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

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities
LLC and the Chapter 7 Estate of Bernard L.
Madoff,

Plaintiff,

v.

ZCM ASSET HOLDING COMPANY
(BERMUDA) LIMITED,

Defendant.

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

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 12-01512 (LGB)

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

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

Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III (“SIPA”), and the substantively consolidated chapter 7 estate of Bernard L. Madoff, by and through his undersigned counsel, submits this motion seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement, the terms and conditions of which are set forth in the settlement agreement (the “Settlement Agreement”), attached hereto as Exhibit A, by and between the Trustee and ZCM Asset Holding Company (Bermuda) Limited (n/k/a ZCM Asset Holding Company LLC) (“Defendant”).¹ In support of the motion, the Trustee respectfully represents as follows:

PRELIMINARY STATEMENT

The Trustee’s action against Defendant seeks to recover \$21,247,755 in customer property (the “Subsequent Transfers”) that Defendant allegedly received from BLMIS through Fairfield Sentry Limited.² The Trustee’s settlement with Defendant provides for payment to the Trustee of \$10,600,000. The Settlement Agreement represents a good faith, complete settlement of the Trustee’s claims for the benefit of the customer property fund. It also takes into consideration the

¹ See *Picard v. ZCM Asset Holding Company (Bermuda) Limited*, Adv. Pro. No. 12-01512 (LGB), Defendant’s Answer, n.1, dated January 19, 2024 (ECF No. 130) (“Effective August 31, 2023, ZCM Asset Holding Company (Bermuda) Limited was re-domiciled as ZCM Asset Holding Company LLC, a Delaware LLC.”); see also Corporate Ownership Statement, dated December 13, 2023 (ECF No. 129).

² This Motion is required because the alleged Subsequent Transfers exceed \$20,000,000, a ceiling established by the Settlement Procedures Order entered by this Court on November 12, 2010, Adv. Pro. No. 08-01789 (LGB) (ECF No. 3181), below which the Trustee may enter into settlements with initial or subsequent BLMIS transferees without further order of the Court.

fact that Defendant will receive a release from the Foreign Representatives for and Joint Liquidators of Fairfield Sentry Limited, Fairfield Sigma Limited, and Fairfield Lambda Limited (collectively, the “Joint Liquidators”) in connection with their separate actions against Defendant. *See Fairfield Sentry Limited (In Liquidation), et al. v. Zurich Capital Markets Company, et al.*, Adv. Pro. No. 10-03634 (JPM); and *Fairfield Sentry Limited (In Liquidation), et al. v. ZCM Asset Holding Company (Bermuda) Ltd., et al.*, Adv. Pro. No. 10-03792 (JPM).³ The Trustee respectfully requests that the Court enter an order approving the settlement, substantially in the form of the proposed Order attached hereto as Exhibit B.

THE TRUSTEE’S CLAIMS AND STATUS OF THE ACTION

On April 12, 2012, the Trustee commenced an adversary proceeding (the “Action”) by filing a complaint, ECF No. 1, in an action now captioned *Picard v. ZCM Asset Holding Company (Bermuda) Limited*, Adv. Pro. No. 12-01512 (LGB), to recover from Defendant alleged subsequent transfers from BLMIS.

On April 21, 2023, the Court entered a stipulation and order between the parties which, *inter alia*, amended the Trustee’s complaint to dismiss claims to recover certain alleged transfers. ECF No. 101.

On January 19, 2024, Defendant filed its answer to the Trustee’s complaint, as amended. ECF No. 130. The parties subsequently engaged in extensive settlement negotiations, which culminated in the Settlement Agreement.

OVERVIEW OF THE SETTLEMENT AGREEMENT

In light of the delay, expense, and uncertainties associated with litigation, the parties desire to settle the Trustee’s claims. The Settlement Agreement should be reviewed for a complete account of its terms. The principal terms, however, are as follows:⁴

³ The effective date of the Settlement Agreement is conditioned on Defendant’s receipt of this release from the Joint Liquidators.

⁴ This summary is provided for purposes of convenience only. To the extent any of the terms described below are

- Within five business days after the effective date of the Settlement Agreement, Defendant shall pay or cause to be paid to the Trustee \$10,600,000.00 (the “Settlement Payment”) in full and final satisfaction of the Trustee’s claims;
- The Trustee will release, acquit, and absolutely discharge Defendant and its affiliates as set forth in the Settlement Agreement;
- Defendant will release, acquit, and absolutely discharge the Trustee and his agents and BLMIS and its consolidated estate as set forth in the Settlement Agreement; and
- The parties shall submit for entry by the Court a stipulation and order dismissing the Action with prejudice and without costs to either party.

LEGAL BASIS

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

The bankruptcy court, in determining whether to approve a settlement, should not decide the numerous questions of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (cleaned up); *see also Masonic Hall & Asylum Fund v. Official Comm. of Unsecured Creditors (In re Refco, Inc.)*, No. 05-60006 (RMB), 2006 WL 3409088, at *7 (S.D.N.Y. Nov. 16, 2006), *aff’d*, 505 F.3d 109 (2d Cir. 2007); *In re Ionosphere Clubs*, 156 B.R. at 426. “[T]he court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation.” *In re Purified Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993).

inconsistent with the Settlement Agreement, the Settlement Agreement shall control in all respects.

In deciding whether a settlement falls within the “range of reasonableness,” the bankruptcy court considers the following factors: (i) the probability of success in the litigation; (ii) the difficulties associated with collection; (iii) the complexity of the litigation, and the attendant expense, inconvenience, and delay; and (iv) the paramount interests of the creditors (or in this case, BLMIS’s defrauded customers). *In re Refco, Inc.*, 2006 WL3409088, at *7; *Nellis v. Shugrue*, 165 B.R. 115, 122 (S.D.N.Y. 1994) (citing *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 292 (2d Cir. 1992), *cert. denied*, 506 U.S. 1088 (1993)).

The bankruptcy court may consider and credit the opinions of the trustee of the debtor and his or her counsel in determining whether a settlement is fair and equitable. *See In re Purified Down Prods.*, 150 B.R. at 522; *In re Drexel Burnham Lambert Grp.*, 134 B.R. at 505. Even though the bankruptcy court has discretion to approve settlements and must independently evaluate the reasonableness of the settlement, *In re Rosenberg*, 419 B.R. 532, 536 (Bankr. E.D.N.Y. 2009), the court should consider the business judgment of the trustee and his counsel in determining whether a settlement is fair and equitable. *In re Chemtura Corp.*, 439 B.R. 561, 594 (Bankr. S.D.N.Y. 2010). The court may also consider the competency and experience of counsel supporting the settlement. *Nellis*, 165 B.R. at 122. Finally, the court should be mindful of the principle that “the law favors compromise.” *In re Drexel Burnham Lambert Grp.*, 134 B.R. at 505 (quoting *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)).

The settlement with Defendant is fair and equitable, reasonable, and in the best interest of the BLMIS estate. While the Trustee believes he would ultimately prevail, litigation is never without risk or costs, especially in a case, such as this one, where discovery would likely be extensive and has only recently commenced. By contrast, the settlement with Defendant brings substantial benefits to the BLMIS estate without further expense or uncertainty. It would immediately augment the customer property fund via the Settlement Payment and may encourage settlement discussions with other defendants from whom the Trustee is seeking to recover BLMIS

subsequent transfers. Accordingly, in an exercise of his business judgement, the Trustee believes the settlement represents a fair and reasonable compromise of the Trustee's claims. *See* Declaration of the Trustee in Support of the Motion, a true and accurate copy of which is attached hereto as Exhibit C.

CONCLUSION

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

NOTICE

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

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

Dated: November 22, 2024
New York, New York

Respectfully submitted,

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