in Fairfield Sentry beginning February 27, 1998, and made a subsequent investment on November 30, 2003.

15. Plaintiff **Banco General S.A.** is a Panamanian institution that invested assets in Fairfield Sentry beginning September 26, 2002, and made

subsequent investments on October 1, 2002, October 1, 2004, October 19, 2004, December 12, 2004, December 14, 2004, April 1, 2005, June 1, 2005, July 1, 2005, September 9, 2005, October 1, 2005, November 1, 2005, December 1, 2005, May 1, 2006, August 1, 2006, October 1, 2006, February 1, 2007, March 1, 2007, May 23, 2007, December 1, 2007, February 1, 2008, and May 1, 2008.

16. Plaintiff **Berndt M. Sommer** is an individual residing in Mexico who invested assets in Fairfield Sentry on November 14, 2008.

17. Plaintiff **Blythel Associated Corp.** is a Panamanian corporation that invested in Fairfield Sentry beginning October 1, 2004, and made subsequent investments on October 30, 2004, and April 30, 2005.

18. Plaintiff **BPV Finance (International) Ltd.** is an Irish company that invested assets in Fairfield Sentry beginning March 21, 2006, and made a subsequent investment on January 1, 2007.

19. Plaintiff **Carling Investment Ltd.** is an Israeli company that invested assets in Fairfield Sentry on March 1, 2008.

20. Plaintiff **Carlos Gauch** is an individual residing in Mexico who invested assets in Fairfield Sentry on June 27, 2005.

21. Plaintiff **Carmel Ventures Ltd.** is a British Virgin Islands corporation that invested assets in Fairfield Sentry beginning September 14, 2005,

and made subsequent investments on August 29, 2005, November 1, 2006, and March 1, 2007.

22. Plaintiff **Centro Inspection Agency** is a New Jersey Defined Benefit Plan that invested assets in Fairfield Sentry beginning September 12, 2006, and made subsequent investments on February 26, 2007 and September 9, 2008.

23. Plaintiff **Diandra DeMorrell Douglas Foundation** is a California charitable foundation that invested assets in Fairfield Sentry beginning in approximately July 2007.

24. Plaintiff **Diandra Douglas** is an individual residing in New York, New York who invested her Investment Retirement Account ("IRA") in Fairfield Sentry in approximately June 2007.

25. Plaintiff **Elaine Meldahl** is an individual residing in Mexico who invested assets in Fairfield Sentry beginning November 14, 2008.

26. Plaintiff **Edurne Alonso** is an individual residing in Mexico who invested assets in Fairfield Sentry beginning November 14, 2008.

27. Plaintiff **Edgar Russo** is an individual residing in Argentina who invested assets in Fairfield Sentry beginning August 23, 2007, and made a subsequent investment on February 22, 2008.

28. Plaintiff **El Prado Trading** is a British Virgin Islands company that invested assets in Fairfield Sentry on August 28, 2006.

29. Plaintiff **Emerson Sanchez** is an individual residing in Brazil who invested assets in Fairfield Sentry on February 26, 2007.

30. Plaintiff **Enrique Descamps Sinibaldi** is an individual residing in Guatemala who invested assets in Fairfield Sentry on October 24, 2006.

31. Plaintiff **Erling D. Speer** is an individual residing in Florida who invested his Investment Retirement Account ("IRA") in Fairfield Sentry on October 19, 2006.

32. Plaintiff **Eugene James Brian Cooper** is an individual residing in Great Britain who invested assets in Fairfield Sentry on September 30, 1999.

33. Plaintiff **EVG Bank Ltd.** is a company incorporated in Antigua that invested assets in Fairfield Sentry beginning March 29, 2006, and made subsequent investments on July 26, 2007, April 17, 2008, May 27, 2008, and June 25, 2008. EVG Bank Ltd. is the successor to Evergreen Bank Ltd.

34. Plaintiff **Falcon One, Ltd.** is a Cayman Islands trust that invested assets in Fairfield Sentry on September 6, 2005.

35. Plaintiff **Federico L. Pedreño Cleries** and Plaintiff **Mercedes Cleries Genovart** are individuals residing in Spain who invested assets in a joint account in Fairfield Sentry on October 1, 1999.

36. Plaintiff **Francisco Vieta Pascual** is an individual residing in Spain who invested assets in Fairfield Sentry on August 3, 1998.

37. Plaintiff **Fundación Rolur** is a Panamanian foundation that invested assets in Fairfield Sentry on July 25, 2008.

38. Plaintiff **Guillermo Cordera** is an individual residing in Mexico who invested assets in Fairfield Sentry on November 14, 2008.

39. Plaintiff **Harel Insurance Company, Ltd.** is an Israeli company that invested assets in Fairfield Sentry on September 22, 2003, and made subsequent investments on April 26, 2006, and June 28, 2007.

40. Plaintiff **Harvest Dawn International Inc.** is a Panamanian corporation that invested assets in Fairfield Sentry in approximately 2007.

41. Plaintiff **Hector Castro** is an individual residing in Argentina who invested assets in Fairfield Sentry in approximately July 2001.

42. Plaintiff **Heidi Steiger Investment Retirement Account** is an IRA that invested assets in Fairfield Sentry on June 13, 2007.

43. Plaintiff **Janine Lannelongue** is an individual residing in Mexico who invested assets in Fairfield Sentry on August 1, 1997.

44. Plaintiff **Johanna L.M. Van Unnik-Borstlap** is an individual residing in Belgium who invested assets in Fairfield Sentry on January 20, 2003.

45. Plaintiff **Juan Antonio Hentschel** is an individual residing in Mexico who invested assets in Fairfield Sentry on November 14, 2008.

46. Plaintiff **Kalandar International** is a British Virgin Islands company that invested assets in Fairfield Sentry on August 26, 2008.

47. Plaintiff **Kapital Geld Sicav, S.A.** is a Spanish investment fund that invested assets in Fairfield Sentry on July 1, 2007.

48. Plaintiff **KAS BANK N.V.** is a company organized in The Netherlands that invested assets in Fairfield Sentry on April 1, 2002.

49. Plaintiff **Kerry Piesch** is an individual residing in Australia who invested assets in Fairfield Sentry in approximately March 1999.

50. Plaintiff **Kidman N.V.** is a company organized in the Netherlands Antilles that invested assets in Fairfield Sentry beginning September 1, 2003, and made a subsequent investment on March 24, 2005.

51. Plaintiff **Landville Capital Management S.A.** is a Panamanian corporation that invested assets in Fairfield Sentry on October 27, 2006.

52. Plaintiff **Loana Ltd.** is a Cayman Islands settlor-directed trust that invested assets in Fairfield Sentry on December 11, 2000.

53. Plaintiff **Madanes Investment & Enterprise Ltd.** is an Israeli company that invested assets in Fairfield Sentry on June 28, 2007.

54. Plaintiff **Margaretha Katherina Cooper** is an individual residing in Great Britain who invested assets in Fairfield Sentry on February 25, 2003.

55. Plaintiff **Maria Elena Curzio** is an individual residing in Mexico who invested assets in Fairfield Sentry on November 14, 2008.

56. Plaintiff **Maria Teresa Marquez** is an individual residing in Mexico who invested assets in Fairfield Sentry on November 14, 2008.

57. Plaintiff **Marrakesh Resources** is a Panamanian company that invested assets in Fairfield Sentry on November 1, 2006.

58. Plaintiff **Miguel Cornejo** is an individual residing in Mexico who invested assets in Fairfield Sentry on June 13, 2008.

59. Plaintiff **Mira Securities N.V.** is a company organized in the Netherlands Antilles that invested assets in Fairfield Sentry beginning September 5, 2002, and made subsequent investments on December 23, 2003, April 18, 2005, and January 1, 2008.

60. Plaintiff **Moises Lou Martinez** is an individual residing in Panama who invested assets in Fairfield Sentry in approximately September 2005.

61. Plaintiffs **Nadav Zohar** and **Rohit Zohar** are individuals residing in the United Kingdom who purchased assets in Fairfield Sentry on February 27, 2008.

62. Plaintiff **Omawa Investment Corporation** is a Panamanian company that invested assets in Fairfield Sentry beginning May 25, 2005, and made a subsequent investment on August 24, 2005.

63. Plaintiff **Paolo Paoloni Remia** is an individual residing in Mexico who invested assets in Fairfield Sentry on January 27, 2005, and made a subsequent investment on September 25, 2006.

64. Plaintiff **Peter Anthony Baines** is an individual residing in Brazil who invested assets in Fairfield Sentry on April 4, 2008.

65. Plaintiff **Property & Equity Corp.** is a Panamanian company that invested assets in Fairfield Sentry beginning in approximately August 2007, and made a subsequent investment on February 27, 2008.

66. Plaintiff **Ricardo Ballesteros** is an individual residing in Mexico who invested assets in Fairfield Sentry on November 14, 2008.

67. Plaintiff **Securities & Investment Company (SICO) Bahrain** is a Bahraini institution that invested assets in Fairfield Sentry on June 27, 2002, and made subsequent investments on September 30, 2004, September 1, 2005, and October 1, 2008.

68. Plaintiff **Shimon Laor** is an individual residing in Israel who invested assets in Fairfield Sentry on May 1, 2004.

69. Plaintiff **South Barrow, S.A.** is a Panamanian company that invested assets in Fairfield Sentry on June 1, 2006.

70. Plaintiff **Stienaklif B.V.** is a Netherland company that invested assets in Fairfield Sentry on October 31, 2006.

71. Plaintiff **Sunglow Equities Inc.** is a Panamanian company that invested assets in Fairfield Sentry on December 8, 2008.

72. Plaintiff **Tampa N.V.** is a company organized in the Netherlands Antilles that invested assets in Fairfield Sentry on July 17, 2003.

73. Plaintiff **The Knight Services Holdings Limited** is a company organized in the British Virgin Islands that invested assets in Fairfield Sentry on March 15, 2007.

74. Plaintiff **Traconcorp** is a Panamanian corporation that invested assets in Fairfield Sentry in approximately 2000.

75. Plaintiff **Vicenza Life Ltd.** is an Irish company that invested assets in Fairfield Sentry beginning April 17, 2008, and made subsequent investments on August 1, 2008, September 1, 2008, and November 1, 2008.

76. Plaintiff **Victor Milke** is an individual residing in Mexico who invested assets in Fairfield Sentry on August 15, 2008.

77. Plaintiff **Wall Street Securities, S.A.** is a Panamanian corporation that invested assets in Fairfield Sentry beginning April 1, 2000, and made dozens of subsequent purchases in 2001, 2002, 2005, 2006, 2007, and 2008.

78. Plaintiff **William De Warren** is an individual residing in Switzerland who invested assets in Fairfield Sentry beginning June 24, 2002, and made a subsequent investment on January 24, 2003.

2. <u>Fairfield Sigma Limited Investors</u>

79. Plaintiff **Akenaton Inversiones Sicav, S.A.** is a Spanish investment fund that invested assets in Fairfield Sigma beginning August 1, 2008.

80. Plaintiff **ABN AMRO LIFE S.A**. is a Luxembourg-based life insurance company that invested assets in Fairfield Sigma beginning October 27, 2003, and made subsequent investments on December 23, 2003, March 24, 2005, and May 25, 2005.

81. Plaintiffs **Arie Pieter van de Bovenkamp** and **Henk van Capelle** are individuals residing in Belgium who invested assets in Fairfield Sigma in approximately 2000.

82. Plaintiff **AXA Private Management** is a Belgian institution that invested assets in Fairfield Sigma beginning July 1, 2005, and made dozens of subsequent investments through June 30, 2008.

83. Plaintiff **Banca Sella Holding S.P.A.** is an Italian company that invested assets in Fairfield Sigma on November 23, 2006.

84. Plaintiff **Beleggingsmaatschappij Josephine D. B.V.** is a company organized in The Netherlands that invested assets in Fairfield Sigma beginning March 24, 2005, and made subsequent investments on April 21, 2005, September 12, 2005, June 27, 2006, and November 23, 2007.

85. Plaintiff **Berzosa de Inversiones, SICAV, S.A.** is a Spanish company that invested assets in Fairfield Sigma on September 23, 2008.

86. Plaintiff **Certimab Control SL** is a Spanish company that invested assets in Fairfield Sigma on January 25, 2005.

87. Plaintiff **Compass Inversiones Sicav, S.A.** is a Spanish investment fund that invested assets in Fairfield Sigma on October 1, 2008.

88. Plaintiff **Eric Simon Van Ruiten** is an individual residing in Belgium who invested assets in Fairfield Sigma beginning October 24, 2003, and made a subsequent investment on June 25, 2007.

89. Plaintiff **Jacco F. Eltingh** is an individual residing in The Netherlands who invested assets in Fairfield Sigma beginning May 31, 2005, and made a subsequent investment on July 2, 2007.

90. Plaintiff **Florijn S.A.** is a company organized in Luxembourg that invested assets in Fairfield Sigma on May 26, 2003.

91. Plaintiff **Gama Bursatil Sicav, S.A.** is a Spanish investment fund that invested assets in Fairfield Sigma on April 2, 2007.

92. Plaintiff **Income Inversiones Sicav, S.A.** is a Spanish investment fund that invested assets in Fairfield Sigma on July 1, 2007.

93. Plaintiff **Inversiones Mobiliarias Alicante, Simcav, S.A.** is a Spanish investment fund that invested assets in Fairfield Sigma on August 1, 2007.

94. Plaintiff **Jesús Domínguez Fernández** is an individual residing in Spain who invested assets in Fairfield Sigma on September 30, 2008.

95. Plaintiff **Johanna L.M. Van Unnik-Borstlap** is an individual residing in Belgium who invested assets in Fairfield Sigma beginning October 24, 2003, and made a subsequent investment on December 23, 2003.

96. Plaintiff **Mira Securities N.V.** is a company organized in the Netherlands Antilles that invested assets in Fairfield Sigma beginning December 23, 2003, and made subsequent investments on April 18, 2005, and January 17, 2008.

97. Plaintiff **Nmás1 Gestión Renta Fija Corto Plazo, Fl** (previously known as Nmás1 Tesorería, Fl) is a Spanish mutual fund that invested assets in Fairfield Sigma on June 30, 2008. Nmás1 had previously purchased shares of Fairfield Sentry on May 31, 2008, which were transferred to Fairfield Sigma shares on June 30, 2008.

98. Plaintiff **Paul V.N. Haarhuis** is an individual residing in The Netherlands who invested assets in Fairfield Sigma in approximately December 2006.

99. Plaintiff **South Barrow, S.A.** is a Panamanian company that invested assets in Fairfield Sigma on May 1, 2007.

100. Plaintiff **SSMART S.A.** is a Greek corporation that invested assets in Fairfield Sigma on July 25, 2006.

101. Plaintiff **Stichting Guppie** is a company organized in the Netherlands Antilles that invested assets in Fairfield Sigma beginning November 20, 2003, and made subsequent investments on August 23, 2004, November 3, 2004, April 26, 2005, May 6, 2005, August 4, 2005, and June 22, 2008.

102. Plaintiff **St. Stephen's School** is a co-educational, non-denominational boarding and day school incorporated in Connecticut and located in Rome, Italy that invested assets from its endowment fund in Fairfield Sigma in approximately December 2005.

103. Plaintiff **Svetlana Kuznetsova** is an individual residing in Monaco who invested assets in Fairfield Sigma beginning June 27, 2006, and made subsequent investments on August 28, 2006, September 26, 2006, and April 22, 2008.

104. Plaintiff **Tampa N.V.** is a company organized in the Netherlands Antilles that invested assets in Fairfield Sigma beginning October 27, 2003, and made subsequent investments on December 23, 2003, October 26, 2006, and July 25, 2007.

105. Plaintiff **Theodorus H. Henkelman** is an individual residing in Belgium who invested assets in Fairfield Sigma on May 25, 2005.

106. Plaintiff **Ubione di Banche Italiane S.c.P.A.** is an Italian financial institution that invested assets in Fairfield Sigma on December 12, 2003.

107. Plaintiff **William De Warren** is an individual residing in Switzerland who invested assets in Fairfield Sigma beginning October 24, 2003, made a subsequent investment on December 12, 2003, and made two further investments on March 24, 2005.

108. Plaintiff **Xavier L. Vuiton** is an individual residing in Belgium who invested assets in Fairfield Sigma on March 1, 2004, and made subsequent investments on April 1, 2005, May 30, 2005, July 5, 2005, August 1, 2005, November 22, 2005, and June 21, 2007.

3. Greenwich Sentry, L.P. Investors

109. Plaintiffs **Pasha S. Anwar** and Julia Anwar are individuals residing in Illinois who have an equity interest in Greenwich Sentry, purchased in approximately May 2007. Plaintiffs Pasha S. Anwar and Julia Anwar previously owned an equity interest in Fairfield Sentry.

110. Plaintiff **ABR Capital Fixed Option/Income Strategic Fund LP** is a fund incorporated under the laws of Delaware that has an equity interest in Greenwich Sentry, purchased on February 1, 2008, and that made subsequent purchases throughout 2008.

111. Plaintiff **Dawson Bypass Trust** is a Nevada trust that has an equity interest in Greenwich Sentry, purchased on February 27, 2008.

112. Plaintiff **Diversified Investments Associates Class A Units** is a New York company that has an equity interest in Greenwich Sentry, purchased on March 15, 2000, and made a subsequent purchase on January 1, 2001.

113. Plaintiff **Jeffrey S. Lieberman** is an individual residing in Florida who has an equity interest in Greenwich Sentry, purchased on April 26, 2007.

114. Plaintiff **Larry Centro** is an individual residing in New Jersey who has an equity interest in Greenwich Sentry, purchased on August 1, 2006.

115. Plaintiff **Martin and Shirley Bach Family Trust** is an Arizona family trust that has an equity interest in Greenwich Sentry, purchased on February 15, 2002, and made subsequent purchases on September 20, 2002, October 31, 2002, June 12, 2006, and December 28, 2007.

4. Greenwich Sentry Partners, L.P. Investors

116. Plaintiff **Natalia Hatgis** is an individual residing in New York who has an equity interest in Greenwich Sentry Partners, purchased on December 1, 2006.

B. Defendants

1. Fairfield Greenwich Defendants

117. Defendant **Fairfield Greenwich Group** ("FGG") is a de facto partnership or partnership by estoppel. FGG's partners include the other Fairfield entities and individual persons, as set forth below. The FGG partners intended to act as partners, held themselves out to Plaintiffs and other investors as partners, and conducted business under the name Fairfield Greenwich Group without regard to corporate structure and formalities.

118. Defendant **Fairfield Greenwich Limited** ("FGL") is a company incorporated under the laws of the Cayman Islands and registered to do business in New York. FGL is a member of the National Futures Association, and is registered with the Commodity Futures Trading Commission as a commodity pool operator. FGL was held out and marketed as a member and partner of FGG. FGL was the Placement Agent for Fairfield Sentry and Fairfield Sigma, and oversaw the marketing of Fairfield Sentry's shares. Prior to 2003, FGL served as the Investment Manager of Fairfield Sentry. FGL was the General Partner of Greenwich Sentry from July 2003 to February 2006. It exercised broad discretion and control over the Funds' assets.

119. Defendant **Fairfield Greenwich (Bermuda) Ltd.** ("FGBL") is an SEC-registered, exempted corporation organized under the laws of Bermuda on

June 13, 2003. FGBL is a wholly-owned subsidiary of FGL and was marketed as a member and partner of FGG. FGBL is registered with the SEC as an investment advisor under the Investment Advisers Act of 1940, effective April 20, 2006. FGBL was the Investment Manager for Fairfield Sentry and the Investment Manager and Investment Advisor for Fairfield Sigma. FGBL was also the General Partner of Greenwich Sentry beginning March 1, 2006, and the General Partner of Greenwich Sentry Partners since the Fund's organization on April 11, 2006. FGBL also is a member of FGG's Risk Management team. FGBL exercised broad discretion in the management of the Funds' investment activities, the selection and monitoring of the Funds' investments, and maintaining relationships between the Funds and their respective custodians, sub-custodians, administrators, registrars and transfer agents. FGBL was responsible for reviewing and approving the parameters and operating guidelines of Madoff's purported split-strike conversion strategy, conducting investment oversight, evaluating market risk, and monitoring investment compliance with the guidelines. In addition, the finance group of FGBL was responsible for reviewing and verifying the monthly NAV calculated by Defendant Citco.

120. Defendant **Fairfield Greenwich Advisors LLC** ("FGA") is a Delaware limited liability company, incorporated on December 12, 2001 that is registered to do business in New York. FGA was held out as a member and

partner of FGG. FGA assisted FGBL with its fund manager selection and due diligence process, and provided each of the Funds with administrative services and back-office support. FGA is registered with the SEC as an investment advisor under the Investment Advisors Act of 1940, as amended, effective November 17, 2003.

121. Defendant **Fairfield Risk Services Ltd.** ("FRS") is incorporated under the laws of Bermuda. It is a wholly owned subsidiary of FGL and shares office space with FGBL in Hamilton, Bermuda. FRS was held out and marketed as a member and partner of FGG. Along with FGBL, FRS served on FGG's Risk Management team. FRS was responsible for analyzing and monitoring FGG's hedge fund managers, monitoring market risk, analyzing asset allocation decisions, creating and disseminating fund-specific risk reports, and maintaining a risk infrastructure to support these activities.

122. Defendant **Fairfield Heathcliff Capital LLC** ("FHC") is incorporated under the laws of Delaware, is registered as a foreign corporation to do business in New York, is registered with the SEC as a broker-dealer, and is a member of the Financial Industry Regulatory Authority, the National Association of Securities Dealers ("NASD"), and the Securities Investor Protection Corporation ("SIPC"). It is a wholly-owned subsidiary of FGL and an affiliate of FGBL. FHC was held out and marketed as a member and partner of FGG. FHC

served as the placement agent for the Funds. FHC maintains offices at 55 East 52nd Street, New York, New York and transacted business relating to the Funds in New York.

123. Defendant **Lion Fairfield Capital Management Ltd.** ("LFCM") is incorporated under the laws of the Republic of Singapore. LFCM is FGG's hedge fund management and client-servicing platform in Asia, and marketed shares of Fairfield Sentry to investors. LFCM was created by a joint venture between FGG and Lion Capital Management Limited (formerly, Straits Lion Asset Management Limited) in 2004. FGG owns 35% of LFCM, and Lion Capital Management Limited owns the remaining 65%. LFCM holds a capital markets services license issued by the Monetary Authority of Singapore under the provisions of the Securities and Futures Act. Lion Capital Management is one of the largest asset management companies in Southeast Asia, and maintains offices in Singapore. LFCM was formerly known as Fairfield Straits Lion Asset Management Limited.

124. Defendant **Walter M. Noel, Jr.** ("Noel") is an American citizen and maintains residences in Connecticut and New York. Noel is a Founding Partner of FGG, which he established in 1983. Since founding FGG, Noel has been a director or general partner of a variety of its funds, including Fairfield Sentry and Fairfield Sigma, and continues to oversee all of FGG's activities. He had significant discretion and control over assets of the Funds. As a founding partner and senior

officer of FGG, Noel was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff. Mr. Noel received a Bachelor of Arts from Vanderbilt University in 1952, a Master of Arts in Economics from Harvard in 1953, and an LL.B. from Harvard Law School in 1959.

125. Defendant **Jeffrey H. Tucker** ("Tucker") is an American citizen and is a resident of New York. Tucker is a Founding Partner of FGG. In 1989, Tucker introduced the Madoff relationship to FGG. FGG's relationship with Madoff later became the basis for Fairfield Sentry. At all relevant times, Tucker oversaw the business and operational activities of several FGG management companies and funds. He had significant discretion and control over assets of the Funds. As of July 2006, Tucker was one of four individuals who could authorize movement of cash into and out of the investment accounts the Funds maintained at Madoff's investment firm, Bernard L. Madoff Investment Securities, Inc. ("BMIS"). As a founding partner and senior officer of FGG, Tucker was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff. Mr. Tucker received a B.A. from Syracuse University in 1966 and a J.D. from Brooklyn Law School in 1969.

126. Defendant **Andres Piedrahita** ("Piedrahita") is one of Defendant Noel's sons-in-law. He is a Colombian citizen and a resident of New York,

London, and Madrid. Piedrahita is a Founding Partner of FGG, and is Director and President of FGBL, which in turn is the investment manager of Fairfield Sentry and Fairfield Sigma, and the general partner of Greenwich Sentry and Greenwich Sentry Partners. Piedrahita has overall management responsibility over FGG and is directly involved in its decision-making. He had significant discretion and control over assets of the Funds. As of July 2006, Piedrahita was one of four individuals who could authorize movement of cash into and out of the investment accounts that the Funds maintained at BMIS. As a founding partner and senior officer of FGG, Piedrahita was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff. Mr. Piedrahita holds a Bachelor's degree from Boston University.

127. Defendant **Amit Vijayvergiya** ("Vijayvergiya") was a partner in FGG and served as the firm's Chief Risk Officer and President of FGBL. Vijayvergiya resides in Bermuda and New York City, and worked primarily out of FGG's Bermuda office, focusing on manager selection and risk management. Vijayvergiya had direct responsibility for monitoring and assessing the past and ongoing performance of the Funds' assets entrusted to Madoff. He had significant discretion and control over assets in the Funds. As of July 2006, Vijayvergiya was one of four individuals who could authorize movement of cash into and out of the investment accounts that the Funds maintained at BMIS. As a partner and senior

officer of FGG, Vijayvergiya was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff. Mr. Vijayvergiya holds an M.B.A. from Schulich School of Business at York University, a B.S. in Statistics from the University of Manitoba, and a B.A. in Economics from the University of Western Ontario; he is a Chartered Financial Analyst and had a Financial Risk Manager certification.

128. Defendant **Daniel E. Lipton** ("Lipton") is FGG's Chief Financial Officer, based in the New York office, and a partner in the Operations Group. He had significant discretion and control over assets in the Funds. As of July 2006, Lipton was one of four individuals who could authorize movement of cash into and out of the Funds' accounts that FGG maintained at BMIS. As a partner and senior officer of FGG, Lipton was compensated with placement, management and performance fees derived from the Funds' investments with Madoff. Lipton received a B.A. in Economics from Tufts University and an M.B.A. in dual degrees in Accounting and Finance from New York University's Stern School of Business; he is a Certified Public Accountant. Lipton spent nine years at Ernst & Young as a Senior Manager, with responsibility for auditing and consulting engagements, specializing in alternative assets, private equity, venture capital, and domestic and offshore funds. Lipton resides in New York City.

129. Defendant **Mark McKeefry** ("McKeefry") is FGG's Chief Operating Officer and General Counsel, based in New York, and a partner in the Operations Group. He had significant discretion and control over assets in the Funds. He holds FINRA Series 7, 24, 63, and 65 licenses and is admitted to the bars of California and New York. Prior to joining FGG's New York office in 2003, McKeefry spent eight years in private law practice advising broker-dealers and investment advisors on regulatory and compliance matters related to onshore and offshore funds and authored several articles on hedge fund compliance issues and investment advisor trading practices. As a partner and senior officer of FGG, McKeefry was paid placement, management and performance fees derived from the Funds' investments with Madoff. McKeefry holds a B.S. from Carnegie Mellon University and a J.D. from Fordham University, where he was a member of the Law Review.

130. Defendant **Richard Landsberger** ("Landsberger") was a partner in FGG's Client Group and a member of its Executive Committee, and a director of LFCM. Having joined FGG in 2001, Landsberger was responsible for business development in Europe and Asia and directly marketed products to a global institutional client base. He had significant discretion and control over assets in the Funds. As a partner and senior officer of FGG, Landsberger was compensated with placement, management, and performance fees derived from the Funds'

investments with Madoff. Landsberger is based in FGG's London office. With over 20 years of experience in capital markets, Landsberger was Managing Director of Fixed Income Sales at PaineWebber and Citicorp Securities. Landsberger received a B.A. from Boston University and an M.B.A. from Cornell University.

131. Defendant **Maria Teresa Pulido Mendoza** ("Pulido Mendoza") was a partner in FGG. Pulido Mendoza was FGG's Head of Global Sales, with responsibility for managing FGG's global sales force and developing new markets. She had significant discretion and control over assets in the Funds. As a partner and senior officer of FGG, Pulido Mendoza was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff. FGG's marketing materials touted Pulido Mendoza's 17 years of experience in private banking, investment banking and management consulting at Citi Private Bank, Bankers Trust/Deutsche Bank, James D. Wolfensohn, Inc., and McKinsey. Pulido Mendoza received a B.A. in economics, cum laude, from Columbia, and an M.B.A., magna cum laude, from MIT Sloan School of Management.

132. Defendant **David Horn** ("Horn") was a partner in FGG, based in the New York office. Horn was held out to investors as a partner in FGG and received compensation out of the profits derived by FGG from the Madoff relationship.

FGG's marketing materials described Horn as a Partner and Chief Global Strategist who served on the firm's Board of Directors. He had significant discretion and control over assets in the Funds. As a partner and senior officer of FGG, Horn was compensated with placement, management, and performance fees from the Funds' investments with Madoff. Horn holds a B.A. from Stanford University and a J.D. with honors from Kent College of Law, Chicago. He was founder CEO of Grey Home Partners, a $4.4 billion hedge fund that was acquired by Morgan Stanley in 1999; thereafter, Horn was a managing director who headed global private client marketing at Morgan Stanley. Horn holds FINRA Series 7, 63, and 65 licenses.

133. Defendant **Andrew Smith** ("Smith") was a partner in FGG's Investments Group and a member of its Executive Committee. Smith was FGG's Chief Risk Officer and President of FGB and is based in FGG's New York office. As a partner and senior officer of FGG, Smith was paid placement, management, and performance fees derived from the Funds' investments with Madoff. Mr. Smith is a graduate of Dartmouth College and holds FINRA Series 7 and 63 licenses.

134. Defendant **Charles Murphy** ("Murphy") was a partner in FGG's New York office, and a member of FGG's Executive Committee, responsible for strategy and capital markets business. He had significant discretion and control over assets in the Funds. As a partner and senior officer of FGG, Murphy was paid

placement, management, and performance fees derived from the Funds' investments with Madoff. Mr. Murphy holds a J.D. from Harvard Law School, an M.B.A. from MIT's Sloan School, and a B.A. from Columbia College.

135. Defendant **Yanko Della Schiava** ("Della Schiava") is one of Defendant Noel's sons-in-law. According to published reports, Della Schiava marketed the Funds to investors in southern Europe from bases in Milan and Lugano. As a partner and senior officer of FGG, Della Schiava was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff.

136. Defendant **Philip Toub** ("Toub") is one of Defendant Noel's sons-in-law. Toub was identified in FGG's marketing brochures as a partner in the Client Group at FGG. Toub marketed FGG's funds in Brazil and the Middle East. As a partner and senior officer of FGG, Toub was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff. Toub was based in New York. Toub holds a B.A. from Middlebury College.

137. Defendant **Lourdes Barreneche** ("Barreneche") is a partner in the Client Group at FGG. Barreneche was described in FGG's marketing materials as an international sales specialist with more than 15 years of experience in the investment management business. Barreneche coordinated FGG's sales efforts and

played a leading role in developing FGG's practices for marketing and business development of FGG funds to offshore clients in Latin America, Europe, and the Far East. Barreneche also played an important role in supporting FGG's relationships with non-profit organizations. Barreneche holds FINRA Series 7 and 63 licenses, and was based in FGG's New York office. As a partner and senior officer of FGG, Barreneche was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff. Ms. Barreneche received a Master's degree in Politics and Economics from New York University.

138. Defendant **Cornelis Boele** ("Boele") is a partner of FGG and has worked in its Client Group. Boele oversaw the marketing efforts of the offshore funds of FGG in the Benelux region and markets them throughout Europe. FGG's marketing materials describe Boele as having more than 15 years of marketing experience in the investment management business. Boele holds a B.A. from Clark University, as well as FINRA Series 7 and 63 licenses, and was based in FGG's New York office. As a partner and senior officer of FGG, Boele was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff.

139. Defendant **Vianney d'Hendecourt** ("d'Hendecourt") is a partner in FGG. FGG's marketing materials describe d'Hendecourt as a partner who markets

FGG's offshore funds throughout Europe, including France, Belgium, and Luxembourg. D'Hendecourt has more than 19 years experience in capital markets and holds a Bachelor of Business Administration degree from European University in Antwerp (Belgium). D'Hendecourt is based in FGG's London office. As a partner and senior officer of FGG, d'Hendecourt was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff.

140. Defendant **Jacqueline Harary** ("Harary") is a partner in the Client Group at FGG. Based in FGG's New York office, Harary marketed FGG funds worldwide, with a focus on Latin America. Her role combined sales responsibilities with manager selection/product development projects. Ms. Harary holds a B.A. from Oglethorpe University, and FINRA Series 7 and 63 licenses. As a partner in FGG, Harary was paid portions of the placement, management, and performance fees derived from the Funds' investments with Madoff.

141. Defendant **Santiago Reyes** ("Reyes") is a partner in FGG's Client Group. Reyes headed FGG's Miami office and marketed FGG's offshore funds worldwide. Reyes holds a B.A. from the University of Texas and a Master of Economic History from the London School of Economics, as well as FINRA Series 7 and 63 licenses. As a partner and senior officer of FGG, Reyes was paid

placement, management, and performance fees derived from the Funds' investments with Madoff.

142. Defendant **Julia Luongo** ("Luongo") is a partner in FGG's New York office and serves as FGG's Assistant General Counsel – Tax Director. Luongo received a B.B.A. in Accounting from Loyola College, a J.D. from Seton Hall University, magna cum laude, where she was a law review editor, and an LL.M. in Taxation from New York University. She is a Certified Public Accountant and is admitted to the bars of New Jersey and New York. Before joining FGG, Luongo worked as a certified public accountant in charge of auditing, consulting, and tax engagements. As a partner and senior officer of FGG, Luongo was paid placement, management and performance fees derived from the Funds' investments with Madoff. Luongo joined FGG in 2004 after five years at PricewaterhouseCoopers, where she was Manager of the International and Offshore Funds Team.

143. Defendant **Harold Greisman** ("Greisman") is a partner in FGG, who focuses on evaluating alternative asset investments and managers. He is based in FGG's New York and London offices. Mr. Greisman received a B.A. from Tufts University and an M.B.A. from NYU's Stern School of Business. As a partner and senior officer of FGG, Greisman was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff.

144. Defendant **Corina Noel Piedrahita** ("Corina Piedrahita") served as a partner in FGG's Client Group. Together with her husband, Defendant Andres Piedrahita, she was responsible for marketing FGG's Funds throughout Europe and South America; she also oversaw trade confirmations for FGG's Funds. Ms. Piedrahita is a U.S. citizen, a graduate of Yale University. She began working for in 1985. As a partner and senior officer of FGG, Corina Piedrahita was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff. Corina Piedrahita continued to share in FGG's profits subsequent to leaving the firm.

145. Defendant **Robert Blum** ("Blum") was a Managing Partner and Chief Operating Officer of FGG from 2000 to 2005. He was responsible for overseeing or assisting in all aspects of FGG's activities, and co-led the build-out of FGG's capabilities to a diversified hedge fund management firm and co-managed FGG's hedge fund business. Blum holds a B.A. from the University of Pennsylvania and a J.D. from the University of Chicago Law School. Blum continued to share in FGG's profits subsequent to leaving the firm. As a managing partner and senior officer of FGG, Blum was compensated with placement, management, and performance fees derived from the Funds' investments with Madoff.

146. Defendant **Gregory Bowes** ("Bowes") was a partner of FGG. According to a 2003 Fairfield Sentry PPM, Bowes focused on all aspects of new

business development, including manager selection, and had, as of that time, 18 years of experience in capital markets. Bowes was paid placement, management, and performance fees derived from the Funds' investments with Madoff. Bowes holds a bachelor's degree in economics and history from Bowdoin College. Bowes continued to share in FGG's profits subsequent to leaving the firm. According to information provided by FGG in the Massachusetts Proceeding, in 2007 alone, Bowes was paid partnership distributions of $4.49 million. His principal place of business is New York City.

147. The persons identified above in paragraphs 124 through 146 are referred to collectively as the "Individual Defendants."

148. The following chart (derived from an exhibit in the Massachusetts Proceeding) reflects percentage ownership interests of Individual Defendants in FGG, as well as their 2007 and 2008 partnership compensation:

	Partner Compensation			
FGG Partner Name	**2007 (Millions)**	**2008 (Millions)**	**2007-2008 Total (Millions)**	**Ownership (%) Interest**
A. Piedrahita	$45.60	$28.25	**$73.85**	24.60%
Tucker	$30.67	$18.79	**$49.46**	16.73%
Noel	$30.67	$18.79	**$49.46**	16.73%
Landsberger	$9.76	$5.85	**$15.61**	4.43%
Toub	$9.59	$5.60	**$15.19**	4.43%
Murphy	$4.80	$4.25	**$9.05**	1.97%

	Partner Compensation			
FGG Partner Name	2007 (Millions)	2008 (Millions)	2007-2008 Total (Millions)	Ownership (%) Interest
McKeefry	$4.47	$4.25	**$8.72**	2.07%
Smith	$5.15	$3.20	**$8.35**	2.36%
Vijayvergiya	$3.22	$2.50	**$5.72**	1.48%
Lipton	$2.75	$1.68	**$4.43**	1.03%
Barreneche	$9.47	$5.39	**$14.86**	4.92%
Gretsman	$4.46	$2.66	**$7.12**	2.21%
Reyes	$3.27	$2.01	**$5.28**	1.57%
Harary	$2.38	$1.53	**$3.91**	1.09%
Boele	$6.24	$2.65	**$8.89**	2.00%
M Teresa Pulido	$0.71	$0.80	**$1.51**	0.32%
Schiava	-	$0.14	**$0.14**	0.30%
D'Hendencourt	-	$0.20	**$0.20**	0.20%
Luongo	-	$0.04	**$0.04**	0.09%
C. Piedrahita	$2.17	$0.90	**$3.07**	0.89%
Blum	$5.81	$3.16	**$8.97**	3.13%
Bowes	$4.49	$2.48	**$6.97**	2.46%
Total	$185.68	$115.12	**$300.80**	95.01%

149. Based on the allegations contained in this Complaint and other publicly available estimates with respect to FGG's total revenues prior to 2007, Defendants' total compensation from the Madoff relationship was many multiples of the millions of dollars shown in the foregoing chart.

150. Defendants FGG, FGL, FGBL, FGA, FRS, FHC, LFCM, Noel, Tucker, Piedrahita, Vijayvergiya, Lipton, McKeefry, Landsberger, Pulido

Mendoza, Smith, and Murphy are referred to collectively as the "Fairfield Defendants." These are the Fairfield-related defendants against which negligent misrepresentation, gross negligence, breach of fiduciary duty, and breach-of-contract claims are asserted. These defendants created and/or disseminated materially false and misleading documents with reckless disregard for their veracity, and breached their fiduciary duties to Plaintiffs as well as their contractual duties to Plaintiffs as third-party beneficiaries. Each of the Fairfield Defendants is either a Founding Partner, a member of the FGG Executive Committee, or FGG's Chief Risk or Sales Officer.

151. A subset of the Fairfield Defendants group, comprised of FGG, FGL, FGBL, FGA, FRS, Noel, Tucker, Piedrahita, Vijayvergiya, Lipton, and McKeefry are referred to collectively as the "Fairfield Fraud Claim Defendants." These are Fairfield Defendants against which fraud claims also are brought. The Fairfield Fraud Claim Defendants were active participants in the preparation and dissemination of materially false and misleading documents, including offering memoranda, and had actual knowledge or acted in reckless disregard of the falsity and material omissions in these documents.

152. Defendants Della Schiava, Toub, Barrenche, Horn, Boele, d'Hendencourt, Harary, Reyes, Luongo, Greisman, Corina Piedrahita, Blum, and

Bowes are referred to collectively as the "Fairfield Fee Claim Defendants." These are the Fairfield Defendants against whom only fee-related claims are brought.

2. PricewaterhouseCoopers Defendants

153. Defendant **PricewaterhouseCoopers International Limited** ("PwC International") is a United Kingdom membership-based company through which constituent PricewaterhouseCoopers ("PwC") offices work together as member firms to "comprise a vigorous global network" according to the global PwC website. The chairman of PwC International maintains his offices in New York, New York.

154. Defendant **PricewaterhouseCoopers LLP** ("PwC Canada") is a member firm of PwC International with its principal place of business in Ontario, Canada. PwC Canada audited the Funds for the years 2006 and 2007.

155. Defendant **PricewaterhouseCoopers Accountants Netherlands N.V.** ("PwC Netherlands") is a member firm of PwC International with its principal place of business in Amsterdam, The Netherlands. PwC Netherlands audited the Greenwich Sentry fund for the year 2004, the Fairfield Sentry funds for the years 2002, 2003, 2004, and 2005, and the Fairfield Sigma fund for the years 2003, 2004, and 2005.

3. Citco Defendants

156. Defendant **Citco Group Limited** ("Citco Group") is a global organization providing financial services, including hedge fund administration, custody and fund trading, financial products, and corporate and fiduciary solutions. It has direct, substantial and continuous contacts with the United States and New York. Citco Group maintains offices and conducts extensive business in New York and elsewhere in the United States, which results in substantial revenues. Citco Group directly controls the conduct of each of the Citco companies identified below pursuant to agreements between them, and each Citco company acts as the agent and alter ego of Citco Group and of each other.

157. **Defendant Citco Fund Services (Europe) B.V.** ("Citco Fund Services") is incorporated in The Netherlands. Citco Fund Services has served as the administrator, registrar, and transfer agent for Fairfield Sentry and Fairfield Sigma since at least July 2003, and as the administrator for Greenwich Sentry and Greenwich Sentry Partners since at least August 2006. Citco Fund Services' responsibilities included communicating with the Funds' shareholders or partners and the public, and independently calculating the Net Asset Values of the Funds and values of individual investor accounts, as well as fees for the Funds' service providers. Citco Fund Services maintained an escrow account at HSBC Bank in New York, where Fund investors wired their investments. It also received

information from, and relayed information to, BMIS and Fund managers in New York.

158. Since at least August 2006, Citco Fund Services has delegated administrative responsibilities for Greenwich Sentry and Greenwich Sentry Partners to Defendant **Citco (Canada), Inc.** ("Citco Canada"). Citco Canada is a corporation organized under the laws of Canada with its principal place of business in Toronto, Ontario. As sub-administrator, Citco Canada also received information from, and relayed information to, BMIS and Fund managers in New York.

159. Defendant **Citco Global Custody N.V.** ("Citco Global") is incorporated in The Netherlands. Citco Global served as the Custodian for Fairfield Sentry since at least July 2003, and for Fairfield Sigma since at least August 2003. In 2006, Citco Global became the Depositary for Fairfield Sentry, and another Citco entity, Citco Bank, discussed below, became Custodian. Citco Global's significant responsibilities included holding any securities purchased for the Fund, or ensuring that the securities were in the custody of a sub-custodian; maintaining an ongoing, appropriate level of supervision of any sub-custodians, including BMIS; and maintaining records of securities held for the Funds. Citco Global engaged with and transferred investor assets to Fairfield Sentry sub-custodian BMIS in New York, and also regularly communicated with the Funds' managers in New York.

160. Defendant **Citco Bank Nederland, N.V., Dublin Branch** ("Citco Bank") is incorporated in The Netherlands and is registered as a branch of an external company in the Republic of Ireland. Citco Bank served as the Bank for Fairfield Sentry since at least July 2003, and for Fairfield Sigma since at least August 2003. In 2006, Citco Bank replaced Citco Global as Custodian, and Citco Global became Depositary for the Fund. As Custodian, Citco Bank undertook the same or similar responsibilities as Citco Global had undertaken. Citco Bank was responsible for providing brokerage services to the Funds, including placing trades for the Funds, transmitting securities purchased for the Funds to the custodian or sub-custodian (BMIS), maintaining records of securities held for the Funds, and sending bi-monthly statements detailing the Funds' position in each security. It was also responsible for assuring that the securities were kept in the custody of any sub-custodian, and maintaining an ongoing, appropriate level of supervision of any sub-custodians, including BMIS. In addition, it undertook to use due care in the selection of third parties they dealt with in providing brokerage services, and had the absolute discretion to refuse to execute instructions by the Funds. Citco Bank transferred assets to and received assets from the Funds' sub-custodian BMIS in New York, and also regularly communicated with the Funds' managers in New York. In addition, Plaintiffs made investment payments to, and received redemption payments from, Citco Bank.

161. Defendant **Citco Fund Services (Bermuda) Limited** ("CFSB") is a corporation organized under the laws of Bermuda with its principal place of business in Hamilton, Bermuda. CFSB employed Ian Pilgrim and Brian Francoeur and directed both employees to serve as directors of FGBL within the scope of their employment, and in return, FGBL paid CFSB for these services. As their employer, CFSB is legally responsible for the actions of Pilgrim and Francoeur as directors of FGBL.

162. Citco Group, Citco Fund Services, Citco Global, Citco Canada, Citco Bank, and CFSB are referenced collectively herein as "Citco."

163. Defendant **Brian Francoeur** is a director of FGBL. Francoeur joined CFSB in 2001 and served as of August 2006 as its Managing Director. (FS PPM-8/14/2006, at 8.) Francoeur served as a director of FGBL as part of his duties and responsibilities as an employee and officer of CFSB.

164. Defendant **Ian Pilgrim** was a director of FGBL from 2003 to 2005. Pilgrim was an employee of CFSB, which he joined in 2001. Pilgrim served as a director of FGBL as part of his duties and responsibilities as an employee and officer of CFSB.

4. GlobeOp Defendant

165. Defendant **GlobeOp Financial Services, LLC** ("GlobeOp") is a Delaware limited liability company that is registered to do business in New York.

GlobeOp served as the Administrator of Greenwich Sentry from January 1, 2004 to August 2006. As Administrator, GlobeOp was responsible for preparing and distributing monthly reports showing the amount of the Partnership's net assets, the amount of any distributions from the Partnership and Performance Allocation, accounting and legal fees, and all other fees and expenses of the Partnership. GlobeOp's responsibilities included independently calculating the Fund's NAV and distributing it to equity holders. GlobeOp's principal office is located at One South Road, Harrison, New York 10528.

ALLEGATIONS OF FACT

A. Bernard Madoff's Massive Ponzi Scheme

166. Madoff founded his investment company BMIS in 1960, and eventually expanded the firm to serve a worldwide client base. Since at least 1990, Madoff perpetrated a massive Ponzi scheme through the investment advisor services of BMIS, whereby Madoff fraudulently distributed new investors' assets to prior investors to create the illusion of profits. BMIS account statements described purported trading activity in securities holdings, but these statements were wholly fictitious. Madoff made no securities trades for years. (Madoff and BMIS are collectively referenced herein as "Madoff.")

167. On December 11, 2008, Bernard L. Madoff was arrested and ultimately charged in a criminal complaint after admitting that his money

management operations were "all just one big lie" and "basically, a giant Ponzi scheme." On March 12, 2009, Madoff pled guilty to an 11-count criminal complaint, including fraud, perjury, theft from an employee benefit plan, and international money laundering. He is serving a sentence of 150 years in prison.

B. <u>Fairfield Greenwich Group's Relationship with Madoff</u>

168. Fairfield Greenwich Group ("FGG") was started in 1983 by its original partners, Defendants Walter Noel and Jeffrey Tucker. In 2007, Defendant Andres Piedrahita, who became a principal and partner of FGG in 1997, was named a "founding" partner of FGG.

169. FGG began its relationship with Madoff in approximately 1990, when Tucker and another founding partner of FGG, Fred Kolber, introduced Noel to Madoff. Shortly thereafter, FGG launched the funds Fairfield Sentry Limited ("Fairfield Sentry") and Greenwich Sentry, L.P. ("Greenwich Sentry"). FGG used Madoff as the investment advisor for both funds, and marketed a supposed investment strategy of "buying a basket of equities hedged by puts and calls," called the "split-strike conversion method." In contravention of standard risk management practice, Madoff also executed the purported trades through the broker-dealer operation of BMIS, and served as the custodian or sub-custodian for the assets of the Funds. Madoff's multiple roles as investment advisor, broker and custodian were key elements in his ability to perpetrate his fraud.

170. Fairfield Sentry was incorporated in 1990 as an international business company in the Territory of the British Virgin Islands ("BVI"). Because Madoff served as the execution agent and sub-custodian for Fairfield Sentry, substantially all of Fairfield Sentry's assets were held by Madoff. Fairfield Sentry was primarily marketed to foreign investors, and investments in Fairfield Sentry were made from outside New York. On July 21, 2009, the Eastern Caribbean Supreme Court in the High Court of Justice of the British Virgin Islands ("BVI Court") ordered that Fairfield Sentry be liquidated, and the BVI Court appointed Kenneth Krys and Christopher Stride as its liquidators.

171. In 1997, in furtherance of its global expansion, FGG launched the fund Fairfield Sigma Limited ("Fairfield Sigma"), which offered three classes of shares in foreign currencies (Euro, Singapore Dollar, and Yen). Several other FGG funds, such as Fairfield Lambda, also raised money that was invested in Fairfield Sentry. Fairfield Sigma was an international business company organized under the laws of the BVI. Fairfield Sigma's stated business objective was "to obtain capital appreciation of its assets by purchasing shares in Fairfield Sentry Limited." (FΣ PPM-12/08 at 2, 9.) Because Fairfield Sigma was wholly invested in Fairfield Sentry, Madoff also held substantially all of Fairfield Sigma's assets. Fairfield Sigma was marketed to foreign investors, and the investments were made from

outside New York. On July 21, 2009, the BVI Court ordered that Fairfield Sigma be liquidated and appointed Kenneth Krys and Christopher Stride as its liquidators.

172. Greenwich Sentry is a Delaware limited partnership organized December 27, 1990 under the name Aspen/Greenwich Limited Partnership. Its name was changed to Greenwich Sentry, L.P., on December 4, 1992, and operations commenced under the new name on January 1, 1993. Because Madoff served as the execution agent and custodian for Greenwich Sentry, substantially all of Greenwich Sentry's assets were held by Madoff. Greenwich Sentry was marketed in the United States and sold limited partnership interests to United States investors, including investors in New York.

173. In 2006, FGG moved some of its Greenwich Sentry investors into a fourth fund, Greenwich Sentry Partners, L.P. ("Greenwich Sentry Partners"). Greenwich Sentry Partners is a Delaware limited partnership, organized on April 11, 2006, which commenced operations on May 1, 2006. Greenwich Sentry Partners is registered to do business in New York. Substantially all of Greenwich Sentry Partners' assets were held by Madoff, which served as the investment manager, execution agent and custodian for Greenwich Sentry Partners. Greenwich Sentry Partners was marketed to United States investors and limited partnership interests were sold to United States investors, including investors in New York.

174. The funds identified in paragraphs 169 through 173 are collectively referred to herein as the "Funds."

175. From December 1, 1995 through December 2008, the Funds handed over approximately $4.5 billion of their investors' money to Madoff . During the same period, investors in the Funds were able to obtain redemptions totaling over $3.5 billion. Plaintiffs could have redeemed their investments in the Funds and recovered their principal at any time during the many years in which redemption requests were being paid. According to an SEC complaint against a senior BMIS employee (*SEC v. DiPascali* (S.D.N.Y., 09 CV 7085)), as of the summer of 2008, BMIS had over $5.5 billion on deposit in a bank account at JPMorgan Chase, which was available to meet redemptions.

C. Nature and Structure of the Fairfield Greenwich Group

176. FGG holds itself out to the public as a partnership among several corporate entities and individuals, and operates as a de facto partnership. FGG's corporate partners include Defendants FGBL, FGL, and FGA, and the other Fairfield corporate Defendants, and FGG's individual partners include Defendants Noel, Tucker and Piedrahita, as well as the other individual Fairfield Defendants and Fairfield Fee Claim Defendants (collectively, the "FGG Partners"). The Executive Committee of FGG controlled the day-to-day operations of FGG and its corporate partners.

177. The FGG Partners (i) shared, on a pro rata basis, the profits and losses realized by FGG and the other FGG entities; (ii) made pro rata contributions to the capital of FGG and the other FGG entities; (iii) intended to carry on as co-owners of FGG with the common goal of earning a profit; and (iv) participated in the management of FGG.

178. The FGG Partners held themselves out as partners in FGG by their words and actions. The FGG Partners' identification of the operating entity as FGG and themselves as "partners" was intended by them to induce Plaintiffs to invest in the Funds, and did induce such investments, FGG acted as an agent and alter ego of each of the FGG Partners and each FGG Partner acted as an agent and alter ego of FGG.

179. Business activities of the FGG Partners are attributed by FGG to FGG and to the Partners. For instance, an FGG brochure describes FGG as consisting of "Partners," and attributes the activities of the Partners to FGG, stating: "Under the leadership of its Partners, FGG has built a team of professionals who specialize in product development, risk management, marketing, operations, compliance, and client services on a global basis." ("Fairfield Greenwich Group – the Firm and Its Capabilities," Sept. 2008, at 20.)

180. FGG and the other Fairfield Defendants drafted, reviewed, authorized, or otherwise participated in the preparation and dissemination of private placement

and confidential offering memoranda and Fund marketing materials to prospective and current investors in the Funds, and were responsible for the content of those materials.

D. Fairfield Defendants' False Representations and Omissions in Marketing the Funds and Their Breaches of Fiduciary Duties to Investors

181. Beginning in 1990 and through December 11, 2008, the Fairfield Defendants marketed the Fairfield Funds on the basis of false and misleading representations and omissions. Investors in the Funds or their nominees were provided copies of the private placement or confidential offering memoranda ("Placement Memoranda") for their respective Funds and were required to acknowledge that they had received that document as a condition to buying shares in the Fund. In addition, the Fairfield Defendants issued to Plaintiffs and published on the FGG website Fund updates, performance reports, and marketing and sales materials. These documents contained uniform misrepresentations and material omissions that induced Plaintiffs to invest in the Funds and retain their investments in the Funds.

182. As set forth herein, the Fairfield Defendants misrepresented to Plaintiffs that their assets were being invested using a split-strike conversion strategy, and that assets in the Funds were earning substantial, consistent returns over time. The Fairfield Defendants further misrepresented that they and their

financial services providers and auditors were conducting extensive due diligence and monitoring of Madoff's operations, which served as the Funds' investment advisor, as well as their broker, execution agent, and sub-custodian or custodian, and that they had full transparency to all of Madoff's operations. The Fairfield Defendants failed to disclose to Plaintiffs the material facts that in reality no one had conducted meaningful due diligence on Madoff prior to establishing the Funds and selecting Madoff as broker, execution agent, and custodian; no one was meaningfully monitoring or independently verifying Madoff's trade activity; they had effectively no transparency to Madoff's operations; they had no independent, factual basis for stating that Madoff was executing a split-strike conversion strategy.

183. The Fairfield Defendants, as acknowledged in their documents and marketing materials, recognized the fundamental importance of proper due diligence and strict monitoring and oversight of the Funds' investment manager, broker and custodian, and their obligation to perform these functions. Nevertheless, as set forth herein, the Fairfield Defendants grossly failed to perform the due diligence that they recognized was essential, and that standard industry practice requires. They also wholly disregarded the red flags that surrounded Madoff and that should have alerted them, as experienced investment professionals, to the need for heightened scrutiny. Moreover, when concerns about

Madoff were raised or questions asked, Defendants purposefully gave false or obfuscated responses.

1. Defendants' False Representations and Omissions Regarding the Split-Strike Conversion Strategy

184. The Placement Memoranda issued by the Fairfield Defendants consistently described the investment strategy of the Funds as seeking to obtain capital appreciation of its assets principally through a "split-strike conversion" strategy. The Placement Memoranda stated that: "The establishment of a typical position entails (i) the purchase of a group or basket of equity securities that are intended to highly correlate to the S&P 100 Index, (ii) the sale of out-of-the-money S&P 100 Index call options in an equivalent contract value dollar amount to the basket of equity securities, and (iii) the purchase of an equivalent number of out-of-the-money S&P 100 Index put options."[1]

185. These representations were false. In reality, no such investment strategy was being pursued because investors' assets were being funneled into Madoff's Ponzi scheme in which no legitimate securities transactions whatsoever were conducted.

186. Furthermore, the Fairfield Defendants failed to disclose to Plaintiffs the material fact that they had no independent factual basis for their representations

[1] FS PPM-7/1/03, at 9-10; FS PPM-10/1/04, at 8; FS PPM-8/14/06, at 9; FΣ PPM- 12/1/08, at 2; FΣ PPM- 2/21/2006, at 2; GS COM- 8/2006, at 1, 8; GS COM- 5/2006, at 7; GS COM- 1994, at 6; GSP COM-8/2006, at 8.

about the Funds' investment strategy, because they had never undertaken any meaningful steps to confirm that the split-strike conversion strategy was actually being implemented by Madoff.

2. Defendants' False Representations and Omissions Regarding the Funds' Track Record of Profitability

187. The Fairfield Defendants uniformly touted – in Placement Memoranda and other uniform sales materials – the Funds' historical track record of profitability. They "set[] forth … the prior trading results" of the Funds, and provided a table representing a rate of return that was positive in virtually all prior months of the Fund's operation and showed substantial, consistent annualized rates of return for the Funds.[2]

188. These representations of the Funds' historical returns were false. Based upon government investigations to date, Madoff did not make any securities transactions in the thirteen years prior to his arrest. There were thus no profitable months for the Funds, because their assets were not invested.

189. The Fairfield Defendants failed to disclose to Plaintiffs the material fact that the historical returns were based solely on information provided by Madoff, and that they had failed to verify independently any of the returns they represented the Funds had earned over the years.

[2] FS PPM-7/1/03, at 23; FS PPM-10/1/04, at 21-22; Fairfield Sentry Limited update reports for July 2007, December 2007, and January through October 2008.

3. Defendants' False Representations and Omissions in Fund Reports to Investors

190. The Fairfield Defendants regularly provided to Plaintiffs various uniform reports, including "Semi-Annual Reports" and "Monthly Strategy Reviews," that purported to inform investors on the Funds' performance and the "strict risk management principles" they were employing.

191. The following are representative examples of Fund reports provided to investors:

a. The August 8, 2007 Semi-Annual Report for Fairfield Sentry stated in part:

- Fairfield Sentry will soon be completing its seventeenth year of operation. Over this time the Fund has remained faithful to its singular objective of seeking non-correlated, low volatility, consistent, risk-adjusted returns. *It has done so all the while applying strict risk management principles.* (Emphasis added.)

- As has been the practice of the Fund for many years, when market conditions present attractive entry opportunities, *the T-Bill holdings are readily liquidated and a position as described above is methodically constructed over the course of several trading days.* Two such implementation cycles have occurred so far this year and both have contributed positively to performance prior to being unwound. (Emphasis added.)

b. "The majority of the Fund's positive performance of 4% in 2007 was driven by gains in the value of the stock

basket which generated 2.41 % in P&L." The February 20, 2008 Semi-Annual Report stated in part:

- Despite the turbulent environment of the second half of 2007, Sentry has performed well, delivering a net return of 3.21% for the six-month period ending December 31, 2007 and another 0.63% in January 2008."

- As can be seen in Figure II, over the past year Sentry has delivered a net return of 122 basis points above the S&P 100 Index with a fraction of the volatility. Similarly, the Fund has exceeded the 90-day Treasury Bill rate by 295 basis points. These results are quite intuitive when one considers the bull spread profile of the SSC.

- [T]he Fund typically spends more than half of the trading days in each year exposed to movements in the S&P 100 Index, albeit on a hedged basis. For the rest of the year, the Fund assumes a 'risk-free' Treasury position and earns short-term money market rates of return as it seeks to protect capital during unfavorable market conditions for the SSC. The key to switching between these stances boils down to a question of timing – and timing, in its various forms, is the principal source of alpha in this strategy.

c. The June 2008 Monthly Strategy Review stated in part:

- Fairfield Sentry Limited . . . returned -0.06% net in June 2008, only the fifteenth negative month since the Fund's inception in December 1990; the Fund has returned 2.58% year-to-date.

- The Fund strives to express sound risk management principles within the SSC strategy in at least two important ways. Firstly, trade activity is governed by strict operating guidelines and trading authorizations

that seek to limit market risk by requiring that, upon activation of the SSC strategy, the stock basket is approximately fully protected by an appropriate quantity of long near out-of-the-money S&P 100 Index put options. Secondly, the Fund seeks to avoid particularly difficult markets by deactivating the SSC strategy and remaining invested in a portfolio of short-dated U.S. Treasury Bills as it awaits the next entry opportunity. *The defensive stance adopted by the SSC strategy in June is in fact a powerful expression of the Fund's commitment to sound risk management and capital preservation principles.* (Emphasis added.)

d. The August 8, 2008 Semi-Annual Report stated in part:

- Sentry's overall performance for the first six months of the year has been positive. Despite the turbulent environment of the first half of 2008, Sentry has performed well, delivering a net return of 2.58% for the six-month period ending June 30, 2008, with positive performance in both quarters (see Figure I).

- The Fund's positive performance for the period exhibits the Fund's bias toward capital preservation during periods of volatile market conditions. This is mainly due to the fact that when the Fund is not invested in the split-strike conversion strategy (the 'Strategy'), it is invested a portfolio of short-dated U.S. Treasury Bills. The Strategy aims to identify periods of positive momentum in large-cap U.S. equities and construct a combination stock/options position to participate in the upward move.

- As has been the practice of the Fund for many years, when market conditions present attractive entry opportunities, a position as described above is methodically constructed over the course of several trading days. There have been two such implementation cycles so far this year and, prior to

being unwound, both have contributed positively to performance.

e. The August 2008 Monthly Strategy Review stated in part:

- Fairfield Sentry Limited . . . returned 0.71% net in August 2008 and has returned 4.05% year-to-date. The S&P 100 Index advanced 1.44% during the month and has declined 12.36% year-to-date.

- In August, the Fund continued its third implementation of the split-strike conversion strategy with an approximately 40% position which was first initiated in July. Early in the month, an attractive entry opportunity was identified and therefore another 20% was added to the Fund's position in the SSC and an appropriate quantity of stocks and S&P 100 Index options were acquired. Prior to options expiration, the Fund unwound the previously constructed August options collars (consisting of long S&P 100 Index put options and short S&P 100 Index call options) and re-implemented a new collar for September expiration. This combination stock/option portfolio was maintained for the remainder of the month.

f. The September 2008 Monthly Strategy Review stated in part:

- Fairfield Sentry Limited . . . returned +0.50% net in September 2008 and has returned +4.57% net year-to-date. The S&P 100 Index declined 7.60% during the month and has declined 19.02% year-to-date.

- In September, the Fund continued its third implementation of the split-strike conversion strategy (the 'Strategy') this year with a 60% invested position first initiated in July. Early in the month, the Fund temporarily unwound the existing short S&P 100 Index call option position and then reimplemented it on the next trading day as the S&P 100 Index rallied. This resulted in the capture of additional call option premium and contributed to positive performance this

> month. By the middle of the month, the stock and options positions were methodically unwound over two trading days and the Strategy returned to a cash stance consisting of short-dated Treasury Bills. This position was maintained for the balance of the month. As investors flocked to the safety of U.S. Treasury Bills during the latter half of September, the Fund's holdings in U.S. Treasury Bills made additional contributions as short-term yields declined markedly.

192. These statements regarding Fund performance and risk management activity were false because the Funds' assets were not being invested and no meaningful risk management was being undertaken. Furthermore, the Fairfield Defendants failed to disclose to Plaintiffs that their risk management was grossly deficient as to the investment with Madoff and that they had no independent basis for their representations about Fund performance, which were based on information provided by Madoff with no independent verification.

4. Defendants' False Representations and Omissions Concerning Due Diligence and Oversight of Madoff

193. The Fairfield Defendants uniformly and consistently represented to existing and potential investors that they conducted thorough due diligence and strict oversight of Madoff's operations, that they independently verified his transactions, and even that they had full transparency and privileged access to Madoff. Through these statements, the Fairfield Defendants recognized the type of diligence and monitoring that they should have been conducting as to Madoff, yet they failed to perform it.

194. The Fairfield Defendants represented in Placement Memoranda that defendant FGBL (the Funds' investment manager/general partner) was "responsible for the management of the Fund's investment activities, the selection of the Fund's investments, monitoring its investments and maintaining the relationship between the Fund and its escrow agent, custodian, administrator, registrar and transfer agent." (*See, e.g.*, FS July 1, 2003, at 7; FS Oct. 1, 2004 PPM, at 6.) They further represented that, "throughout its history," when using "external managers" such as Madoff, they "obtain[] underlying portfolio information for monitoring and client communication purposes." (Id.)

195. The Fairfield Defendants also represented in Placement Memoranda that they imposed guidelines on Fund accounts held by Madoff for implementation of the split-strike conversion strategy:

> The Split Strike Conversion strategy is implemented by Bernard L. Madoff Investment Securities LLC ("BLM") [BMIS], a broker-dealer registered with the Securities and Exchange Commission, through accounts maintained by the Fund at that firm. The accounts are subject to certain guidelines which, among other things, impose limitations on the minimum number of stocks in the basket, the minimum market capitalization of the equities in the basket, the minimum correlation of the basket against the S&P 100 Index, and the permissible range of option strike prices.[3]

[3] FS PPM-8/14/06, at 9-10; FS PPM-5/8/06, at 9-10; FΣ PPM-12/1/08, at 9; FΣ-PPM 2/21/06, at 8; GS COM-8/2006, at 8-9; GS COM- 5/2006, at 7-8; GSP COM-8/2006, at 8.

196. The Fairfield Defendants expanded on these representations in their uniform marketing materials and related documents provided to investors. They repeatedly represented that they conducted daily monitoring of Madoff's activities and compliance with Fund guidelines. For example, they indicated that they conducted "detailed daily compliance monitoring of portfolio activity against all risk limits" and "daily positions-based risk measurement, performance attribution and other quantitative analytics." (Fairfield Sentry Limited Standardized Responses, Dec. 2008 ¶¶ 54, 69.) They similarly represented that "portfolio holdings are reconciled daily" using "proprietary software." (Fairfield Sentry Limited Due Diligence Questionnaire, Oct. 2007, at 21.) They further represented that: "The Investment Manager monitors compliance of the SSC strategy against these risk limits and guidelines each day." (Fairfield Sentry Limited Standardized Responses, Dec. 2008, ¶ 77.)

197. The Fairfield Defendants regularly represented that "regular on-site visits [of Madoff's firm] are conducted by a number of senior members of FGG's legal, operations, and risk teams. [PricewaterhouseCoopers], the Fund's Auditor, has also conducted periodic on-site checks." (Fairfield Sentry Limited Due Diligence Questionnaire, Oct. 2007, at 16.)

198. The Fairfield Defendants represented, in a document called "FGG's Value-Added Investment Process," that "FGG employs an in-depth, multi-faceted

due diligence and risk monitoring process which is designed to uncover" risk from "faulty or incomplete due diligence by investors or their advisors." (Fairfield Greenwich Group, Due Diligence and Risk Monitoring: FGG's Value-Added Investment Process, at 2.) They also represented that they conducted an "[a]nalysis of portfolio composition, portfolio stress testing, risk management, asset verification, peer group comparison, operational procedures, information technology, and a review of offering documents and financial statements." (Id.) They recognized that "lack of regular and comprehensive follow-up risk monitoring are often revealed as the reasons why [investors or their advisors] were not aware of and/or did not react to risks or behavior that eventually became the cause of a fund's unexpectedly high level of losses." (Id.)

199. Throughout their materials, the Fairfield Defendants consistently asserted the fundamental importance of having transparency into Madoff's operations as Fund manager. For instance, they acknowledged that "[o]nly by receiving full transparency from its managers can FGG assure itself and its clients that every FGG fund continues to act according to the principles, agreements, and strategies that are specified to FGG and investors." (Fairfield Greenwich Group, Due Diligence and Risk Monitoring, at 2.)

200. The Fairfield Defendants specifically represented that they required full transparency from all of their Fund managers, including Madoff. For example,

they stated that they "maintain full transparency to [Madoff] accounts" and perform "[i]ndependent verification of prices and account values." (Fairfield Greenwich Group: Fairfield Sentry Limited Presentation, May 2006, at 17; Fairfield Greenwich Group Fairfield Sentry Limited Presentation, Oct. 2008, at 8.) They similarly represented that, "[f]or risk monitoring purposes, FGG obtains portfolio transparency from all managers which are included in its multi-strategy funds." (Fairfield Sentry Limited October 2008 Update.) They even claimed that their "business model enables the firm to have privileged access to all aspects of a manager's operation and investment process, including security level transparency which is employed on a confidential basis." (Fairfield Greenwich Group, Due Diligence and Risk Monitoring, Apr. 2008, at 2.)

201. The Fairfield Defendants represented that, in the fund manager selection process, transparency was a key criterion. They stated that among the qualities they "look[ed] for in managers," were "strong risk management"; "solid investment process"; "operational procedures"; "legal compliance"; and "transparency." (Fairfield Greenwich Group, Investment Process and Risk Management Overview, Apr. 2006, at 4-5.) They further claimed they verified a potential manager's "portfolio analysis," "financial statements," "backoffice procedures," and "regulatory/legal procedures" before selecting a manager. (Id.) They also represented that their due diligence process involved "check[ing] for a

'reputable' auditor," and an "understand[ing]…of explanation of valuation methods used [and] trade execution process." (Id. at 14-15.)

202. The Fairfield Defendants further represented that they maintained "deep, ongoing joint venture relationships" with their fund managers and would review on an ongoing basis "audited financials and auditor's management letter comments"; "accounting controls: from trade execution; to trade capture; to trade reconciliation with the Street, administrator, and fund; to fund's books and records"; "bank reconciliations for irregular or outstanding items"; and "broker reconciliations to ensure completeness and existence of all securities." (Fairfield Greenwich Group, Due Diligence and Risk Monitoring, at 7; Fairfield Greenwich Group: The Firm and Its Capabilities, Sept. 2008, at 18.)

203. The Fairfield Defendants even went so far as to assert that their oversight, monitoring, and risk management processes were so superior that they would have uncovered the significant Bayou Fund fraud that had deceived other investment managers several years before. They represented that they would never have invested in the Bayou Fund Ponzi scheme because they would have "[v]isit[ed][the potential fund manager's] office, have [had] several face-to-face meetings" and "[w]atch[ed] for inconsistent answers, refusal to give information," in addition to "[v]erif[ying] assets under management for all funds directly with the prime broker/ administrator" and conducting an "independent, third party

confirmation of assets." (Fairfield Greenwich Group, Investment Process and Risk Management Overview, Apr. 2006, at 21-22.)

204. The Fairfield Defendants represented that they understood the risks of the hedge fund business and knew how to avoid "blow ups" by applying principles which, in actuality, they ignored. They stated, "When one reads about a hedge fund 'blow-up' in the media, it is most likely the result of operational failure or fraud … **Operational failures, including misrepresentation of valuations and outright fraud, constitute a majority of instances where massive investor losses occur**… The inadequacy or lack of independence or transparency of valuation procedures, contingency plans, and other trading and settlement procedures may cause FGG to reject an otherwise appealing manager." (Fairfield Greenwich Group, Due Diligence and Risk Monitoring, at 5) (emphasis in original).

205. The foregoing representations were all knowingly false as to Madoff when made. The Fairfield Defendants knowingly disregarded the fundamentally important operating and risk management principles that they touted, and they failed to disclose to Plaintiffs that they were not fulfilling these important functions. The Fairfield Defendants in fact were not engaging in customary, or any other meaningful, due diligence to verify that the Plaintiffs' assets were being properly invested and managed by Madoff, or even that the assets that had been

entrusted to Madoff still existed. The Fairfield Defendants had no transparency (much less "full" transparency), and no access (much less "privileged" access) to Madoff's operations.

206. Because the Fairfield Defendants knew that they had not conducted due diligence and oversight as represented to Plaintiffs, in 2008 they acknowledged internally that "[t]he biggest single counterparty risk exposure we have at FGG is [Madoff]" and admitted there existed what they euphemistically referred to as "gaps" in their knowledge of Madoff's operations, a fact they failed to disclose to Plaintiffs.

207. Internal FGG emails disclosed in the Massachusetts Proceeding demonstrate that each of the individual Fairfield Defendants – Noel, Tucker, Piedrahita, Vijayvergiya, Lipton, McKeefry, Landsberger, Smith, and Murphy – was aware of FGG's lack of knowledge of Madoff's operations.

208. On September 22, 2008, Defendant Landsberger sent an email to Defendants Vijayvergiya, Tucker and the Executive Committee (Defendants Piedrahita, Smith, and Murphy), asking "[c]an we get some clarity from BLM on how he sees the markets and liquidity from his counterparties on the options?"

209. Defendant Vijvergiya, in an email dated September 24, 2008, to defendants Smith, Landsberger, Tucker, Lipton, and the "Executive Committee" ("ExecutiveCommittee@fggus.com," including defendant Piedrahita), stated that

"[w]e have a number of questions for BLM relating to the derivatives [counter-parties] – including his views on the willingness of the options [counter-parties] that have been historically used to continue trading with BLM, as Agent in this environment. These are in addition to several other important questions we have for BLM relating to their operations and trading (Bernie has already been sent a fax of our questions).... [M]y preference would be to approach Bernie with well thought out, reasoned questions that focus on filling the gaps in our knowledge."

210. Among other things, the Fairfield Defendants had no access to Madoff's accounts, so they could not possibly confirm that Fund investment guidelines were being followed, as represented. The Fairfield Defendants could not have monitored Madoff's positions and risk profiles on a daily basis as represented, because they did not receive trade confirmations from Madoff until three to five days after trades had been purportedly executed – a highly unusual and suspicious delay – which gave Madoff time to concoct fake trading records.

211. The Fairfield Defendants knew that Madoff had never permitted them to examine "prime broker trading records" in a manner that would permit verification that transactions were even made, much less the transaction price or account value. The Fairfield Defendants never contacted any of Madoff's purported counterparties to verify that trades supposedly made by Madoff had in

fact occurred. Nor could senior Fairfield personnel describe the proprietary models and algorithms that Madoff supposedly used to implement the strategy.

212. The Fairfield Defendants acquiesced to the unusual arrangement by which BMIS served as both the sub-custodian or custodian of Fund assets and the executing broker, as well as the investment manager, without heightening their scrutiny or taking steps to confirm that Madoff actually held the securities he was purporting to trade. This meant that any verification of the custodian's records against the broker's records was merely a comparison of information received from Madoff against other information received from Madoff. In reality, it was no check at all.

213. Based on the Fairfield Defendants' public statements, it appears that the only attempt they ever made to confirm that Madoff was actually making trades was a 2001 visit to Madoff's office by Jeffrey Tucker during which Madoff showed him a few purported records of trading in a single stock. (*See* Massachusetts Proceeding, Consent Order, Sept. 8, 2009, ¶¶ 102-04.)

214. Tucker's testimony demonstrates that the Fairfield Defendants failed to perform the due diligence that they represented to Plaintiffs:

> Q. Have you ever had a tour of the part of Madoff's offices where he engaged in the split strike conversion strategy?
> A. No.

> Q. Do you know of anyone else at Fairfield who has had a tour of the portion of Madoff's offices where he engages in the split strike conversion strategy?
> A. I don't know.
> Q. You don't know of anybody?
> A. I'm not aware of anybody that had access to it.
> Q. With respect to the SSC strategy that Madoff had been executing for the Sentry Fund, could you please describe those proprietary models and algorithms?
> A. I don't --- I'm not familiar with them.
> Q. Do you know anything about them?
> A. No.

(Massachusetts Proceeding, Consent Order, ¶¶ 102, 104.)

215. Further evidence of the Fairfield Defendants' failure to perform any meaningful due diligence and monitoring arises from the fact that Madoff sent FGG confirmations for hundreds of trades that purportedly were made at prices that were outside the actual trading range for those securities on the dates in question; any comparison of Madoff's reports to market prices would have led to discovery of the fraud. Similarly, Madoff reported making trades on weekends, which could not have occurred, and reported purchases of options on equity trades that had not yet been executed.

216. Although Madoff stated to the Fairfield Defendants that he "maintained accurate records as to voting of … proxies that will enable the investment advisor to periodically review … actions taken on individual voting situations" with respect to the purported assets, the Fairfield Defendants never received or reviewed any proxy materials from Madoff in connection with the

equities he was supposedly holding. Had they done so as part of their represented due diligence, they would have discovered that Madoff was not, in fact, buying and selling the securities. Monitoring proxies was yet another basic, normal-course-of-dealing due diligence step that the Fairfield Defendants failed to undertake.

E. The Fairfield Defendants Ignored Red Flags of Madoff's Fraud

217. The misrepresentations and omissions of the Fairfield Defendants are even more egregious when viewed against the backdrop of the warning signs and suspicious conduct by Madoff that they ignored. These red flags violated some of the most basic tenets of sound investment management that Defendants represented they were following. The red flags included the lack of any transparency into Madoff's operations, that key positions were held by Madoff family members, the lack of segregation of important functions, such as investment management, brokerage, and custodianship, inadequate auditing, Madoff's use of paper trading records, and the implausibly consistent positive returns for a fund pursuing a market-based strategy. In addition to flagrantly disregarding these red flags, the Fairfield Defendants knowingly concealed the existence of these warning signs from Plaintiffs. Some of the red flags included the following:

1. Madoff's Secretive Operations

218. Madoff refused to answer even basic questions about BMIS and its operations, let alone to permit the kind of due diligence and transparency that the

Fairfield Defendants represented was necessary, was being undertaken, and that they should have undertaken. As an example, a "BLM Operational Due Diligence" memorandum, dated October 2, 2008, purporting to memorialize a meeting at BMIS with FGG partners Noel and Tucker, reflects that, on one of the rare occasions when the Fairfield Defendants actually inquired about his operations, Madoff refused to provide answers.

219. The Fairfield Defendants ignored this breach of their asserted due diligence protocol, and failed to disclose Madoff's alarming lack of transparency to investors. The lack of transparency was even more suspicious in light of the fact that the Fairfield Defendants knew that the Funds collectively were Madoff's largest investors.

2. Key Positions Held by Madoff Family Members

220. Madoff's secrecy was exacerbated by the fact that Madoff family members controlled key positions at the firm, thus limiting third party involvement. The Fairfield Defendants knew about this arrangement, yet ignored the risk it presented, and concealed this risk from Plaintiffs.

3. Madoff's Custody of Assets

221. Another red flag ignored and concealed by the Fairfield Defendants was that Madoff failed to trade through an independent broker and, instead, self-cleared all Fund activities through his wholly-owned company BMIS. In addition,

Madoff served as his own custodian or sub-custodian for the Funds' assets, even though this greatly increased the risk of Madoff perpetrating a fraud. At minimum, this arrangement should have alerted the Defendants to the need for heightened scrutiny, monitoring, and verification of transactions, yet Defendants ignored this risk, and failed to disclose that they had taken no meaningful precautionary steps to mitigate this risk.

4. Madoff's Unknown Auditing Firm

222. Another warning sign was Madoff's use of Friehling & Horowitz ("F&H"), an unknown accounting firm that was plainly unequipped to audit a company of BMIS's size. The firm had only three employees – a retired partner living in Florida, a secretary, and one active certified public accountant. While F&H was a member of the American Institute of Certified Public Accountants ("AICPA"), it had not been subject to a peer review since 1993 – a requirement of membership in AICPA – because F&H represented to the AICPA, in writing, that it did not perform any audits. This material information was ignored and concealed from Plaintiffs.

5. Madoff's Paper Trading Records

223. While Madoff claimed his operation to be technologically advanced, and the Fairfield Defendants claimed they had transparency to Madoff and his operations, in fact, Madoff reported his trades to Defendants using only paper

confirmation forms, with copies of the tickets received by Fairfield Defendants 3-5 days after the trades supposedly occurred. Based on standard industry practices in the 21st century, the lack of access to real-time electronic reporting should have raised significant concerns about the BMIS operation. The use of delayed paper trade records, which are patently susceptible to manipulation, was another red flag ignored by the Fairfield Defendants, and which they concealed from Plaintiffs.

6. Madoff's Consistent Investment Returns

The impossible consistency of Madoff's reported results using the split-strike conversion strategy and the resulting investment returns was another warning sign. Among other things: (1) Madoff generally reported that he bought near daily lows and sold near highs with uncanny consistency; (2) Madoff reported trades at prices that were outside the stocks' actual trading ranges or took place on weekends, both of which are impossible; (3) Madoff always claimed to be fully invested in treasury bills at the end of each quarter; and (4) Madoff's reported results were inconsistent with the split-strike strategy, which might reduce volatility but could not produce gains in a declining stock market. Madoff's reported results were unattainable and not repeatable by others, yet the Fairfield Defendants ignored this warning sign.

224. Rather than ignoring these and other red flags (as the Fairfield Defendants did), other investment banks and investment professionals conducted

due diligence concerning Madoff and his purported investment strategy, which led to serious doubts about Madoff's legitimacy and caused them either to refuse to invest or to withdraw investments with Madoff. For example, *The New York Times* reported that Société Générale conducted routine due diligence and concluded that Madoff's numbers "simply did not add up," and prohibited its investment banking division from doing business with him.

F. The Fairfield Defendants Falsely Reassured Investors Who Made Inquiries

225. When various Fund investors raised questions about Madoff, the Fairfield Defendants repeatedly – and falsely – assured them that they had nothing to worry about. For example, in 2005, in response to the failure of another investment fund, a Fairfield client asked with respect to Fairfield Sentry, "who supervises that everything is in order?" In order to respond to this basic question, the Fairfield Defendants scrambled to find out information about F&H, Madoff's auditing firm. They discovered that F&H was operating out of a strip mall in New City, New York, and that "[i]t appears Friehling is the only employee." (E-mail from G. McKenzie to J. Tucker, D. Lipton & C. Castillo, with copies to L. Barreneche and McKeefry, Sept. 14, 2005.) Yet, with absolutely no basis, Defendant Lipton, FGG's chief financial officer, told those scheduled to speak to the inquiring client that F&H is "a small to medium size financial services audit and tax firm, specializing in broker-dealers and other financial services firms," and

that the firm had "100's of clients and are well respected in the local community." (E-mail from D. Lipton to C. Castillo & J. Tucker, Sept. 12, 2005.)

226. When, after Madoff's arrest, the Fairfield Defendants inquired about the auditing firm they had touted earlier, they confirmed that F&H only had one employee and approximately $180,000 in annual revenues. Despite FGG's representations about the accounting firm, it appears that none of the Fairfield Defendants had ever spoken to F&H, other than in a purported five- to ten-minute conversation with a partner at F&H in 2005. This total lack of due diligence and knowledge about the accounting firm is apparent from an e-mail to Defendant Vijayvergiya on August 20, 2008, in which Defendant Lipton asked, "Do we know any of the other client [sic] of BLM's [BMIS's] auditors? Or how big they are? I remember we called over there a while ago." The Fairfield Defendants' representations that F&H had the ability to properly and independently monitor an operation the size of Madoff's were false and lacked any good faith basis.

227. Although the Fairfield Defendants failed to conduct any due diligence of Madoff's auditors, they represented to Plaintiffs that they had conducted such due diligence. For example, in an April 2006 marketing piece titled, "Fairfield Greenwich Group, Investment Process and Risk Management Overview April 2006," FGG recognized that due diligence requires "check[ing] for 'reputable' auditor," and claimed that FGG would not have invested in another fund which had

been found to be fraudulent because it would have "question[ed]" the fund's "obscure auditing firm." (*See* Fairfield Greenwich Group, Investment Process and Risk Management Overview, Apr. 2006, at 14, 21.) These representations were knowingly false when made because, as the Fairfield Defendants knew, they had never attempted to conduct any manner of credible due diligence on Madoff's purported auditors.

228. In response to a May 2008 client request, the Fairfield Defendants were unable to provide information concerning such basic matters as account segregation, audits, and trade confirmations; recognizing that "[u]nfortunately there are certain aspects of [Madoff's] operations that remain unclear," thus they turned belatedly to Madoff for answers they should have already known and independently verified before they made any representations to Plaintiffs. (E-mail from A. Vijayvergiya to C. Murphy, Piedrahita, Toub, Tucker, the Executive Committee and others, Aug. 19, 2008.)

229. Notwithstanding their lack of knowledge about Madoff's operations, the Fairfield Defendants continued to assuage their clients' questions with the same unsubstantiated assurances. For example, on September 16, 2008, defendant Vijayvergiya sent an email to Fairfield Sentry investors stating that Fairfield Sentry had dodged the market meltdown over the Lehman Brothers bankruptcy because "[c]urrently the [split-strike conversion] portfolio of Sentry is fully invested in

short date U.S. Treasury bills." And, in an effort to dissuade a client from redeeming over 10,000 shares in one of the Funds, on October 20, 2008, Defendant Barreneche assured the client that "the Fund has protected capital this year through Sept'08 and has in fact been in US T-bills since September 16, 2008 to date, when the S&P 100 has dropped close to 20% for the same period." As for the client's concerns about counterparty risk, Defendant Barreneche assured the client that the Fund "has not had any exposure to Lehman Bros, Merrill Lynch or AIG. Sentry's executing broker uses derivatives dealers and international banks for the majority of the OTC options trades and counterparty risk is diversified amongst approximately 20 dealers in order to reduce exposure to any single counterparty. These counterparties are highly rated and maximum exposure to a single counterparty is currently 10%." These representations were false when made and the Fairfield Defendants knew they had no factual basis upon which to make them, particularly in view of their failure to conduct the represented due diligence and oversight of Madoff.

230. On October 2, 2008, defendants Noel, Tucker, McKeefry and Vijayvergiya (by telephone) finally attended a due diligence meeting at BMIS with Madoff and Frank Di Pascali. (BMIS Operational Due Diligence Memo., Oct. 2, 2008.) During that meeting, Madoff refused to answer many of the central questions that FGG had asked in a questionnaire. For example, he refused to

supply the names of key personnel involved in implementation of the split-strike conversion strategy and would not identify the persons responsible for placing trade orders or their supervisors. Despite the fact that they had received numerous customer inquiries regarding counterparty risk and the identities of counterparties, the Fairfield Defendants did not press Madoff for this and other important information or otherwise follow up with any due diligence.

231. The Fairfield Defendants continued to tout their due diligence, even after Madoff refused to provide the information they belatedly requested. For example, on October 21, 2008, defendant Barreneche emailed a prospective client and boasted that "Fairfield Greenwich (Bermuda) has been facilitating rigorous and very thorough investment and operational due diligence on Fairfield Sentry Limited in response to our clients' requests and in line with institutional demand." At the time when Defendant Barreneche made that representation, she had no basis in fact to assert that the recent Madoff due diligence expedition had been anything but an abject failure.

232. Thus, during the fall of 2008, the Fairfield Defendants were finally seeking answers from Madoff to basic questions which they had been representing to Fund investors for years that they were not only asking (which they were not), but that they were receiving satisfactory answers to (which they had not). When Madoff failed to answer those questions, the Fairfield Defendants continued falsely

to represent that they were in complete control over the operations of the Funds and had complete transparency into Madoff's operations. At no time did Defendants disclose that Madoff was not providing access to, or even basic information about, his operations and Plaintiffs' assets.

233. In the face of their lack of due diligence and, thus, lack of information about Madoff, and in furtherance of their fraudulent scheme, the Fairfield Defendants developed over a long period of time a set of standardized responses specifically for use by any FGG employee who might be asked questions regarding the operation of the Fairfield Sentry Fund. The database responses confirm that the Fairfield Defendants falsely represented that controls existed to ensure the legitimacy of Madoff's operations, including the handling of the Fairfield Funds' assets, such as (i) annual reports by F&H, the purported independent auditors, with respect to Madoff's internal controls; (ii) bi-annual audits by PricewaterhouseCoopers concerning "controls and systems at . . . [BMIS], the front-office and trading practices, procedures in respect to supervision and monitoring, procedures in respect of stock reconciliation, procedures in respect to trade allocation of bunched orders, error handling and a number of other items"; and (iii) the Fairfield Defendants' own "periodic[] … on-site due diligence visits to . . . [BMIS to] independently assess the suitability of operational controls, systems and procedures." (E-mail from D. Attavar to Sentry Team, Nov. 14, 2008.) The

final codification of these "talking points" took the form of a document entitled "Fairfield Sentry Limited – Standardized Responses" and was dated December 2008. Even as of that late date, the Fairfield Defendants continued to falsely represent that trade confirmations were "reconciled immediately"; that they had "full position transparency" and "granular position transparency" which allowed them to conduct "detailed daily compliance monitoring of portfolio activity against all risk limits"; that they "monitor[ed] compliance of the SSC strategy against these risk limits and guidelines each day"; that "[t]he portfolio is priced daily by the broker and the Investment Manager – Fairfield Greenwich (Bermuda) Ltd."; and that "[t]he Fund trades in highly liquid, large cap stocks all of which are members of the S&P 100 Index. These stocks are amongst the most well traded, liquid issues in US equity markets." (Fairfield Sentry Limited Standardized Responses, Dec. 2008, ¶¶ 24, 27, 59, 69, 89.) Like the other representations made by the Fairfield Defendants, the representations in the standardized responses were false and omitted material facts, and the Fairfield Defendants had no basis upon which to make them.

G. The Fairfield Defendants Assisted Madoff in Thwarting an SEC Investigation

234. In 2005, the Fairfield Defendants knowingly assisted Madoff in thwarting an SEC investigation into his operations. Knowing that, as Madoff's largest investor, FGG would be a key witness in the SEC's investigation, the

Fairfield Defendants sought and followed Madoff's instructions on how to approach their upcoming testimony. In a telephone conversation that began with Madoff telling Vijayvergiya and McKeefry that "this conversation never happened," Madoff proceeded to instruct the Fairfield Defendants in what to say and what not to say to the SEC. Rather than taking the SEC investigation as an opportunity to acquire valuable knowledge about Madoff's operations – to which Plaintiffs had committed billions of dollars in reliance on the Fairfield Defendants' representations – the Fairfield Defendants aided Madoff in deceiving the SEC and, ultimately, Plaintiffs. The Fairfield Defendants then compounded this betrayal of trust by citing to the inconclusive result of the SEC investigation in their public statements to Fund investors as proof that Madoff and BMIS could be trusted as faithful manager and custodian of the Funds' assets.

H. The Fairfield Defendants Attempted to Raise Money to Keep Madoff Afloat in Late 2008

235. In addition to covering up for Madoff, the Fairfield Defendants tried to prop him up. In 2008, Madoff desperately pressed the Fairfield Defendants to bring in new infusions of cash. The Fairfield Defendants redoubled their efforts to raise new capital to be funneled to Madoff through a newly-created "Emerald Fund" and other leveraged versions of the Fairfield Funds. This effort continued until December 11, 2008, when Madoff's fraud was revealed.

I. The Fairfield Defendants and Fairfield Fee Claim Defendants Earned Massive Fees from Funneling Plaintiffs' Assets into the Madoff Fraud

236. During the entire period from the Fairfield Funds' inception until December 2008, the Fairfield Defendants collected enormous fees in return for services ostensibly provided. These fees were calculated on the basis of non-existent profits and asset values that were reported by Madoff. On this basis, the Fairfield Defendants and the Fairfield Fee Claim Defendants were paid hundreds of millions of dollars in fees which they never legitimately earned. These fees took a number of forms.

237. Placement Fees. In 2006, the Fairfield Sentry PPM specified that FGL, the Fund's Placement Agent, could charge placement fees not to exceed 3% of the shareholder's investment. (FS PPM-8/14/06, at 2, 8.) In 2003 and 2004, the PPMs specified that placement fees not to exceed 3% could be charged by FGBL (which was the Fund's Investment Manager) or an affiliate. (FS PPM-10/1/04, at 2, 10; FS PPM-7/1/03, at 2, 8.)

238. Performance Fees. As Placement Agent, FGL received "for each calendar quarter, a performance fee (the "Performance Fee") in an amount equal to 20% of the net realized and net unrealized appreciation in the Net Asset Value of each Share in such calendar quarter ("Net Profits")." (FS PPM-8/14/06, at 4, 15.)

In earlier years, the PPMs specified that FGBL, the investment manager, would receive the performance fee. (FS PPM-10/1/04, at 4, 13; FS PPM-7/1/03, at 4, 15.)

"Performance Fees" Paid by Fairfield Sentry	
Year	**Fee**
2002	$ 83,591,000
2003	$ 80,515,000
2004	$ 81,278,000
2005	$ 87,225,000
2006	$107,779,000
2007	$ 61,063,000
2008 (through June 30)	$ 46,070,000
Total	$547,521,000

(Fairfield Sentry Directors' Report and Financial Statements for the year ended December 31, 2003 Auditor's Report, at 8; Fairfield Sentry Directors' Report and Financial Statements for the year ended December 31, 2005 Auditor's Report, at 8; Fairfield Sentry Directors' Report and Financial Statements for the years ended December 31, 2007 and 2006 Auditor's Report, at 8; Fairfield Sentry Directors' Report and Financial Statements for the period January 1, 2008 to June 30, 2008 Auditor's Report, at 7.)

239. Management Fees. In 2006, the Fairfield Sentry PPM stated that FGL (the Placement Agent) "will receive for each month a management fee (the 'Management Fee') in an amount equal to one-twelfth of one percent (0.0833%) (approximately 1% per annum) of the Net Asset Value of the Fund before Performance Fees." It further provides that "FGL may pay a portion of the

Management Fee to an affiliate of FGL and the Investment Manager....," and that "FGL will pay the Investment Manager [FGBL] a fixed fee for providing certain managerial services to the Fund...." (FS PPM-8/14/06, at 4, 14, 15.) In earlier years, the PPMs stated that "the Manager" (FGBL) would receive the above-mentioned fee. (FS PPM-10/1/04, at 4, 13; FS PPM 7/1/03, at 4, 14.)

"Management Fees" Paid by Fairfield Sentry	
Year	**Fee**
2002	$ 3,884,000
2003	$ 5,221,000
2004	$ 21,549,000
2005	$ 51,127,000
2006	$ 50,465,000
2007	$ 32,393,000
2008 (through June 30)	$ 36,134,000
Total	$200,773,000

(Fairfield Sentry Directors' Report and Financial Statements for the year ended December 31, 2003 Auditor's Report, at 8; Fairfield Sentry Directors' Report and Financial Statements for the year ended December 31, 2005 Auditor's Report, at 8; Fairfield Sentry Directors' Report and Financial Statements for the years ended December 31, 2007 and 2006 Auditor's Report, at 8; Fairfield Sentry Directors' Report and Financial Statements for the period January 1, 2008 to June 30, 2008 Auditor's Report, at 7.)

240. Fees for Administrative Services and Back Office Support by Fund Affiliates. In 2003, Fairfield Sentry's PPM stated that "[t]he Fund pays an annual expense reimbursement to Fairfield Greenwich Advisors LLC, an affiliate of the

Manager, on a quarterly basis in an amount equal to one-fortieth of one percent (0.025%) of the Net Asset Value in the last day of each calendar quarter (ten basis points per annum) of the Fund for providing certain administrative services and back-office support to the Fund." (FS PPM-7/1/03, at 15.) In addition, FGBL was to pay FGL an "expense reimbursement" equaling 15% of its own management fee for "bearing certain of the Fund's internal accounting and operational expenses." (Investment Management Agreement between Fairfield Sentry Limited and Fairfield Greenwich (Bermuda) Limited, dated Oct. 1, 2004 ("Investment Management Agreement") ¶ 9; *see also* Investment Management Agreement between Fairfield Sigma Limited and Fairfield Greenwich (Bermuda) Ltd., dated Oct. 1, 2001 ("Sigma Investment Management Agreement") ¶ 9.)

241. These Fairfield Sentry fees were calculated on the basis of fraudulent information, which the Fairfield Defendants never verified was accurate.

242. Fairfield Sigma's assets were invested in Fairfield Sentry, and therefore, Fairfield Sigma investors were subject to the Fairfield Sentry fee structure. The Fairfield Sigma PPMs ("FΣ PPM") discussed the fee schedule established by Fairfield Sentry and the means by which FGBL and Citco Fund Services would be compensated. (FΣ PPM-12/1/08, at 2, 4, 15, 18, 20; FΣ PPM-2/21/06, at 2, 4, 14, 15, 16.) It also established the expense reimbursement that would be received by FGA and certain directors: "Fairfield Greenwich Advisors

LLC, an affiliate of the Investment Manager, will receive an annual expense reimbursement from the Fund, payable quarterly, in an amount equal to 0.0375% of the Fund's Net Asset Value (0.15% on an annual basis) as of the last day of each calendar quarter, for providing certain administrative services and back-office support to the Fund." (FΣ PPM-12/1/08, at 4, 15; FΣ PPM-2/21/06, at 3, 14.)

243. Fairfield Sigma investors paid the following fees:

Expense Reimbursement and Administration Fees for Fairfield Sigma	
Year	**Fee**
2002	€ 57,665
2003	€ 111,678
2004	€ 341,170
2005	€ 570,270
2006	€ 693,441
2007	€1,174,665
Total	€2,948,889

(Fairfield Sigma Limited Financial Statements for the year ended December 31, 2003, at 7; Fairfield Sigma Limited Financial Statements for the year ended December 31, 2004, at 7; Fairfield Sigma Limited Financial Statements for the year ended December 31, 2005, at 7; Fairfield Sigma Limited Financial Statements for the years ended December 31, 2007 and 2006, at 6). FGBL calculated these fees based on false data provided by BMIS that, notwithstanding the Fairfield Defendants' representations of performing extensive due diligence, they never verified.

244. These Fairfield Sigma fees were also calculated on the basis of fraudulent information, which the Fairfield Defendants never verified was accurate.

245. Incentive/Performance Fees. The Greenwich Sentry Confidential Offering Memoranda ("GS COMs") specified that "at the end of each fiscal quarter, 20% of the Partnership's realized and unrealized net capital appreciation allocable to the capital accounts of the Limited Partners will be allocated to the General Partner [FGBL] (the "Performance Fee")" (GS COM- 8/2006, at 3, 13; GS COM-5/2006, at 3-4, 12; GS COM-1994, at 3, 9, 14; GSP COM-8/2006, at 3, 13.) "Since the [performance fee] is calculated on a basis that includes unrealized appreciation of assets, such allocation may be greater than if it were based solely on realized gains." (GS COM- 8/2006, at 14; GS COM-5/2006, at 14; GSP COM-8/2006, at 15.)

246. Management Fees. In 2006, the COMs stated that "the General Partner generally receives a monthly management fee calculated at the annual rate of approximately 1% (0.0833% per month) of each Limited Partner's Capital Account (the "Management Fee"). (GS COM- 8/2006, at 19; GS COM-5/2006, at 17; GSP COM-8/2006, at 18.) The General Partner began charging these fees on May 1, 2006. (Greenwich Sentry, L.P., Financial Statements for the years ended

December 31, 2007 and 2006, at 10.) The General Partner collected $282,277 in 2006 and $987,153 in 2007. (*Id.*)

247. Fees for Administrative Services and Back Office Support by Fund Affiliates. In 2006, the COMs stated that "the Partnership may pay Fairfield Greenwich Advisors LLC, an affiliate of the General Partner, an amount equal to one-fortieth of one percent (0.025%) of the value of the Limited Partners' Capital Accounts as of the first day of each fiscal quarter (10 basis points per annum) for providing certain administrative services and back-office support to the Partnership (the "Expense Reimbursement")" (GS COM- 8/2006, at 19; GS COM-5/2006, at 18; GSP COM-8/2006, at 18.)

248. These Greenwich Sentry and Greenwich Sentry Partners fees were also on the basis of fraudulent information, which the Fairfield Defendants never verified was accurate.

249. Following the revelation of Madoff's Ponzi scheme on December 11, 2008, the Fairfield Defendants and Fairfield Fee Claim Defendants have failed to repay compensation that they received which was calculated on the basis of Madoff's fraudulent investment returns. They continue to claim that they are owed tens of millions of dollars in fees from the few tangible assets that remain. While the Fairfield Defendants and Fairfield Fee Claim Defendants continue to profess their shock and innocence about what has transpired, the many investors in the

Fairfield Funds face the loss of their entire investments, amounting to billions of dollars.

J. Fairfield Defendants Agreed to Provide Full Restitution to Massachusetts Investors in the Funds

250. On April 1, 2009 the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts ("Securities Division") filed a 110-page Administrative Complaint against Defendants FGA and FGBL (referred to in the Administrative Complaint collectively as "Fairfield"), thereby commencing the Massachusetts Proceeding.

251. The Administrative Complaint was the result of an investigation conducted by the Securities Division, which included documents produced by FGG and interviews conducted by the Division of defendants in this action, including Noel, Tucker, Vijayvergiya and Lipton.

252. The Administrative Complaint was "based on a profound disparity between the due diligence Fairfield represented to its investors that it would conduct with respect to [BMIS] and the due diligence it actually conducted, as well as misrepresentations to investors in its Sentry funds about Fairfield's degree of knowledge and comfort with respect to Madoff's operations." *See* Administrative Complaint, page 1.

253. The Administrative Complaint also alleged that the defendants "were blinded by the fees they were earning, did not engage in meaningful due diligence

and turned a blind eye to any fact that would have burst their lucrative bubble." Among other things, the Complaint alleged that the defendants assisted Madoff in misleading the SEC. *See* Administrative Complaint, page 5.

254. The Complaint observed that "Fairfield has not offered to repay the enormous performance fees it reaped, even though it now knows that the performance upon which those fees are based is fictitious." *See* Administrative Complaint, page 37.

255. The allegations in the Administrative Complaint were supported by extensive and detailed proof, including quotations from emails and other internal FGG documents, and 61 appended documents.

256. On August 12, 2009, the two Fairfield defendants named in the Massachusetts Proceeding filed a Pre-Hearing Memorandum with the Securities Division, "consent[ing] to the entry of the findings of the facts alleged in the Complaint."

257. On September 8, 2009, the Massachusetts Securities Division entered into a Consent Order with FGA and FGBL. In the Consent Order, FGA and FGBL agreed (a) to permanently cease and desist from violations of the Massachusetts Uniform Securities Act, (b) to be censured by the Securities Division, (c) to pay the Securities Division a civil penalty of $500,000, an amount commensurate with the costs of the Division's investigation in, and (d) to provide restitution to all

Massachusetts residents who were investors in the Fairfield Sentry, Greenwich Sentry, and Greenwich Sentry Partners funds, in the approximate amount of $8 million.

258. By causing FGA and FGBL to enter into the Consent Order, FGG acknowledged that it had obligations directly to investors in the Funds.

K. PricewaterhouseCoopers Failed to Audit the Funds According to U.S. and International Standards and Misrepresented the Financial Condition of the Funds

259. PwC Netherlands and PwC Canada were retained to conduct independent audits of the Funds; they started to audit certain of the Funds in 2002 or earlier and continued to audit the Funds through 2007. As set forth below, PwC continuously audited the Funds during this period, and PwC and the Funds had a mutual understanding that PwC would continue indefinitely to provide recurring auditing and related services to the Funds. For example, in an engagement letter to FGG dated February 7, 2006, PwC Netherlands referred to "our ongoing appointment as auditors of the Fairfield Funds" and the document provided that "this engagement letter is also effective for years subsequent to 2005, until it is replaced by a new engagement letter, unless the engagement is terminated."

260. PwC provided auditing, tax, and other consulting services to the Funds on a regular and recurring basis. In preparing and certifying annual financial statements for the Funds, PwC relied on audits that it prepared in prior

periods and reaffirmed that the financial information in the certified financial statements, both past and present, was prepared in accordance with GAAP, GAAS, International Accounting Standards, and all applicable accounting standards and that the statements were an accurate representation of the financial condition of the Funds. Among other tasks, PwC expressly undertook to conduct "tests of physical existence, ownership and recorded value of selected assets", "tests of selected recorded transactions with documentation required by law and good business practice", and "direct confirmation with selected third parties (e.g., banks, customers, suppliers) of amounts due to or by them and other relevant information." PwC misrepresented that it performed these tests, when it did not, and fraudulently concealed its misconduct from Plaintiffs, thereby preventing Plaintiffs from discovering that the Funds' financial statements were false and misleading.

1. PwC Issued Clean Audit Opinions for the Funds

261. PwC Netherlands issued an unqualified (or clean) audit opinion for the financial statements of Greenwich Sentry for the year ended December 31, 2005. PwC certified that the financial statements were presented in conformity with United States generally accepted accounting principles ("GAAP") and the audit was conducted in accordance with United States generally accepted auditing standards ("GAAS").

262. PwC Canada issued an unqualified (or clean) audit opinion for the financial statements of Greenwich Sentry for the years ended December 31, 2006 and 2007. PwC certified that the financial statements were presented in conformity with GAAP and the audit was conducted in accordance with GAAS.

263. PwC Netherlands issued an unqualified (or clean) audit opinion for the financial statements of Fairfield Sentry for the years ended December 31, 2002, 2003, 2004 and 2005. PwC certified that the financial statements were presented in conformity with International Financial Reporting Standards ("IFRS") and the audit was conducted in accordance with International Standards of Auditing ("ISA").

264. PwC Canada issued an unqualified (or clean) audit opinion for the financial statements of Fairfield Sentry for the years ended December 31, 2006 and 2007. PwC Canada certified that the financial statements were presented in conformity with IFRS and the audit was conducted in accordance with GAAS.

265. PwC Netherlands issued an unqualified (or clean) audit opinion for the financial statements of Fairfield Sigma for the years ended December 31, 2003, 2004, and 2005. PwC certified that the financial statements were presented in conformity with IFRS and the audit was conducted in accordance with International Standards of Auditing.

266. PwC Canada issued an unqualified (or clean) audit opinion for the financial statements of Fairfield Sigma for the years ended December 31, 2006 and 2007. PwC certified that the financial statements were presented in conformity with IFRS and the audit was conducted in accordance with GAAS.

267. PwC Canada issued an unqualified (or clean) audit opinion for the financial statements of Greenwich Sentry Partners for the years ended December 31, 2006 and 2007. PwC certified that the financial statements were presented in conformity with GAAP and the audit was conducted in accordance with GAAS.

2. PwC Operates As a Unitary International Professional Services Organization

268. PwC International serves as an umbrella organization coordinating the accounting and auditing activities of the various PricewaterhouseCoopers accounting firms. PwC International's literature and its global website refer to these constituent members, including PwC Netherlands and PwC Canada, as "PricewaterhouseCoopers" or "PwC." Accordingly, in this complaint, PwC is used to refer to all the PricewaterhouseCoopers entities.

269. PwC International provides a global governance structure for all PricewaterhouseCoopers entities. This global structure is predominantly made up of members of the U.S. and U.K. firms and includes the Network Leadership Team, which in turn includes representatives from PricewaterhouseCoopers in the United States; the Global Board, which is made up of members from the United

States, the UK, and ten other countries; the Strategy Council, made up of twenty-one representatives from different countries, with a representative from the United States as its chair; and the Network Executive Team, which has representatives from the United States and UK.

270. With respect to the Funds, PwC Netherlands and PwC Canada acted as agents of PwC International, pursuant to agreements between them, and provided services under the auspices, at the direction, and for the benefit of PwC International. PwC International controls the acts of its member firms and is responsible for the acts of its member firms, including PwC Netherlands and PwC Canada. As an example, the audit reports prepared by PwC Canada and issued to the Funds' partners and shareholders stated that "PricewaterhouseCoopers refers to the Canadian firm … and other member firms of PricewaterhouseCoopers International Limited."[4] All references herein to "PwC" shall include PwC International, PwC Netherlands, and PwC Canada.

271. In addition to auditing the Funds, PwC also audited at least eight other "feeder funds" to Madoff, including funds with purported multi-billion dollar values, such as Optimal Strategies U.S. Equity Ltd., Kingate Global Fund, and Thema International Fund. In these audits, PwC undertook a concerted, global

[4] Fairfield Sentry Directors' Report and Financial Statements for the years ended December 31, 2007 and 2006, at 9; Fairfield Sigma Directors' Report and Financial Statements for the years ended December 31, 2007 and 2006, at 7; Greenwich Sentry Financial Statements for the years ended December 31, 2007 and 2006, at 3; Greenwich Sentry Partners Financial Statements for the years ended December 31, 2007 and 2006, at 3.

effort with various PwC offices assisting and relying upon each other to conduct and coordinate the audits. For example, in connection with its audit of the Funds, on March 15, 2005, PwC Netherlands wrote to Defendant Lipton stating that in December 2004 PwC Bermuda had conducted a meeting with Madoff "in order to obtain and/or update *PwC's understanding of the procedures in place at* . . . [BMIS]." (Emphasis supplied.) The letter stated that the purpose was to "obtain[] an understanding of certain procedures and organization aspects of . . . [BMIS] for the purpose of gaining comfort thereon for *the audits by several PwC offices* of a number of funds having moneys managed by . . . [BMIS]." (Emphasis supplied.)

272. An internal, "strictly confidential" PwC memorandum memorialized a meeting between PwC and Madoff in connection with PwC's audit of Optimal, a "feeder fund" that, like Fairfield, turned over its investors' funds to BMIS. The memorandum reported that Madoff told PwC's representatives that "99% of all trades are electronic, therefore records are updated daily and all reconciliations are performed daily (automated process)." PwC accepted Madoff's representation at face value and did not perform any independent confirmation or analysis of the purported trades, or even review the purported electronic confirmations, despite the fact that it knew that Madoff did not provide electronic confirmations to the Funds that he managed, and instead gave them delayed, paper confirmation of supposed

trades. Had PwC engaged in the most rudimentary investigation, it would have discovered that there were no electronic records of trades.

273. The PwC memorandum further stated that "[t]rades are initiated by the system without trader intervention and routed in accordance with the firms [sic] routing priority. Trades are bunch but the system maintains detail by account, which upon electronic conformation of execution is automatically posted to each individual . . ." PwC again blindly accepted Madoff's representations without any attempt to confirm them with documentary evidence. For example, the lack of "trader intervention" in order to implement BMIS' purported trading strategies could have been tested by a cursory review of the trading programs employed. In addition, prioritized bunch trades posted to an array of accounts would have generated substantial back office data, including daily compliance runs and digitized records, none of which PwC attempted to review.

274. PwC's coordinated audits of other "feeder" funds also provided the firm with a unique ability and opportunity to verify information about BMIS. That information, particularly in the aggregate, should have raised significant suspicions about Madoff's operations and the Funds' assets. For example, in a January 7, 2008 filing with the SEC on Form ADV, BMIS represented that its assets under management totaled $17,091,640,696. Yet, PwC knew or easily could have determined, that, as of the end of 2007, PwC alone was auditing Madoff "feeder

funds" which had assets under management that approximated the total amount of Madoff's SEC-reported assets under management:

PwC Audited Feeder Fund	Assets Under Management - 2007
Fairfield Sentry (inclusive of Fairfield Lambda & Sigma)	$ 7,277,386,000
Greenwich Sentry, LP	$ 262,531,000
Kingate Global, Ltd	$ 2,754,291,825
Kingate Euro Fund, Ltd	$ 766,322,771
Optimal Strategies US Equity, Ltd.	$ 3,100,000,000
Thema International Fund, PLC	$ 1,447,688,803
Zeus Partners, Ltd	$ 300,000,000
Defender Fund Ltd	$ 312,282,024
Plaza Investments International Ltd./ Notz Stucki & Cie.	$ 657,241,006
Total	**$16,877,743,429**

3. PwC Owed Duties to Plaintiffs and Knew Investors in the Funds Would Rely on Clean Audit Opinions

275. PwC addressed audit reports to the shareholders of Fairfield Sentry and Fairfield Sigma and to the partners of Greenwich Sentry and Greenwich Sentry Partners, whom PwC knew would rely on the audit reports in acquiring and holding shares or partnership interests of the Funds.[5] PwC thus understood and accepted that it owed a direct duty to Plaintiffs to conduct proper audits of the Funds.

[5] *See* Fairfield Sentry Directors' Report and Financial Statements for the Years Ended Dec. 31, 2007 and 2006; Fairfield Sigma Financial Statements for the Years Ended Dec. 31, 2007 and 2006; Fairfield Sentry Directors' Report and Financial Statements for the Year Ended Dec. 31, 2005; Fairfield Sentry Directors' Report and Financial Statements for the Year Ended Dec. 31, 2003; Greenwich Sentry Financial Statements for the Years Ended Dec. 31, 2007 and 2006; Greenwich Sentry Partners Financial Statements for the Years Ended Dec. 31, 2007 and 2006; Greenwich Sentry Financial Statements for the Years Ended Dec. 31, 2005 and 2004.

276. In fact, in a report to the Investment Manager of FGG on its Audit Plan for the year ending December 31, 2008 ("the Audit Plan"), PwC recognized that it was "responsible for reporting to the…shareholders and/or partners on the financial statements of the Funds…." Audit Plan at 8. PwC's acknowledgement of its obligations and duties as auditor as set out in the Audit Plan applies equally to the audits that are the subject of this action.

277. In addition, PwC knew that its name was used by the Funds in marketing so as to give the Funds legitimacy and, therefore, to draw investors to the Funds. PwC also knew that its audit letters would be provided or made available to potential investors and to existing investors. PwC knew that investors and potential investors, including Plaintiffs, would rely upon the facts that PwC was the auditor of the Funds, represented it conducted proper audits of the Funds, and issued unqualified, or clean, opinions on the Funds' financial statements. Indeed, PwC acknowledged in the Audit Plan that its audit engagement involved "delivering" to "shareholders and other stakeholders" in the Funds "independent opinions and reports that provide assurance on financial information released by the Funds." *Id.*

278. For example, PwC Canada, in engagement letters dated January 11, 2007 and October 17, 2007, and PwC Netherlands, in an engagement letter dated February 7, 2006 (the only engagement letters publicly available), each entered

into with FGG, retained the right to object to the publication of its name in any document made available to third parties. Thus, the inclusion of the PwC name in the PPMs and COMs reflects PwC's consent and knowledge that its role as the Funds' auditor was being published to investors. Plaintiffs reasonably understood that the reference to PwC as the Funds' auditor in the PPMs and COMs was an actual or implicit representation to investors that PwC had consented to the use of its name in association with the Funds' historical financial statements and that PwC had issued unqualified or "clean" audit reports on the Funds' financial condition in accordance with GAAP. Moreover, the Funds' audited financial statements, containing PwC's opinion letter, addressed to shareholders or limited partners, were provided to existing investors on an annual basis.

279. PwC also knew that there was no independent market mechanism or evidence to value the shares and limited partnership interests in the Funds, and that there was no other independently-verified third party financial information about the Funds besides the audited financial statements. PwC knew that the primary purpose of its audits was to provide investors in the Funds with assurance that the Funds' assets were legitimately invested and accurately valued. PwC also knew that the Funds were not in any sense "operating" businesses but were, instead, merely vehicles to aggregate investments and transfer them to Madoff.

4. PwC Recklessly Performed Its Audits and Made Misrepresentations Regarding the Funds

a) PwC Was Required, at a Minimum, to Obtain Independent Verification that the Funds' Assets Existed.

280. The American Institute of Certified Public Accountants ("AICPA"), the professional organization that promulgates the national auditing standards known as GAAS, develops the objectives for audits conducted in accordance with GAAS. GAAS set the minimum level of performance and quality that auditors are expected to meet. Through its Auditing Standards Board, the AICPA has in its Statements of Accounting Standards codified a detailed interpretation of GAAS, which is cited as "AU" in this complaint. The International Auditing and Assurance Standards Board ("IAASB") of the International Federation of Accountants promulgates the International Standards on Auditing (ISA). Those pronouncements are consistent with U.S. GAAP in all material respects. Accordingly, references herein to GAAS and ISA are intended to be synonymous and references to GAAS are intended to include references to ISA.

281. Generally Accepted Accounting Principles, or "GAAP," are those principles recognized by the accounting profession as the uniform rules, conventions, and procedures necessary to define generally accepted accounting principles in the United States. AU § 411. The International Financial Reporting Standards (IFRS) govern the framework for the preparation of financial statements

adopted by the International Accounting Standards Board. The IFRS mirror GAAP with respect to the form and content of the Funds' financial statements. References herein to GAAP and IFRS are intended to be synonymous and, accordingly, references to GAAP shall include reference to IFRS.

282. The AICPA and the IAASB prohibit members from expressing an opinion or stating affirmatively that financial statements or other financial data "present fairly … in conformity with generally accepted accounting principles," if such information departs from applicable accounting principles.

283. There are ten Generally Accepted Auditing Standards established by the AICPA which PwC had a duty to follow in the audits of the Funds: General Standards, Standards of Field Work, and Standards of Reporting.

> *General Standards*
>
> 1. The auditor must have adequate technical training and proficiency to perform the audit.
>
> 2. The auditor must maintain independence in mental attitude in all matters relating to the audit.
>
> 3. The auditor must exercise due professional care in the performance of the audit and the preparation of the report.
>
> *Standards of Field Work*
>
> 1. The auditor must adequately plan the work and must properly supervise any assistants.

2. The auditor must obtain a sufficient understanding of the entity and its environment, including its internal control, to assess the risk of material misstatement of the financial statements whether due to error or fraud, and to design the nature, timing, and extent of further audit procedures.

3. The auditor must obtain sufficient appropriate audit evidence by performing audit procedures to afford a reasonable basis for an opinion regarding the financial statements under audit.

Standards of Reporting

1. The auditor must state in the auditor's report whether the financial statements are presented in accordance with generally accepted accounting principles (GAAP).

2. The auditor must identify in the auditor's report those circumstances in which such principles have not been consistently observed in the current period in relation to the preceding period.

3. When the auditor determines that informative disclosures are not reasonably adequate, the auditor must so state in the auditor's report.

4. The auditor must either express an opinion regarding the financial statements, taken as a whole, or state that an opinion cannot be expressed, in the auditor's report. When the auditor cannot express an overall opinion, the auditor should state the reasons therefore in the auditor's report. In all cases where an auditor's name is associated with financial statements, the auditor should clearly indicate the character of the auditor's work, if any, and the degree of responsibility the auditor is taking, in the auditor's report.

AU § 150.02. The International Standards on Auditing are effectively the same as GAAS insofar as material to PwC's audits of the Funds' financial statements. *See* ISA 200 "Objective and General Principles Governing an Audit of Financial Statements."

284. PwC was thus required to exercise due professional care "to plan and perform the audit to obtain *reasonable assurance* about whether the financial statements are free of material misstatement, *whether caused by error or fraud.*" AU § 110.02 (emphasis added); *see also* AU § 230.03 (concerning the auditors' responsibility to conduct their work exercising due professional care); ISA 240 ("The Auditor's Responsibility to Consider Fraud and Error in an Audit of Financial Statements"); ISA 300 ("Planning"). PwC specifically acknowledged this obligation by quoting the GAAS provision in the Audit Plan's section entitled "PwC's Role." (Audit Plan at 24.)

285. In order to state an opinion with regard to an audited entity's financial statements, GAAS states that "the auditor must obtain a sufficient understanding of the entity and its environment, including its internal controls, as to assess the risk of material misstatement of the financial statements, whether due to error or fraud." AU § 314.01; *see also* ISA 310 ("Knowledge of Business").

286. Audit risk and materiality must be considered by the auditor in designing the nature, timing, and extent of audit procedures and in evaluating the

results of those procedures. AU § 312.01. GAAS requires the auditor use professional judgment and, in particular, professional skepticism in determining whether a risk factor is present and should be considered in identifying and assessing the risks of material misstatement due to fraud. AU §§, 230.07-09, 316.12, 316; *see also* ISA 400 ("Risk Assessments and Internal Controls").

287. In the Audit Plan, PwC acknowledged the importance of assessing the risk posed by a particular business when conducting of an audit: "Business risk directly affects audit risk." Audit Plan at 4. PwC went on to state that "it adjust[s] [its] audit approach to focus on identified higher risk areas that could have an impact on the financial statements." *Id.* PwC further represented that its audit procedures must "[i]dentify and assess specific fraud risks based on the information gathered, and develop appropriate audit procedures to address the identified risks." *Id.* at 25.

288. PwC acknowledged in the Audit Plan that, as part of the process of assessing audit risks, it was required to "[c]onsider whether the programs and controls that address identified risks of material misstatement due to fraud have been suitably designed and placed in operation" by the Funds. *Id.* at 24.

289. In particular, the auditor is required to consider the competency and sufficiency of the audit evidence. Since audit evidence is gathered and evaluated

throughout the audit, professional skepticism should be exercised throughout the audit process. AU § 230.08; *see also* ISA 200.

290. Moreover, GAAS recognizes that the audit of an entity with securities investments requires special procedures: "The inherent risk for an assertion about a derivative or security is its susceptibility to a material misstatement, assuming there are no related controls." AU § 332.08.

291. Thus, when auditing the existence of a security, auditors must perform substantive procedures, such as confirmations with the security's issuer or physical inspections of the security.

> Existence assertions address whether the derivatives and securities reported in the financial statements through recognition or disclosure exist at the date of the statement of financial position. Occurrence assertions address whether derivatives and securities transactions reported in the financial statements, as a part of earnings, other comprehensive income, or cash flows or through disclosure, occurred. Paragraph .19 provides guidance on the auditor's determination of the nature, timing, and extent of substantive procedures to be performed. Examples of substantive procedures for existence or occurrence assertions about derivatives and securities include—
>
> • *Confirmation with the issuer of the security.*
>
> • Confirmation with the holder of the security, including securities in electronic form, or with the counterparty to the derivative.
>
> • *Confirmation of settled transactions with the broker-dealer or counterparty.*

> • Confirmation of unsettled transactions with the broker-dealer or counterparty.
>
> • *Physical inspection of the security or derivative contract*.
>
> • Reading executed partnership or similar agreements.
>
> • Inspecting underlying agreements and other forms of supporting documentation, in paper or electronic form, for the following:
>
> — Amounts reported
> — Evidence that would preclude the sales treatment of a transfer
> — Unrecorded repurchase agreements
>
> • *Inspecting supporting documentation for subsequent realization or settlement after the end of the reporting period*.
>
> • *Performing analytical procedures*. For example, the absence of a material difference from an expectation that interest income will be a fixed percentage of a debt security based on the effective interest rate determined when the entity purchased the security provides evidence about existence of the security.

AU § 332.21 (emphasis added)

292. PwC was well aware of the enormous risks posed by the type of investments such as the Funds' investments with Madoff. In 2007, for example, claiming a "leadership position as auditors for both investee funds and investor entities," PwC issued a publication setting out its "perspective" on the "audit

requirements related to investor entities that invest in alternative investments," such as those made in BMIS for the Funds. ("PwC Guide" at Intro., 1.) PwC recognized the "unique audit risks" posed by these investments, admitting that the key question when auditing a fund is "Do the investor entity's alternative investments exist at the financial statement date, and have the related transactions occurred during the period?" (PwC Guide at 32, Intro.) For example, PwC acknowledged that:

- An auditor cannot audit what management has not done" and that management's internal controls "are particularly important because they can affect the nature, timing and extent of audit procedures performed by the investor entity's auditor over alternative investments. (PwC Guide at 4.)
- transparency and due diligence" were "two of the main themes" and that "the auditor should not rely exclusively on information obtained from the fund manager while ignoring the investor entity's controls, including its monitoring process. (PwC Guide at Intro., 2.)
- it [is] necessary for the auditor to request confirmation of the fund's holdings on a security-by-security basis. (PwC Guide at 3.)
- Even if the auditor obtains a detailed confirmation of the fund's holdings, the AICPA Practice Aid states that the auditor may need to perform additional procedures, depending on the significance of the alternative investments to the entity's financial statements. (PwC Guide at 24.)

293. PwC represents that it not only meets, but exceeds, these standards, and is at "the leading edge of best practice":

> [T]he knowledge and experience necessary to help [clients] with complex financial accounting issues. . . . Our member firms audit many of the world's best-known companies and thousands of other organizations both large and small. Our audit approach, *at the leading edge of best practice*, is tailored to suit the size and nature of [the clients'] organization and draws upon our extensive industry knowledge.

http://www.pwc.com/gx/en/audit-services/index.jhtml (last visited Sept. 29, 2009) (emphasis supplied).

294. In fact, in its 2008 Global Annual Review, PwC represented that its member firms' compliance with accepted or normal auditing, accounting, and professional standards "is a given," because those standards serve only as the "expected performance baseline for everything we do."

295. Similarly to the PwC Guide, the AICPA *Audit & Accounting Guide, Investment Companies* (the "Guide") directs auditors of investment funds to gain an understanding of the attitude of the fund's management concerning internal control and its importance in reliable financial reporting. Guide § 5.64. Auditors must consider testing the fund's control and monitoring procedures. Guide § 5.64. The Guide further directs auditors to consider whether the fund's investment in an underlying fund is so significant as to require modification of financial statements. Guide § 5.48.

296. As member firms of PwC International, PwC Netherlands and PwC Canada were bound by the foregoing standards and guidelines.

297. Indeed, because PwC knew that the Funds constituted conduits for investments that were controlled by Madoff, PwC was required to plan and conduct audits that verified the existence of the Funds' investments. In order to do so, PwC was required to understand the Funds' "information systems for derivatives and securities," including its investments held by BMIS. AU § 332.05. An understanding of the Funds' internal controls was particularly important to a properly planned audit because, absent effective internal controls, the Funds were not in a position to accurately and reliably validate the existence, or value, of the investments through BMIS.

298. Moreover, in addition to the requirements imposed by the foregoing standards, PwC should have treated BMIS as a service organization because its services were part of the Funds' information system for derivatives and securities that affected (1) how the Funds' derivatives and securities transactions were purportedly initiated and (2) the accounting records, supporting information, and specific accounts in the financial statements involved in the processing and reporting of the Funds' derivatives and securities transactions. AU §§ 332.11, 332.20, and 324; *see also* ISA 402 ("Audit Considerations Relating to Entities Using Service Organization").

299. PwC was thus required to consider the controls put in place by BMIS:

> Following the guidance in Section 324, Service Organizations, a service organization's services are part of an entity's information system for derivatives and securities if they affect any of the following:
>
> a. How the entity's derivatives and securities transactions are initiated.
>
> b. The accounting records, supporting information, and specific accounts in the financial statements involved in the processing and reporting of the entity's derivatives and securities transactions.

AU § 332.11.

300. PwC was also required to perform additional procedures required in situations where, as here, there is a lack of segregation of duties at a service organization. With respect to the Funds, BMIS initiated the securities transactions held and serviced the securities as custodian and prepared trading and account information. Even the Funds acknowledged that there was a risk of misappropriation of the assets due to the fact that they did not have custody of them.[6] This heightened risk required PwC to perform additional procedures to opine on the financial statements of the Funds. AU § 332.16 specifically directs that confirmations from service organizations are not sufficient audit evidence.

[6] *See* FS PPM-8/14/06, at 21; FS PPM-10/1/04, at 19; FS PPM-7/1/03, at 21; FΣ PPM-12/1/08, at 23; FΣ PPM-2/21/06, at 20.

301. Moreover, where, as here, the service organization (BMIS) both initiated the transactions and held and serviced the securities, the greater risk of fraud requires the auditor to perform additional procedures, including site visits to inspect documentation, and identification of controls by the service organization:

> — *If one service organization initiates transactions as an investment adviser and also holds and services the securities, all of the information available to the auditor is based on the service organization's information. The auditor may be unable to sufficiently limit audit risk without obtaining audit evidence about the operating effectiveness of one or more of the service organization's controls*. An example of such controls is establishing independent departments that provide the investment advisory services and the holding and servicing of securities, then reconciling the information about the securities that is provided by each department.

AU § 332.20 (emphasis added).

302. In light of the nature of the Funds and of the circumstances surrounding them, PwC also had an obligation to discuss with BMIS' independent auditor, F&H, the result of F&H's most recent audit of BMIS. Guide § 5.59; AU § 332.11. In this regard, PwC was required to examine the control environment at BMIS and should have either requested or performed additional tests of controls. Guide §§ 5.66-67.

303. Because F&H's "audits" of BMIS' were unsatisfactory, PwC had the additional obligation to apply appropriate auditing procedures:

> If the investee's financial statements are not audited, or if the investee auditor's report is not satisfactory to the investor's auditor for this purpose, the investor's auditor should apply, or should request that the investor arrange with the investee to have another auditor apply, appropriate auditing procedures to such financial statements, considering the materiality of the investment in relation to the financial statements of the investor.
>
> AU § 332.30.

b) PwC Failed to Verify the Existence of the Funds' Madoff Investments

304. PwC failed in its obligation to obtain reasonable assurance that the assets included in the Funds' Statements of Assets and Liabilities in fact existed and were appropriately valued. The following tables show, on a yearly basis, the asset valuations for which PwC offered an unqualified opinion as to conformance with GAAP (*i.e.*, for which PwC purported to have "reasonable assurance" that such valuations were free of material misstatement):

FAIRFIELD SENTRY ASSETS BY YEAR[7]	
Year	**Assets**
2007	$7,227,386,000
2006	$6,210,966,000
2005	$4,977,749,000
2004	$5,157,860,000
2003	$4,551,211,000

[7] Fairfield Sentry Directors' Report and Financial Statements for the Years Ended Dec. 31, 2007 and 2006; Fairfield Sentry Directors' Report and Financial Statements for the Year Ended Dec. 31, 2005; Fairfield Sentry Directors' Report and Financial Statements for the Year Ended Dec. 31, 2003; Fairfield Sentry Directors' Report and Financial Statements for the Year Ended Dec. 31, 2002.

FAIRFIELD SENTRY ASSETS BY YEAR[7]	
2002	$4,085,538,000
2001	$3,605,909,000

FAIRFIELD SIGMA ASSETS BY YEAR[8]	
Year	**Assets**
2007	€775,354,793
2006	€493,419,529
2005	€333,138,505
2004	€237,484,165
2003	€198,806,354
2002	€146,025,179

GREENWICH SENTRY ASSETS BY YEAR[9]	
Year	**Assets**
2007	$261,531,458
2006	$149,925,210
2005	$123,628,704

GREENWICH SENTRY PARTNERS ASSETS BY YEAR	
Year	**Assets**
2007	$9,801,583
2006	$10,493,818

305. Contrary to the applicable accounting standards, PwC failed to gather sufficient, competent evidential matter to support its opinion that the Funds' financial statements were free of material misstatement with respect to the claimed

[8] Fairfield Sigma Financial Statements for the Years Ended Dec. 31, 2007 and 2006.
[9] Greenwich Sentry Financial Statements for the Years Ended Dec. 31, 2007 and 2006; Greenwich Sentry Financial Statements for the Years Ended Dec. 31, 2005 and 2004.

assets, instead inappropriately relying on the Funds' management's representations AU § 333; *see also* ISA 580 ("Management Representations"). As a result, although PwC opined that the multi-billion dollar valuations of the Funds' investments were fairly presented in the financial statements, PwC failed to determine whether the assets, which constituted over 95% of the Funds' value, even existed.

306. PwC also did not perform the necessary procedures to audit the existence of the transactions which constituted the split-strike conversion strategy. PwC was aware that the Funds were purportedly using that strategy, a nontraditional options trading strategy. Due to the strategy's heavy use of options trading, PwC should have performed substantive procedures or testing, although it recognizes that "[a]n audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements." Audit Plan at 5. In fact, in its Audit Plan, PwC represented that its audit procedure involves "perform[ing] substantive tests," something it did not do when it audited the Funds. *Id.*

307. PwC's Audit Plan specifically addressed BMIS as it related to the audit of the Funds. Noting that BMIS served as custodian, sub-custodian, and prime broker, PwC stated that as part of its audit, "[t]hrough discussion and enquiry with . . . [BMIS], we will obtain an understanding of the key control activities as they relate to the operations and processes over the custodian, sub-

custodian and prime broker functions." *Id.* at 11. Significantly, PwC represented that as part of its audits of the Funds it "will perform transaction testing on the investment strategy applied by . . . [BMIS] for the applicable Funds." *Id.* PwC failed to conduct the testing of Madoff's operations that its own Audit Plan recognized was appropriate.

308. Had PwC undertaken the proper analysis and testing of the strategy purportedly employed by Madoff, it would have determined that the strategy, including the claimed liquidation of all positions at the end of each quarter to acquire U.S. Treasury bonds, could not have functioned as described within market parameters. Moreover, PwC would have determined that BMIS' claimed consistent, positive returns were not achievable.

309. PwC also acknowledged that its audit would properly require independent testing of the prices used by Citco so as to verify the accuracy of the reported valuations (Audit Plan at 12), something it again failed to do. PwC further represented that, "in the absence of an exchange-traded price," it would perform "alternative valuation procedures," including "understanding the methodology used to determine the estimated fair value of the investments" and "assessing the nature of the investments, including…the frequency of trading activity." *Id.* Here again, PwC failed to perform the acts its own Audit Plan recognized were necessary.

310. In addition, despite its knowledge of the interconnection between the Funds and BMIS, and of the Funds' reliance on the supposed integrity of BMIS' operations, PwC did not review the data required by the auditing standards with respect to an auditor's obligation to examine the "controls over derivatives and securities transactions from their initiation to their inclusion in the financial statements." PwC did not test the trades supposedly made by BMIS or confirm the actual existence of securities in BMIS accounts. If PwC had made any such efforts, it would have discovered the securities did not exist.

311. PwC also improperly relied on the financial information provided by BMIS without inquiring into F&H, BMIS' auditor, even though F&H had represented to the AICPA that it did not perform audits and was, therefore, not subject to the annual peer review process. PwC should have, but did not, perform additional procedures such as visiting the offices of F&H to discuss the audit procedures. Had PwC taken this necessary step, it would have discovered that there was no effective audit of BMIS.

c) PwC Violated Its Duties to Fund Investors

312. As the independent party charged with certifying that it had reasonable assurance that the Funds' financial statements were free of material misstatement, PwC failed to meet its obligation to the Funds' investors when it issued its audit opinions – opinions upon which it knew those parties would rely.

313. Had PwC performed appropriate audits (as it represented it had), it would have learned that the securities transactions purportedly conducted by Madoff did not occur and the assets of the Funds did not exist.

314. In addition, the audits PwC represented it conducted, even the limited audit work that PwC must have conducted would have given it actual knowledge or information that it willfully ignored, that:

- BMIS was not audited pursuant to GAAS by a "qualified and reputable independent audit firm";
- The Funds and the Fairfield Defendants as Fund managers performed no meaningful due diligence on BMIS;
- The Funds did not test the validity of Madoff's performance or strategy;
- The Funds had no process in place to verify the fair value of the investments purportedly made by BMIS;
- The Funds did not verify the supposed trades made by Madoff with counterparties or other third parties and, thus, did not verify the existence of the securities and other assets

315. PwC breached its duties as the independent auditor of the Funds at least as follows:

- PwC failed to exercise due professional care and professional skepticism in its audit of the Funds. Specifically, PwC failed to use professional skepticism "when considering the risk of material misstatement due to fraud";

- PwC failed to obtain a sufficient understanding of the Funds and their environment, including their internal controls, to assess the risk of material misstatement of the financial statements whether due to error or fraud;

- PwC failed to obtain sufficient competent audit evidence with respect to existence of the Funds' investments through BMIS and PwC did not perform the necessary procedures to audit the existence of the Funds' securities;

- PwC failed to obtain an understanding of the internal controls (or lack thereof) of BMIS and did not perform the necessary procedures to audit the occurrence of the transactions which constituted the purported split-strike conversion strategy, such as confirmation with counterparties, confirmation of settled transactions, physical inspection of the securities, or performance of analytical procedures;

- PwC failed to perform additional procedures required in situations where, as here, there was a lack of segregation of duties at a service organization. Numerous red flags, discussed above, indicating that Madoff was a fraud existed and required PwC to investigate further and perform additional audit procedures prior to opining on the presentation of the Funds' financial positions.

- Any reliance by PwC on the financial statements of BMIS was improper because F&H was not qualified or able to audit BMIS in accordance with GAAP.

5. PwC's Substantial Assistance to Fairfield Defendants' Fraud and Breaches of Fiduciary Duty

316. In the course of its audits of the Funds, PwC acquired knowledge that: (i) all of the Funds' assets were managed by Madoff; (ii) Madoff was both the investment advisor and the broker-dealer with respect to those assets; and (iii) Madoff was also the custodian of the assets. PwC thus knew that Madoff was responsible for managing, trading and holding the Funds' assets, an unusual multiple-role situation that facilitated Madoff's fraudulent scheme. PwC failed to conduct the audits of the Funds in accordance with GAAS, ISA, and customary practices followed by independent auditors, As a consequence, PwC's audit reports misrepresented that PwC had conducted the audits in compliance with GAAS and ISA and misrepresented that the Funds' financial statements set out the true financial condition of the Funds. Indeed, PwC's failure to comply with GAAS, ISA, and its own policies and procedures was so egregious that PwC failed to detect that the purported Fund assets did not even exist. In sum, PwC's audits were so deficient that in reality there were no audits at all.

317. Moreover, in the course of even an inadequate audit, PwC must have known or willfully ignored that the Fairfield Defendants did not, in fact, conduct the due diligence they falsely represented that they conducted. PwC further must have known or willfully ignored that the Fairfield Defendants did not monitor or verify the investments purportedly made by Madoff in order to confirm that BMIS

operated legitimately, using the represented investment strategy, and in accordance with the legal and regulatory requirements.

318. In conducting its audits, PwC was willfully blind to the Fairfield Defendants' breaches of fiduciary duty and fraud, and PwC thereby provided substantial assistance to the Fairfield Defendants in that regard by providing clean audit opinions and by failing in its other duties as set forth above.

L. Citco Violated Its Obligations to Provide Financial Services to Fund Investors

1. Citco Operates as a Single Global Financial Services Provider

319. Citco holds itself out as a "global industry leader" in financial services, including hedge fund administration, custody and fund trading. (http://www.citco.com/Index.jsp (last visited Sept. 29, 2009).)

320. Citco provides financial services to its customers through four "divisions." The executive committee of Citco Group hires division directors to oversee the daily operations of its divisions, and reviews the directors' performance. The directors act on behalf of Citco Group.

321. Citco's Fund Services division – the relevant division here – offers its services to customers globally through "16 strategic centers." (http://www.citco.com/Divisions_Fund_Services.jsp (last visited Sept. 29, 2009).) It is controlled by a director appointed by the Citco Group's executive committee, and the director

acts on behalf of the Citco Group. The use of global "strategic centers" reflects Citco's philosophy to provide support where its clients are located. The 16 strategic centers function under common management, direction and control as regional offices of Citco, not as independent companies.

322. In its marketing, Citco does not distinguish between its individual companies, stating only that the organization, has more than 78 offices in 34 countries employing more than 3,400 employees. (*Funds of Hedge Funds: A Unique Approach* (2007), http://www.citco.com/docs/FundofFundsBrochure.pdf, at 12.)

323. The individual companies that comprise the "Citco Fund Services" division, including the Citco companies named as defendants here, are controlled and operated by Citco Group and its director, and function as part of its unified "Citco Fund Services" division. Engagements with companies in the Citco Fund Services division expressly provide that services may be provided by Citco Group or any of its companies, not just the company that is engaged. (*See, e.g.*, Feb. 20, 2003 Administration Agreement between Fairfield Sentry and Citco Fund Services, § 2.4.) Its marketing materials refer to Citco Fund Services as a single administrator, stating: "Citco Fund Services administer more than 2,000 funds with more assets than any other hedge fund administrator." (*Moving Fund Services Forward* (2007), (http://www.citco.com/Divisions_ Fund_Services_Brochures.jsp,

at 1.) Similarly, Citco's website states that Citco Fund Services, as a whole, "*draws upon a global team* of more than 3,000 experienced, knowledgeable and highly trained staff to ensure that each fund is supported appropriately and service quality standards are not only met, but consistently exceeded." (http://www.citco.com/Divisions_ Fund_Services.jsp (last visited Sept. 29, 2009).) (emphasis added). It touts the ability of its staff "to transfer between offices and divisions, meaning between the individual companies." (*Moving Fund Services Forward* (2007), http://www.citco.com/Divisions_ Fund_Services_Brochures.jsp, at 3.) Thus, irrespective of what Citco company is technically engaged, customers are provided services from, and on behalf of, Citco as a whole. Pursuant to agreements between them, all of the composite companies are agents of Citco Group and of each other.

2. Citco Holds Itself Out as a Superior Financial Services Provider

324. Citco holds its Fund Services division companies out as "the world's pre-eminent hedge fund administrators" with "35 years experience in the provision of administration and other services to their hedge fund clients, many of whom are leading names in the industry." (http://www.citco.com/Divisions_Fund_Services.jsp (last visited Sept. 29, 2009).) It asserts that its companies "have consistently been ranked 'Best in Class' and 'Top-Rated' across all locations in recognized industry surveys of hedge fund administrators for both single manager funds and funds of hedge funds." (Id.) In addition, Citco boasts that all division

staff are provided with "career development initiatives and extensive training programs to ensure staff are equipped to handle the complexities of hedge funds." (Id.)

325. Citco recognizes that its "reputation for independence and high-quality client services has earned it the trust of its clients." (*Funds of Hedge Funds: A Unique Approach* (2007), http://www.citco.com/docs/FundofFundsBrochure.pdf, at 12.) Citco has also stated on its website: "By providing fully independent services, we act as a reliable fiduciary to safeguard the interests of investors." Thus, Citco recognizes that it is a fiduciary to the investors of its fund customers, such as Plaintiffs here.

326. Citco provides substantial financial services to funds, beyond the services typical of fund administrators or custodians. Citco acknowledges that it seeks "to provide funds with a quality and scope of services beyond what is merely required." (*Moving Fund Services Forward* (2007), http://www.citco.com/Divisions_Fund_Services_Brochures.jsp, at 1.) The middle office services Citco claims to provide to its fund clients include: "independent pricing of funds portfolio on a monthly basis," "daily position, proceeds and trade reconciliation to Prime Brokers," and "verification." (http://www.citco.com/Divisions_Fund_Services_Services_ Hedge_Funds.jsp (last visited Sept. 29, 2009).) The back office services include: "monthly independent portfolio verification," "positions

and balances reconciliation," and "investment restriction compliance monitoring." (http://www.citco.com/Divisions_Fund_ Services_Services_Hedge_Funds.jsp (last visited Sept. 29, 2009).)

3. Citco Committed to Serve as the Funds' Administrator

327. As administrator for the Funds, Citco (with Citco Fund Services and Citco Canada as the contracting companies) undertook responsibilities beyond that of a typical Fund administrator. For example, Citco committed to provide "reconciliation of cash and other balances at brokers," "independent reconciliation of the Fund's portfolio holdings," and "calculation of the Net Asset Value and the Net Asset Value per Share on a monthly basis in accordance with the Fund Documents." (Sentry Administration Agreement, Sched. 2, Pt. 1; Sigma Administration Agreement, Sched. 2, Pt. 1.) Citco was also responsible for preparing monthly financial statements in conformity with International Accounting Standards, which would include portfolio listings; preparing books and records to facilitate the external audit; and liaising with auditors to review and prepare the financial statements. (Id.) Citco also committed to provide a "reconciliation of information provided by the Fund's prime broker and custodian with information provided by the Investment Manager." (Sentry Administrative Agreement, Sched. 2, Pt. 2; Sigma Administration Agreement, Sched. 2, Pt. 2.) Citco was obligated to provide the services of individuals or corporations to serve

as Directors and other Officers of funds if requested. (Sigma Administration Agreement, Sched. 2, Pt. 4.)

328. Furthermore, Citco was to serve as the Funds' agent with the general public, and was specifically responsible for communications with investors. (Sentry Administration Agreement, Sched. 2, Pt. 3; Sigma Administration Agreement, Sched. 2, Pt. 3.) Citco communicated directly with Plaintiffs, and Plaintiffs with Citco. Plaintiffs sent their subscription documents directly to Citco, sent funds for investments to Citco, and received investment confirmations from Citco.

329. Citco agreed to act in good faith in the performance of these and other services as Fund administrator. Citco was permitted only to rely on information it received without making further inquiries if that information demonstrated an "absence of manifest error." (Sentry Administration Agreement § 6.2, and Sched. 2, Pt. 1; Sigma Administration Agreement § 6.2(c).)

4. Citco Committed to Serve as Custodian for Fairfield Sentry and Sigma

330. As custodian, bank, and depositary for Fairfield Sentry and Fairfield Sigma, Citco (with Citco Global and Citco Bank as the contracting companies) undertook significant additional discretionary responsibilities, beyond that of a typical fund custodian, bank, or depositary. Citco was responsible for taking "due care . . . in the selection and ongoing appropriate level of monitoring of any . . .

sub-custodian" appointed by the Fund – including BMIS. (Sentry 2006 Custodian Agreement § 4.3; Sentry 2003 Custodian Agreement § 4.3; Sigma 2003 Custodian Agreement § 5.2.) It was also obligated to "to keep the securities in the custody of the Custodian or procure that they are kept in the custody of any sub-custodian," (Sentry 2006 Custodian Agreement § 6.1.1; Sentry 2003 Custodian Agreement § 6.1.1; Sigma 2003 Custodian Agreement § 7.1), and agreed that "Securities held at any one time by the Custodian or any sub-custodian shall be recorded in and ascertainable from the books and/or ledgers of the Custodian...." (Sentry 2006 Custodian Agreement § 6.2; Sentry 2003 Custodian Agreement § 6.2; Sigma 2003 Custody Agreement § 7.2.) Citco agreed to employ "financial or other experts" in execution of its duties. (Sentry 2006 Custodian Agreement § 6.1.6; Sentry 2003 Custodian Agreement § 6.1.6; Sigma 2003 Custodian Agreement § 7.1.6.) Furthermore, Citco had the authority to "act without first obtaining instructions from the Fund" if such action were necessary "in order to preserve or safeguard the Securities or other assets of the Fund." (Sentry 2006 Custodian Agreement § 6.3; Sentry 2003 Custodian Agreement § 6.3; Sigma 2003 Custody Agreement § 7.3.) As the Funds' bank, Citco also undertook to use due care in the selection of third parties it dealt with in providing brokerage services, and had the absolute discretion to refuse to execute instructions by the Fund. (Sentry 2006 Custodian

Agreement § 6.3; Sentry 2003 Custodian Agreement § 6.3; Sigma 2003 Custody Agreement § 7.3.)

331. Citco also committed to use its "best efforts and judgment and due care in performing its obligations and duties," and represented that it would act in good faith and with reasonable care in the execution of its duties. (Sentry 2006 Custodian Agreement § 8.2; Sentry 2003 Custodian Agreement § 8.3; Sigma 2003 Custody Agreement § 10.2.) Citco was only permitted to "rely on the genuineness of any document," to the extent Citco believed in "good faith" that the document was "validly executed by or on behalf of the Fund." (Sentry 2006 Custodian Agreement § 8.6; Sentry 2003 Custodian Agreement § 8.6; Sigma 2003 Custody Agreement § 4.5.)

5. Citco Owed Duties to Plaintiffs as Fund Investors

332. Citco was a fiduciary to Plaintiffs, and owed Plaintiffs a duty of due care in the performance of the financial services it provided.

333. Citco was aware that potential and current investors knew that Citco was providing significant financial services to the Funds, and were relying on Citco in making their investment decisions. Citco was aware that its involvement in the Funds lent significant credibility to the Funds, and provided potential and current investors with assurance about the quality of financial services provided to the Funds, the security of the assets held by the Funds, and the accuracy of the

reported values of the Funds and of the investors' individual accounts. In short, Citco knowingly placed its imprimatur on the Funds.

334. As fully intended by Citco, the Plaintiffs reposed their trust and confidence in Citco, which occupied a superior position, to provide these financial services, when Plaintiffs made their initial investment in the Funds, re-invested in the Funds, and retained those investments in the Funds. Plaintiffs also relied on Citco as a fiduciary in the period after they sent their money for investment, but before their assets were turned over to Madoff.

335. The NAV, which was to be independently calculated and reported by Citco, was fundamental to Plaintiffs' initial investment decisions, decisions to invest additional funds, and decisions to maintain the investments over time. The number of shares that Plaintiffs received in exchange for their investment amounts depended on Citco's NAV calculations. Plaintiffs' subsequent reported profits also turned on Citco's calculations. Therefore, Plaintiffs necessarily relied on Citco's NAV calculations. Their initial and subsequent investments were sent directly to Citco. Plaintiffs who invested in Fairfield Sentry and Sigma also relied on Citco to fulfill its duties as custodian, bank and depositary. Plaintiffs reasonably and foreseeably reposed trust and confidence in Citco to safeguard their assets, to record the securities purchased for them, to monitor anyone else assigned to hold

those assets (*i.e.* BMIS), and to ensure those third parties were safely holding the securities.

6. Citco's Performance of Its Duties to Plaintiffs Was Grossly Deficient

336. Citco was grossly deficient in the fulfillment of its duties to Plaintiffs. Citco utterly failed to take reasonable, industry-standard steps to fulfill its duties as administrator, custodian, bank, and depositary.

337. For instance, in contravention of its commitments in Schedule 2 of its Administration Agreement, Citco failed to take reasonable steps, industry-standard to calculate the Funds' NAV; to reconcile balances at the Funds' broker, Madoff; to independently reconcile the Funds' portfolio holdings with Madoff; to reconcile information provided by Madoff as the Funds' prime broker with information provided by the Investment Manager; to prepare the monthly financial statements in accordance with International Accounting Standards; or to relay accurate information to investors.

338. Rather, Citco blindly and recklessly relied on information provided by Madoff and the Funds to calculate and disseminate the Funds' NAV, and to perform its other duties, even though that information was manifestly erroneous and should not have been relied on. Citco could not have reasonably relied on this information because the roles of investment manager, sub-custodian and trade execution agent were consolidated in Madoff, thus hugely increasing the risk of

fraud, and the need for independent verification and scrutiny, as Citco was well aware. Furthermore, as alleged above, the trade and profit information provided by Madoff was, on its face, virtually impossible to achieve. Moreover, the numerous red flags surrounding Madoff's operations and purported results should have caused Citco to increase its scrutiny of the information provided, and seek independent verification.

339. Citco also grossly failed in the execution of its custodial responsibilities. It did not take reasonable, industry-standard steps to safeguard the assets that were entrusted to it as custodian. Rather, in contravention of its duties under the Custodian Agreements, Citco blindly and recklessly handed investors' assets over to Madoff as sub-custodian and broker without independent or sufficient due diligence and monitoring, and without any reasonable, good faith basis for relying on information provided by the Fairfield Defendants or Madoff. It further failed to record accurately the securities held by the sub-custodian because no securities were actually being held by Madoff as sub-custodian, or to take any reasonable steps to verify that the securities were being held by Madoff. The consolidation of the roles of investment manager, sub-custodian and execution agent, and the numerous red flags surrounding Madoff, set forth above, mandated an even higher level of scrutiny over information provided by Madoff, which Citco failed to provide.

340. If Citco had not breached its duties as set forth above, Plaintiffs would not have invested in the Funds, or retained their investments in the Funds. Plaintiffs could have redeemed their investments and recovered their principal at any time during the many years in which the Funds were making redemptions, prior to the revelation of Madoff's fraud in December 2008.

7. Citco Provided Substantial Assistance to the Fairfield Defendants' Fraud and Breaches of Fiduciary Duty

341. Citco knowingly provided substantial assistance to the Fairfield Fraud Claim Defendants and Fairfield Defendants in the fraud and breaches of fiduciary duty that they perpetrated on investors. By virtue of Citco's long-standing involvement in the Funds, and its experience in fund management, Citco knew or was willfully blind to the fact that the due diligence and risk controls employed by the Fairfield Defendants were grossly deficient. Citco further knew that the Fairfield Defendants uniformly represented to Plaintiffs that they employed thorough due diligence, monitoring and verification of Fund managers, including Madoff, and strict risk controls – representations which Citco knew to be false or was willfully blind to the evident falsity.

342. Rather than alerting investors to these problems, Citco provided substantial assistance to the Fairfield Defendants. For example, Citco assisted the Fairfield Defendants by receiving investments from Plaintiffs and transferring their funds to BMIS; sending Plaintiffs investment confirmations; calculating the Funds'

NAV and disseminating the NAV values; receiving and transmitting other Fund information from the Fairfield Defendants to Plaintiffs; allowing Citco's name and the services it was ostensibly providing to be included in the Funds' placement memoranda and other documents; and recording the securities Madoff said he was holding. The Fairfield Defendants could not have perpetrated their fraud and breaches of fiduciary duty without this substantial assistance by Citco. If Citco had refused to fulfill the instructions of the Fairfield Defendants or rely on the information they transmitted, as it had a right to do, or alerted investors to the conduct of the Fairfield Defendants, Plaintiffs' investments would have been saved.

8. Citco Collected Unearned Fees

343. While grossly failing in its duties to investors, Citco was collecting millions of dollars in fees – fees that were calculated on the basis of fictitious profits reported by Madoff.[10] Because the fees were calculated on the basis of fraudulent data, and Citco did not perform its obligations, it did not earn these fees, and the fees should be returned to Plaintiffs.

M. GlobeOp Violated Its Obligations to Greenwich Sentry Investors

344. GlobeOp also provided administrative services to Greenwich Sentry from approximately January 2004 to August 2006. GlobeOp touts on its website

[10] FS PPM-8/14/06, at 17; FS PPM-10/1/04, at 15; FS PPM-7/1/03, at 17; Sentry Agreement Sched. 3, Pt. 1; Sigma Administration Agreement, Sched. 3, Pt. 1; Sentry 2006 Custodian Agreement Sched. 1; Sentry 2003 Custodian Agreement Sched. 1; Sigma 2003 Custodian Agreement Sched. 1.

that its "independence, technology leadership and deep knowledge of complex financial instruments uniquely positions us to provide truly independently derived net-asset-value (NAV) reports and best-practice administration support for domestic and offshore funds." (http://www.globeop.com/globeop/proserv/fund_administration/ (last visited Sept. 29, 2009).)

345. In its role as administrator, GlobeOp undertook significant discretionary responsibilities that included preparing and distributing "monthly reports that contain the amount of the Partnership's net assets, the amount of any distributions from the Partnership and Incentive Allocation, accounting and legal fees, and all other fees and expenses of the Partnership." (GS COM-5/2006, at 10.)

346. Plaintiffs who invested in Greenwich Sentry reasonably and foreseeably reposed their trust and confidence in GlobeOp to fulfill its duties. Therefore, GlobeOp was a fiduciary to Plaintiffs and owed Plaintiffs a duty of care in the performance of its duties.

347. GlobeOp was grossly deficient in the fulfillment of its duties to investors. Among other things, GlobeOp should have, but did not, take reasonable, industry-standard steps to calculate the Fund's NAV, or to verify independently or even minimally scrutinize the information provided to it. GlobeOp also blindly and recklessly relied on information provided by BMIS and the Fund to calculate

and disseminate the Fund's NAV. Had GlobeOp fulfilled its duties, Plaintiffs would not have invested, re-invested, or retained their investments in the Fund.

N. Defendants' Fraudulent Concealment of Their Breaches of Duty

348. Plaintiffs did not discover and could not have discovered, through the exercise of reasonable diligence, the existence of the Madoff Ponzi scheme and the wrongful conduct of Defendants as alleged herein until after December 11, 2008, when the news of Madoff's confession and arrest became known in the marketplace.

349. Defendants actively and fraudulently concealed their failure to perform any material due diligence on or monitoring of the operations of BMIS and Madoff, and affirmatively misrepresented that they were performing constant and intensive due diligence on every aspect of the implementation of the split-strike conversion strategy when in fact they were performing virtually no such due diligence.

350. The affirmative acts of the Defendants alleged herein, including the lack of any material due diligence and the failure to perform their duties and obligations to Plaintiffs to monitor and protect their investments, were inherently self-concealing and were carried out in a manner that precluded detection.

CLASS ACTION ALLEGATIONS

351. Plaintiffs bring this action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of all shareholders in Fairfield Sentry Limited, Fairfield Sigma Limited, Greenwich Sentry, L.P., and Greenwich Sentry Partners, L.P., as of December 10, 2008 (the "Class"), who suffered a net loss of principal invested in the Funds. Excluded from the Class are the Defendants herein, and any entity in which the Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, immediate family members, heirs, successors, subsidiaries, and/or assigns of any such individual or entity.

352. Plaintiffs seek to designate four subclasses, one for the class members who invested in each of the four Funds managed by FGG: Fairfield Sentry Limited, Fairfield Sigma Limited, Greenwich Sentry, L.P., and Greenwich Sentry Partners, L.P.

353. The Class satisfies the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure:

> **Numerosity**. During the Class Period, shares in the Funds were sold to thousands of investors. The membership of the Class is so numerous as to render joinder impracticable. The precise number of Class members remains indeterminate and can only be ascertained through discovery, but Plaintiffs believe it is in the thousands.

Typicality. The losses suffered by the named Plaintiffs were caused by the same events, patterns of practice, and courses of conduct that give rise to the claims of the other members of the Class. The named Plaintiffs are members of the Class and the losses to the named Plaintiffs are based on the same legal theories.

Common Questions. The numerous predominant questions of law and fact that are common to the Class include the following:

a. Whether the Fairfield Fraud Claim Defendants are liable for fraud in making statements through private placement memoranda regarding the investment strategy for the Fairfield Funds and historical results achieved by such Funds without regard to their truth or falsity;

b. Whether such statements were, alternatively, negligent misrepresentations;

c. Whether the Fairfield Defendants recklessly or negligently misrepresented, *inter alia*, the services that would be provided by the Fairfield Defendants; the extent and quality of the due diligence, ongoing risk monitoring, and transaction verification that they would and were performing on Madoff; the Fairfield Defendants' transparency to Madoff; the split-strike conversion method ostensibly used by Madoff; each Fund's value and appreciation; and Madoff's qualifications to serve as investment manager, broker, and custodian for the Funds;

d. Whether the Fairfield Defendants breached their fiduciary duty to investors;

e. Whether the Fairfield Defendants, PwC and Citco violated the securities laws by making misrepresentations or material omissions.

f. Whether and to what extent Plaintiffs were damaged by the Fairfield Defendants' misrepresentations and breaches of fiduciary duty;

g. Whether the Fairfield Defendants were grossly negligent in:

i. failing to perform adequate due diligence before selecting Madoff as each Fund's investment manager, execution agent for the purported split-strike conversion strategy, and custodian for the Funds;

ii. failing to monitor Madoff and BMIS on an ongoing basis to any meaningful degree; and

iii. failing to take adequate steps to confirm BMIS's purported account statements, transactions and holdings of each Fund's assets;

h. Whether Plaintiffs are entitled to the imposition of a constructive trust on all monies and other property in the possession of the Fairfield Defendants and Fairfield Fee Claim Defendants which derive from

their compensation in the form of management and performance and other fees based on Madoff's fraudulent reports;

i. Whether Plaintiffs are entitled to an accounting of: (1) the actual investments and transactions done on Plaintiffs' behalf, (2) the actual calculation used to determine each management and performance fee, and (3) the amounts taken in management and performance fees;

j. Whether PwC breached its duties and obligations to Plaintiffs by its negligence and gross negligence in auditing the Funds by:

i. Failing to verify the existence of the assets that purportedly constituted 95% of the Funds' assets;

ii. failing to exercise due professional care and professional skepticism in its audits of the Funds;

iii. failing to obtain sufficient understanding of the Funds and their environment, including their internal controls, to assess the risk of material misstatement of the financial statements whether due to error or fraud;

iv. failing to obtain sufficient competent audit evidence with respect to existence of the Funds' investments through BMIS and failing to perform the necessary procedures to audit the existence of the Funds' assets;

v. failing to obtain an understanding of the internal controls (or lack thereof) of BMIS and failing to perform the necessary procedures to audit the occurrence of the transactions involving the Funds' assets;

vi. failing to perform additional procedures required in situations where, as here, there was a lack of segregation of duties at a service organization;

vii. failing to investigate and follow up the numerous red flags, discussed above, indicating that Madoff was a fraud;

viii. improperly relying on the financial statements of BMIS because, among other things, F&H was not qualified or able to audit BMIS in accordance with GAAS.

k. Whether PwC aided and abetted the Fairfield Defendants' breach of fiduciary duties to Plaintiffs.

l. Whether PwC aided and abetted the Fairfield Fraud Claim Defendants' fraud.

m. Whether PwC made negligent misrepresentations to Plaintiffs regarding the financial statements of the Funds.

n. Whether PwC Canada and PwC Netherlands made false representations and omissions in connection with Plaintiffs' purchase of their interests in the Funds.

o. Whether PwC International was a control person liable for those misrepresentations and omissions.

p. Whether Citco breached its fiduciary duties, by:

i. failing to exercise due care and diligence in the selection and supervision of BMIS as the Funds' sub-custodian;

ii. failing to make appropriate inquiries to confirm that BMIS's obligations were being competently discharged;

iii. failing to take proper steps to confirm information received from Madoff and BMIS;

iv. misrepresenting that BMIS was a qualified sub-custodian and misrepresenting the care Citco Bank had taken with respect to selection and supervision of BMIS;

v. permitting the Funds' investment manager and execution agent to serve as sub-custodian;

vi. carelessly entrusting Plaintiffs' assets to BMIS;

vii. profiting at Plaintiffs' expense;

viii. failing to perform adequate due diligence of BMIS;

ix. failing to monitor Madoff and BMIS on an ongoing basis to any reasonable degree;

x. failing to take adequate steps to confirm the accuracy and plausibility of the data received from BMIS and recklessly creating and disseminating to Fund investors purported account statements, transactions and holdings of Fund assets based upon such unsubstantiated data; and

xi. furnishing to Fund investors monthly statements and net asset value calculations that Citco did not independently verify.

q. Whether Citco aided and abetted the Fairfield Defendants' breach of fiduciary duties to Plaintiffs.

r. Whether Citco aided and abetted the Fairfield Fraud Claim Defendants' fraud.

s. Whether Citco recklessly made false statements to investors.

t. Whether the Citco Defendants (excluding Citco Group) made false representations and omissions in connection with Plaintiffs' purchase of their interests in the Funds.

u. Whether Citco Group was a control person liable for those misrepresentations and omissions.

v. Similar questions of fact and law are common with respect to Plaintiffs' claims against the other Defendants.

Adequate Representation. The representative Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained experienced counsel qualified in class action litigation who are competent to assert the interests of the Class.

Superiority. A class action in superior to other methods for the fair and efficient adjudication of this controversy involving thousands of similarly situated investors.

CLAIMS FOR RELIEF

Count 1
Fraud against Fairfield Fraud Claim Defendants (Purchaser Claims)

354. The foregoing paragraphs are realleged herein.

355. The Fairfield Fraud Claim Defendants falsely represented to Plaintiffs in connection with their purchase of shares and/or equity interests in the Fairfield Funds that: (i) the Funds would invest their monies into a legitimate fund, principally relying upon the SSC investment strategy involving the purchase of equities and options; (ii) that by using this strategy, the Funds historically had consistent profitable returns since inception; (iii) the Fairfield Fraud Claim Defendants would conduct due diligence into, monitor, and verify the investments made by them in the Funds operated by Madoff to confirm that the Funds were

operated legitimately, using the stated investment strategy, and in accordance with the required legal and regulatory requirements.

356. The Fairfield Fraud Claim Defendants failed to disclose the following material information, among other things, which rendered their other representations false and misleading: (i) that the Fairfield Fraud Claim Defendants were in fact not engaging in customary, or even minimal, due diligence to verify that the Funds' assets were being properly invested and managed by Madoff and BMIS, or that the assets even existed; (ii) the existence of numerous red flags regarding the Funds including, among others, the lack of transparency into Madoff's actual operations, the lack of segregation of duties, inadequate auditing of Madoff, and the attainability of consistently profitable returns for a fund pursuing the stated strategy.

357. The Fairfield Fraud Claim Defendants made these false and misleading representations and omissions knowingly, recklessly, without regard for their truth or falsity, and with the intent to induce Plaintiffs to rely upon them by investing assets in the Funds.

358. Plaintiffs justifiably relied upon the false representations made by the Fairfield Fraud Claim Defendants by investing their assets in the Fund.

359. As a direct and proximate result of their reliance upon the false representations and omissions of the Fairfield Fraud Claim Defendants, Plaintiffs

have suffered damages, including the loss of their investments in the Funds, and the Fairfield Fraud Claim Defendants, in turn, have wrongfully taken substantial assets belonging to the Plaintiffs in the form of improper and unearned fees.

Count 2
Fraud against Fairfield Fraud Claim Defendants (Holder Claims)

360. The foregoing paragraphs are realleged herein.

361. The Fairfield Fraud Claim Defendants induced purchasers to hold their positions in the Fairfield Funds by falsely representing to Plaintiffs that: (i) the Fairfield Fraud Claim Defendants had conducted thorough due diligence and exercised oversight of Madoff's operations and had determined that those operations were legitimate, utilized the SSC investment strategy, and had a long track record of achieving positive investment returns; (ii) Plaintiffs' assets invested in the Funds operated by the Fairfield Fraud Claim Defendants would, in turn, be invested in the legitimate funds operated by Madoff that utilized the SSC investment strategy; (iii) the Fairfield Fraud Claim Defendants would monitor the investments made by them in the Funds operated by Madoff to confirm that the Funds were operated legitimately, using the SSC investment strategy, and in accordance with all legal and regulatory strictures, and further that the Fairfield Fraud Claim Defendants would verify Fund transactions, including that the Madoff funds actually made the represented trades and held the represented assets; (iv) the due diligence and oversight process employed by the Fairfield Defendants was so

thorough as to be privileged in providing full transparency to all aspects of Madoff's operations, which allowed the Fairfield Fraud Claim Defendants to assure that the Funds invested with Madoff were being actually and legitimately invested; and (v) Madoff's operations and accounts were audited by reputable, independent auditors utilizing appropriate and accepted accounting and auditing procedures, which provided further assurance that Madoff's accounts actually held the represented assets and were otherwise operated lawfully.

362. The Fairfield Fraud Claim Defendants made the representations knowing that they were false in that: (i) the Fairfield Fraud Claim Defendants did not, in fact, conduct thorough or appropriate due diligence of, or exercise oversight over Madoff and his operations and had not determined that Madoff actually invested assets utilizing the SSC investment strategy, with a long track record of achieving positive investment returns; (ii) the Fairfield Fraud Claim Defendants did not invest Plaintiffs' assets in legitimate funds that utilized the SSC investment strategy; (iii) the Fairfield Fraud Claim Defendants did not meaningfully monitor the investments in the Funds operated by Madoff to confirm that the Funds were operated legitimately using the SSC investment strategy and in accordance with all legal and regulatory structures, and did not verify Fund transactions, including that Madoff actually made the represented trades and that the Funds held the represented assets; (iv) the due diligence and oversight processes employed by the

Fairfield Fraud Claim Defendants were non-existent, much less so thorough as to be privileged in providing total transparency to all aspects of Madoff's operations, and did not allow the Fairfield Fraud Claim Defendants the ability to assure that the assets provided to Madoff were actually and legitimately invested; and (v) Madoff's operations and accounts were not audited by reputable, independent auditors utilizing appropriate and accepted accounting and auditing procedures, and thus did not provide any assurance that the Fairfield Funds actually held the represented assets and were otherwise operated lawfully.

363. When they made their false statements and committed their omissions, the Fairfield fraud Claim Defendants knew facts or had access to information suggesting that their public statements were not accurate or failed to check information they had a duty to monitor and which would have demonstrated the falsity of their statements.

364. The Fairfield Fraud Claim Defendants made the false representations knowing of their falsity and with the intent to induce Plaintiffs to rely upon the false representations by holding assets in the Funds.

365. Plaintiffs justifiably relied upon the false representations made by the Fairfield Fraud Claim Defendants in holding their assets in the Funds.

366. As a direct and proximate result of their reliance upon the false representations and omissions of the Fairfield Fraud Claim Defendants, Plaintiffs

have suffered damages, namely the loss of their investments in the Funds, and the Fairfield Fraud Claim Defendants, in turn, have wrongfully taken substantial assets belonging to the Plaintiffs in the form of improper and unearned fees.

Count 3
Violation of Section 10(b) and Rule 10b-5 against Fairfield Fraud Claim Defendants

367. The foregoing paragraphs are realleged herein.

368. This Count is asserted against the Fairfield Fraud Claim Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder.

369. The Fairfield Fraud Claim Defendants directly engaged in a common plan, scheme, and unlawful course of conduct, pursuant to which they knowingly or recklessly engaged in acts, practices, and courses of business which operated as a fraud and deceit upon Plaintiffs, and made various deceptive and untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiffs. The purpose and effect of this scheme, plan, and unlawful course of conduct was, among other things, to induce Plaintiffs to purchase shares in the Funds.

370. The Fairfield Fraud Claim Defendants, pursuant to said scheme, plan, and unlawful course of conduct, knowingly and recklessly issued, caused to be

issued, participated in the issuance of, the preparation and issuance of deceptive and materially false and misleading statements to Plaintiffs as particularized above.

371. When they made false statements and committed their omissions, the Fairfield Fraud Claim Defendants knew facts or had access to information suggesting that their public statements were not accurate or recklessly failed to check information they had a duty to monitor and which would have demonstrated the falsity of their statements.

372. The Fairfield Fraud Claim Defendants were motivated to commit wrongful acts by the hundreds of millions of dollars in fees they received based on Plaintiffs' investments and the illusory profits from those investments.

373. In ignorance of the false and misleading nature of the statements described above and the deceptive and manipulative devices and contrivances employed by the Fairfield Fraud Claim Defendants, Plaintiffs relied, to their detriment, on such misleading statements and omissions in purchasing limited partnerships or shares in the Funds. Plaintiffs have suffered substantial damages as a result of the wrongs alleged herein.

374. By reason of the foregoing, the Fairfield Fraud Claim Defendants directly violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts

necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon Plaintiffs in connection with their investments in the Fund.

Count 4
Violation of Section 20(a) against Fairfield Fraud Claim Defendants and Defendants Landsberger, Murphy, and Smith

375. The foregoing paragraphs are realleged herein.

376. The Fairfield Fraud Claim Defendants and defendants Landsberger, Murphy, and Smith (as members of FGG's Executive Committee) each acted as a controlling person of the Funds within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high level position, participation in and/or awareness of the Funds' operations, and/or intimate knowledge of the Funds' products, sales, accounting, plans and implementation thereof, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Funds, including the content and dissemination of the various statements that were false and misleading. The Fairfield Fraud Claim Defendants, and defendants Landsberger, Murphy, and Smith, had the ability to prevent the issuance of the statements or cause the statements to be corrected.

377. The Fairfield Fraud Claim Defendants, and defendants Landsberger, Murphy, and Smith, had direct and supervisory involvement in the day-to-day

operations of the Fund and, therefore, are presumed to have had the power to control or influence the particular statements giving rise to the securities violations as alleged herein, and exercised the same.

378. By virtue of their position as controlling persons, the Fairfield Fraud Claim Defendants and defendants Landsberger, Murphy, and Smith are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of the wrongful conduct, Plaintiffs suffered damages in connection with their investments in the Funds.

Count 5
Negligent Misrepresentation against Fairfield Defendants (Purchaser Claims)

379. The foregoing paragraphs are realleged herein.

380. Based on their unique or special expertise with respect to investments generally and the Madoff Funds in particular, the Fairfield Defendants had a special relationship of trust or confidence with Plaintiffs, which created a duty on the part of the Fairfield Defendants to impart full and correct information to Plaintiffs.

381. The Fairfield Defendants falsely represented to Plaintiffs in connection with their purchase of shares and partnership interests in the Funds that: (i) the Funds would invest their monies into a legitimate fund, principally relying upon a SSC involving the purchase of equities and options; (ii) that by using this strategy, the Funds historically had achieved consistent profitable returns and had a

long track record of achieving positive investment returns; (iii) the Fairfield Defendants would monitor the investments made by them in the Funds operated by Madoff to confirm that the Funds were operated legitimately, using the stated investment strategy, and in accordance with all legal and regulatory strictures.

382. The Fairfield Defendants failed to disclose the following material information, among other things, which rendered their other representations false and misleading: (i) that the Fairfield Defendants were in fact not engaging in customary, or any other meaningful, due diligence to verify that the Funds' assets were being properly invested and managed by the fund manager, or that the assets even existed; (ii) the existence of numerous red flags regarding the Fairfield Funds including, among others, the lack of transparency into Madoff's actual operations, the lack of segregation of duties, inadequate auditing of Madoff, and the unattainability of consistently profitable returns for a fund pursuing the stated strategy.

383. The Fairfield Defendants made the false representations and material omissions knowing that Plaintiffs would use and rely upon the representations and omissions for the particular purpose of determining where and how to invest their assets and, in particular, to decide to invest their assets in the Funds.

384. Plaintiffs justifiably relied upon the false representations and material omissions made by the Fairfield Defendants in furtherance of that particular purpose by investing their assets in the Funds.

385. The Fairfield Defendants knew that Plaintiffs were investors and understood that they would rely upon the false statements and material omissions for the particular purpose of investing their assets in the Funds.

386. As a result of their reliance upon the false representations and material omissions of the Fairfield Defendants, Plaintiffs have suffered damages, namely the loss of their investments in the Funds, and the Fairfield Defendants, in turn, have derived substantial profits. Defendants' misconduct was the direct and proximate cause of Plaintiffs' losses.

Count 6
Negligent Misrepresentation against Fairfield Defendants (Holder Claims)

387. The foregoing paragraphs are realleged herein.

388. Based on their unique or special expertise with respect to investments generally and the Madoff funds in particular, the Fairfield Defendants had a special relationship of trust or confidence with Plaintiffs, which created a duty on the part of the Fairfield Defendants to impart correct information to Plaintiffs.

389. The Fairfield Defendants induced purchasers to hold their positions in the Fairfield Funds by falsely representing to Plaintiffs that: (i) the Fairfield Defendants had conducted thorough due diligence and exercised oversight of

Madoff's operations and had determined that those operations were legitimate, utilized the SSC investment strategy, and had a long track record of achieving positive investment returns; (ii) Plaintiffs' assets invested in the funds operated by the Fairfield Defendants would, in turn, be invested in a legitimate manner by Madoff that utilized the SSC investment strategy; (iii) the Fairfield Defendants would monitor the investments made by Madoff to confirm that the Funds were operated legitimately, using the SSC investment strategy, and in accordance with all legal and regulatory strictures, and further that the Fairfield Defendants would verify Fund transactions, including that the Madoff funds actually made the represented trades and that the Funds held the represented assets; (iv) the due diligence and oversight process employed by the Fairfield Defendants was so thorough as to be privileged in providing total transparency to all aspects of Madoff's operations, which allowed the Fairfield Defendants to assure that the funds invested with Madoff were being actually and legitimately invested; (v) the net asset values of Plaintiffs' investments were true and correct reflections of the value of their investments in the Funds; and (vi) Madoff's operations and accounts were audited by reputable, independent auditors utilizing appropriate and accepted accounting and auditing procedures, which provided further assurance that the Fairfield Funds actually held the represented assets and were otherwise operated lawfully.

390. The representations made by the Fairfield Defendants were false in that, among other things: (i) the Fairfield Defendants did not, in fact, conduct thorough due diligence of, or exercise oversight over, Madoff and his operations and had not determined that Madoff actually invested assets utilizing the SSC investment strategy, with a long track record of achieving positive investment returns; (ii) the Fairfield Defendants did not invest Plaintiffs' assets in legitimate funds that utilized the SSC investment strategy; (iii) the Fairfield Defendants did not intend to monitor the investments in the Funds operated by Madoff to confirm that the funds were operated legitimately using the SSC investment strategy and in accordance with all legal and regulatory structures, and did not intend to verify Fund transactions, including that Madoff actually made the represented trades and that the Funds actually held the represented assets; (iv) the due diligence and oversight process employed by the Fairfield Defendants was non-existent, much less so thorough as to be privileged in providing total transparency to all aspects of Madoff's operations, and thus did not allow the Fairfield Defendants the ability to assure that the assets provided to Madoff were actually and legitimately invested; (v) Madoff's operations and accounts were not audited by reputable, independent auditors utilizing appropriate and accepted accounting and auditing procedures, and thus did not provide any assurance that the Fairfield Funds actually held the

represented assets and were otherwise operated lawfully, and (vi) the purported net asset values of Plaintiffs' investments in the Funds were fictitious.

391. The Fairfield Defendants made the false representations knowing that Plaintiffs would use and rely upon the representations for the particular purpose of determining whether to hold their assets in the Funds.

392. Plaintiffs justifiably relied upon the false representations made by the Fairfield Defendants in furtherance of that particular purpose by continuing to hold their assets in the funds operated by the Fairfield Defendants.

393. The Fairfield Defendants knew that Plaintiffs were investors in the funds and understood that Plaintiffs would rely upon the false statements for the particular purpose of continuing to hold their assets in the Funds.

394. As a result of their reliance upon the false representations made by the Fairfield Defendants, Plaintiffs have suffered damages, namely the loss of their investments in the Funds, and the Fairfield Defendants, in turn, have derived substantial profits. The Fairfield Defendants' misconduct was the direct and proximate cause of Plaintiffs' losses.

Count 7
Gross Negligence against Fairfield Defendants

395. The foregoing paragraphs are realleged herein.

396. The Fairfield Defendants, as investment advisors, managers, and placement agents with discretionary control over Fund assets, had a special

relationship with Plaintiffs that gave rise to a duty to exercise due care in the management of Plaintiffs' assets invested in the Funds, and in the selection and monitoring of Fund managers and sub-custodians. The Fairfield Defendants knew or should have known that Plaintiffs were relying on the Fairfield Defendants to manage the investments entrusted to the Funds with reasonable care, and Plaintiffs did reasonably and foreseeably rely on the Fairfield Defendants to exercise such care by entrusting their assets to their Fund.

397. The Fairfield Defendants grossly failed to exercise due care, and acted in reckless disregard of their duties, and thereby injured Plaintiffs. The Fairfield Defendants failed to exercise the degree of prudence, caution, and good business practice that would be expected of any reasonable investment professional. The Fairfield Defendants failed to perform adequate due diligence before selecting BMIS as the Funds' execution agent for its SSC method, and before allowing BMIS to serve as sub-custodian for the Funds; failed to monitor Madoff and BMIS on an ongoing basis to any reasonable degree; failed to take adequate steps to confirm BMIS's purported account statements, transactions and holdings of Fund assets.

398. If the Fairfield Defendants had not been grossly negligent with respect to Plaintiffs' assets invested in the Funds, they would have discovered that Madoff

was a fraud, and would not have entrusted Plaintiffs' assets invested in the Funds to Madoff and BMIS.

399. As a direct and proximate result of the Fairfield Defendants' gross negligence with respect to Plaintiffs' assets invested in the Fairfield Funds, Plaintiffs have lost all, or substantially all, their investment in the Funds.

400. By reason of the foregoing, the Fairfield Defendants are jointly and severally liable to Plaintiffs.

401. Because of the outrageous nature of the Fairfield Defendants' willful and wanton conduct, Plaintiffs are entitled to punitive damages.

Count 8
Breach of Fiduciary Duty against Fairfield Defendants

402. The foregoing paragraphs are realleged herein.

403. The Fairfield Defendants had substantial discretion and control over Plaintiffs' assets in the Madoff feeder funds, the marketing of those Funds, and communications to Plaintiffs.

404. This discretion and control gave rise to a fiduciary duty and duty of care on the part of the Fairfield Defendants to the Plaintiffs.

a. The Fairfield Defendants occupied a superior position over Plaintiffs with respect to their management and control over their assets in the Funds, and had superior access to confidential information about the investment of the assets and about Madoff and BMIS.

b. The Fairfield Defendants' superior position necessitated that Plaintiffs repose their trust and confidence in the Fairfield Defendants to fulfill their duties, and Plaintiffs did so by investing in the Funds.

c. The Fairfield Defendants held themselves out as providing superior client investment services, and evinced an understanding that they were the fiduciaries of the investors. Plaintiffs reasonably and foreseeably relied on such representations, and trusted in the Fairfield Defendants' purported expertise and skill.

405. FGBL has served as the General Partner of Greenwich Sentry since March 1, 2006, and as the General Partner of Greenwich Sentry Partners, since its organization in April 2006. As the General Partner, FGBL was responsible for directing the Funds' investment and trading activities and owed fiduciary duties to the Plaintiffs.

406. From January 1998 to February 2006, FGL served as the General Partner of Greenwich Sentry. From January 1, 1993, the date of inception of the Partnership, to January 1998, Walter Noel and Jeffrey Tucker were the General Partners of Greenwich Sentry. FGG recognized in its publications to shareholders that "the General Partner has a fiduciary duty to the Partnership to exercise good faith and fairness in all of its dealings with it." (GS COM- 8/2006, at 21; GS COM-5/2006, at 20; GSP COM-8/2006, at 20.) The General Partner is responsible

for the supervision of the Administrator and Sub-Administrator in the completion of their duties. (GS COM- 8/2006, at 11; GSP COM-8/2006, at 10.)

407. FRS serves on the Risk Management team for FGG, and provides risk management services to Fairfield Sentry and to the other Funds.

a. FRS was responsible for conducting "both the pre- and post-investment quantitative analyses of hedge fund managers, monitors the market risk and provides the quantitative analyses supporting the asset allocation decisions across the firm's multi-strategy funds." (FS PPM-8/14/06, Appendix A, Items 4.A.(5) and 4.(B).(8), Mar. 27, 2008, at 7.)

b. FRS was also responsible for generating monthly reports on the Funds, including an analysis of "Exposures, Sensitivities, Scenarios and Stress Tests, VaR, Correlations Analysis, and Attribution Analysis." (Id.) This suite of reports was for review and discussion at "FGG's Investment Committee at a formal monthly risk meeting." (Id.)

408. The Fairfield Defendants breached their fiduciary duties to Plaintiffs by failing to conduct adequate due diligence and monitoring with respect to the Funds' investments, by failing to follow-up on red flags that would have caused them to discover that Madoff was conducting Ponzi scheme, and by pocketing hundreds of millions of dollars in fees based on fraudulent asset values and investment returns.

409. Plaintiffs have been damaged as a proximate result of these breaches of fiduciary duty and are entitled to damages, and appropriate equitable relief, including accounting and imposition of a constructive trust.

Count 9
Third-Party Beneficiary Breach of Contract against Fairfield Defendants and Fairfield Fee Claim Defendants

410. The foregoing paragraphs are realleged herein.

411. Plaintiffs are third-party beneficiaries of contracts entered by certain Fairfield Defendants with the Funds, including the Investment Management Agreements and general partnership agreements entered by FGL and FGBL agreements evince a clear intent to benefit shareholders, for instance, by requiring FGBL to seek "suitable investment opportunities" for the Funds (Investment Management Agreement ¶ 2) to "obtain capital appreciation" and return on Plaintiffs' investments (FS PPM-8/14/06, at 9.)

412. The benefits to Plaintiffs under the Investment Management Agreements between the Funds and FGBL were immediate, not simply incidental, in that the Funds' only motivations for executing the Investment Management Agreements were to provide investors with capital appreciation and returns on their investments in the Funds.

413. FGBL has been Fairfield Sentry's Investment Manager since 2003, and in that capacity, controlled the assets of both the Fairfield Sentry and Fairfield

Sigma investors. (Investment Management Agreement ¶ 1; Sigma Investment Management Agreement ¶ 1.)

a. FGBL's duties include "management of the Fund's investment activities, the selection of the Fund's investments, monitoring its investments and maintaining the relationship between the Fund and its custodian, administrator, registrar and transfer agent." (FS PPM-8/14/06, at 7; Investment Management Agreement ¶ 1; Sigma Investment Management Agreement ¶¶ 1-2.)

b. FGBL was to use "best efforts to (a) seek suitable investment opportunities and manage the investment portfolio of the Fund; (b) perform or oversee the day-to-day investment operations of the Fund; (c) act as investment adviser for the Fund in connection with investment decisions; (d) provide information in connection with the preparation of all reports to the Fund's shareholders described in the Memorandum; and (e) arrange for and oversee the services of the Fund's administrator, custodian(s), auditors and counsel to act on behalf of the Fund; provided, however, that the Investment Manager is not authorized to enter into agreements in the name of the Fund with such providers of services." (Investment Management Agreement ¶ 2; Sigma Investment Management Agreement ¶¶ 1-2.)

c. FGBL was obligated to "send to the Fund weekly and monthly valuations of the [split-strike conversion] Investments." (Sigma Investment Management Agreement ¶ 3.) FGBL was to be "available at all times" for consultation regarding this information. (Sigma Investment Management Agreement ¶ 3.)

d. FGBL agreed that it would execute its duties in the absence of "willful misfeasance, bad faith or gross negligence" or a "reckless disregard of their obligations and duties." (Id. ¶ 10(a).)

414. Before FGBL assumed the role of investment manager for Fairfield Sentry in 2003, FGL served as the Investment Manager, and had contractual obligations similar to FGBL.

415. FGBL has also served as the General Partner of Greenwich Sentry since March 2006 and of Greenwich Sentry Partners since April 2006. Prior to FGBL, FGL served as General Partner of Greenwich Sentry. As General Partner, FGL and FGBL undertook similar responsibilities as they undertook for Fairfield Sentry and Sigma.

416. FGBL and FGL breached their investment management and general partnership contracts by grossly failing to meet the obligations of these agreements to provide competent investment management services to the Funds. They also breached their contracts by receiving and holding fees based on fictitious profits and for services not properly performed. Both are liable to Plaintiffs as third party beneficiaries of those contracts.

Count 10
Constructive Trust against Fairfield Defendants and Fairfield Fee Claim Defendants

417. The foregoing paragraphs are realleged herein.

418. The Fairfield Defendants and Fairfield Fee Claim Defendants had a fiduciary relationship with Plaintiffs which included an obligation to invest Plaintiffs' assets in legitimate investments, and perform adequate due diligence and monitoring as set forth in the Private Placement Memoranda and Confidential Offering Memoranda.

419. The Fairfield Defendants and Fairfield Fee Claim Defendants were compensated by Plaintiffs with fees that were calculated based on the "Net Profits" and current assets of the Funds.

420. The Fairfield Defendants and Fairfield Fee Claim Defendants were unjustly enriched by the retention of fees that were predicated on fictitious profits and assets. Plaintiffs are entitled to have a constructive trust imposed on the amount of all monies and other property in the possession of the Fairfield Defendants and Fairfield Fee Claim Defendants which relate to fees paid to them on account of fictitious profits and assets of the Funds, the amount of which is to be determined.

Count 11
Mutual Mistake against Fairfield Defendants and Fairfield Fee Claim Defendants

421. The foregoing paragraphs are realleged herein.

422. Pursuant to the PPMs and CMOs and other agreements with investors, the Fairfield Defendants and Fairfield Fee Claim Defendants were paid fee

amounts estimated to range from approximately $100 million to $200 million per year. Each year the FGG Partners were allocated a proportionate share of the fees.

423. The Fairfield Defendants and Fairfield Fee Claim Defendants were paid those fees under a mutual mistake of the parties as to the amount and value of net assets under management and the amount of profits. In fact, there were no assets under management and no profits.

424. Plaintiffs' investments were used to pay the foregoing fees to the Fairfield Defendants and Fairfield Fee Claim Defendants.

425. Plaintiffs demand recovery of the foregoing fee payments made pursuant to a mutual mistake.

Count 12
Gross Negligence against PricewaterhouseCoopers

426. The foregoing paragraphs are realleged herein.

427. PwC, as the Funds' auditors, had a special relationship with Plaintiffs that gave rise to a duty to exercise due care.

428. For example, PwC addressed audit reports to the shareholders and limited partners of the Funds. PwC knew that its audit reports would be relied upon by Plaintiffs in deciding to make or retain investments in the Funds in that, among other things, PwC addressed its audit reports to investors in the Funds, and PwC knew the Funds advised Plaintiffs and the investment community that PwC

audited the Funds' financial statements and had given the Funds "clean" audit reports.

429. Plaintiffs foreseeably and reasonably relied, directly or indirectly, on PwC to exercise such care as ordinarily exercised by auditors generally and as required by GAAS and other applicable auditing standards in conducting the audits of the Funds.

430. PwC was grossly negligent in knowingly failing to properly audit the Funds in accordance with GAAS and other applicable auditing standards, and then misrepresenting that it had conducted proper audits of the Funds. Moreover, PwC willfully turned a blind eye to numerous red flags both as to Madoff's fraud and the Fairfield Fraud Defendants' misrepresentations, omissions, and breaches of duty. PwC nevertheless recklessly issued clean audit opinions that the Funds' financial statements fairly represented the financial condition of the Funds.

431. Had PwC not acted recklessly and with willful blindness it would have not issued the clean audits of the Funds.

432. As a result of PwC's gross negligence, Plaintiffs have lost all or, or substantially all, of their investments in the Funds.

Count 13
Negligence against PricewaterhouseCoopers

433. The foregoing paragraphs are realleged herein.

434. PwC, as the Funds' auditors, had a special relationship with Plaintiffs that gave rise to a duty to exercise due care.

435. PwC addressed audit reports to the shareholders and limited partners of the Funds. In addition, PwC knew that its audit reports would be relied upon, directly or indirectly, by Plaintiffs in deciding to make or retain investments in the Funds in that, among other things, PwC addressed its audit reports to investors in the Funds, and knew the Funds advised Plaintiffs and the investment community that PwC audited the Funds' financial statements and had given the Funds "clean" audit reports.

436. Plaintiffs foreseeably and reasonably relied, directly or indirectly, on PwC to exercise such care as ordinarily exercised by auditors generally and as required by GAAS and other auditing standards in conducting the audits of the Funds.

437. PwC negligently failed to exercise due care by failing to properly audit the Funds in accordance with GAAS and other applicable auditing standards and thereby caused injury to the Plaintiffs, who have lost all, or substantially all, of their investments in the Funds.

Count 14
Negligent Misrepresentation against PricewaterhouseCoopers

438. The foregoing paragraphs are realleged herein.

439. Based on its role as the auditor for the Funds and its unique or special expertise with respect to the performance of audits, including audits of feeder funds, and with respect to the Madoff funds in particular, PwC had a special relationship of trust or confidence with Plaintiffs, which created a duty on the part of PwC to impart correct information to Plaintiffs.

440. PwC induced purchasers to hold their positions in the Funds and to purchase additional interests in the Funds by falsely representing to Plaintiffs that (i) it had conducted its audits in accordance with GAAS or ISA and (ii) the Funds' financial statements "present[ed] fairly, in all material respects, the financial position of [the Funds]...."

441. These representations made by PwC were false in that: (i) PwC failed to conduct the audits of the Funds in accordance with GAAS and ISA; and (ii) the Funds' financial statements, including the claimed value of the Funds' investments through Madoff, did not present fairly in all respects the financial position of the Funds. In fact, PwC made the false statements without so much as properly confirming the existence of the Funds' assets.

442. PwC made the false representations knowing that Plaintiffs would use and rely upon the representations for the particular purpose of determining whether to hold their assets in the Funds and whether to purchase additional interests in the Funds.

443. Plaintiffs justifiably relied upon the false representations made by PwC in furtherance of that particular purpose by continuing to hold their assets in the Funds and by purchasing additional interests in the Funds.

444. PwC knew that Plaintiffs were investors in the Funds and understood that Plaintiffs would rely upon the false statements for the particular purpose of continuing to hold their assets in the Funds and to purchase additional interests in the Funds.

445. As a result of their reliance upon the false representations made by PwC, Plaintiffs have suffered damages, namely the loss of their investments in the Funds, and PwC, in turn, derived substantial audit fees. PwC's misconduct was the direct and proximate cause of Plaintiffs' losses.

Count 15
Third-Party Beneficiary Breach of Contract against PricewaterhouseCoopers

446. The foregoing paragraphs are realleged herein.

447. PwC entered into contracts with the Funds to perform audits in accordance with GAAS and other applicable auditing standards.

448. The contracts evince a clear intent to benefit Plaintiffs, who had invested in the Funds, to whom the audit reports were addressed, and who relied upon PwC to audit the financial statements of the Funds and to opine that the financial statements fairly represented the financial condition of the Funds only if that professional opinion was based upon a proper audit of the Funds conducted in

accordance with GAAS and other applicable auditing standards. The benefits to Plaintiffs under the contracts were immediate, not simply incidental.

449. PwC breached its agreements to perform audits for the Funds, and this breach proximately caused Plaintiffs' losses.

450. PwC is liable to Plaintiffs as third party beneficiaries of those contracts.

Count 16
Aiding and Abetting Breach of Fiduciary Duty against PricewaterhouseCoopers

451. The foregoing paragraphs are realleged herein.

452. As the auditor for the Funds, PwC was aware of the fiduciary duties owed by the Fairfield Defendants to Plaintiffs as alleged above. PwC acted with willful blindness or recklessness in conducting its audits and is thus charged with constructive knowledge that:

a. The Fairfield Defendants had the discretion and control giving rise to a fiduciary duty and duty of care to the Plaintiffs.

b. The Fairfield Defendants occupied a superior position over Plaintiffs with respect to their management and control over their assets in the Funds, and had superior access to confidential information about the investment of the assets and about Madoff and BMIS.

c. The Fairfield Defendants' superior position necessitated that Plaintiffs repose their trust and confidence in the Fairfield Defendants to fulfill

their duties, and that Plaintiffs did so by investing in the Funds.

d. The Fairfield Defendants held themselves out as providing superior client investment services, and evinced an understanding that they were the fiduciaries of the investors. PwC was further aware that Plaintiffs reasonably and foreseeably relied on such representations, and trusted in the Fairfield Defendants' purported expertise and skill.

453. PwC substantially assisted the Fairfield Defendants by issuing "clean" audit reports on the Funds and failing to conduct proper independent audits of the Funds, including PwC's failure to disclose that the representations made by management in the financial statements could not be relied upon.

454. As a direct and natural result of (a) the Fairfield Defendants' breaches of their fiduciary duties and (b) PwC's aiding and abetting those breaches, the Plaintiffs have suffered substantial damages.

Count 17
Aiding and Abetting Fraud against PricewaterhouseCoopers

455. The foregoing paragraphs are realleged herein.

456. As alleged above, a fraud was perpetrated on Plaintiffs by the Fairfield Fraud Claim Defendants.

457. PwC acted with willful blindness or recklessness in conducting its audits and is thus charged with constructive knowledge that:

a. The Fairfield Fraud Claim Defendants falsely represented to Plaintiffs in connection with their

purchase of shares and/or equity interests in the Fairfield Funds that: (i) the Funds would invest their monies into a legitimate fund, principally relying upon the SSC investment strategy involving the purchase of equities and options; (ii) that by using this strategy, the Funds historically had consistent profitable returns since inception; (iii) the Fairfield Fraud Claim Defendants would conduct due diligence into, monitor, and verify the investments made by them in the Funds operated by Madoff to confirm that the Funds were operated legitimately, using the stated investment strategy, and in accordance with the required legal and regulatory requirements.

b. The Fairfield Fraud Claim Defendants failed to disclose the following material information, among other things, which rendered their other representations false and misleading: (i) that the Fairfield Fraud Claim Defendants were in fact not engaging in customary, or even minimal, due diligence to verify that the Funds' assets were being properly invested and managed by Madoff and BMIS, or that the assets even still existed; (ii) the existence of numerous red flags regarding the Funds including, among others, the lack of transparency into Madoff's actual operations, the lack of segregation of duties, inadequate auditing of Madoff, and the attainability of consistently profitable returns for a fund pursuing the stated strategy.

c. The Fairfield Fraud Claim Defendants induced purchasers to hold their positions in the Fairfield Funds by falsely representing to Plaintiffs that: (i) the Fairfield Fraud Claim Defendants had conducted thorough due diligence and exercised oversight of Madoff's operations and had determined that those operations were legitimate, utilized the SSC investment strategy, and had a

long track record of achieving positive investment returns; (ii) Plaintiffs' assets invested in the Funds operated by the Fairfield Fraud Claim Defendants would, in turn, be invested in the legitimate funds operated by Madoff that utilized the SSC investment strategy; (iii) the Fairfield Fraud Claim Defendants would monitor the investments made by them in the funds operated by Madoff to confirm that the Funds were operated legitimately, using the SSC investment strategy, and in accordance with all legal and regulatory strictures, and further that the Fairfield Fraud Claim Defendants would verify Fund transactions, including that the Madoff funds actually made the represented trades and held the represented assets; (iv) the due diligence and oversight process employed by the Fairfield Defendants was so thorough as to be privileged in providing total transparency to all aspects of Madoff's operations, which allowed the Fairfield Fraud Claim Defendants to assure that the Funds invested with Madoff were being actually and legitimately invested; and (v) Madoff's operations and accounts were audited by reputable, independent auditors utilizing appropriate and accepted accounting and auditing procedures, which provided further assurance that Madoff's accounts actually held the represented assets and were otherwise operated lawfully.

d. The Fairfield Fraud Claim Defendants made the representations knowing that they were false in that: (i) the Fairfield Fraud Claim Defendants did not, in fact, conduct thorough or appropriate due diligence of, or exercise oversight over Madoff and his operations and had not determined that Madoff actually invested assets utilizing the SSC investment strategy, with a long track record of achieving positive investment returns; (ii) the Fairfield Fraud Claim Defendants did not invest

> Plaintiffs' assets in legitimate funds that utilized the SSC investment strategy; (iii) the Fairfield Fraud Claim Defendants did not intend to monitor the investments in the Funds operated by Madoff to confirm that the Funds were operated legitimately using the SSC investment strategy and in accordance with all legal and regulatory structures, and did not intend to verify Fund transactions, including that Madoff actually made the represented trades and that the Funds held the represented assets; (iv) the due diligence and oversight processes employed by the Fairfield Fraud Claim Defendants were non-existent, much less so thorough as to be privileged in providing total transparency to all aspects of Madoff's operations, and thus did not allow the Fairfield Fraud Claim Defendants the ability to assure that the assets provided to Madoff were actually and legitimately invested; and (v) Madoff's operations and accounts were not audited by reputable, independent auditors utilizing appropriate and accepted accounting and auditing procedures, and thus did not provide any assurance that the Fairfield Funds actually held the represented assets and were otherwise operated lawfully.

458. PwC substantially assisted the Fairfield Defendants by issuing "clean" audit reports and failing to conduct proper independent audits of the Funds, including its failure to disclose that the representations made by management in the financial statements could not be relied upon.

459. As a direct and natural result of (a) the Fairfield Fraud Claim Defendants' fraudulent scheme and (b) PwC's aiding and abetting that fraudulent scheme, the Plaintiffs have suffered substantial damages.

Count 18
Violation of Section 10(b) and Rule 10b-5 against PwC Canada and PwC Netherlands

460. The foregoing paragraphs are realleged herein.

461. This Count is asserted against PwC and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder.

462. PwC Canada and PwC Netherlands issued audit opinions that constituted the presentation of false and misleading information as to the assets of the Funds. Instead of billions of dollars, as represented, virtually no assets existed. These statements were made recklessly, and constitute deceptive and untrue statements of material facts and omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. These statements induced Plaintiffs to make additional investments in the Funds.

463. PwC Canada and PwC Netherlands issued audit opinions with respect to the Funds' financial statements in which they (i) stated that they conducted the audits in accordance with GAAS or ISA and (ii) expressed its unqualified opinion that the Funds' financial statements "present[ed] fairly, in all material respects, the financial position of [the Funds]...." Those statements were false. In truth, PwC Canada and PwC Netherlands did not confirm the existence of the Fund's assets. While purporting to conduct an audit, they did not take the most fundamental and

obvious step of confirming the existence of the Funds' assets, and did not do so despite the requirements of GAAS or ISA and statements in audit plans, as set forth above, that it would do so.

464. PwC Canada and PwC Netherlands acted recklessly in making the false statements and their conduct in performing the audits was highly unreasonable and represented an extreme departure from the standards of ordinary care. Moreover, when they made their false statements and committed their omissions, PwC Canada and PwC Netherlands knew facts or had access to information suggesting that their public statements were not accurate or failed to check information they had a duty to monitor and which would have demonstrated the falsity of their statements.

465. For example, assuming they conducted audits of the Funds, PwC Canada and PwC Netherlands knew that: the management of the Funds did not have effective internal controls and performed little to no due diligence or oversight over BMIS; the Funds did not have in place processes to verify the value of the investments purportedly made by BMIS; the Funds did not verify the existence of the assets invested through BMIS; the Funds did not test the validity of Madoff's investment strategy or claimed returns. Even the most minimal of audits, let alone one performed in accordance with accepted auditing standards,

gave PwC knowledge that the Funds' management had no verification that the assets invested through BMIS even existed.

466. PwC Canada and PwC Netherlands knew that substantially all of the Funds' assets were managed by Madoff, who was the investment advisor, the broker-dealer, and the custodian of the assets, highly-unusual multiple roles that facilitated Madoff's fraud. Yet, PwC Canada and PwC Netherlands failed, as detailed above, to conduct the minimal steps needed to independently confirm the existence of the Funds' assets, so that PwC Canada's and PwC Netherland's audits failed to uncover the fact that the assets did not exist.

467. To issue clean audit opinions that the Funds had hundreds of millions or billions of dollars of assets without any independent confirmation that any of the assets existed is a textbook definition of such a reckless audit as to constitute, essentially, no audit at all. Issuing clean audit opinions in the circumstances here, with the multiple red flags set forth above, is more reckless yet. The failure of PwC Canada and PwC Netherland to acquire evidential matter from independent third parties, such as counterparties to the alleged trades made by BMIS, or to acquire direct personal knowledge, such as by inspections and physical examination of the assets, not only was a blatant violation of auditing standards and their audit plans, but violated the most commonsense and obvious purpose of an audit—to confirm that reported assets in fact exist.

468. In ignorance of the false and misleading nature of the statements described above, Plaintiffs relied, to their detriment, on such misleading statements and omissions contained in PwC Canada's and PwC Netherlands' clean audit opinions by investing additional monies in the Funds. Plaintiffs have suffered substantial damages as a result of the wrongs alleged herein.

Count 19
Violation of Section 20(a) against PricewaterhouseCoopers International

469. The foregoing paragraphs are realleged herein.

470. PwC International acted as a controlling person of PwC Canada and PwC Netherlands within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of its high level position, control, participation in and/or awareness of the operations of PwC Canada and PwC Netherlands, and/or intimate knowledge of the audit work and resulting audit opinions PwC Canada and PwC Netherlands issued on the Funds, PwC International had the power to influence and control and did influence and control, directly or indirectly, the decision-making of PwC Canada and PwC Netherlands, including the content and dissemination of the audit statements that were false and misleading. PwC had the ability to prevent the issuance of the audit statements or cause the statements to be corrected or not issued.

471. PwC International had direct and supervisory involvement and control in the day-to-day operations of PwC Canada and PwC Netherlands and, therefore,

is presumed to have had the power to control or influence the audit statements giving rise to the securities violations as alleged herein, and exercised the same.

472. By virtue of its position as a controlling person, PwC International is liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of the wrongful conduct, Plaintiffs suffered damages in connection with their investments in the Funds.

Count 20
Third-Party Beneficiary Breach of Contract against Citco

473. The foregoing paragraphs are realleged herein.

474. Citco entered contracts with the Funds, and it breached its obligations to the Plaintiffs as third party beneficiaries of those contracts.

475. The Administration Agreements for Fairfield Sentry and Fairfield Sigma evince a clear intent to benefit Plaintiffs by affirmatively recognizing Citco's obligation to keep Fund shareholders informed of the status and performance of their investments in furtherance of the Funds' goal of seeking "capital appreciation of its assets" for the benefit of shareholders. (Sigma 2003 Administration Agreement, Sched. 1; Sentry Administrative Agreement, Sched. 1.) The benefits to Plaintiffs under the Administration Agreements were immediate, not simply incidental, in that the Funds' motivation for entering the Administration Agreements was to provide investors with capital appreciation and returns on their investments.

476. Citco agreed to act in good faith in the performance of its services as Fund Administrator. (Sentry Administrative Agreement ¶ 6.2; Sigma Administration Agreement ¶ 6.2.) Citco' duties that required good faith, due care and diligence in their execution included the following: "reconciliation of cash and other balances at brokers"; "reconciliation of bank accounts"; "calculation of income and expense accruals"; "calculation of management and performance/performance fees with supporting schedules"; "independent reconciliation of the Fund's portfolio holdings"; "calculation of the Net Asset Value and the Net Asset Value per Share on a monthly basis in accordance with the Fund Documents"; "Preparation of monthly financial statements, in conformity with the International Accounting Standards," including "Statement of Assets and Liabilities," "Statement of Operations," "Statement of Changes in Net Assets," "Statement of Cash Flows," and "Portfolio listings"; "Preparation of books and records (including specific schedules and analysis) to facilitate external audit, and liaising with the Fund's auditors in their review and preparation of the annual financial statements"; "Provision of accounting or accounting related reports and/or support schedules as agreed between the Administrator and the Investment Manager"; and "Disbursement of payments for third party fees and expenses incurred by the Fund." (Sentry Administrative Agreement, Sched. 2, Part 1; Sigma Administration Agreement, Sched. 2, Part 1.) Citco was only permitted to rely on

information it received without making further inquiries if that information demonstrated an "absence of manifest error." (Sentry Administrative Agreement ¶ 6.2(c); Sigma Administration Agreement ¶ 6.2(c).)

477. Citco agreed to make the following communications directly to shareholders in Fairfield Sentry and Fairfield Sigma: "publishing the Net Asset Value per Share (of each class if appropriate) as requested by the Fund"; "reconciliation of information provided by the Fund's prime broker and custodian with information provided by the Investment Manager"; "dealing with and replying to all correspondence and other communications addressed to the Fund in relation to the subscription, redemption, transfer (and where relevant, conversion) of Shares"; "despatching to Shareholders notices, proxies and proxy statements prepared by or on behalf of the Fund in connection with the holding of meetings of Shareholders"; "despatching to Shareholders and anyone else entitled to receive the same in accordance with the Fund Documents and any applicable law copies of the audited financial statements." (Sentry Administrative Agreement, Sched. 2, Part 2; Sigma Administration Agreement, Sched. 2, Part 2(e).)

478. The Administration Agreements for Greenwich Sentry and Greenwich Sentry Partners also evince a clear intent to benefit limited partners by affirmatively recognizing Citco Fund Services' obligation to keep Fund partners informed of the status and performance of their investments in furtherance of the

Fund's goal of seeking "capital appreciation of its assets" for the partners' benefit. (GS COM-1994 at 6; GS COM-5/2006 at 7; GS COM-8/2006 at 8; GSP COM-8/2006 at 7.) The benefits to Plaintiffs were immediate, not simply incidental, in that the Funds' motivation for entering into the Administration Agreement was to provide limited partners with capital appreciation and returns on their investments in the Funds.

479. Under the Administration Agreements with Greenwich Sentry and Greenwich Sentry Partners, Citco is responsible for "communicating with Limited Partners; maintaining the record of accounts; processing subscriptions and withdrawals; preparing and maintaining the Partnership's financial and accounting records and statements; calculating each Limited Partner's capital account balance (on a monthly basis); preparing financial statements; arranging for the provision of accounting, clerical and administrative services; and maintaining corporate records." (GS COM- 8/2006, at 12; GSP COM-2006, at 11.)

480. Citco Bank and Citco Global entered Custodian Agreements with Fairfield Sentry and Fairfield Sigma. Plaintiffs who invested in Fairfield Sentry and Fairfield Sigma are third-party beneficiaries under those Agreements. The Agreements evince a clear intent to benefit shareholders by affirmatively recognizing Citco's obligation to receive and/or hold shareholder assets and ensure that sub-custodians were qualified to hold the assets. The benefits to Plaintiffs

were immediate, not simply incidental, in that the Funds' motivation for entering the Agreement was to ensure shareholders' assets invested in the Funds would be securely held.

481. Under the Custodian Agreements, Citco was responsible for holding the Plaintiffs' assets in Fairfield Sentry and Fairfield Sigma and, if a sub-custodian was appointed, ensuring that the sub-custodian properly performed its duties. One of Citco's duties was to maintain an "ongoing appropriate level of monitoring" of any sub-custodian for Fairfield Sentry. (Sentry 2006 Custodian Agreement ¶ 4.3.) Citco had authority to "act without first obtaining instructions from the Fund" if such action were necessary "in order to preserve or safeguard the Securities or other assets of the Fund." (Sentry 2006 Custodian Agreement ¶ 6.3.) Citco agreed to employ "financial or other experts" in execution of its duties as Custodian. (Sentry 2006 Custodian Agreement ¶ 6.1.6.)

482. Citco committed to use its "best efforts and judgment and due care in performing its obligations and duties" as Custodian. (Sentry 2006 Custodian Agreement ¶ 8.2.) Citco represented that it would act in good faith and reasonable care in its execution of its duties. (Id.) Under the Custodian Agreement, Citco was only able to "rely on the genuineness of any document," to the extent Citco believed in "good faith" that the document was "validly executed by or on behalf of the Fund." (Sentry 2006 Custodian Agreement ¶ 8.6.)

483. In addition, as Depository, Citco has the responsibility of holding securities on behalf of the Fund. Under the Custodian Agreement, Citco received instructions from the Fund through the Custodian. Along with Citco Bank, Citco Global was authorized to "enter into further agreements for the appointment" of sub-custodians. (Sentry 2006 Custodian Agreement ¶ 4.1.) Citco Global agreed to perform its services as Depository without "willful misfeasance, bad faith, fraud or negligence." (Sentry 2006 Custodian Agreement ¶ 6.8.)

484. Citco breached the Administration Agreements with the Funds by, among other omissions, grossly failing to discharge its responsibility to calculate accurately the Funds' NAVs. Citco is liable to Plaintiffs as third party beneficiaries of those contracts.

485. Citco breached the Custodian Agreements with Fairfield Sentry and Fairfield Sigma by, among other omissions, handing Plaintiffs' investments over to BMIS, and failing to monitor BMIS as sub-custodian and ensure it was qualified to hold Plaintiffs' assets.

486. Citco is liable to Plaintiffs who invested in Fairfield Sentry and Fairfield Sigma as third party beneficiaries of those contracts.

Count 21
Breach of Fiduciary Duty against Citco

487. The foregoing paragraphs are realleged herein.

488. As Administrator to the Funds, Citco Fund Services had discretion regarding Plaintiffs' assets in Fairfield Sentry, Fairfield Sigma, Greenwich Sentry Partners, and Greenwich Sentry, including the calculation of the Funds' net asset value ("NAV"), accounting for the Funds, communications to the Plaintiffs about their investments, and receipt of Plaintiffs' investment amounts.

489. Citco Canada was delegated all or some of Citco Fund Services' responsibilities as administrator for Greenwich Sentry and Greenwich Sentry Partners, including the accounting, registrar, and transfer services, and also had discretion regarding Plaintiffs' assets invested in Greenwich Sentry and Greenwich Sentry Partners.

490. As Custodian and Bank to Fairfield Sentry and Sigma, Citco Bank and Citco Global had discretion and control regarding Plaintiffs' assets in Fairfield Sentry and Fairfield Sigma, including receiving and safeguarding Plaintiffs' investments, receiving and sending Plaintiffs' redemption amounts, monitoring BMIS as a sub-custodian, ensuring BMIS was qualified to hold Plaintiffs' assets, and transferring the assets to BMIS.

491. Citco also was responsible for receiving and holding investors' assets, sending investment confirmation statements to Plaintiffs, and sending investors' assets to Madoff.

492. Citco occupied a superior position over Plaintiffs with respect to their discretionary responsibilities, and had superior access to confidential information about the investments, including the location, security, and value of the assets. Citco held itself out as providing superior administrative, custodial, and other financial services.

493. Citco's superior position necessitated that Plaintiffs repose their trust and confidence in Citco to fulfill its duties, and Plaintiffs did so by investing in the Funds, and retaining their investments in the Funds. Plaintiffs reasonably and foreseeably trusted in the Citco's purported expertise and skill, and Citco recognized that Plaintiffs would rely on and repose their trust in Citco when deciding to invest and retain their investments in the Funds.

494. Citco's discretion, control and superior position over Plaintiffs gave rise to a fiduciary duty and duty of care on the part of Citco to the Plaintiffs who invested in the Funds.

495. Citco Fund Services and Citco Canada breached their fiduciary duties to Plaintiffs by, among other omissions, failing to discharge properly their responsibilities as Administrators and Sub-Administrators, including in calculating the Funds' NAV and communicating fictitious Fund valuations to Plaintiffs.

496. Citco Bank and Citco Global breached their fiduciary duties by, among other omissions, failing to discharge properly their responsibilities as

Custodian and Bank, sub-delegating responsibilities to BMIS without adequate supervision or control, failing to supervise or monitor BMIS as a sub-custodian, and handing over Plaintiffs' investments to BMIS.

497. Citco's fiduciary duties could not be delegated to BMIS or any third party and the fact that Citco entrusted its responsibilities to BMIS without adequate supervision or control of the constituted a *per se* breach of fiduciary duty.

498. Plaintiffs have been damaged as a proximate result of Citco's breach of fiduciary duties. Had Citco fulfilled its fiduciary duties, Plaintiffs would not have invested or re-invested in the Funds, Plaintiffs would not have retained their investments in the Funds, Plaintiffs' assets would not have been turned over to BMIS, and Plaintiffs would not have lost their investments.

499. Citco collected fees in return for the services they were ostensibly providing. A substantial portion of those fees was calculated on the basis of Madoff's fictional profits that were never actually earned. Because the fees were calculated on the basis of fraudulent information, and Citco did not fulfill its duties, Citco did not earn these fees, and they should be repaid to Plaintiffs.

500. By reason of the foregoing, Citco is liable to Plaintiffs, and Plaintiffs are entitled to a constructive trust on fees received, damages, and appropriate equitable relief.

Count 22
Gross Negligence against Citco

501. The foregoing paragraphs are realleged herein.

502. Citco, as the Funds' financial services provider, had a special relationship with Plaintiffs that gave rise to a duty to exercise due care in the performance of its duties. Citco knew or should have known that Plaintiffs were relying on Citco to exercise reasonable care in providing financial services to the Funds, and Plaintiffs did reasonably and foreseeably rely on Citco to exercise such care by entrusting their assets to their Funds and to Citco by maintaining their assets in the Funds.

503. Citco grossly failed to exercise due care, and acted in reckless disregard of their duties. Citco failed to exercise the degree of prudence, caution, and good business practice that would be expected of any reasonable investment professional.

504. Plaintiffs have been damaged as a proximate result of Citco's gross negligence.

Count 23
Negligence against Citco

505. The foregoing paragraphs are realleged herein.

506. Citco, as the Funds' financial services provider, had a special relationship with Plaintiffs that gave rise to a duty to exercise due care in the

performance of its duties. Citco knew or should have known that Plaintiffs were relying on Citco to exercise reasonable care in providing financial services to the Funds, and Plaintiffs did reasonably and foreseeably rely on Citco to exercise such care by entrusting their assets to their Funds, and to Citco by maintaining their assets in the Funds.

507. Citco negligently failed to exercise due care and failed to exercise the degree of prudence, caution, and good business practice that would be expected of any reasonable investment professional.

508. Plaintiffs have been damaged as a proximate result of Citco's negligence.

Count 24
Aiding and Abetting Breach of Fiduciary Duty against Citco

509. The foregoing paragraphs are realleged herein.

510. As alleged above, the Fairfield Defendants breached their fiduciary duties to Plaintiffs.

511. Citco had actual knowledge of and substantially participated in the breaches of fiduciary duty committed by the Fairfield Defendants which are alleged above.

512. As administrator, custodian, bank, and depositary for the Funds, Citco gained significant knowledge of the operations of the Funds and their investment managers and other service providers. As a leading provider of back office

services to the hedge fund industry, and by virtue of their long-standing relationship with the Funds, Citco knew that the Fairfield Defendants owed a fiduciary duty to the Plaintiffs. Citco also knew that the due diligence and risk controls employed by the Fairfield Defendants were grossly deficient in breach of their fiduciary duties.

513. With knowledge that the Fairfield Defendants were breaching their fiduciary duties owed to the Plaintiffs, Citco substantially assisted the Fairfield Defendants in this breach. For example, Citco substantially assisted the Fairfield Defendants by receiving investments from Plaintiffs and transferring their investments directly to BMIS; calculating the Funds' NAV and disseminating the NAV values; receiving and transmitting other Fund information from the Fairfield Defendants to Plaintiffs; and allowing Citco's name and the services it was ostensibly providing to be included in the Funds' placement memoranda and other documents. The Fairfield Defendants' breach of fiduciary duty would not have occurred without this substantial assistance by Citco.

514. As a direct and natural result of (a) the Fairfield Defendants' breach of fiduciary duty and (b) Citco's aiding and abetting in that breach, Plaintiffs have suffered substantial damages.

Count 25
Aiding and Abetting Fraud against Citco

515. The foregoing paragraphs are realleged herein.

516. As alleged above, a fraud was perpetrated on Plaintiffs by the Fairfield Fraud Claim Defendants.

517. Citco had actual knowledge of and substantially assisted in the fraudulent scheme perpetrated by the Fairfield Fraud Claim Defendants.

518. As administrator, custodian, bank, and depositary for the Funds, Citco gained significant knowledge of the operations of the Funds and their investment managers and other service providers. Citco knew that the Fairfield Fraud Claim Defendants were falsely representing to Plaintiffs that they had undertaken meaningful due diligence and implemented risk controls, and were failing to disclose clear deficiencies in their internal controls and monitoring of BMIS's activities.

519. Citco substantially assisted the Fairfield Fraud Claim Defendants in the fraud perpetrated on Plaintiffs by means of the actions alleged above. The Fairfield Defendants could not have perpetrated their fraud without this substantial assistance by Citco.

520. As a direct and natural result of (a) the Fairfield Defendants' fraudulent scheme and (b) Citco's aiding and abetting in that fraudulent scheme, Plaintiffs have suffered substantial damages.

Count 26
Violation of Section 10(b) and Rule 10b-5 against Citco Fund Services and Citco Canada

521. The foregoing paragraphs are realleged herein.

522. This Count is asserted against Citco Fund Services and Citco Canada (for purposes of this Count, "Citco Defendants") and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder.

523. The Citco Defendants issued false statements containing inflated NAV calculations and account balance information. In issuing the statements, the Citco Defendants acted recklessly because they knew or had access to information suggesting that their public statements were not accurate, including that the values and profits reported to Plaintiffs were not attainable under the circumstances.

524. Moreover, the Citco Defendants acted recklessly by failing to check or verify the information received from BMIS despite a duty to scrutinize and verify independently the information relating to the NAV and account balances. Their failure to check or verify the information was also reckless because the Citco Defendants were aware of the red flags surrounding BMIS, including the consolidation of the roles of investment manager, custodian and execution agent in Madoff and BMIS.

525. Plaintiffs justifiably relied on the information contained in the Citco Defendants' statements. Moreover, the Citco Defendants were paid substantial fees for performing these services.

526. Plaintiffs relied, to their detriment, on the Citco Defendants' false statements and omissions, in ignorance of their falsity, by making their initial investments in the Funds, retaining their investments in the Funds, and (where applicable) making additional investments in the Funds. Plaintiffs have suffered substantial damages as a result of the wrongs alleged herein.

Count 27
Violation of Section 20(a) against Citco Group

527. The foregoing paragraphs are realleged herein.

528. Citco Group acted as a controlling person of Citco Fund Services and Citco Canada (for purposes of this Count, "Citco Defendants") within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of its high level position, control, participation in and/or awareness of the operations of the Citco Defendants, and/or intimate knowledge of the duties, obligations and representations of the Citco Defendants to Plaintiffs, Citco Group had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Citco Defendants, including the content and dissemination of the statements that were false and misleading. Citco Group had the ability to

prevent the issuance of the false statements or cause the statements to be corrected or not issued.

529. Citco Group had direct and supervisory involvement and control in the day-to-day operations of the Citco Defendants and, therefore, is presumed to have had the power to control or influence the false statements giving rise to the securities violations as alleged herein, and exercised the same.

530. By virtue of its position as a controlling person, Citco Group is liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of the wrongful conduct, Plaintiffs suffered damages in connection with their investments in the Funds.

Count 28
Negligent Misrepresentation against Citco Fund Services, Citco Canada, and Citco Group

531. The foregoing paragraphs are realleged herein.

532. This Count is asserted against Citco Fund Services and Citco Canada (for purposes of this Count, "Citco Defendants"), as well as Citco Group.

533. Based on their role as the administrator for the Funds and their unique or special expertise and superior position with respect to providing financial services and calculating the Funds' NAV and account balances, and with respect to the Madoff funds in particular, the Citco Defendants had a special relationship of

trust or confidence with Plaintiffs, which created a duty on the part of the Citco Defendants to impart correct information to Plaintiffs.

534. The Citco Defendants induced Plaintiffs to make their initial investments in the Funds, to retain their investments in the Funds, and (where applicable) to make additional investments in the Funds by issuing false NAV and account balance statements for the Funds that they then disseminated to Plaintiffs, or knew would be disseminated to Plaintiffs.

535. The Citco Defendants knew that Plaintiffs would rely upon the false NAV and account balance statements for the particular purpose of deciding whether to invest in the Funds, retain their investments in the Funds, and (where applicable) making additional investments in the Funds.

536. The Citco Defendants' NAV calculations and account balance information were false. In issuing the statements, the Citco Defendants acted recklessly because they knew or had access to information suggesting that their statements were not accurate, including numerous red flags described above.

537. Moreover, the Citco Defendants acted recklessly by failing to verify the information received from BMIS despite a duty to scrutinize and verify independently information relating to the NAV and account balances. In addition. their failure to check or verify the information was reckless because the Citco Defendants were aware of the red flags surrounding BMIS, including the

consolidation of the roles of investment manager, custodian and execution agent in Madoff and BMIS.

538. Plaintiffs justifiably relied on the information contained in the Citco Defendants' statements. Moreover, the Citco Defendants were paid substantial fees for performing these services.

539. Plaintiffs justifiably relied, to their detriment, on the Citco Defendants' false statements and omissions, in ignorance of their falsity, by making their initial investments in the Funds, retaining their investments in the Funds, and (where applicable) making additional investments in the Funds. Plaintiffs have suffered substantial damages as a result of the wrongs alleged herein.

540. The Citco Defendants were acting as agents or alter egos of Citco Group when committing the acts alleged herein. Therefore, Citco Group is also liable to Plaintiffs for this conduct.

Count 29
Breach of Fiduciary Duty against GlobeOp

541. The foregoing paragraphs are realleged herein.

542. In providing administrative services to Greenwich Sentry, GlobeOp was responsible for accounting, registrar, and transfer services, and also had discretion regarding Plaintiffs' assets invested in Greenwich Sentry.

543. GlobeOp occupied a superior position over Plaintiffs with respect to its discretionary responsibilities, and had superior access to confidential information about the investments, including the location, security, and value of the assets. GlobeOp held itself out as providing superior administrative services to financial firms.

544. GlobeOp's superior position necessitated that Plaintiffs repose their trust and confidence in GlobeOp to fulfill its duties, and Plaintiffs did so by investing in Greenwich Sentry, and retaining their investments in the Fund. Plaintiffs reasonably and foreseeably trusted in GlobeOp's purported expertise and skill, and GlobeOp recognized that Plaintiffs would rely on and repose their trust in it when deciding to invest and retain their investments in Greenwich Sentry.

545. GlobeOp's discretion, control, and superior position over Plaintiffs gave rise to a fiduciary duty and duty of care on the part of GlobeOp to the Plaintiffs who invested Greenwich Sentry.

546. GlobeOp breached its fiduciary duties to Plaintiffs by, among other omissions, failing to discharge properly its responsibilities as administrator, including in calculating Greenwich Sentry's NAV, reviewing information provided to it, and communicating fictitious Fund valuations to Plaintiffs.

547. Plaintiffs have been damaged as a proximate result of GlobeOp's breach of fiduciary duties.

548. GlobeOp collected fees in return for the services it was ostensibly providing. Those fees were calculated in large part on the basis of Madoff and BMIS's fictional profits and assets under management that never existed. Because the BMIS investments never existed, and GlobeOp did not fulfill its duties, it did not earn these fees, and they should be repaid to Plaintiffs.

549. By reason of the foregoing, GlobeOp is liable to Plaintiffs who invested in Greenwich Sentry, and Plaintiffs are entitled to a constructive trust on fees received, damages, and appropriate equitable relief.

Count 30
Gross Negligence against GlobeOp

550. The foregoing paragraphs are realleged herein.

551. In providing administrative services to Greenwich Sentry, GlobeOp had a special relationship with Plaintiffs that gave rise to a duty to exercise due care in the performance of its duties. GlobeOp knew or should have known that Plaintiffs were relying on it to exercise reasonable care in providing its services to Greenwich Sentry, and Plaintiffs did reasonably and foreseeably rely on GlobeOp to exercise such care by reinvesting in Greenwich Sentry.

552. GlobeOp was grossly negligent and acted in reckless disregard of its duties as administrator. It relied recklessly and blindly on information provided by BMIS in calculating the NAV, and relayed such fictitious information to Plaintiffs,

without scrutiny or verification of the information. GlobeOp was obligated to scrutinize and verify independently the information it was provided in calculating the NAV, but grossly failed to do so. GlobeOp was not entitled to rely on such information because of the red flags surrounding BMIS, the consolidation of the roles of investment manager, custodian and execution agent in BMIS, and because the information was manifestly incorrect.

553. Plaintiffs have been damaged as a proximate result of GlobeOp's gross negligence.

Count 31
Negligence against GlobeOp

554. The foregoing paragraphs are realleged herein.

555. In providing administrative services to Greenwich Sentry, GlobeOp had a special relationship with Plaintiffs that gave rise to a duty to exercise due care in the performance of its duties. GlobeOp knew or should have known that Plaintiffs were relying on it to exercise reasonable care in providing financial services to Greenwich Sentry, and Plaintiffs did reasonably and foreseeably rely on GlobeOp to exercise such care by investing in Greenwich Sentry.

556. GlobeOp negligently failed to exercise due care in its role as administrator, and failed to exercise the degree of prudence, caution, and good business practice that would be expected of any reasonable financial professional.

557. Plaintiffs have been damaged as a proximate result of GlobeOp's gross negligence.

Count 32
Breach of Fiduciary Duty against Francoeur, Pilgrim and Citco

558. The foregoing paragraphs are realleged herein.

559. Brian Francoeur began his employment for CFSB in 2001. As part of his employment with CFSB, Francoeur was appointed as a director of FGBL.

560. Ian Pilgrim began his employment for CFSB in 2001. As part of his employment with CFSB, Pilgrim was appointed as a director of FGBL.

561. FGBL's Board of Directors had responsibility for FGBL, which as investment manager, had day-to-day management responsibility for the Funds, including selecting the Fund's investments and investment advisors, monitoring those investments and advisors, and maintaining relationships between the Funds and their advisors, custodians, administrators, and transfer agents.

562. Defendants Francoeur and Pilgrim breached their fiduciary duties by failing to supervise the Funds' managers and investments that were entrusted to Madoff and in failing to pursue red flags that should have alerted them to the presence of unlawful activity.

563. At the time the tortious conduct that injured Plaintiffs was committed by Francoeur and Pilgrim as described above, Francoeur and Pilgrim were acting within the course and scope of their employment with CFSB, and CFSB was paid

for the services provided by Francoeur and Pilgrim to FGBL. Such tortious conduct is thus imputable to CFSB under the doctrine of respondeat superior.

564. Furthermore, CFSB was one of the companies that comprised the Fund Services division of Citco Group. In designating Francoeur and Pilgrim for appointment as directors of FGBL, CFSB was acting as an agent of Citco Group and the other Citco defendants, to solidify further their relationship with FGG, an important customer. In addition, Francoeur and Pilgrim were acting as agents of Citco Group and the other Citco defendants. Therefore, Citco Group and the other Citco defendants are also liable for the conduct of Francoeur and Pilgrim.

565. As a direct and proximate result of the wrongful conduct perpetrated by Francoeur and Pilgrim in their capacity as directors of FGBL, which was taken in the course and scope of performing their duties as employees of CFSB, Plaintiffs have suffered damages, including the loss of all, or substantially all, of their investments.

Count 33
Unjust Enrichment against All Defendants

566. The foregoing paragraphs are realleged herein.

567. This Count is asserted against all Defendants.

568. The Defendants all benefitted from their unlawful acts and omissions and breached their fiduciary duties to Plaintiffs. These unlawful acts and

omissions and fiduciary breaches caused Plaintiffs to suffer injury and monetary loss.

569. As a result of the foregoing, it is unjust and inequitable for the Defendants to have enriched themselves through the collection of fees for their services.

570. Equity and good conscience require that Defendants disgorge all such unjust enrichment and that Defendants should pay the amounts by which they were unjustly enriched to Plaintiffs in an amount to be determined at trial.

571. Plaintiffs seek restitution from these Defendants, and seek an order of this Court disgorging all profits, benefits and other compensation obtained by Defendants from their wrongful conduct and fiduciary breaches.

572. Plaintiffs are entitled to the establishment of a constructive trust impressed upon the benefits derived by the Defendants from their unjust enrichment and inequitable conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following:

a) Certification of this action as a class action proper and maintainable pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and declaration of the proposed named Plaintiffs as proper Class representatives;

b) Such preliminary and permanent equitable relief, including imposition of a constructive trust, as is appropriate to preserve the assets wrongfully taken from Plaintiffs;

c) Compensatory, consequential, and general damages in an amount to be determined at trial;

d) Disgorgement and restitution of all earnings, profits, compensation and benefits received by Defendants as a result of their unlawful acts and practices;

e) Punitive damages for each claim to the maximum extent available under the law on account of the outrageous nature of Defendants' willful and wanton disregard of Plaintiffs' rights;

f) Costs and disbursements of the action;

g) Pre- and post-judgment interest;

h) Reasonable attorneys' fees; and

i) Such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial.

Dated: September 29, 2009

Respectfully submitted,

By: _____

David Boies
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504
(914) 749-8200

David A. Barrett
Howard L. Vickery
BOIES, SCHILLER & FLEXNER LLP
575 Lexington Avenue
New York, NY 10022
(212) 446-2300

Stuart H. Singer
Carlos M. Sires
Sashi Bach Boruchow
BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Boulevard, #1200
Ft. Lauderdale, Florida 33301
(954) 356-0011

Robert C. Finkel
Carl L. Stine
James A. Harrod
E. Elizabeth Robinson
WOLF POPPER LLP
845 Third Avenue
New York, NY 10022
(212) 759-4600

Christopher Lovell
Victor E. Stewart
LOVELL STEWART HALEBIAN LLP
61 Broadway, Suite 501
New York, NY 10006
(212) 608-1900

Interim Co-Lead Counsel for Plaintiffs and Counsel for PSLRA Plaintiffs

Of Counsel:

Robert S. Schachter
Hilary Sobel
ZWERLING, SCHACHTER & ZWERLING, LLP
41 Madison Avenue
New York, NY 10010
(212) 223-3900

Counsel for Plaintiffs Nadav and Rohit Zohar

Steven J. Toll
S. Douglas Bunch
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave. NW
Suite 500, West Tower
Washington, DC 20005
(202) 408-4600

Jacob Sabo
The Tower
#3 Daniel Frisch St.
Tel Aviv, Israel
011 (972) 3607-8888

Counsel for Plaintiffs Arie and Dafna Gruber, Carling Investment Ltd., Madanes Investment & Enterprise Ltd., and Shimon Laor

Daniel W. Krasner
Gregory M. Nespole
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
270 Madison Avenue
New York, New York 10016
(212) 545-4600

Counsel for Plaintiff The Knight Services Holdings Limited

David A. Gehn
GUSRAE, KAPLAN, BRUNO & NUSBAUM PLLC
120 Wall Street
New York, NY 10005
(212) 269-1400

Counsel for Plaintiff Pacific West Health Medical Center, Inc. Employee's Retirement Trust

EXHIBIT 27

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANWAR, ***et al.***,

Plaintiff,

v.

FAIRFIELD GREENWICH LIMITED, ***et al***.,

Defendants.

This Document Relates To: All Actions

No. 09 CV 118 (VM)

NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law, dated December 22, 2009, Defendant PricewaterhouseCoopers Accountants N.V. ("PwC Netherlands") will move this Court, before the Honorable Victor Marrero, United States District Judge, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, at a time and date to be set by the Court, for an Order, pursuant to Rules 8, 9(b), and 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the Second Consolidated Amended Complaint as against PwC Netherlands in the above captioned action and awarding such other relief as the Court may find to be just and equitable.

/s/ Sarah L. Cave

Sarah L. Cave
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

Attorneys for Defendant
PricewaterhouseCoopers Accountants N.V.

EXHIBIT 28

United States District Court
Southern District of New York
----------x

Anwar, *et al.*,

Plaintiffs,

Master File 09 CV 118 (VM)

v.

Fairfield Greenwich Limited, *et al.*,

Defendants.

----------x

Notice Of Motion By Defendant Brian Francoeur To
Dismiss The Second Consolidated Amended Complaint

Please take notice that Defendant Brian Francoeur moves to dismiss the Second Consolidated Amended Complaint against him pursuant to Fed. R. Civ. P. Rule 12(b)(6) on the grounds that the Second Consolidated Amended Complaint fails to state a claim against him for which relief may be granted.

Dated: New York, New York
December 22, 2009

Respectfully submitted,
Law Offices of Kenneth A. Zitter

By_____
Kenneth A. Zitter
Attorneys for Defendant Brian Francoeur
260 Madison Avenue, 18th Floor
New York, New York 10016
212-532-8000
KAZ-3195

EXHIBIT 29

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANWAR, *et al.*	)	
	)	
	)	
Plaintiffs,	)	Case No: 09-CV-118 (VM)
	)	
v.	)	ECF Case
	)	
FAIRFIELD GREENWICH LIMITED, *et al.*,	)	
	)	
Defendants.	)	
	)	

NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the attached declaration of Timothy A. Duffy, dated December 22, 2009, and the accompanying memorandum in support, PricewaterhouseCoopers LLP ("PwC Canada") hereby moves before the Honorable Victor Marrero, at the United States Courthouse located at 500 Pearl Street, Courtroom 17B, New York, New York, 10007, for an order dismissing plaintiffs' Second Consolidated Amended Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

/s/ Timothy A. Duffy

Andrew M. Genser
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800

Emily Nicklin, P.C.
Timothy A. Duffy, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Email: tim.duffy@kirkland.com

Attorneys for Defendant
PricewaterhouseCoopers LLP

EXHIBIT 30

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

ANWAR, et al.,

Plaintiffs,

-against-

FAIRFIELD GREENWICH LIMITED, et al.,

Defendants.

MASTER FILE NO.
09-CV-0118 (VM)

This Document Relates To: All Actions
----------x

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT CITCO BANK NEDERLAND N.V. DUBLIN BRANCH

Defendant Citco Bank Nederland N.V. Dublin Branch ("CBN"), by and through undersigned counsel, hereby files this Answer and Affirmative Defenses to the Second Consolidated Amended Complaint ("SCAC").

1. CBN denies the allegations set forth in paragraph 1 of the SCAC.

2. CBN denies the allegations set forth in paragraph 2 of the SCAC.

3. CBN denies the allegations set forth in paragraph 3 of the SCAC.

4. CBN denies the allegations set forth in paragraph 4 of the SCAC.

5. CBN admits only that at least one plaintiff is a citizen of a foreign state. CBN denies the remaining allegations set forth in paragraph 5 of the SCAC.

6. CBN denies the allegations set forth in paragraph 6 of the SCAC.

7. CBN denies the allegations set forth in paragraph 7 of the SCAC.

8. CBN denies the allegations set forth in paragraph 8 of the SCAC.

1. - 116.[1] CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraphs 1 through 116 of the SCAC, and therefore denies same.

117. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 117 of the SCAC, and therefore denies same.

118. CBN admits only that FGL is a company incorporated under the laws of the Cayman Islands and that FGL served as Placement Agent for Fairfield Sentry and Fairfield Sigma, Investment Manager of Fairfield Sentry, and was the General Partner of Greenwich Sentry. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 118 of the SCAC, and therefore denies same.

119. CBN admits only that FGBL is a corporation organized under the laws of Bermuda and that FGBL served as Investment Manager and Investment Advisor for Fairfield Sigma and was the General Partner of Greenwich Sentry and Greenwich Sentry Partners. CBN denies that "Citco" (as that term is defined in the SCAC) calculated the monthly NAV. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 119 of the SCAC, and therefore denies same.

120. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 120 of the SCAC, and therefore denies same.

121. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 121 of the SCAC, and therefore denies same.

122. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 122 of the SCAC, and therefore denies same.

[1] On page 4 of the SCAC, plaintiffs have restarted the numbering of the paragraphs of the SCAC from number 1.

123. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 123 of the SCAC, and therefore denies same.

124. CBN admits only that Walter M. Noel, Jr. was a director of Fairfield Sentry and Fairfield Sigma. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 124 of the SCAC, and therefore denies same.

125. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 125 of the SCAC, and therefore denies same.

126. CBN admits only that Andres Piedrahita is a Director and President of FGBL. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 126 of the SCAC, and therefore denies same.

127. CBN admits only that Amit Vijayvergiya was President of FGBL. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 127 of the SCAC, and therefore denies same.

128. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 128 of the SCAC, and therefore denies same.

129. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 129 of the SCAC, and therefore denies same.

130. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 130 of the SCAC, and therefore denies same.

131. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 131 of the SCAC, and therefore denies same.

132. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 132 of the SCAC, and therefore denies same.

133. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 133 of the SCAC, and therefore denies same.

134. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 134 of the SCAC, and therefore denies same.

135. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 135 of the SCAC, and therefore denies same.

136. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 136 of the SCAC, and therefore denies same.

137. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 137 of the SCAC, and therefore denies same.

138. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 138 of the SCAC, and therefore denies same.

139. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 139 of the SCAC, and therefore denies same.

140. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 140 of the SCAC, and therefore denies same.

141. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 141 of the SCAC, and therefore denies same.

142. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 142 of the SCAC, and therefore denies same.

143. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 143 of the SCAC, and therefore denies same.

144. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 144 of the SCAC, and therefore denies same.

145. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 145 of the SCAC, and therefore denies same.

146. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 146 of the SCAC, and therefore denies same.

147. Paragraph 147 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN denies the allegations set forth in paragraph 147 of the SCAC.

148. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 148 of the SCAC, and therefore denies same.

149. CBN denies the allegations set forth in paragraph 149 of the SCAC.

150. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 150 of the SCAC, and therefore denies same.

151. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 151 of the SCAC, and therefore denies same.

152. Paragraph 152 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN denies the allegations set forth in paragraph 152 of the SCAC.

153. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 153 of the SCAC, and therefore denies same.

154. CBN admits only that PwC Canada was the auditor for the Funds. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 154 of the SCAC, and therefore denies same.

155. CBN admits only that PwC Netherlands was the auditor for Fairfield Sentry, Fairfield Sigma and Greenwich Sentry. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 155 of the SCAC, and therefore denies same.

156. CBN denies the allegations set forth in paragraph 156 of the SCAC.

157. CBN admits only that Citco Fund Services (Europe) B.V. ("CFSE") is incorporated in The Netherlands, that CFSE served as administrator, registrar, and transfer agent for Fairfield Sentry and Fairfield Sigma and that CFSE served as administrator for Greenwich Sentry and Greenwich Sentry Partners. CBN denies plaintiffs' characterizations of CFSE's responsibilities to the extent that they exceed the scope of or are inconsistent with the Administration Agreements that govern the respective relationships between CFSE and the Funds.[2] CBN denies the remaining allegations set forth in paragraph 157 of the SCAC.

158. CBN admits only that Citco (Canada) Inc. ("CCI") is a corporation organized under the laws of Canada with its principal place of business in Toronto, Ontario and that CFSE delegated to CCI certain administrative responsibilities subject to the terms and conditions of the Administration Agreements. CBN denies plaintiffs' characterizations of CCI's responsibilities to the extent that they exceed the scope of or are inconsistent with the Administration

[2] CFSE entered into agreements titled "Administration Agreement" with Fairfield Sentry, Fairfield Sigma, Greenwich Sentry, and Greenwich Sentry Partners including as follows: Fairfield Sigma Administration Agreement, dated February 20, 2003; Fairfield Sentry Administration Agreement, dated February 20, 2003; Greenwich Sentry Administration Agreement, dated August 10, 2006; Greenwich Sentry Partners Administration Agreement, dated August 10, 2006. Such agreements are referred to as the "Administration Agreements."

Agreements that govern the respective relationships between CCI and the Funds. CBN denies the remaining allegations set forth in paragraph 158 of the SCAC.

159. CBN admits only that Citco Global Custody N.V. ("CGC") is incorporated in The Netherlands and that CGC has served as custodian and depository for Fairfield Sentry and as custodian for Fairfield Sigma. CBN denies plaintiffs' characterizations of CGC's responsibilities to the extent that they exceed the scope of or are inconsistent with the Custodian Agreements that govern the respective relationships between CGC and Fairfield Sentry and Fairfield Sigma.[3] CBN denies the remaining allegations set forth in paragraph 159 of the SCAC.

160. CBN admits only that it is incorporated in The Netherlands and that it has served as bank and custodian for Fairfield Sentry and as bank for Fairfield Sigma. CBN denies plaintiffs' characterizations of its responsibilities to the extent that they exceed the scope of or are inconsistent with the Custodian Agreements that govern the respective relationships between CBN and Fairfield Sentry and Fairfield Sigma. CBN denies the remaining allegations set forth in paragraph 160 of the SCAC.

161. CBN admits only that Citco Fund Services (Bermuda) Limited ("CFSB") is a corporation organized under the laws of Bermuda with its principal place of business in Hamilton, Bermuda and that CFSB employed Ian Pilgrim and Brian Francoeur. CBN denies the remaining allegations set forth in paragraph 161 of the SCAC.

[3] CBN and CGC entered into agreements with Fairfield Sentry and Fairfield Sigma including as follows: Fairfield Sentry Custodian Agreement, dated July 3, 2006; Fairfield Sentry Brokerage and Custody Agreement, dated July 17, 2003; Fairfield Sigma Brokerage and Custody Agreement, dated August 12, 2003. Such agreements are referred to as the "Custodian Agreements."

162. Paragraph 162 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN denies the allegations set forth in paragraph 162 of the SCAC.

163. CBN admits only that Francoeur was employed by CFSB and that Francoeur was a director of FGBL. CBN denies the remaining allegations set forth in paragraph 163 of the SCAC.

164. CBN admits only that Pilgrim was employed by CFSB and that Pilgrim was a director of FGBL. CBN denies the remaining allegations set forth in paragraph 164 of the SCAC.

165. CBN admits only that GlobeOp was the administrator of Greenwich Sentry. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 165 of the SCAC, and therefore denies same.

166. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 166 of the SCAC, and therefore denies same.

167. CBN admits only that Bernard L. Madoff was arrested and charged in an 11-count criminal complaint, that Bernard L. Madoff admitted he operated a Ponzi scheme, and that Bernard L. Madoff was sentenced to 150 years in prison. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 167 of the SCAC, and therefore denies same.

168. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 168 of the SCAC, and therefore denies same.

169. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 169 of the SCAC, and therefore denies same.

170. CBN admits only that Fairfield Sentry was incorporated in 1990 as an international business company in the Territory of the British Virgin Islands, that Madoff (as defined in the SCAC) served as execution agent and sub-custodian for Fairfield Sentry, that Fairfield Sentry was primarily marketed to foreign investors and investments in Fairfield Sentry were made from outside New York, and that on July 21, 2009 the Eastern Caribbean Supreme Court in the High Court of Justice (the "BVI Court") ordered Fairfield Sentry to be wound up and appointed Christopher Stride and Kenneth Krys as joint liquidators. CBN denies the remaining allegations set forth in paragraph 170 of the SCAC.

171. CBN admits only that Fairfield Sigma was an international business company organized under the laws of the BVI, that Fairfield Sigma was marketed to foreign investors and investments in Fairfield Sigma were made from outside New York, and that on July 21, 2009 the BVI Court ordered Fairfield Sigma to be wound up and appointed Christopher Stride and Kenneth Krys as joint liquidators. CBN denies the remaining allegations set forth in paragraph 171 of the SCAC.

172. CBN admits only that Greenwich Sentry is a Delaware limited partnership organized on December 27, 1990 under the name Aspen/Greenwich Limited Partnership, that its name was changed to Greenwich Sentry, L.P., that Greenwich Sentry commenced operations on January 1, 1993, and that Madoff (as defined in the SCAC) served as the execution agent and custodian for Greenwich Sentry. CBN denies the remaining allegations set forth in paragraph 172 of the SCAC.

173. CBN admits only that Greenwich Sentry Partners is a Delaware limited partnership organized on April 11, 2006, which commenced operations on May 1, 2006 and that

Madoff (as defined in the SCAC) was custodian for Greenwich Sentry Partners. CBN denies the remaining allegations set forth in paragraph 173 of the SCAC.

174. Paragraph 174 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN denies the allegations set forth in paragraph 174 of the SCAC.

175. CBN denies the allegations set forth in paragraph 175 of the SCAC.

176. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 176 of the SCAC, and therefore denies same.

177. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 177 of the SCAC, and therefore denies same.

178. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 178 of the SCAC, and therefore denies same.

179. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 179 of the SCAC, and therefore denies same.

180. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 180 of the SCAC, and therefore denies same.

181. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 181 of the SCAC, and therefore denies same.

182. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 182 of the SCAC, and therefore denies same.

183. CBN denies the allegations set forth in paragraph 183 of the SCAC.

184. CBN denies the allegations set forth in paragraph 184 of the SCAC.

185. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 185 of the SCAC, and therefore denies same.

186. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 186 of the SCAC, and therefore denies same.

187. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 187 of the SCAC, and therefore denies same.

188. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 188 of the SCAC, and therefore denies same.

189. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 189 of the SCAC, and therefore denies same.

190. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 190 of the SCAC, and therefore denies same.

191. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 191 of the SCAC, and therefore denies same.

192. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 192 of the SCAC, and therefore denies same.

193. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 193 of the SCAC, and therefore denies same.

194. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 194 of the SCAC, and therefore denies same. CBN refers to the referenced Placement Memoranda for a complete statement of their contents.

195. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 195 of the SCAC, and therefore denies same. CBN refers to the referenced Placement Memoranda for a complete statement of their contents.

196. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 196 of the SCAC, and therefore denies same.

197. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 197 of the SCAC, and therefore denies same.

198. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 198 of the SCAC, and therefore denies same.

199. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 199 of the SCAC, and therefore denies same.

200. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 200 of the SCAC, and therefore denies same.

201. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 201 of the SCAC, and therefore denies same.

202. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 202 of the SCAC, and therefore denies same.

203. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 203 of the SCAC, and therefore denies same.

204. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 204 of the SCAC, and therefore denies same.

205. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 205 of the SCAC, and therefore denies same.

206. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 206 of the SCAC, and therefore denies same.

207. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 207 of the SCAC, and therefore denies same.

208. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 208 of the SCAC, and therefore denies same.

209. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 209 of the SCAC, and therefore denies same.

210. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 210 of the SCAC, and therefore denies same.

211. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 211 of the SCAC, and therefore denies same.

212. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 212 of the SCAC, and therefore denies same.

213. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 213 of the SCAC, and therefore denies same.

214. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 214 of the SCAC, and therefore denies same.

215. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 215 of the SCAC, and therefore denies same.

216. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 216 of the SCAC, and therefore denies same.

217. CBN denies the allegations set forth in paragraph 217 of the SCAC.

218. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 218 of the SCAC, and therefore denies same.

219. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 219 of the SCAC, and therefore denies same.

220. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 220 of the SCAC, and therefore denies same.

221. CBN denies the allegations set forth in paragraph 221 of the SCAC.

222. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 222 of the SCAC, and therefore denies same.

223. CBN denies the allegations set forth in paragraph 223 of the SCAC and in the unnumbered paragraph on page 71 following subheading E.6.

224. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 224 of the SCAC, and therefore denies same.

225. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 225 of the SCAC, and therefore denies same.

226. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 226 of the SCAC, and therefore denies same.

227. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 227 of the SCAC, and therefore denies same.

228. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 228 of the SCAC, and therefore denies same.

229. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 229 of the SCAC, and therefore denies same.

230. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 230 of the SCAC, and therefore denies same.

231. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 231 of the SCAC, and therefore denies same.

232. CBN denies the allegations set forth in paragraph 232 of the SCAC.

233. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 233 of the SCAC, and therefore denies same.

234. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 234 of the SCAC, and therefore denies same.

235. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 235 of the SCAC, and therefore denies same.

236. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 236 of the SCAC, and therefore denies same.

237. CBN admits only that the referenced PPMs contain provisions regarding placement fees. CBN refers to the referenced PPMs for a complete statement of their contents. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 237 of the SCAC, and therefore denies same.

238. CBN admits only that the referenced PPMs contain provisions regarding performance fees. CBN refers to the referenced PPMs for a complete statement of their contents. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 238 of the SCAC, and therefore denies same.

239. CBN admits only that the referenced PPMs contain provisions regarding management fees. CBN refers to the referenced PPMs for a complete statement of their

Case 1:12-cv-09408-VM-FM Document 41-30 Filed 12/19/12 Page 43 of 57

contents. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 239 of the SCAC, and therefore denies same.

240. CBN admits only that the referenced PPM contains a provision regarding fees for administrative services and back office support. CBN refers to the referenced PPM for a complete statement of its contents. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 240 of the SCAC, and therefore denies same.

241. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 241 of the SCAC, and therefore denies same.

242. CBN admits only that the referenced PPMs contain provisions regarding fees and expense reimbursements. CBN refers to the referenced PPMs for a complete statement of their contents. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 242 of the SCAC, and therefore denies same.

243. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 243 of the SCAC, and therefore denies same.

244. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 244 of the SCAC, and therefore denies same.

245. CBN admits only that the referenced COMs contain provisions regarding incentive allocations. CBN refers to the referenced COMs for a complete statement of their contents. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 245 of the SCAC, and therefore denies same.

246. CBN admits only that the referenced COMs contain provisions regarding management fees. CBN refers to the referenced COMs for a complete statement of their

Case 1:09-cv-09488-VM Document 40-3 Filed 01/19/10 Page 17 of 57

contents. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 246 of the SCAC, and therefore denies same.

247. CBN admits only that the referenced COMs contain provisions regarding fees for administrative services and back office support. CBN refers to the referenced COMs for a complete statement of their contents. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 247 of the SCAC, and therefore denies same.

248. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 248 of the SCAC, and therefore denies same.

249. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 249 of the SCAC, and therefore denies same.

250. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 250 of the SCAC, and therefore denies same.

251. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 251 of the SCAC, and therefore denies same.

252. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 252 of the SCAC, and therefore denies same.

253. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 253 of the SCAC, and therefore denies same.

254. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 254 of the SCAC, and therefore denies same.

255. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 255 of the SCAC, and therefore denies same.

256. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 256 of the SCAC, and therefore denies same.

257. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 257 of the SCAC, and therefore denies same.

258. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 258 of the SCAC, and therefore denies same.

259. CBN admits only that PwC Netherlands and PwC Canada were auditors for the Funds. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 259 of the SCAC, and therefore denies same.

260. CBN admits only that PwC Netherlands and PwC Canada provided auditing services to the Funds. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 260 of the SCAC, and therefore denies same.

261. CBN admits only that PwC Netherlands issued an unqualified audit opinion for the financial statements of Greenwich Sentry for the year ended December 31, 2005 and certified that the financial statements were presented in conformity with United States generally accepted accounting principles ("GAAP") and the audit was conducted in accordance with United States generally accepted auditing standards ("GAAS"). CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 261 of the SCAC, and therefore denies same.

262. CBN admits only that PwC Canada issued an unqualified audit opinion for the financial statements of Greenwich Sentry for the years ended December 31, 2006 and 2007 and certified that the financial statements were presented in conformity with GAAP and the audit was

conducted in accordance with GAAS. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 262 of the SCAC, and therefore denies same.

263. CBN admits only that PwC Netherlands issued an unqualified audit opinion for the financial statements of Fairfield Sentry for the years ended December 31, 2002, 2003, 2004 and 2005 and certified that the financial statements were presented in conformity with International Financial Reporting Standards ("IFRS") and the audit was conducted in accordance with International Standards of Auditing ("ISA"). CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 263 of the SCAC, and therefore denies same.

264. CBN admits only that PwC Canada issued an unqualified audit opinion for the financial statements of Fairfield Sentry for the years ended December 31, 2006 and 2007 and certified that the financial statements were presented in accordance with IFRS and the audit was conducted in accordance with GAAS. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 264 of the SCAC, and therefore denies same.

265. CBN admits only that PwC Netherlands issued an unqualified audit opinion for the financial statements of Fairfield Sigma for the years ended December 31, 2003, 2004 and 2005 and certified that the financial statements were presented in conformity with IFRS and the audit was conducted in accordance with ISA. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 265 of the SCAC, and therefore denies same.

266. CBN admits only that PwC Canada issued an unqualified audit opinion for the financial statements of Fairfield Sigma for the years ended December 31, 2006 and 2007 and certified that the financial statements were presented in conformity with IFRS and the audit was conducted in accordance with GAAS. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 266 of the SCAC, and therefore denies same.

267. CBN admits only that PwC Canada issued an unqualified audit opinion for the financial statements of Greenwich Sentry Partners for the years ended December 31, 2006 and 2007 and certified that the financial statements were presented in conformity with GAAP and the audit was conducted in accordance with GAAS. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 267 of the SCAC, and therefore denies same.

268. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 268 of the SCAC, and therefore denies same.

269. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 269 of the SCAC, and therefore denies same.

270. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 270 of the SCAC, and therefore denies same.

271. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 271 of the SCAC, and therefore denies same.

272. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 272 of the SCAC, and therefore denies same.

273. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 273 of the SCAC, and therefore denies same.

274. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 274 of the SCAC, and therefore denies same.

275. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 275 of the SCAC, and therefore denies same.

276. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 276 of the SCAC, and therefore denies same.

277. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 277 of the SCAC, and therefore denies same.

278. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 278 of the SCAC, and therefore denies same.

279. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 279 of the SCAC, and therefore denies same.

280. Paragraph 280 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 280 of the SCAC, and therefore denies same.

281. Paragraph 281 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 281 of the SCAC, and therefore denies same.

282. Paragraph 282 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 282 of the SCAC, and therefore denies same.

283. Paragraph 283 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 283 of the SCAC, and therefore denies same.

284. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 284 of the SCAC, and therefore denies same.

285. Paragraph 285 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 285 of the SCAC, and therefore denies same.

286. Paragraph 286 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 286 of the SCAC, and therefore denies same.

287. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 287 of the SCAC, and therefore denies same.

288. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 288 of the SCAC, and therefore denies same.

289. Paragraph 289 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 289 of the SCAC, and therefore denies same.

290. Paragraph 290 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 290 of the SCAC, and therefore denies same.

291. Paragraph 291 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 291 of the SCAC, and therefore denies same.

292. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 292 of the SCAC, and therefore denies same.

293. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 293 of the SCAC, and therefore denies same.

294. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 294 of the SCAC, and therefore denies same.

295. Paragraph 295 contains no allegations of fact, and therefore no response is required. To the extent that a response is deemed to be required, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 295 of the SCAC, and therefore denies same.

296. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 296 of the SCAC, and therefore denies same.

297. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 297 of the SCAC, and therefore denies same.

298. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 298 of the SCAC, and therefore denies same.

299. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 299 of the SCAC, and therefore denies same.

300. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 300 of the SCAC, and therefore denies same.

301. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 301 of the SCAC, and therefore denies same.

302. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 302 of the SCAC, and therefore denies same.

303. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 303 of the SCAC, and therefore denies same.

304. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 304 of the SCAC, and therefore denies same.

305. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 305 of the SCAC, and therefore denies same.

306. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 306 of the SCAC, and therefore denies same.

307. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 307 of the SCAC, and therefore denies same.

308. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 308 of the SCAC, and therefore denies same.

309. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 309 of the SCAC, and therefore denies same.

310. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 310 of the SCAC, and therefore denies same.

311. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 311 of the SCAC, and therefore denies same.

312. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 312 of the SCAC, and therefore denies same.

313. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 313 of the SCAC, and therefore denies same.

314. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 314 of the SCAC, and therefore denies same.

315. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 315 of the SCAC, and therefore denies same.

316. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 316 of the SCAC, and therefore denies same.

317. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 317 of the SCAC, and therefore denies same.

318. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 318 of the SCAC, and therefore denies same.

319. CBN denies the allegations set forth in paragraph 319 of the SCAC.

320. CBN denies the allegations set forth in paragraph 320 of the SCAC.

321. CBN denies the allegations set forth in paragraph 321 of the SCAC.

322. CBN denies the allegations set forth in paragraph 322 of the SCAC.

323. CBN denies the allegations set forth in paragraph 323 of the SCAC.

324. CBN denies the allegations set forth in paragraph 324 of the SCAC.

325. CBN denies the allegations set forth in paragraph 325 of the SCAC.

326. CBN denies the allegations set forth in paragraph 326 of the SCAC.

327. CBN admits only that CFSE entered into the referenced Administration Agreements. CBN refers to the referenced Administration Agreements for a complete statement of their contents. CBN denies the remaining allegations set forth in paragraph 327 of the SCAC.

328. CBN admits only that CFSE entered into the referenced Administration Agreements and that subscriptions were processed in accordance with the terms thereof. CBN refers to the referenced Administration Agreements for a complete statement of their contents. CBN denies the remaining allegations set forth in paragraph 328 of the SCAC.

329. CBN admits only that CFSE entered into the referenced Administration Agreements. CBN refers to the referenced Administration Agreements for a complete statement of their contents. CBN denies the remaining allegations set forth in paragraph 329 of the SCAC.

330. CBN admits only that it and CGC entered into the referenced Custodian Agreements. CBN refers to the referenced Custodian Agreements for a complete statement of their contents. CBN denies the remaining allegations set forth in paragraph 330 of the SCAC.

331. CBN admits only that it and CGC entered into the referenced Custodian Agreements. CBN refers to the referenced Custodian Agreements for a complete statement of their contents. CBN denies the remaining allegations set forth in paragraph 331 of the SCAC.

332. CBN denies the allegations set forth in paragraph 332 of the SCAC.

333. CBN denies the allegations set forth in paragraph 333 of the SCAC.

334. CBN denies the allegations set forth in paragraph 334 of the SCAC.

335. CBN denies the allegations set forth in paragraph 335 of the SCAC.

336. CBN denies the allegations set forth in paragraph 336 of the SCAC.

337. CBN denies the allegations set forth in paragraph 337 of the SCAC.

338. CBN denies the allegations set forth in paragraph 338 of the SCAC.

339. CBN denies the allegations set forth in paragraph 339 of the SCAC.

340. CBN denies the allegations set forth in paragraph 340 of the SCAC.

341. CBN denies the allegations set forth in paragraph 341 of the SCAC.

342. CBN denies the allegations set forth in paragraph 342 of the SCAC.

343. CBN denies the allegations set forth in paragraph 343 of the SCAC.

344. CBN admits only that GlobeOp provided administrative services to Greenwich Sentry. CBN is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 344 of the SCAC, and therefore denies same.

345. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 345 of the SCAC, and therefore denies same.

346. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 346 of the SCAC, and therefore denies same.

347. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 347 of the SCAC, and therefore denies same.

348. CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 348 of the SCAC, and therefore denies same.

349. CBN denies the allegations set forth in paragraph 349 of the SCAC.

350. CBN denies the allegations set forth in paragraph 350 of the SCAC.

351. CBN denies the allegations set forth in paragraph 351 of the SCAC and denies that class certification is appropriate.

352. CBN denies the allegations set forth in paragraph 352 of the SCAC and denies that class certification is appropriate.

353. CBN denies the allegations set forth in paragraph 353 of the SCAC and denies that class certification is appropriate.

Count 1
Fraud against Fairfield Fraud Claim Defendants (Purchaser Claims)

354.-359.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 354, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 355 through 359, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 2
Fraud against Fairfield Fraud Claim Defendants (Holder Claims)

360.-366.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 360, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 361 through 366, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 3
Violation of Section 10(b) and Rule 10b-5 against Fairfield Fraud Claim Defendants

367.-374.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 367, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 368 through 374, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 4
Violation of Section 20(a) against Fairfield Fraud Claim Defendants and Defendants Landsberger, Murphy, and Smith

375.-378.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 375, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 376 through 378, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 5
Negligent Misrepresentation against Fairfield Defendants (Purchaser Claims)

379.-386.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 379, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 380 through 386, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 6
Negligent Misrepresentation against Fairfield Defendants (Holder Claims)

387.-394.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 387, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 388 through 394, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 7
Gross Negligence against Fairfield Defendants

395.-401.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 395, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 396 through 401, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 8
Breach of Fiduciary Duty against Fairfield Defendants

402.-409.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 402, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 403 through 409, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 9
Third-Party Beneficiary Breach of Contract against Fairfield Defendants and Fairfield Fee Claim Defendants

410.-416.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 410, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 411 through 416, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 10
Constructive Trust against Fairfield Defendants and Fairfield Fee Claim Defendants

417.-420.

Count 10 was dismissed in its entirety by Order of the Court dated August 18, 2010.

Count 11
Mutual Mistake against Fairfield Defendants and Fairfield Fee Claim Defendants

421.-425.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 421, CBN repeats and reincorporates by

reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 422 through 425, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 12
Gross Negligence against PricewaterhouseCoopers

426.-432.

Count 12 was dismissed in its entirety by Order of the Court dated August 18, 2010.

Count 13
Negligence against PricewaterhouseCoopers

433.-437.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 433, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 434 through 437, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 14
Negligent Misrepresentation against PricewaterhouseCoopers

438.-445.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 438, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 439 through 445, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 15
Third-Party Beneficiary Breach of Contract against PricewaterhouseCoopers

446.-450.

Count 15 was dismissed in its entirety by Order of the Court dated August 18, 2010.

Count 16
Aiding and Abetting Breach of Fiduciary Duty against PricewaterhouseCoopers

451.-454.

Count 16 was dismissed in its entirety by Order of the Court dated August 18, 2010.

Count 17
Aiding and Abetting Fraud against PricewaterhouseCoopers

455.-459.

Count 17 was dismissed in its entirety by Order of the Court dated August 18, 2010.

Count 18
Violation of Section 10(b) and Rule 10b-5 against PwC Canada and PwC Netherlands

460.-468.

Count 18 was dismissed in its entirety by Order of the Court dated August 18, 2010.

Count 19
Violation of Section 20(a) against PricewaterhouseCoopers International

469.-472.

Count 19 was dismissed in its entirety by Order of the Court dated August 18, 2010.

Count 20
Third-Party Beneficiary Breach of Contract against Citco[4]

473. CBN repeats and reincorporates by reference its responses to the foregoing paragraphs of the SCAC as if set forth fully herein.

---

4 CBN believes that Count 20 was dismissed as to it by Order of the Court dated August 18, 2010, and therefore no response to this Count is required by CBN. However, CBN is answering this Count in an abundance of caution.

474. CBN admits only that CFSE entered into Administration Agreements.[5] CBN denies the remaining allegations set forth in paragraph 474 of the SCAC.

475. CBN denies the allegations set forth in paragraph 475 of the SCAC.

476. CBN admits only that CFSE entered into the referenced Administration Agreements. CBN refers to the referenced Administration Agreements for a complete statement of their contents. CBN denies the remaining allegations set forth in paragraph 476 of the SCAC.

477. CBN admits only that CFSE entered into the referenced Administration Agreements. CBN refers to the referenced Administration Agreements for a complete statement of their contents. CBN denies the remaining allegations set forth in paragraph 477 of the SCAC.

478. CBN denies the allegations set forth in paragraph 478 of the SCAC.

479. CBN admits only that CFSE entered into the referenced Administration Agreements. CBN refers to the referenced Administration Agreements for a complete statement of their contents. CBN denies the remaining allegations set forth in paragraph 479 of the SCAC.

480. Pursuant to the Court's Order dated August 18, 2010, dismissing the third-party beneficiary breach of contract claim as it relates to the Custodian Agreements, no response is required. To the extent that a response is deemed to be required, CBN denies the allegations set forth in paragraph 480 of the SCAC.

481. Pursuant to the Court's Order dated August 18, 2010, dismissing the third-party beneficiary breach of contract claim as it relates to the Custodian Agreements, no response is required. To the extent that a response is deemed to be required, CBN denies the allegations set forth in paragraph 481 of the SCAC.

---

[5] In its Order dated August 18, 2010, the Court dismissed this claim to the extent that it related to the Custodian Agreements. Thus, the only agreements arguably relevant to this Count are the Administration Agreements.

482. Pursuant to the Court's Order dated August 18, 2010, dismissing the third-party beneficiary breach of contract claim as it relates to the Custodian Agreements, no response is required. To the extent that a response is deemed to be required, CBN denies the allegations set forth in paragraph 482 of the SCAC.

483. Pursuant to the Court's Order dated August 18, 2010, dismissing the third-party beneficiary breach of contract claim as it relates to the Custodian Agreements, no response is required. To the extent that a response is deemed to be required, CBN denies the allegations set forth in paragraph 483 of the SCAC.

484. CBN denies the allegations set forth in paragraph 484 of the SCAC.

485. Pursuant to the Court's Order dated August 18, 2010, dismissing the third-party beneficiary breach of contract claim as it relates to the Custodian Agreements, no response is required. To the extent that a response is deemed to be required, CBN denies the allegations set forth in paragraph 485 of the SCAC.

486. CBN denies the allegations set forth in paragraph 486 of the SCAC.

Count 21
Breach of Fiduciary Duty against Citco

487. CBN repeats and reincorporates by reference its responses to the foregoing paragraphs of the SCAC as if set forth fully herein.

488. CBN denies the allegations set forth in paragraph 488 of the SCAC.

489. CBN denies the allegations set forth in paragraph 489 of the SCAC.

490. CBN denies the allegations set forth in paragraph 490 of the SCAC.

491. CBN denies the allegations set forth in paragraph 491 of the SCAC.

492. CBN denies the allegations set forth in paragraph 492 of the SCAC.

493. CBN denies the allegations set forth in paragraph 493 of the SCAC.

494. CBN denies the allegations set forth in paragraph 494 of the SCAC.

495. CBN denies the allegations set forth in paragraph 495 of the SCAC.

496. CBN denies the allegations set forth in paragraph 496 of the SCAC.

497. CBN denies the allegations set forth in paragraph 497 of the SCAC.

498. CBN denies the allegations set forth in paragraph 498 of the SCAC.

499. CBN denies the allegations set forth in paragraph 499 of the SCAC.

500. CBN denies the allegations set forth in paragraph 500 of the SCAC.

Count 22
Gross Negligence against Citco

501.-504.

Pursuant to the Court's Order dated August 18, 2010, dismissing the gross negligence claim against CBN, no response to this Count by CBN is required. To the extent that a response is deemed to be required, as to paragraph 501, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 502 through 504, CBN denies the allegations set forth in these paragraphs.

Count 23
Negligence against Citco

505.-508.

Pursuant to the Court's Order dated August 18, 2010, dismissing the negligence claim against CBN, no response to this Count by CBN is required. To the extent that a response is deemed to be required, as to paragraph 505, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 506 through 508, CBN denies the allegations set forth in these paragraphs.

Count 24
Aiding and Abetting Breach of Fiduciary Duty against Citco

509. CBN repeats and reincorporates by reference its responses to the foregoing paragraphs of the SCAC as if set forth fully herein.

510. CBN denies the allegations set forth in paragraph 510 of the SCAC.

511. CBN denies the allegations set forth in paragraph 511 of the SCAC.

512. CBN denies the allegations set forth in paragraph 512 of the SCAC.

513. CBN denies the allegations set forth in paragraph 513 of the SCAC.

514. CBN denies the allegations set forth in paragraph 514 of the SCAC.

Count 25
Aiding and Abetting Fraud against Citco

515. CBN repeats and reincorporates by reference its responses to the foregoing paragraphs of the SCAC as if set forth fully herein.

516. CBN denies the allegations set forth in paragraph 516 of the SCAC.

517. CBN denies the allegations set forth in paragraph 517 of the SCAC.

518. CBN denies the allegations set forth in paragraph 518 of the SCAC.

519. CBN denies the allegations set forth in paragraph 519 of the SCAC.

520. CBN denies the allegations set forth in paragraph 520 of the SCAC.

Count 26
Violation of Section 10(b) and Rule 10b-5 against Citco Fund Services and Citco Canada

521.-526.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 521, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 522 through 526, CBN denies the allegations set forth in these paragraphs.

Count 27
Violation of Section 20(a) against Citco Group

527.-530.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 527, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 528 through 530, CBN denies the allegations set forth in these paragraphs.

Count 28
Negligent Misrepresentation against Citco Fund Services, Citco Canada, and Citco Group

531.-540.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 531, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 532 through 540, CBN denies the allegations set forth in these paragraphs.

Count 29
Breach of Fiduciary Duty against GlobeOp

541.-549.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 541, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 542 through 549, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 30
Gross Negligence against GlobeOp

550.-553.

Count 30 was dismissed in its entirety by Order of the Court dated August 18, 2010.

Count 31
Negligence against GlobeOp

554.-557.

This Count is not directed at CBN, and therefore no response is required. To the extent that a response is deemed to be required, as to paragraph 554, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 555 through 557, CBN is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in these paragraphs, and therefore denies same.

Count 32
Breach of Fiduciary Duty against Francoeur, Pilgrim and Citco

558.-565.

Pursuant to the Court's Order dated August 18, 2010, dismissing this claim against Brian Francoeur, Ian Pilgrim and "Citco," no response is required. To the extent that a response is deemed to be required, as to paragraph 558, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 559 through 565, CBN denies the allegations set forth in these paragraphs.

Count 33
Unjust Enrichment against All Defendants

566.-572.

Pursuant to the Court's Order dated August 18, 2010, dismissing the unjust enrichment claim against CBN, no response to this Count by CBN is required. To the extent that a response

is deemed to be required, as to paragraph 566, CBN repeats and reincorporates by reference its responses to the foregoing paragraphs as if set forth fully herein. As to paragraphs 567 through 572, CBN denies the allegations set forth in these paragraphs.

PRAYER FOR RELIEF

CBN denies each of the allegations set forth in paragraphs "a" through "i" of the "Prayer for Relief" found on pages 201-202 of the SCAC.

AFFIRMATIVE DEFENSES

Without in any way admitting any of the allegations of the SCAC and without admitting or suggesting that CBN bears the burden of proof on any of the following issues, as separate and independent affirmative defenses, CBN asserts as follows:

First Affirmative Defense

Plaintiffs' claims against CBN are barred because the SCAC fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiffs' claims against CBN are barred by the applicable statute of limitations.

Third Affirmative Defense

This Court lacks subject matter jurisdiction over the claims asserted in the SCAC.

Fourth Affirmative Defense

Venue is improper in the Southern District of New York for this matter.

Fifth Affirmative Defense

The Southern District of New York constitutes an inconvenient forum for this matter, and thus this matter should be dismissed pursuant to the doctrine of *forum non conveniens.*

Sixth Affirmative Defense

Forum is improper in the Southern District of New York to the extent that the governing contracts contain forum selection clauses calling for a different venue.

Seventh Affirmative Defense

Some or all of the plaintiffs lack standing and/or capacity to assert the claims asserted in the SCAC.

Eighth Affirmative Defense

Plaintiffs' common law claims against CBN are barred because they are derivative.

Ninth Affirmative Defense

Plaintiffs' claims against CBN are barred by operation of the doctrine of laches.

Tenth Affirmative Defense

Plaintiffs' claims against CBN are barred by operation of the doctrine of unclean hands.

Eleventh Affirmative Defense

Plaintiffs' claims against CBN are barred by operation of the doctrines of waiver and/or estoppel.

Twelfth Affirmative Defense

Plaintiffs' common law claims against CBN are barred because they are preempted by the Martin Act, N.Y. Gen. Bus. Law, Art. 23-A, §§ 352 et seq.

Thirteenth Affirmative Defense

Plaintiffs' common law claims against CBN are barred because they are preempted by the Securities Litigation Uniform Standards Act, 15 U.S.C. § 78bb(f)(1).

Fourteenth Affirmative Defense

Plaintiffs' claims against CBN are barred because of the contributing and/or comparative negligence and fault of plaintiffs.

Fifteenth Affirmative Defense

Plaintiffs' claims against CBN are barred because plaintiffs knowingly and voluntarily assumed the risks inherent in the investments at issue.

Sixteenth Affirmative Defense

Plaintiffs' claims against CBN are barred to the extent that plaintiffs invested in the Funds in violation of the applicable laws or regulations of its, his, or her country of origin.

Seventeenth Affirmative Defense

Plaintiffs' claims against CBN are barred because plaintiffs did not actually rely on any representation, omission, or act by CBN or any person or entity acting or purporting to act on its behalf.

Eighteenth Affirmative Defense

Plaintiffs' claims against CBN are barred because plaintiffs did not reasonably or justifiably rely on any representation, omission, or act by CBN or any person or entity acting or purporting to act on its behalf.

Nineteenth Affirmative Defense

Plaintiffs' common law claims against CBN are barred by the economic loss rule because any obligations of or services to be provided by CFSE and CCI and/or CBN and CGC are expressly set forth in the relevant contracts between those parties and the Funds.

Twentieth Affirmative Defense

Plaintiffs' common law claims against CBN are barred because any duties owed by CFSE and CCI in connection with the administrative services at issue and by CBN and CGC in connection with the custodian services were contractual duties owed to the Funds pursuant to the pertinent Administration Agreements and Custodian Agreements, and thus CBN or any person or entity acting or purporting to act on its behalf was not in privity with, and did not owe any duty to, the plaintiffs.

Twenty-First Affirmative Defense

Plaintiffs' claims against CBN are barred because CBN, or any person or entity acting or purporting to act on its behalf, acted in good faith and with due care and diligence and did not, directly or indirectly, participate in, or aid and abet, or induce any act constituting any alleged violation of law or breach of duty claimed in the SCAC.

Twenty-Second Affirmative Defense

Plaintiffs' claims against CBN are barred because, to the extent that CBN is found to owe any duty to the plaintiffs, any alleged liability of CBN is limited by the exculpatory clauses contained in the pertinent Administration Agreements and/or Custodian Agreements.

Twenty-Third Affirmative Defense

Plaintiffs' claims against CBN are barred because the alleged fraudulent conduct of Bernard L. Madoff, Bernard L. Madoff Investment Securities LLC and/or their employees or agents was not foreseeable.

Twenty-Fourth Affirmative Defense

Plaintiffs' claims against CBN are barred because plaintiffs' injuries, if any, were the result of the intervening or superseding conduct of third parties.

Twenty-Fifth Affirmative Defense

Plaintiffs' claims against CBN are barred because plaintiffs failed to mitigate their damages, if any.

Twenty-Sixth Affirmative Defense

Plaintiffs' claims against CBN are barred because plaintiffs' damages, if any, are remote, uncertain, speculative and without basis in law or in fact.

Twenty-Seventh Affirmative Defense

CBN is entitled to an offset of any and all recoveries by plaintiffs, including, but not limited to, the following: (i) all proceeds plaintiffs have received or will receive in settlement of all or some of their claims; (ii) any payments that plaintiffs have recovered or will recover from others; (iii) any payments that plaintiffs have recovered or will recover from insurance; (iv) any payments that plaintiffs have recovered or will recover in any bankruptcy, liquidation or other legal proceeding in the United States or any other jurisdiction; and (v) any redemptions received from the Funds.

Twenty-Eighth Affirmative Defense

Any damages recoverable from CBN by the plaintiffs are limited to the percentage of fault attributable to CBN. CBN cannot be held liable for damages corresponding to the percentages of fault due to the negligence and/or wrongdoing of others, including: (i) Bernard Madoff, Bernard L. Madoff Investment Securities, LLC, and/or their agents and employees; (ii) the other defendants identified in the SCAC, namely, Fairfield Greenwich Group, Fairfield Greenwich Limited, Fairfield Greenwich (Bermuda) Ltd., Fairfield Greenwich Advisors LLC, Fairfield Risk Services Ltd., Fairfield Heathcliff Capital LLC, Lion Fairfield Capital Management Ltd., Walter M. Noel, Jr., Jeffrey H. Tucker, Andres Piedrahita, Amit Vijayvergiya,

Daniel E. Lipton, Mark McKeefry, Richard Landsberger, Maria Teresa Pulido Mendoza, David Horn, Andrew Smith, Charles Murphy, Yanko Della Schiava, Philip Toub, Lourdes Barreneche, Cornelis Boele, Vianney d'Hendecourt, Jacqueline Harary, Santiago Reyes, Julia Luongo, Harold Greisman, Corina Noel Piedrahita, Robert Blum, Gregory Bowes, PricewaterhouseCoopers International Limited, PricewaterhouseCoopers LLP, PricewaterhouseCoopers Accountants Netherlands N.V., and GlobeOp Financial Services, LLC; and (iii) any other non-parties who may be identified through discovery in this matter.

Twenty-Ninth Affirmative Defense

Pursuant to New York General Obligations Law § 15-108, in the event a release or covenant not to sue or not to enforce a judgment is given by plaintiffs to any other person liable or claimed to be liable in tort for the same injury that is the subject of the SCAC, then plaintiffs' claims against CBN should be reduced by the amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, or the amount of the released tortfeasor's equitable share of the damages under Article 14 of the civil practice law and rules, whichever is greatest.

Thirtieth Affirmative Defense

Plaintiffs' claims that derive from the obligations set forth in the Administration Agreements with Fairfield Sentry and Fairfield Sigma are barred under the law of the British Virgin Islands, which governs those claims.

Thirty-First Affirmative Defense

Plaintiffs' claims that derive from the obligations set forth in the Custodian Agreements are barred under the law of The Netherlands, which governs those claims.

Thirty-Second Affirmative Defense

Plaintiffs' claims against CBN are barred because plaintiffs are not third party beneficiaries of the Administration Agreements, which do not establish rights enforceable by the shareholders of the Funds.

Thirty-Third Affirmative Defense

Plaintiffs' claims against CBN are barred by operation of the doctrine of *in pari delicto*.

Thirty-Fourth Affirmative Defense

Plaintiffs' claims against CBN are barred because plaintiffs cannot establish loss causation.

Dated: October 1, 2010

Respectfully submitted,

/s/ Lewis N. Brown

Lewis N. Brown
Dyanne E. Feinberg
Terence M. Mullen
Amanda M. McGovern
Elizabeth A. Izquierdo
BROWN AND HELLER, P.A.
One Biscayne Tower, 15th Floor
2 South Biscayne Blvd.
Miami, FL 33131
T: 305.358.3580
F: 305.374.1756
lbrown@bhlawpa.com
amcgovern@bhlawpa.com

Eliot Lauer (EL 5590)
Michael Moscato (MM 6321)
CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP
101 Park Avenue
New York, NY 10178
T: 212.696.6000
F: 212.697.1559
elauer@curtis.com
mmoscato@curtis.com

Attorneys for Defendant Citco Bank Nederland N.V. Dublin Branch

EXHIBIT 31

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PASHA S. ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants. This Document Relates To: All Actions	Master File No. 09-cv-118 (VM)

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs AXA Private Management, Pacific West Health Medical Center Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company Bahrain, Dawson Bypass Trust, and St. Stephen's School (collectively, "Class Representatives") respectfully move the Court for an order pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure appointing them class representatives and certifying this action as a class action on behalf of a class (the "Class") consisting of all shareholders/limited partners in Fairfield Sentry Limited, Fairfield Sigma Limited, Greenwich Sentry, L.P. and Greenwich Sentry Partners, L.P. (the "Funds") as of December 10, 2008 who suffered a net loss of principal invested in the Funds. Plaintiffs submit the accompanying memorandum in support of this motion.

Dated: March 1, 2011

Respectfully submitted,

By: /s/ David A. Barrett

David Boies
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504
(914) 749-8200

David A. Barrett
Howard L. Vickery
BOIES, SCHILLER & FLEXNER LLP
575 Lexington Avenue
New York, NY 10022
(212) 446-2300

Stuart H. Singer
Carlos M. Sires
Sashi Bach Boruchow
BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Boulevard, #1200
Ft. Lauderdale, Florida 33301
(954) 356-0011

Robert C. Finkel
Carl L. Stine
James A. Harrod
E. Elizabeth Robinson
WOLF POPPER LLP
845 Third Avenue
New York, NY 10022
(212) 759-4600

Christopher Lovell
Victor E. Stewart
LOVELL STEWART HALEBIAN LLP
61 Broadway, Suite 501
New York, NY 10006
(212) 608-1900

Interim Co-Lead Counsel for Plaintiffs and Counsel for PSLRA Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2011, I caused the foregoing attached document to be electronically served to all counsel of record.

/s/ David A. Barrett
David A. Barrett

EXHIBIT 32

CAFJSEC1 Motions

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff,

v. 12 MC 115 JSR

BERNARD L. MADOFF,

Defendant.

----------x

October 15, 2012
4:25 p.m.

Before:

HON. JED S. RAKOFF,

District Judge

(In open court)
(Case called)
THE COURT: All right. I don't think it would be fruitful to have argument on the standing issue except on the assignee issue.
I also think that in arguing the SLUSA issue, it should be argued in terms of on the assumption, the hypothetical assumption that the only standing will be assignee standing, and on the insider exception you're free to argue anything.
Let me hear first from whoever is going to start on the defense side.
MR. CUNHA: Your Honor, I would like to make a couple of preliminary remarks and dive into the issues your Honor wants to hear argument on.
I think it is important, standing at 30,000 feet looking at what the trustee is trying to do here with respect to prosecution of common law claims is to see, if, in fact, the trustee is putting himself into competition with the investors rather than carrying out what is the purpose of SIPA, which is to protect. There is nothing about the structure or language of SIPA, nothing about underlying legislative history of SIPA which suggests or implies in any way that the trustee should be putting himself into competition with or working at cross-purposes with investors and with the customers. In fact,

by trying to prosecute common law claims, either his own common law claims or common law claims taken by assignment, that is precisely what the trustee is doing.

I think it is most obvious, of course, in the case of claims, common law claims that the trustee develops on his own. There, in fact, he is in direct and raw competition with the underlying customers who have brought the same claims against the same defendants, seeking the same recoveries and, in fact, seeking recovery from the same pool of limited assets.

So, for example, if you look at the Enmar case, pending in the Southern District of New York before Judge Marrero, a class action brought by the investors in various Fairfield funds, they have brought the exact same common law claims against the same defendants that the trustee has brought. In fact, if the trustee is allowed to pursue those claims, what we have is a rather unseemly race to the courthouse and race to a judgment to try to collect from these defendants who have very limited resources, particularly the individual defendants.

THE COURT: I am not sure how that cuts. Supposing there is some claim that the trustee is bringing that the investors didn't bring, does that mean that we should allow that just because the investors didn't bring it? And should disallow it because the investor did bring it?

MR. CUNHA: No, I don't think so, your Honor.

THE COURT: So I think it is irrelevant.

MR. CUNHA: Well, it is not irrelevant here because I do think we have to focus on the specific pleadings here and what is at issue before your Honor.

Here we don't have claims that are different. In fact, the common law claims overlap. So while it may be an issue in another case, it is not an issue here on this motion to dismiss which, of course, my clients are intensely interested in.

I do think, though, that even if the claims are somewhat different, there will still be competition for the same pool of assets. Perhaps they will be competing based on a different legal theory, but here there is absolutely no doubt the pool of assets which are being sought are far less than the dollar amount of the claims that are brought, and the kind of damages that are sought are the same and will be the same. Here it is for fees and for losses on the underlying investment.

That is always going to be the same, and there is no doubt that there will be a competition for limited resources on the part of the defendants. So that's number one, your Honor. It would seem to be absolutely at cross-purposes if not completely contrary to the purpose of SIPA of trying to protect investors and making investors a favored class of claimants in the liquidation proceeding.

With respect to the assigned claims, the trustee is in competition on the assigned claims as well in a couple of ways. Notwithstanding that the underlying customers did assign those claims; and, therefore, could be said in some sense to have consented to it, by allowing the assignments to go forward, we give the trustee, we would give the trustee an incentive to, in fact, squeeze the underlying customers in order to extract these assignments from them.

In fact, we have seen that occur here. There are three particular assignments involving Sentry funds, Fairfield Sentry, Greenwich Sentry and Greenwich Sentry Partners, where in the same settlement agreement in which the trustee obtained assignment of the claims of those funds against their managers, the trustee also forced in those negotiations those funds to take a very severe haircut on the amount of their claims.

So the Sentry Fund was --

THE COURT: You say forced? As far as I am aware, no one was putting a gun to anyone.

MR. CUNHA: It is not force in the sense that there was coercion or anything unlawful, and that is not our claim at all. When I say "forced," it is forced economically because the trustee's position in those cases was we are not going to recognize your claim at all unless you agree to the following conditions. Those conditions included assignment of the common law claims by those customers and included those customers

agreeing to take again a very severe haircut on the amount of their claim.

Again there is something unseemly about this and something contrary to the purpose of the statute and language of the statute and its legislative history where we have the trustee engaging in strong-arm tactics effectively in negotiations, tough positions with its customers. That is not what --

THE COURT: Is any of that before me?

Do I have to hold a hearing, evidentiary hearing to determine whether there were, "strong-arm tactics" here?

MR. CUNHA: No, I don't think you do. I think you need only look at the terms of the settlements which are on file in those proceedings. There are a matter on public record.

We can strip it of the pejorative language. I don't think we need to characterize it that way for your Honor to rule. The point is this: The terms themselves show that what the trustee was prepared to do in this case is to allow claims on a very diminished basis along with the entire package of the deal which included assignment by those customers of their claims to the trustee.

Again there is nothing in the language of SIPA which would encourage any reader to think that the purpose of this statute is to allow and encourage the trustee to enter into

these hard-fought, hard bargained, difficult negotiations with the customers.

THE COURT: I guess I am still missing your legal argument. You're not claiming that these assignments were invalid as a matter of law, are you?

MR. CUNHA: Well, I am, actually, and I will get to that, your Honor.

THE COURT: All right. But not at least on the grounds that you've just told me?

MR. CUNHA: No.

THE COURT: So if it is a valid assignment, to the extent he is not precluded by other statutes or whatever, he can exercise the rights given him by assignment, yes?

MR. CUNHA: Correct. My remarks so far were just a preface towards looking at the language of the statute and how we ought to read the language of the statute.

The language of the statute, of course, gives the trustee certain powers. The powers are limited by the language of the SIPA statute, and the statute with respect to the assignment that is in the statute has been uniformly interpreted by the courts by allowing the trustee to take assignments from customers only with respect to those customers' net equity claims as against the estate. That makes sense because the section of the statute in which we find it is the section that has to do with payments by SIPA to the

customers.

So it makes sense in the statutory scheme that SIPA would be providing advances to these customers and then SIPA would have the ability to require those customers, to the extent of those advances, to assign back their right of recovery from the estate in that amount on their net equity claim. That is what the statute says, that is what the structure suggested, that is what the placement of the language in the statute suggests and that is how the language has been uniformly held by the courts to mean.

Addressing your Honor's earlier question, yes, the statute does not allow the kinds of assignments that the trustee is trying to pursue here. My earlier remarks were to claim why there is a reasonable rationale why Congress would not go there. Now, your Honor doesn't have to endorse that reasoning. Your Honor can rest on the language of the statute. In fact, that is what the courts have done up to this point.

SIPA provides circumscribed powers to the trustee. One of them is this narrow power of assignment. If Congress wanted to give the trustee a more broad power of assignment, Congress knew how to do that, but it did not do it. We must presume and assume Congress knew what it was doing when it assigned the trustee limited powers.

THE COURT: All right.

MR. CUNHA: Another issue here, your Honor, which is

not in the briefs, but arises from the discussion in the briefs is that the in pari delicto/Wagoner rule comes into effect with respect to the assigned claims here as well, because the trustee, if it seeks to prosecute the assigned claims at issue here, the ones assigned by the funds, stands in the shoes of the funds.

Yet the trustee in his own briefing as against those funds, the trustee has sued those funds. He has sued Greenwich Sentry Partners, he sued the other Sentry Fund, and he has indicated in Paragraph 338 of his amended complaint that the feeder funds worked with and were complicit with the other defendants and pursuing and in furthering the fraudulent scheme.

He has alleged the funds themselves were defrauding Sentry Partners, working hand-in-hand with other defendants and participating in the fraud; and, accordingly, Wagoner in pari delicto are directly implicated there as well. Even were the court to find that there was statutory authority for the trustee to pursue assigned claims, which we believe the court should not find and which no court has ever found, but even if the court were to find that, in this instance by the trustee's own pleadings, those claims are going to be barred by Wagoner and you in pari delicto not because the trustee himself is in pari delicto, but because the funds are in pari delicto under the trustee's pleading, and he stands in the shoes of the funds

with respect to the claims that they have assigned to him.

Your Honor, there are a couple of other issues that come into play here. Judge McMahon, in her JPM decision on the justiciability issue, there are justiciability issues with respect to the trustee trying to pursue these assigned claims which are common law claims on behalf of the funds or their underlying investors. There are reliance issues. There are causation issues much better pursued by the persons who actually suffered the losses and who have knowledge of the underlying facts and ability to get at those facts than to allow a SIPA trustee who is a stranger to these facts because after all, the claims are the claims of the underlying customers, and they arise out of facts and circumstances that existed before the trustee came into existence.

There is also the issue which your Honor has alluded to which we believe is correct, that allowing to pursue assigned claims would also interfere with SIPA's preference claim. These claims would allow recovery on common law claims and effectively payment on common law claims prior to payment of the entire amount of the net equity claims, and again that's contrary to the preference scheme and timing scheme set forth on the face of the statute.

Your Honor, in sum, for all these reasons, both because of the language of the statute, that which language has been uniformly interpreted by the courts in accordance with

defendant's position, the underlying purpose of SIPA and the other arguments we pointed out, your Honor, we believe the court was quite right and that every court to consider the issue is quite right. The trustee simply does not have authority to take or prosecute common law claims by way of assignment from customers.

THE COURT: All right. Let me, before we go to other issues, let me hear from the trustee on the issue of -- I should mention to everyone at 5:00 o'clock I have to take a conference call with a judge from Texas. I don't think that will take more than two or three minutes.

MR. LONG: I hope to be quick, your Honor.

Your Honor, again I am Thomas Long on behalf of the trustee, and I'll address the arguments that were made by the defendants.

Let's begin by what are the powers of the SIPA trustee. They make great deal out of the fact there is a specific provision included in the SIPA statute under 78fff2-B, which permits the trustee in the claims process to ask a claimant as they're being paid in full to assign their net equity claims to the trustee.

There is no question about it, that is an express power given to the trustee. It was not a limitation of power regarding assignments. In fact, 78fff-1 gives the trustee all the powers of a Chapter 11 trustee, and those powers include

under 541 (a)(7) the ability to take assignments and use assignments properly.

I'd like to point out --

THE COURT: What about the issue that was raised, and your adversary notes that it was raised for the first time here today, so that if he makes use of these assignments at least in certain other circumstances, he will be barred by pari delicto.

MR. LONG: I am more than willing to address that, your Honor, because I think that misstates exactly how these funds operated and who we are pursuing in this particular instance.

What we are dealing with, for example, let's turn first to the Fairfield funds. The Fairfield funds were operated out of the British Virgin Islands. There was nothing there, your Honor. It was a mail drop. That's it. Everything was contracted out to one of the other Fairfield entities for management purposes called Fairfield Greenwich Bermuda, which in turn through a series of I sometimes refer to it as a labyrinth of partnerships back to people who had offices here in New York City. They're the people that we have alleged to be the wrongdoers.

They had contractual duties, not negligent duties, but contractual duties to the fund to perform in certain ways. Those rights have been assigned to the trustee. We don't believe in that instance that Wagoner would apply and cut off

the claims of the fund. The fund would have been able to assert those claims. As noted, the trustee stands in the shoes of the fund, so that's the difference there, your Honor.

THE COURT: All right.

MR. LONG: I would like point out in Greenwich Sentry, I think there is Greenwich Sentry and Greenwich Sentry Partners, both were Delaware limited partnerships where again Fairfield Greenwich Bermuda was the general partner, all investors were limited partners. The trustee's claims were assigned by both funds that were at the time in Chapter 11 proceedings as debtors in possession before Judge Lifland.

What I find interesting is, your Honor, the very defendants that are here raising these arguments were the ones who negotiated that settlement and now are trying to claim that we shouldn't be allowed to use the assignment.

To give you an idea of the details of those negotiations, one of the things that they argued for and bargained for and received, they had certain claims against the fund for setoff, for indemnification, for certain payments that way. The trustee expressly agreed that in the process of litigation, they could still assert those as against the assigned claims.

This certainly wasn't a situation where anybody had a gun to their head when we negotiated these agreements. In fact, if you take their arguments to the extreme, what we are

really talking about is the fact that these funds had certain assets. This was the way they could pay the claims the trustee had against them.

For example, if you look at some of the other feeder funds, we didn't put guns to anybody's heads. A number of them paid the trustee's claims. They not only got their claims allowed in full, they were even given in the situation where there was a preference a spring-in claim. They received their full claim. They weren't discounted down.

You can look at the Tremont case. They paid a billion dollars. That case is unfortunately still on appeal by one little objector, but they're going to have a claim for over $2 billion when it is all said and done.

In this particular instance, they didn't have the ability to pay the claims with cash, so they looked to others' assets. Your Honor, this court in the Katz case dealt with the settlement that was negotiated where some of the defendants in the Katz case, what they did is they assigned not their net equity claims to the trustee, but they took certain monies that were due to them and assigned them back to the trustee. It was an asset that they had available to them to effectively pay the claims.

The other thing that I find so interest today in these arguments, and I just wish everybody would try to take the position and stick by it, because the Amfar case was the case

brought up, in Amfar, in response to a proposed class action of the investors in Fairfield Sentry, Greenwich Sentry and Greenwich Sentry Partners, the defendants argued you don't own those claims, those are owned by the fund. You're really trying to do something that should have been a derivative action that should have been filed by the fund. Yet here it seems to be oh, no, those with are the claims owned by the individual investors.

Your Honor, we believe based upon the clear law there is no limitation on the part of the trustee in terms of the SIPA proceeding. That certain provision within SIPA is something that would be necessary to deal with certain procedures that go on itself. In a normal bankruptcy, a Chapter 11 trustee wouldn't need those powers.

Instead of being an exclusionary power, this was an additional power that was given to a SIPA trustee in addition to the powers that are given to them under the normal trustee's powers in Chapter 11 proceeding.

Your Honor, the other thing they say is all the cases have always ruled this way. The fact of the matter is, your Honor, the other cases that they cited in their brief were dealing with the type of claims that if you can bear with me, my way of describing it is under 78fff2-B as sort of claims assignments, they were dealt with a claims process versus a settlement assignment, somebody who was using their assets.

The other cases other than the Michigan case all dealt with were the 78fff2-B type of assignments. This Court has already ruled whether or not they're allowed to do that. We respectfully disagree. We preserved our claims, and the Second Circuit, your Honor, has now said set argument on that for November 21. We will all hear what they have to say here shortly.

THE COURT: No, no, no. They'll hear what you have to say.

MR. LONG: I think that's right.

THE COURT: I notice there was a sort of suggestion from both sides that I await the Second Circuit's decision. If I had confidence that their decision would be forthcoming soon, that would make perfect sense, but having had the great privilege of having sat by designation on the Second Circuit, I am inclined to replace that hope with the voice of experience, so it might be years before you would get a decision from the Second Circuit. So I think I will move ahead irrespective of that. If they come down with a decision, great; if they don't, that's their business.

MR. LONG: I was only trying to give that for informational purposes. This is something you wouldn't know about personally. My wife, who is an appellate judge in Ohio, has said you might be having an argument then, but that doesn't mean you get a decision that day.

THE COURT: I don't mean in any way to impugn the Second Circuit. I wouldn't dare do that because they wouldn't invite me back again.

Anyway, go ahead.

MR. LONG: I'll wrap up.

On the Michigan case what I find interesting about that, Judge Pollack was dealing with a very different assignment involved there. It wasn't a customer that was involved. It is hard to understand by reading the court record what was involved there. It appeared to be almost a situation where some person didn't have any claims, and they assigned them to the trustee as a way they could get paid and maybe the trustee would get money.

However, in that case what Judge Pollack said is under 78fff2-B, you can't do that, that is not what that is all about. On the other hand, there was no discussion under 541 (a)(7), and I think if you look historically at the court's decisions, this Court's decisions and the Second Circuit's decisions as set out in the CBI case, there is a history regarding assigned claims to trustees.

For the longest time under New York State Law, it had been held by the Barnes decision, which I believe was a 1925 case, that such assignments could not have taken place. That was based upon the old bankruptcy code. When the modern bankruptcy code was passed, clearly it was interpreted that

assignments were possible. As a result, a lot of people did not push that issue. More recently Judge Scheindlin had a case in the Merrill Lynch Love funding case where these issues came up as well, an issue whether this would violate the law of New York Chambertree.

She dismissed the case. It went up to the Second Circuit. They certified the question as well to the New York Court of Appeals, who held they did not violate Chambertree and it is time for the courts to no longer look at Barnes, it is no longer good law even if we don't technically overrule it. They said in the Semitech case it shouldn't be pursued.

As a result, if you look at the history of the type of what I referred to for shorthand the settlement assignments, clearly they're valid. The trustee has standing to assert them. These were assets given to the trustee as a means to pay what people believed monies were owed to them.

I think it is interesting that Judge Lifland, when he had the 9019 hearings in both these cases and especially with the Fairfield Funds, because of their liquidation in the PBI, there had to be a hearing there as well. Both judges recognized it was a hard-fought, bargained-settlement negotiations that resulted in the ultimate settlement.

THE COURT: I will hear from the defendant in response, but I need to take that, and hear from SIPIC, too, but I need to take this five minute call and I am sure it won't

last longer than five minutes.

(Recess)

Cafrsec2

THE COURT: Let me hear from SIPC I guess is where we were up to.

MR. LaROSA: First, in response to some of the remarks made by defendants' counsel, we think it would be wrong to extrapolate from the circumstances of this case all SIPA litigation. We point out there are many, many instances where the trustee is effectively the only party with the financial resources sufficient to bring claims like the ones that have been brought here. Of course, the trustee is backed by SIPA funds, which makes complex litigation possible for the trustee where it would not be for many private plaintiffs.

It is also important that the trustee have the power to take assignments for claims against third parties because recoveries when the trustees recovers are shared by all recoveries, which often is not the case. That is absolutely consistent with, in furtherance of, the purposes of the statute.

THE COURT: I take it that is what you would have said about the argument that you were in competition. The trustee is trying to work out a resolution that is fair to all customers under a method that's been approved by the Second Circuit. Therefore, the specific needs of any given customer are neither here nor there because they have a more specific focus than the trustee does.

MR. LaROSA: That's correct, your Honor. The only

other point I want to make is the statement that SIPA 78fff-2(b) has been uniformly held not to allow the claims against third parties is inaccurate. The Albert & Maguire case, SEC v. Albert & Maguire, an older case that dealt with an earlier version of the statute but essentially the same language, held that that provision did allow the taking of assignments of claims from third parties. In fact, the court used language that very much buttresses the argument we are making here. I'm quoting at 560 F.2d, the case is at 569. The language is at page 573.

THE COURT: "Nothing in the statutory language restricts the form or purpose of the assignments to use against the debtor."

MR. LaROSA: Yes, indeed.

THE COURT: Dot dot dot "If the trustee recovers on customers' claims against third parties, the single and separate fund is augmented and additional money becomes available to satisfy claims of all the customers." Is that what you had in mind?

MR. LaROSA: You're way ahead of me, your Honor. Thank you.

THE COURT: Very good. Let me hear from defense counsel.

MR. CUNHA: Just a few points, your Honor. With respect to the CBI case, of course, it's not a SIPA case, so it

doesn't address the specific language within SIPA with respect to seems. It of course does not arise in a SIPA context, so the contextual arguments with respect to SIPA do not apply in the CBI situation.

The justiciability issues that we raise of course are not raised there. It's based on section 541(a)(7). 541(a)(7), your Honor, of the code, the bankruptcy code, simply indicates that the estate is comprised of the following property: "Any interest in property that the estate acquires after the commencement of the case." That language begs the question which is before the Court, which is was it proper, is this particular interest in property an interest that is proper for the trustee to acquire at all.

Again, we don't think that CBI is on point. It has to do with bankruptcy, trustee powers, not with the powers specifically of the SIPA trustee, and here we do have language specifically on point in SIPA, which we think makes CBI inapposite. Of course, under general statutory construction principles, the specific rules over the general.

THE COURT: Thank you very much.

MR. CUNHA: I would make one other point, your Honor, that I think is important. I think it is important for the Court not to conflate the funds with the funds' underlying investors here. What happened here is these assignments were made by the funds. The funds are themselves entities. They

are not disregarded. There is not an alter ego issue here or a veil piercing issue. We did provide those assignments to your Honor as exhibits to our initial submission, so your Honor has them.

The claim that the funds didn't do anything wrong, and therefore in pari delicto should not apply. It comes, frankly, as a mystery to us, since trustee has sued the funds. In his complaints they are defendants in the complaint, and he includes allegations specifically in their complaint that they are participants in the underlying fraud.

Not only that, but two of the funds are partnerships. The general partner is one of the management companies that in fact has been sued by the trustee and against which wrongdoing is alleged. The other fund, the large one, the offshore fund, Century, was run by a three-person board of directors. One of those directors is Walter Noel, who was one of the management individuals, one of the principals of the management companies, and also a target defendant in the trustee's suit.

I, frankly, just don't understand the trustee's argument in that regard, your Honor. By his own pleadings he has claimed the same wrongdoing by the funds as he claims on the part of the management defendants, and in pari delicto is clearly going to apply to those entities. Thank you.

THE COURT: Thank you very much.

Let's turn to SLUSA. Does anyone want to be heard on

that?

MR. CUNHA: Yes, your Honor, happy to address it.

THE COURT: This only comes into play, of course, if the trustee has the power to pursue creditors' claims against third parties. Implicit in my not hearing argument on the nonassignment argument for that is that I haven't changed my mind about my earlier view of that. But I am happy to hear whether SLUSA would come into play assuming arguendo that there were claims that could be brought by virtue of the assignment.

MR. CUNHA: Yes, your Honor. I'll limit my remarks to the assigned claims.

We think SLUSA does come into effect with respect to the assigned claims if your Honor finds that the assignments were valid and that the trustee is allowed to take and pursue those assigned claims.

The statute provides that it applies to covered class actions. Covered class actions are defined as a single lawsuit in which damages are sought on behalf of more than 50 persons. It is all over the trustee's complaint in this case, your Honor, all over his complaints I should say, that his complaints are brought on behalf of the underlying customers.

So, by the trustee's own pleading, he has pled himself into coverage under SLUSA. If he seeks to prosecute those assigned claims, he will be seeking to prosecute them on behalf of a group of more than 50 persons, to wit, the customers of

BLMIS.

After that point, your Honor, the other SLUSA arguments are the same with respect to assigned claims as they are with respect to his own claims. I guess the trustee would point to the entity exception and try to take refuge there. It doesn't apply.

First of all, all it says is that the entity gets treated as a single person for purposes of counting under SLUSA. But that begs the question. The point is that the statute defines a covered class action to mean where damages are sought on behalf of more than 50 persons. Whether you consider the trustee a single person or not a single person, that's not where the inquiry is. That's not where the focus is, the focus is on whose behalf is he seeking the damages. That is the underlying customers.

If for some reason the Court were to adopt the trustee's thinking there, then you get to the second prong of the counting aspect of the SLUSA statute, which is that you count it as a single entity only if the entity is not established for the purpose of participating in the action.

There, frankly, courts have come out different ways in examining what's meant by the purpose. Does it have to be the sole purpose, does it have to be the primary purpose, or does it have to be a purpose? We think the courts have reasoned through this, have reasoned better that it need only be a

purpose, particularly in a case like this, where the trustee has argued that it's a statutorily mandated purpose. Clearly, at least one purpose for which the trustee was formed was to pursue this litigation.

THE COURT: And SLUSA is supposed to be given a broad construction.

MR. CUNHA: Absolutely, your Honor. Which takes is me to my final point. The trustee argues, really without giving a reason, that for some reason he as trustee is different than, say, a class representative of a plaintiff class seeking to end-run the PSLRA requirements for pleading by bringing state common law claims. But he doesn't give any reason for that, nor is any reason apparent why it should be different.

In fact, the trustee is trying to do the same thing as a class plaintiff would try to do here, which is to avoid more stringent pleading requirements which are required by the federal securities laws where there are claims sounding in misrepresentation than the much easier to satisfy pleading requirements of state common law.

This situation falls well within the purpose of the statute, which is that Congress did not want to give the ability to plaintiffs operating as a group of more than 50, where damages are sought by more than 50, to end run the standards that they think ought to govern misrepresentation type claims in a securities context.

THE COURT: Let me hear from the trustee.

MR. LONG: Thank you, your Honor. I'll be very brief.

First, when you look at which claims we're talking about, I believe we have to only focus on the 78fff-2(b) claims. Claims that would have been assigned to us as part of the settlements clearly would not be brought into the SLUSA operation, because we are standing in the shoes of those particular claimants asserting the claims they would have had.

Turning then to what I referred to earlier in the argument as the claim settlements, first, their argument in the papers was that the trustee couldn't be entitled to the entity exception because he is a person. I find that somewhat ridiculous in that clearly none of this money is going to Irving Picard. It goes into the estate. And that's the purpose of it.

If you look at the legislative history of SLUSA, one of the things that was specifically talked about in dealing with the entity exception was they did not want to put any bankruptcy trustee -- they didn't use the words, and I would readily admit this, SIPA trustee -- but a bankruptcy trustee wouldn't be forced out. That's why they took the entity exception.

Second, your Honor, they claim that the trustee was organized for purposes of pursuing the litigation. Originally, they relied upon the RH Holdings case. That case was reversed.

One of the things that the case noted is that you have to look at the primary purpose for why the entity exists.

This isn't a case where you have had several courts hold where an entity is just formed for one single purpose and that's to litigate claims. Here the trustee was appointed by Judge Stanton and was given a variety of tasks. We have set those out in the brief. I don't want to take much of your time. They include marshaling the assets, selling the assets, determining claims, taking the distribution of claims, allocating the moneys, and so forth.

As a result, nowhere can it be alleged that the primary purpose for why Mr. Picard was appointed trustee in this case was simply to pursue common law litigation. Certainly one of the things that he has done, in addition to a certain and a relatively small number of common law claims, he's pursued the avoidance and recovery claims that he is permitted to do under the bankruptcy code.

Finally, your Honor, the fact of the matter is the trustee is pursuing these claims to go into the fund of customer property. It is not being passed along directly to the various customers. It will go in and be allocated properly within the SIPA proceeding. As a result, we do not believe SLUSA would apply in this instance.

THE COURT: Did SIPC want to be heard?

MR. LaROSA: No, your Honor.

Cafrsec2

THE COURT: Anything by way of rebuttal?

MR. CUNHA: Very quickly, your Honor. In the RGH Liquidating Trust case, we would point out that there the Court was able to reach its findings by finding that the claims at issue were owned by the bankrupt estate and therefore was able to limit it to the single person. We don't have that at play here. We also frankly think that the dissent had by far the better part of the argument there. Of course, that court is not binding on this Court. We'll leave it at that.

THE COURT: Let's turn finally to the insider exception. Let me hear from defense counsel.

MS. BIRGER: Your Honor, it's a different question with respect to the spouse defendants. For the spouses this is a plain vanilla application of in pari delicto. Whatever the Court may conclude about the validity of the asset need theory, that has no application to the spouses. There are no claims on behalf of customers against the spouses. There's nothing to have been assigned. And there is no claim that the spouses engaged in any long doing.

The only claim against the spouses is that they received transfers from BLMIS that they weren't entitled to. That's the allegation. If that claim is viable, it can only be on behalf of BLMIS, and then it's barred by a very straight-forward application of in pari delicto.

It is against that backdrop that the trustee has

resorted to the insider exception and says even if this Court says he has no standing to pursue the common law claims, he can against the spouse defendants only because of that exception.

Your Honor, I think the scope and purpose of the insider exception rule has been thoroughly covered in the briefs by both sides. It was not my intention, unless the Court has questions, to belabor those points. It is pretty simple. The insider exception is restricted to insiders. The spouses aren't insiders. Ergo, no exception.

The only thing I would add to the briefs, your Honor, is that the thrust of the trustee's argument is that this Court should ignore settled in pari delicto law and essentially carve out a new exception just to permit him to pursue claims against certain transfers. I just want to say that it is not accurate to suggest that bringing a common law claim against the spouses is the only potential avenue he has to pursue those funds.

The case against the spouses involved certain transfers from BLMIS which went jointly to the husbands, to Mark and Andrew, and the spouses. The trustee is bringing his claims as preferences or fraudulent transfers against the husbands themselves. He is trying to avoid those exact same transfers under the bankruptcy code and under New York debtor/creditor law. So, the transfers are still being challenged.

The issue under in pari delicto is whether he has standing to pursue certain common law claims against certain

defendants, not the sums of money. That is an unequivocal no, as the Court knows. So, by saying he wants to recover money from the spouses, he's mixing apples and oranges. He is basically answering the wrong question.

In addition, in pari delicto would have posed no obstacle to the trustee bringing avoidance claims under the bankruptcy code against the spouses. He can't do that now, because they are time-barred. But that was his choice.

So, in a nutshell, he is trying to resurrect the claims that he has against the spouses. He is trying to ask this Court to carve out an exception that doesn't exist. That is the very nature of the in pari delicto doctrine, your Honor. It bars plaintiffs from bringing claims they want to bring. The fact that Mr. Picard really wants to bring this one doesn't mean he has standing to do it.

THE COURT: Thank you very much.

Let me hear from the trustee.

MR. OPPENHEIM: Thank you, your Honor.

This attempt to withdraw the reference as to the applicability of the insider exception is improper because there is no motion pending before the bankruptcy court. Movants are not arguing that there is an issue of sufficient complexity requiring disposition by an Article III judge.

Instead, these movants, the spouse defendants, were happy to make these arguments to the bankruptcy court in

opposition to the trustee's motion for leave to further amend. Movants opposed the trustee's motion without once arguing that this issue was beyond the bankruptcy court's jurisprudence. Instead they waited until briefing was completed, and once they got a ruling they didn't like, they turned to this Court for a second bite at the apple to complain that the bankruptcy court never should have heard that argument in the first place.

That is not a motion to withdraw the residence, it is an appeal of a decision that these defendants don't like. By referencing the de novo standard of Ionosphere in their papers, they are make their intentions obvious. They would like your Honor to overturn the holding of the bankruptcy court without requiring a formal court appeal and, critically, without allowing the trustee to set forth substantive argument in opposition to this.

This is a bait and switch. The trustee has argued that these issues don't require withdrawal of the reference, and movants have argued, just as they did to the bankruptcy court, that the trustee's claims ought to be barred. There is almost no explanation of what pending issue must be heard by this Court.

This only explanation they offer is the last line of their reply brief where they write, "There is no motion pending because the parties have adjourned the spouse defendants time to move or answer the second amend complaint pending this

Court's decision." That is false. There is no motion pending before the bankruptcy court, because the bankruptcy court has already ruled on this issue.

Movants presented their arguments, the trustee presented his arguments, and the bankruptcy court made its ruling. Again, your Honor, they are not here because the arguments weren't properly before the bankruptcy court. They are here because they don't like the result.

The second thing is, to turn to the substance argument, which I think it is important we do here, these defendants shouldn't be permitted to circumvent the insider exception, which is exactly what happened here. The first thing we have to get out of the way is there are no reported briefs cited in any of the briefs that confront this issue.

THE COURT: It is standard for people in bankruptcy or facing bankruptcy to try to evade various provisions of the bankruptcy code or in this case SIPA by making transfers to relatives, spouses, and otherwise. That is always dealt with as a question of fraudulent conveyance or preference or something of that sort. Why isn't that the remedy for you if there is some sort of circumvention rather than saying that this Court should carve out a special exception to the in pari delicto doctrine?

MR. OPPENHEIM: I would, your Honor, if there had been transfers at issue here, but there are not. There are no

transfers alleged in this complaint that are at all unique to these defendants. The point we make is that during the pendency of their marriages, as I think everyone's wife would remind them, there were no transfers to Andrew; there were only transfers to Andrew and Deborah while they were married.

In the case of transfers to these spouse defendants, the trustee has done exactly what you suggest, which is why these spouse defendants are also defendants in separate proceedings initiated by the trustee to recover under the bankruptcy code for those transfers.

But these claims arise out of the assertion of property interest in transfers made to a husband and a wife. It is a unity of interest which these spouse defendants are trying to avoid. That's why, if I may, I would take issue with my adversary's description of this as an attempt to carve out a new exception. I see it as the opposite, frankly, your Honor.

In this situation there is a single transfer that was made to a single husband and wife. That husband and wife are similarly tainted by the very same insider exception that we have successfully pled before the bankruptcy court.

It is only now that the spouse defendants are saying that they shouldn't be considered married for purposes of those transfers that came during the pendency of their marriage because they would like to assert a property interest in those transfers, whether they are the result of in some cases divorce

or death. In neither case, however, would it be appropriate to carve out a new way to get out from under the insider exception because of the unity of these transfers.

Effectively, your Honor, this is very similar to what happens in a civil or criminal forfeiture case. This is the last thing I'm going to touch on because it is an argument the trustee made in its papers, and it is effectively -- that is the third time I have used that word, I will stop -- ignored in these defendants' papers.

You can look to the case of SEC v. Cavanagh, which is a Second Circuit opinion about SEC forfeiture that uses some language that I think is important here. This is basically the Mafia case. The point is you can't hide transfers of money by allowing a spouse to assert an ownership interest in them all of a sudden. In that case the Second Circuit held in fact that was not a way to get around the recovery of certain assets. That is why we think that should be the focus here.

These defendants are right, the insider exception does focus on defendants and not transfers. But we have argued in response and that response has been ignored, that these are the same transfers. There is no other transfer to these spouse defendants that magically transforms them into insiders. The trustee readily concedes that they did not work at BLMIS. However, during their marriage those transfers were one and the same, and that's why the insider exception should allow us to

Cafrsec2

bring these claims here.

THE COURT: Thank you very much.

Did SIPC want to be heard on this?

MR. LaROSA: No, thank you, your Honor.

THE COURT: Let me hear on rebuttal from defense counsel.

MS. BIRGER: Very briefly, your Honor. First, it is a misnomer to say that this issue has already been decided. The issue before Judge Lifland was whether they could amend the complaint to add the spouses. They tried to amend the complaint to add fraudulent conveyance and preferential transfer claims against the spouses as well as the common law claim.

The decision that came down from the bankruptcy court was: You are barred by the statute of limitations from bringing the bankruptcy claims, the common law claim is an issue of first impression, there is no case law on the insider exception, so I can't hold that it is entirely futile for you to bring the claims, so I'll let you amend the claim to add it.

He did not rule on the motion to dismiss standard. Upon their filing the second amend complaint, we were about to file a motion to dismiss when this Court withdrew the reference to consider this issue, so the parties have adjourned that briefing pending this Court's ruling.

It is also a red herring. You can move to withdraw

the reference without a formal motion pending. Indeed, we did not wait until we got the issue from the bankruptcy court. We moved to withdraw the reference before this Court's April 2nd deadline on the statute of limitations issue and this issue as well. It wasn't until after that that Judge Lifland's ruling came down. So he also the timing and the facts a bit off.

The only other thing I will say is that the trustee's argument proved my point. He told you that there were only one set of transfers at issue here and they were transfers that went simultaneously to husband and wife. That just shows that what he is really trying to do is to avoid the transfers. That's not the right question here.

The question here is whether he has standing to pursue certain defendants. It's not the transfers that are being sued, it's Stephanie Mack and Deborah Madoff, and he doesn't have standing to bring common law claims against them. They may or may not have it against their husbands; he is contending that he does, they are insiders. That's not before the Court. He could pursue the transfers had they not been time-barred, but the fact that the transfers are simultaneous does not create standing.

THE COURT: Thank you very much. I will take all of this under advisement. Is there anything else anyone needs to raise this evening? Thanks so much.

(Adjourned)