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Hearing Date: February 4, 2014, 10:00 a.m. (EST)

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

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 10-4932 (SMB)

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

Plaintiff,

v.

JPMORGAN CHASE CO., JPMORGAN CHASE
BANK, N.A., J.P. MORGAN SECURITIES LLC,
and J.P. MORGAN SECURITIES LTD.,

Defendants.

**REPLY TO NOTICE OF INTENTION TO OPT-OUT FILED IN RESPONSE TO
MOTION FOR ENTRY OF ORDER PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE APPROVING SETTLEMENT OF COMMON LAW
CLAIMS BY AND BETWEEN THE TRUSTEE, THE CLASS REPRESENTATIVES
AND JPMORGAN**

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the estate of Bernard L. Madoff (“Madoff,” and together with BLMIS, the “Debtors”), by and through the Trustee’s undersigned counsel, submits this reply (“Reply”) in further support of the Trustee’s Motion¹ seeking entry of an order, pursuant to section 105(a) of title 11, United States 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 a settlement (“Settlement”) on the Trustee’s common law claims, the terms and conditions of which are set forth in the Settlement Agreement (the “Settlement Agreement”) dated January 6, 2014, by and among the Trustee; Paul Shapiro, and Stephen and Leyla Hill (the “Class Representatives”); and JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, and J.P. Morgan Securities Ltd. (collectively, “JPMorgan” or “Defendants”) (the Trustee, each of the Class Representatives, and each of the Defendants a “Party” and collectively, the “Parties”), and in opposition to the notice of intention to opt-out of the proposed Settlement Agreement (the “Opt-Out Notice”) filed by Helen Chaitman on behalf of a group of “net winner” BLMIS customers (the “Net Winner Customer Group”),² ECF No. 40, the Trustee respectfully represents as follows:

REPLY

1. The Trustee’s Motion seeks approval from this Court of the compromise of his substantial common law claims against JPMorgan. After the Trustee’s common law claims were

¹ Capitalized terms not defined herein shall have the meaning set forth in the Trustee’s Motion.

² Exhibit A to the Opt-Out Notice filed on behalf of the Net Winner Customer Group has a numbered list of 193 BLMIS customers. Three customers, Hendler & Gersten LLC, Todd Rechler, and Scott Rechler, are each listed twice, bringing the total number of customers on whose behalf the Opt-Out Notice was filed to 190. Although the Opt-Out Notice states that it is filed on behalf of “net winner” customers, BLMIS records reveal that nine of the 190 customers listed on Exhibit A have both “net winner” accounts and also have “net loser” accounts. For purposes of this Reply, the Trustee assumes that counsel intended to file only on behalf of “net winner” customers.

dismissed by the District Court, similar claims were brought by the Class Representatives against JPMorgan in two separate class action lawsuits on behalf of “net losers” customers, *i.e.*, BLMIS customers who had not yet recovered their principal investments, *Hill v. JPMorgan Chase & Co.*, 11 Civ. 7961 (CM) (S.D.N.Y.), and *Shapiro v. JPMorgan Chase & Co.*, 11 Civ. 8331 (CM) (S.D.N.Y.).

2. In order to reach a consensual, efficient settlement of these claims in a manner most beneficial to net losers, the Parties agreed that JPMorgan would pay \$218 million to settle the Trustee’s and Class Representatives’ common law claims. The ability of the Parties to reach this complex resolution hinged on the fact that the settlement payment was to be distributed only to net losers. This settlement payment is to be distributed through the class action, upon the approval of this Court and the District Court.

3. On January 10, 2014, District Judge McMahon entered an order preliminarily approving the proposed class action settlement and providing for notice (the “Preliminary Approval Order”), No. 11-cv-8331-CM (S.D.N.Y. Jan. 10, 2014), ECF No. 52, attached hereto as Exhibit A. In the Preliminary Approval Order, Judge McMahon certified a class, for settlement purposes only (the “Settlement Class”), defined as:

All BLMIS customers, including their successors, transferees, or assignees, who directly had capital invested with BLMIS as of the Filing Date and thus, under the net investment method upheld by the United States Court of Appeals for the Second Circuit had net losses (“Net Losses”) as of the Filing Date (“Net Losers”), regardless of whether they had filed a claim in the SIPA proceeding. The net investment method credits the amount of cash deposited by a BLMIS customer into his or her BLMIS account, less any amounts withdrawn from it. *See generally In re Bernard L. Madoff Investment Securities LLC*, 654 F.3d 229 (2d Cir. 2011). The Settlement Class includes all Net Losers, including those that did not file claims in the SIPA proceeding, and is intended to be coterminous with all BLMIS customers who have a positive net equity claim in the SIPA proceeding or would have had a positive net equity claim in the SIPA proceeding had they filed a timely customer claim in that proceeding.

Exhibit A at ¶ 1.

4. The Preliminary Approval Order then excluded from the Settlement Class certain defined BLMIS accountholders, BLMIS employees and insiders, and any persons or entities that exclude themselves from the Settlement Class by opting out. *Id.*

5. The Opt-Out Notice states that the Net Winner Customer Group opts-out of the instant Settlement Agreement in order to pursue separate claims against JPMorgan on behalf of all “net winners.” As an initial matter, the Net Winner Customer Group is not a party to the Settlement Agreement and therefore they cannot “opt-out” of the Settlement Agreement itself. The most that the Net Winner Customer Group could do here is file an objection to the Trustee’s Motion with this Court, which it did not. The Opt-Out Notice sets forth no objection to the terms of the Settlement Agreement and no request that the Court not approve the Trustee’s Motion. It therefore has no impact whatsoever on the Trustee’s Motion for approval of the Settlement.

6. To the extent that the Opt-Out Notice filed in this Court is an effort by the Net Winner Customer Group to “opt-out” of the class action, it is misplaced both because the customers in the Net Winner Customer Group are not class members by definition and because any requests for exclusion from the class action must be done so in accordance with the procedures set forth in the Preliminary Approval Order of the District Court.³ *See* Exhibit A at ¶¶ 12-14.

³ Furthermore, the Net Winner Customer Group’s attempt to opt-out on behalf of themselves and “the class of ‘net winners’ that they represent,” Opt-Out Notice at 2 (emphasis added), is an impermissible violation of due process. Each prospective class member must be provided an opportunity to remove themselves from the class by requesting exclusion or returning an opt-out form to the court. *See* Newberg on Class Actions § 9:49 (5th ed.) (“The right to opt out in a Rule 23(b)(3) class action is considered an *individual* right. Practically, this means that a plaintiff who chooses to opt out herself may not also opt out a group *en masse* without the express consent of each individual.”) (emphasis in original); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1024 (9th Cir. 1998) (“There is no class action rule, statute, or case that allows a putative class plaintiff or counsel to exercise class rights *en masse*, either by making a class-wide objection or by attempting to effect a group-wide exclusion from an existing class. Indeed, to do so would infringe on the due process rights of the individual class members, who have the right to intelligently and individually choose whether to continue in a suit as class members. Additionally, to allow

7. A more basic flaw with the Net Winner Customer Group’s attempt to “opt-out” of the settlement is that they can neither opt out of nor object to a settlement of a class action of which they are not members. The express language of Rule 23 permits only members of a class to object to a settlement. *See* Fed. R. Civ. P. 23(e)(5) (stating “[a]ny class member may object to the proposal if it requires court approval”); *see also* Newberg on Class Actions § 11:55 (4th ed.) (“as a general rule only class members have standing to object to a proposed settlement”); *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989) (“non-class members have no standing to object, pursuant to a Rule 23(e) notice directed to class members, to a proposed settlement”); *Mayfield v. Barr*, 985 F.2d 1090, 1092 (D.C.Cir. 1993) (“The fact that res judicata would bind them provides class members with an incentive to voice their objections. Those who are not class members, because they are outside the definition of the class or have opted out, are on a different footing”).

8. Quite simply, “net winners” such as the Net Winner Customer Group, are not prospective class members under the Settlement Class certified by Judge McMahon on January 10, 2014, nor were they putative class members of the Consolidated Class Action, which Complaint defines the class as “all persons who, directly, had capital invested with BMIS, as of December 12, 2008.” *See* Consolidated Class Action Compl. ¶ 289, 11-cv-8331-CM, ECF No. 18.

9. By definition, “net winners” did not have any remaining capital directly invested with BLMIS as of December 12, 2008. Whether a BLMIS accountholder is a “net winner” or a “net loser” is determined by application of the net investment method, upheld by the Second Circuit in *In re Bernard L. Madoff Investment Securities LLC*, 654 F.3d 229 (2d Cir. 2011),

representatives in variously asserted class actions to opt a class out without the permission of individual class members ‘would lead to chaos in the management of class actions.’”) (citation omitted).

which offsets the amount of money each customer deposited with the money they withdrew from BLMIS. The net investment method shows that the “net winners” had already withdrawn all of their capital by December 11, 2008, in addition to “fictitious profits” comprised of principal investments of other investors. Accordingly, the net winners did not have capital directly invested in BLMIS as of December 12, 2008. They merely had the mistaken belief that they did.

10. The Second Circuit’s ruling on the net investment method and the class definitions set forth in the Preliminary Approval Order and the Consolidated Class Action Complaint are consistent. Having capital invested with BLMIS is synonymous with having a positive balance under the net investment method in December 2008. As such, the Net Winner Customer Group’s assertion that the Settlement Class definition as set forth in the Agreement (and as certified by Judge McMahon) is narrower than the class definition set forth in the Consolidated Class Action Complaint is without merit. Nor is the Net Winner Customer Group permitted, as non-class members, to object to the class definition. In any event, such issues are improperly raised before this Court in the Opt-Out Notice. Any disputes concerning the class definition, assuming they are properly raised in the District Court, will be resolved by Judge McMahon in the class action. Thus, even if this Court was being asked by the Net Winner Customer Group to consider the merits of the Opt-Out Notice, no relief is warranted nor can it be provided.

11. The Net Winner Customer Group cannot opt-out of the Settlement Agreement before this Court because it is not a party to it. And because the Net Winner Customer Group has not raised any objection to the Settlement itself, which is the subject of the Trustee’s Motion, the Opt-Out Notice has no effect on the terms of the Settlement Agreement or on the Trustee’s request that this Court approve the Settlement.

WHEREFORE, the Trustee respectfully requests that the Court enter an order substantially in the form of Exhibit B to the Motion granting the relief requested therein.

Respectfully submitted,

Dated: January 31, 2014
New York, New York

/s/ David J. Sheehan
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*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities
LLC and the Estate of Bernard L. Madoff*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>PAUL SHAPIRO, on behalf of himself as an individual, and on behalf of all others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., J.P. MORGAN SECURITIES LLC, and J.P. MORGAN SECURITIES, LTD.,</p> <p>Defendants.</p>	<p>Case No.: 11-CV-8331 (CM)</p> <p>(ECF CASE)</p> <div data-bbox="1019 555 1479 815" style="border: 1px solid black; padding: 5px;"> <p>USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 1/10/14</p> </div>
<p>STEPHEN and LEYLA HILL, on behalf of themselves as individuals, and on behalf of all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., J.P. MORGAN SECURITIES LLC, and J.P. MORGAN SECURITIES, LTD.,</p> <p>Defendants.</p>	<p>Case No.: 11-CV-7961 (CM)</p> <p>(ECF CASE)</p>

**~~PROPOSED~~ ORDER PRELIMINARILY APPROVING
PROPOSED SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, a proposed class action is pending before the Court in the above-captioned consolidated action (the "Consolidated Class Action");

WHEREAS, plaintiffs Paul Shapiro, Stephen Hill, and Leyla Hill, putative representatives of the proposed class of former customers of Bernard L. Madoff Investment Securities LLC ("BLMIS") in the Consolidated Class Action (the "Customer Representatives"), together with Irving H. Picard, in his capacity as trustee ("Trustee") for the liquidation of the

business of BLMIS under the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa *et seq.*, as amended (“SIPA”), and the substantively consolidated estate of Bernard L. Madoff (“Madoff”), have reached a proposed settlement (the “Settlement”) with defendants JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, and J.P. Morgan Securities Ltd. (collectively, “JPMorgan”), as memorialized in the Settlement Agreement attached as Exhibit 1 to the Declaration of Andrew J. Entwistle, dated January 6, 2014;

WHEREAS, the Customer Representatives have moved, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with the Settlement Agreement, certifying a Settlement Class for purposes of settlement as defined below, and approving notice to the Settlement Class as more fully described herein, and the Trustee supports such motion;

WHEREAS, the Court having considered the Settlement Agreement, the exhibits thereto, including the proposed (a) Notice of Proposed Settlement of Class Action to Direct Investors in Bernard L. Madoff Investment Securities, LLC (“Claim Notice”), (b) Summary Notice, and (c) Proposed Judgment, and the submissions relating thereto, and finding that substantial and sufficient grounds exist for entering this Order; and

WHEREAS, unless otherwise defined herein, all capitalized words contained herein shall have the same meanings as they have in the Settlement Agreement;

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Settlement Class Certification:** Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, and for purposes of the Settlement only, the Court certifies the Consolidated Class Action as a class action on behalf of the following Settlement Class:

All BLMIS customers, including their successors, transferees, or assignees, who directly had capital invested with BLMIS as of the

Filing Date and thus, under the net investment method upheld by the United States Court of Appeals for the Second Circuit, had net losses (“Net Losses”) as of the Filing Date (“Net Losers”), regardless of whether they filed a claim in the SIPA proceeding. The net investment method credits the amount of cash deposited by a BLMIS customer into his or her BLMIS account, less any amounts withdrawn from it. *See generally In re Bernard L. Madoff Securities LLC*, 654 F.3d 229 (2d Cir. 2011). The Settlement Class includes all Net Losers, including those that did not file claims in the SIPA proceeding, and is intended to be coterminous with all BLMIS customers who have a positive net equity claim in the SIPA proceeding or who would have had a positive net equity claim in the SIPA proceeding had they filed a timely customer claim in that proceeding.

Excluded from the Settlement Class are: (i) BLMIS insiders and their families; (ii) defendants in any criminal Madoff-related proceeding; (iii) BLMIS accountholders whose claims against the BLMIS estate were extinguished by virtue of three separate settlements with the Trustee, the estate of Jeffrey Picower, *Picard v. Picower*, 09-1197 (BRL) (Bankr. S.D.N.Y.) (ECF No. 43), the Carl Shapiro Family, *SIPC v. BLMIS*, 08-1789 (Bankr. S.D.N.Y.) (ECF No. 3551), and Jeanne Levy-Church and Francis N. Levy, *SIPC v. BLMIS*, 08-1789 (Bankr. S.D.N.Y.) (ECF No. 1964), and (iv) any persons or entities that exclude themselves from the Settlement Class by filing a request for exclusion that is accepted by the District Court.

2. **Settlement Class Findings:** The Court finds, for purposes of the Settlement only, that the prerequisites for certifying the Consolidated Class Action as 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 thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of the Customer Representatives are typical of the claims of the Settlement Class; (d) Customer Representatives and Co-Lead Counsel (as defined herein) have and will 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 Consolidated Class Action.

3. The Court hereby finds and concludes pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of the Settlement only, that the Customer Representatives are adequate class representatives and certifies them as class representatives on behalf of the Settlement Class, and hereby appoints the law firms of Entwistle & Cappucci LLP and Hagens Berman Sobol Shapiro LLP as Co-Lead Counsel for the Settlement Class.

4. **Preliminary Approval of the Settlement:** The Court hereby preliminarily approves the Settlement, as memorialized in the Settlement Agreement, as fair, reasonable and adequate, and in the best interest of the Customer Representatives and the other Settlement Class members, subject to further consideration at the Settlement Hearing to be conducted as described below.

5. **Settlement Hearing:** The Court will hold a settlement hearing (the "Settlement Hearing") on March 7, 2014 at 10:00 a.m./p.m. at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 14C, New York, NY 10007-1312, for the following purposes: (a) to determine whether the proposed Settlement, on the terms and conditions provided for in the Settlement Agreement, is fair, reasonable and adequate, and should be approved by the Court; (b) to determine whether a Judgment substantially in the form attached as Exhibit C to the Settlement Agreement should be entered dismissing the Consolidated Class Action with prejudice; (c) to determine whether the proposed Plan of Allocation for the Class Settlement Fund is fair and reasonable and should be approved; (d) to determine whether Co-Lead Counsel's upcoming Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses in the amount of the Customer Representatives Attorneys' Fee Payment, should be

approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be furnished to Settlement Class members as set forth in Paragraph 7 of this Order.

6. The Court may adjourn the Settlement Hearing and approve the proposed Settlement with such modifications as the parties may agree to, if appropriate, without further notice to the Settlement Class.

7. **Use of Existing Claims Administrator and Manner of Notice:** AlixPartners LLP, who serves as the Trustee's claims agent in the SIPA proceeding, is appointed Claims Administrator to supervise and administer the notice procedure and the processing of claims in connection with the Settlement as more fully set forth below. Notice of the Settlement and the Settlement Hearing shall be furnished to prospective Settlement Class members as follows:

(a) Not later than (14) calendar days of the date of entry of this Order (the "Notice Date"), the Claims Administrator shall cause a copy of the Claim Notice, substantially in the form attached as Exhibit D to the Settlement Agreement, to be to be mailed by first-class mail to Settlement Class members at addresses on file with the Trustee. A copy of the Claim Notice will also be sent, where appropriate, to the assignee or transferee of any customer claim as reflected on the claims register maintained in the SIPA proceeding;

(b) Not later than seven (7) calendar days after the Notice Date, the Trustee's Professionals and/or Co-Lead Counsel shall cause the Summary Notice, substantially in the form attached as Exhibit E to the Settlement Agreement, to be posted on the Trustee's and Co-Lead Counsel's websites and published via Bloomberg; and

(c) Not later than seven (7) calendar days prior to the Settlement Hearing, the Trustee's professionals and/or Co-Lead Counsel shall serve on JPMorgan's counsel and file with

the Court proof, by affidavit or declaration, of such mailing and publication.

8. **Approval of Form and Content of Notice:** The Court (a) approves the Claim Notice and the Summary Notice, substantially in the form and content as the attached Exhibits D and E, respectively, to the Settlement Agreement, and (b) finds that the mailing and distribution of the Claim Notice and the publication of the Summary Notice in the manner and form set forth in Paragraph 7 of this Order (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise individual Settlement Class members of the pendency of the Consolidated Class Action, of the effect of the proposed Settlement (including the Released Customer Claims), and of their rights to object to any aspect of the proposed Settlement or motion for attorneys' fees and expenses, to appear at the Settlement Hearing, and to exclude themselves from the Settlement Class; (iii) constitutes due, adequate and sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Claim Notice and Summary Notice before they are mailed and published, respectively.

9. **Participation in the Settlement:** Settlement Class members who previously submitted a customer claim in the SIPA proceeding and who wish to participate in the Settlement **DO NOT** need to submit a Claim Form or take any additional steps; they will automatically participate in the Class Settlement **UNLESS** they elect to be excluded from the Settlement by following the procedure outlined herein. Settlement Class members who did not submit a customer claim in the SIPA proceeding but who wish to participate in the Settlement and to be eligible to receive a distribution from the Class Settlement Fund **MUST** complete and submit a Claim Form (to be provided with the Claim Notice) to the Trustee's professionals in accordance

with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be postmarked no later than sixty (60) calendar days after the Notice Date.¹ Notwithstanding the foregoing, the Trustee's professionals may, at their discretion and in consultation with Co-Lead Counsel, accept for processing and payment late claims provided such acceptance does not materially delay the distribution of the Class Settlement Fund to the Settlement Class. By submitting a Claim, a person or entity shall be deemed to have submitted to the jurisdiction of this Court with respect to his, her or its Claim and the subject matter of the Settlement.

10. Each Claim Form submitted must satisfy the following conditions: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding paragraph; (ii) it must be accompanied by adequate supporting documentation, such as BLMIS account statements, or such other documentation as is deemed adequate by the Trustee's professionals; (iii) if the person executing the Claim Form is acting in a representative capacity, a certification of his, her or its current authority to act on behalf of the Settlement Class member must be included in the Claim Form to the satisfaction of the Claims Administrator and

¹ As noted in the Class Notice and related documents, JPMorgan's contemporaneous settlements of the SIPA Trustee's bankruptcy avoidance claims (the "Avoidance Settlement") and the U.S. Attorney's investigation (the "Government Settlement") are subject to separate approval and distribution processes. To receive distributions from the Trustee in connection with the Avoidance Settlement, BLMIS customers must hold an allowed claim in the BLMIS SIPA proceeding. To receive a payment from the Madoff Victim Fund in connection with the Government Settlement, a separate proof of claim in connection with that fund (attached to the Class Notice) must be filed by February 28, 2014. Madoff "feeder funds" and other investment vehicles that are customers of BLMIS may, like other BLMIS customers, participate in distributions from the Class Settlement Fund by following the instructions contained in the Class Notice. Different rules apply to distributions from the Madoff Victim Fund, and Madoff feeder funds will need to follow the rules and procedures applicable to Madoff feeder funds and their investors in connection with distributions from the Madoff Victim Fund, including the proceeds of the contemporaneous Government Settlement. Copies of the relevant forms and additional information concerning the Madoff Victim Fund can be found at the Madoff Victim Fund's website at <http://www.madoffvictimfund.com> or by calling the Administrator of the Madoff Victim Fund at (866) 624-3670.

the Trustee's professionals; and (iv) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

11. Any Settlement Class member who did not submit a customer proof of claim in the SIPA proceeding and does not timely and validly submit a Claim Form or whose claim is not otherwise approved by the Court: (a) shall be deemed to have waived his, her or its right to share in the Class Settlement Fund; (b) shall forever be barred from participating in any distributions therefrom; (c) shall be bound by the provisions of the Settlement and all proceedings, determinations, orders and judgments in the Consolidated Class Action relating thereto, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing, maintaining or prosecuting any of the Released Customer Claims, as more fully described in the Settlement Agreement and Notices.

12. **Exclusion From the Settlement Class:** Any prospective Settlement Class member who wishes to exclude himself, herself or itself from the Settlement Class must request exclusion in writing within the time and in the manner set forth in the Notices, which shall provide that: (a) any such request for exclusion from the Settlement Class must be mailed or delivered such that it is received by the Claims Administrator no later than twenty one (21) calendar days prior to the Settlement Hearing; and (b) that each request for exclusion must (i) state the name, address and telephone number of the person or entity requesting exclusion; (ii) state that such person or entity "requests exclusion from the Settlement Class in the Consolidated Class Action, *Hill v. JPMorgan Chase & Co., et al.*, No. 11-cv-7961 (CM); *Shapiro v. JPMorgan Chase & Co., et al.*, No. 11-cv-8331 (CM)"; and (iii) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be effective unless it provides all the

required information and is received within the time stated above, or is otherwise accepted by the Court.

13. Any person or entity who or which timely and validly requests exclusion from the Settlement Class, in compliance with the terms stated in this Order, and is excluded from the Settlement Class, shall not be a Settlement Class member, shall not be bound by the terms of the Settlement and Settlement Agreement, and shall not receive any distribution from the Class Settlement Fund.

14. Any Settlement Class member who or which does not timely and validly request exclusion from the Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her or its right to be excluded from the Settlement Class; (b) shall be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the Settlement and Settlement Agreement and all proceedings, determinations, orders and judgments in the Consolidated Class Action, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing, maintaining or prosecuting any of the Released Customer Claims, as more fully described in the Settlement Agreement and Notices.

15. **Appearance and Objections at Settlement Hearing:** Any Settlement Class member who does not request exclusion from the Settlement Class may enter an appearance in the Consolidated Class Action, at his, her or its own expense, individually or through counsel of his, her or its own choice, by filing with the Clerk of Court and delivering a notice of appearance to Co-Lead Counsel, the Trustee's counsel, and JPMorgan's counsel, as set forth in Paragraph 17 below, such that it is received no later than twenty one (21) calendar days prior to the Settlement

Hearing, or as the Court may otherwise direct. Any Settlement Class member who does not enter an appearance will be represented by Co-Lead Counsel.

16. Any Settlement Class member who does not request exclusion from the Settlement Class may file written objections to any aspect of the proposed Settlement, the proposed Plan of Allocation and/or the upcoming Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Fee and Expense Motion") and appear and show cause, if he, she or it has any cause, why the proposed Settlement, the proposed Plan of Allocation and/or Fee and Expense Motion should not be approved; *provided, however*, that no Settlement Class member shall be heard or entitled to contest the approval of the terms and conditions of any aspect of the proposed Settlement, the proposed Plan of Allocation and/or the Fee and Expense Motion unless that person or entity has filed written objections with the Court and served copies of such objections on Co-Lead Counsel, the Trustee's counsel, and JPMorgan's counsel at the addresses set forth below such that they are received no later than twenty one (21) calendar days prior to the Settlement Hearing:

A. To the 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

Re: *Hill v. JPMorgan Chase & Co., et al.*, No. 11-cv-7961 (CM); *Shapiro v. JPMorgan Chase & Co., et al.*, No. 11-cv-8331 (CM).

B. Co-Lead Counsel

ANDREW J. ENTWISTLE
ENTWISTLE & CAPPUCCI LLP
280 PARK AVENUE, 26TH FLOOR WEST
NEW YORK, NY 10017

REED KATHREIN
HAGENS BERMAN SOBOL SHAPIRO LLP
715 HEARST AVE., SUITE 202
BERKELEY, CA 94710

C. Counsel for the Trustee

DAVID J. SHEEHAN
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NEW YORK, NY 10011

D. Counsel for JPMorgan

JOHN F. SAVARESE
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51 WEST 52ND STREET
NEW YORK, NY 10019

17. Any objections, filings and other submissions by any objecting Settlement Class member (a) must contain a statement of his, her or its objections, as well as the specific reasons for each objection, including the legal and evidentiary support the Settlement Class member wishes to bring to the Court's attention; and (b) must include documents sufficient to prove membership in the Settlement Class, as defined above in Paragraph 1.

18. Any Settlement Class member who does not make his, her or its objection in the manner provided herein shall be deemed to have waived his, her or its right to object to any aspect of the proposed Settlement, the proposed Plan of Allocation and the Fee and Expense Motion and shall forever be barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlement, the Plan of Allocation or the requested Attorneys' Fees and Litigation Expenses, or from otherwise being heard concerning the Settlement, the Plan of Allocation or the requested Attorneys' Fees and Litigation Expenses in this or any other proceeding.

19. **Settlement Administration Fees and Expenses:** All reasonable costs incurred in notifying Settlement Class members as well as in administering the Settlement shall be paid as set forth in the Settlement Agreement without further order of the Court.

20. **Taxes:** Co-Lead Counsel is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect of the Class Settlement Fund, to pay from the Class Settlement Fund any taxes owed with respect to the Settlement Fund and to otherwise perform all obligations with respect to taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Settlement Agreement.

21. **Termination:** If the Settlement is terminated, or is not approved, or the Effective Date does not occur, this Order shall become null and void, and shall be without prejudice to the rights of the Customer Representatives, members of the Settlement Class, the Trustee, and JPMorgan.

22. **Use of this Order:** Neither this Order nor the proposed Settlement (including the Settlement Agreement or any of its terms, or any aspect of any of the negotiations, discussions and proceedings in connection with the negotiation of and/or efforts to consummate the Settlement): (a) shall be offered in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum or other tribunal other than as may be necessary to enforce the terms of this Order and/or the Settlement; (b) shall be described as, construed as, interpreted as or offered against any party as evidence of and/or deemed to be evidence of any presumption, concession or admission as to any liability, negligence, fault, wrongdoing on their part or the validity of any claim by any party or the merits of any of their defenses; and (c) shall be described as, construed as, interpreted as or offered against any party or any Settlement Class member as evidence of any infirmity in the claims of any party or the Settlement Class, or as evidence that the damages recoverable from any party would not have exceeded the Settlement Amount.

23. **Supporting Papers:** Co-Lead Counsel shall file and serve papers in support of the proposed Settlement, the Plan of Allocation and the Fee and Expense Motion not later than thirty-five (35) calendar days prior to the Settlement Hearing; and reply papers, if any, shall be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

24. The JPMorgan Releasees shall not have any responsibility for or liability with respect to the Plan of Allocation or any application for Attorneys' Fees or reimbursement of Litigation Expenses submitted by Co-Lead Counsel, and such matters will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

25. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation proposed by the Trustee and Co-Lead Counsel, and any application for Attorneys' Fees or reimbursement of Litigation Expenses submitted by Co-Lead Counsel, shall be approved.


26. 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 between the Customer Representatives and Settlement Class members on the one hand and the JPMorgan Releasees on the other, except as provided in the Settlement Agreement and as necessary to carry out or comply with terms and conditions of the Settlement.

27. 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 person or entity has appeared in the above-captioned consolidated action, shall commence or prosecute, or continue to prosecute, in any court or forum any action involving the subject matter of any of the Released Customer Claims against any of the JPMorgan Releasees, including by taking any discovery. This

injunction is necessary to protect and effectuate the Settlement, this Order, and the Court's flexibility and authority to enter judgment when appropriate.

28. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

SO ORDERED this 10 day of January, 2014.



The Honorable Colleen McMahon
United States District Judge *CM*