UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE TREMONT SECURITIES LAW, STATE LAW AND INSURANCE LITIGATION	:	Master File No.: 08 Civ. 11117 (TPG)
This Document Relates to: All Actions	:	**JURY TRIAL DEMANDED**
	:	"**ECF Case**"

MEMORANDUM IN SUPPORT OF MOTION FOR APPROVAL OF FUND DISTRIBUTION ACCOUNT PLAN OF ALLOCATION, DISTRIBUTION PROCEDURES, ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

PRELIMINARY STATEMENT

Plaintiffs' Settlement Class Counsel ("Class Counsel") respectfully submit this Memorandum in support of their Motion for Approval of the Fund Distribution Account Plan of Allocation,[1] Distribution Procedures, Attorneys' Fees and Reimbursement of Expenses (the "Motion").[2] The Motion is further supported by the Joint Declaration of Andrew J. Entwistle, Reed R. Kathrein and Jeffrey M. Haber, with exhibits ("Joint FDA Decl.") and the accompanying Affidavit of Stephen J. Cirami of the Garden City Group, LLC (the "Claims Administrator" or "GCG"), with exhibits ("Cirami FDA Aff."). Class Counsel respectfully

[1] The Fund Distribution Account Plan of Allocation ("proposed FDA POA" or "FDA POA") submitted for the Court's approval is attached hereto as Exhibit A, and is the same as the "Consensus FDA POA" (ECF No. 1050-2) submitted to the Court in connection with the Net Settlement Fund ("NSF") distribution motion recently approved by the Court. ECF No. 1071. As described more fully below, the proposed FDA POA is the product of almost two years of mediation ("Mediation"), conducted by Class Counsel and retired United States District Judge Layn R. Phillips (who also acted as mediator for the underlying settlement ("Settlement") of the above-captioned actions ("Actions")) (the "Mediator" or "Judge Phillips"), and related efforts, and enjoys the unanimous support of the Lead Plaintiffs, Settlement Class Representatives and a vast majority of the Mediation participants invested in the Eligible Hedge Funds as measured by Net Loss. For ease of reference, the defined terms herein will have the same meaning as the definitions in the underlying Stipulation of Partial Settlement (ECF No. 392-1) ("Stipulation") and in the proposed FDA POA unless otherwise noted. For clarity, "FDA" always refers to the Fund Distribution Account created by the Settlement and related approval Order (ECF No. 604) and "NSF" always refers to the separate Net Settlement Fund that is currently being distributed to the Settlement Class.

[2] The Court will recall that the portion of the fee and expense award that was to be payable from the FDA (as opposed to the portion of fees and expenses previously awarded, confirmed and paid from the NSF) was deferred, at the Court's request, until after approval of the FDA POA. The Court properly anticipated that there would be significant additional work by counsel in connection with post-Settlement proceedings, including: the defense of vigorous appeals of the Settlement resolving this litigation and of the settlement of the Madoff Bankruptcy Trustee (the "Madoff Trustee" or "Trustee") proceedings (the "Trustee Settlement") that is principally funding the FDA; related litigation and arbitration permitted under the Settlement; attention to administrative issues and various activities related to allocation of the NSF and FDA -- including development and implementation of the allocation protocol and the conduct of the allocation Mediation and related efforts in order to build the broadest possible consensus for the various plans of allocation, while giving deference to the Fund structure required by the Settlement and all of the relevant equities.

request that the Court enter the [Proposed] Order and Final Judgment submitted concurrently herewith approving: (i) the proposed FDA POA;[3] (ii) the distribution procedures, including the administrative determinations by the Claims Administrator with respect to, *inter alia,* Fund Distribution Claimants' disbursements under the FDA POA; and (iii) attorneys' fees and reimbursement of expenses.

The Settlement of the Actions created two separate funds providing recovery for eligible investors in the Rye Funds[4] and the Tremont Funds[5] (collectively, the "Rye and Tremont Funds" or "Funds"). The first of the two Settlement funds, the NSF, was derived from the consideration

[3] FutureSelect Prime Advisor II LLC, The Merriwell Fund, L.P. and Telesis IIW, LLC (collectively, "FutureSelect") have recently filed a motion referring to something called the "Fortress POA" and an "Investor POA" as purportedly arising out of the Mediation of the FDA plan of allocation. ECF No. 1083. This is not the case. While various proposals were made and ultimately rejected during the Mediation process because they were inequitable, only the FDA POA proposed in this Motion by Class Counsel has the support of a broad consensus of investors from all Funds. Thus, there is no such thing as a "Fortress POA" as FutureSelect suggests, just as there is no putative "Investor POA" as FutureSelect suggests. Rather, FutureSelect's proposal is just that, a "proposal" as Fund Distribution Claimants do not have standing to move for approval of a plan of allocation (though they certainly may advance their own proposal in an objection). *See* ECF No. 604 at 20 ("A separate order shall be entered to approve the application by Plaintiffs' State and Securities Law Settlement Class Counsel . . . for approval of the Plans of Allocation"). In any event, FutureSelect's suggestions are more properly referred to as the "FutureSelect Proposal" and will be addressed as such in this and related filings responding more fully thereto.

[4] The Rye Funds are: (i) Rye Select Broad Market Fund, L.P. ("Rye Onshore"); (ii) Rye Select Broad Market Portfolio Limited ("Rye Offshore"); (iii) Rye Select Broad Market Insurance Fund, L.P. ("Rye Insurance"); (iv) Rye Select Broad Market Insurance Portfolio, LDC (but solely with respect to five investors); (v) Rye Select Broad Market Prime Fund, L.P. (the "Prime Fund"); (vi) Rye Select Broad Market XL Fund, L.P. (the "XL Fund"); (vii) Broad Market XL Holdings Limited; and (viii) Rye Select Broad Market XL Portfolio Limited. Stipulation at ¶1.52.

[5] The Tremont Funds are: (i) Tremont Market Neutral Fund L.P.; (ii) Tremont Market Neutral Fund II, L.P.; (iii) Tremont Market Neutral Fund Limited; (iv) Tremont Opportunity Fund Limited; (v) Tremont Opportunity Fund II L.P.; (vi) Tremont Opportunity Fund III L.P.; (vii) Tremont Arbitrage Fund, L.P.; (viii) Tremont Arbitrage Fund-Ireland; and (ix) Tremont Strategic Insurance Fund, L.P. Stipulation at ¶1.65.

the Tremont Defendants tendered in exchange for releases of the claims Lead Plaintiffs asserted against them in the Actions, and provides recovery to Settlement Class Members, as defined in the Stipulation, based upon the Class Members' net investments in the Rye and Tremont Funds. Stipulation ¶1.53, ¶4. The second Settlement fund -- and the subject of the instant Motion -- is the FDA. Stipulation ¶1.18.

The FDA consists of all assets remaining in the Rye Funds after settlement of the claims of the Madoff Trustee, approved by the Bankruptcy Court in 2011 and subsequently affirmed by the District Court. The FDA is, by definition, a "pour over" account effecting a quasi-liquidation of the Rye Funds. By operation of the Settlement of the Actions, all of the assets remaining in any of the Funds -- including the claims in the Madoff bankruptcy preserved by the Trustee Settlement -- were poured into the FDA for the benefit of limited partners or shareholders of the Settling Funds as of December 11, 2008 (*see* definition of "Fund Distribution Claimant" at ¶ B9 of the proposed FDA POA; Stipulation ¶1.18).[6]

[6] Paragraph 9 of the proposed FDA POA defines "Fund Distribution Claimant" as: "[A]ny limited partner or shareholder invested in Eligible Securities of any Eligible Hedge Fund as of December 11, 2008 or its successors pursuant to any merger or other business combination or by valid assignment (including secondary market purchase of such claims) who is entitled under the Stipulation and this FDA POA to share in the disbursement of the Fund Distribution Account. Only those Fund Distribution Claimants who suffered a net loss on their investments in Eligible Securities . . . are entitled to a payment from the Fund Distribution Account. Only Fund Distribution Claimants who were limited partners or shareholders as of December 11, 2008, or their successors pursuant to any merger or other business combination or by valid assignment (including secondary market purchasers of such claims), may be entitled to a Disbursement from the Fund Distribution Account. For the avoidance of doubt, any person who purchased an interest in an Eligible Hedge Fund after December 11, 2008, shall receive distributions on account of such interest based on the net equity investment of the person who held such interest as of December 11, 2008. Nothing herein is intended to affect the Loan Agreements or the Claim Participation Agreement." For the avoidance of any doubt herein, when we refer to Fund Distribution Claimants in the context of the FDA POA, we are referring at all times to this definition.

Tremont managed two groups of funds: (i) the Rye Funds, which were either directly invested in Madoff/BLMIS[7] or Madoff-exposed through Cross Investments in other Rye Funds, or in the case of the XL Fund, through synthetic investments (based upon swap agreements); and (ii) the Tremont Funds that were invested in a number of different hedge funds that included, but were not limited to, the Rye Funds. Only assets from the Rye Funds have poured over into the FDA.[8] These include two categories of Rye Fund assets -- cash and claims (and related recoveries) in the BLMIS/Madoff bankruptcy, preserved and recognized as a result of the Trustee Settlement. Just over $35 million in cash poured over from the Rye Funds into the FDA (almost all of which came from the XL Fund). In addition, almost $3 billion in bankruptcy claims were awarded to three of the Rye Funds as part of the Madoff Trustee Settlement -- Rye Onshore; Rye Offshore; and Rye Insurance -- which have thus far yielded a net recovery of approximately $620 million that has been deposited into the FDA. Thus, the Madoff Trustee Settlement, achieved by the cooperative efforts of Class Counsel, Counsel for Defendants and the Madoff Trustee, is the principal source of funding for the FDA to date. Joint FDA Decl. at ¶¶7, 25.

The Court will recall that the structure of the Trustee Settlement required the Funds, collectively, to pay approximately $1 billion (funded, in large part, by a loan made by Fund Distribution Claimant Fortress Group LLC and its affiliates (collectively, "Fortress"), along with direct cash payments of approximately $35 million, $8 million and $200 million by the Prime

[7] Bernard L. Madoff Investment Securities is sometimes referred to herein as "BLMIS."

[8] No Tremont Fund assets poured over into the FDA; however, Tremont Fund investors are Fund Distribution Claimants to the extent of their respective Fund's net Cross Investments in the Rye Funds and their contributions to the Trustee Settlement. Depending on the Tremont Fund, its Madoff-related exposure through Cross Investments in one or more Rye Funds could have been as much as 28 percent or as little as 0 percent. For example, the Tremont Opportunity Fund II L.P. had only 6.5% Madoff exposure through its Cross Investments in the Rye Funds.

Fund, Rye Onshore and Rye Offshore, respectively, and approximately $94 million contributed collectively by various Tremont Funds. In exchange, the Trustee agreed to release all "clawback" claims and preserve, and ultimately recognize, the almost $3 billion in Madoff bankruptcy claims of Rye Onshore, Rye Offshore and Rye Insurance (including recognition of a Section 502(h) claim for Rye Onshore and Rye Offshore of 80% of the $1 billion in cash paid by the Funds, as described above).

Through numerous discussions, meetings, vigorous negotiations among sophisticated counsel and investors, and the extensive Mediation sessions and related discussions over approximately the past two years before Judge Phillips, Class Counsel were able to obtain broad-based support for the FDA POA from Fund Distribution Claimants representing the vast majority of the aggregate net ownership interests in the Funds. Joint FDA Decl. at ¶5. Equally important is the view of the Settlement Class Representatives and Lead Plaintiffs who were invested in the various Funds that the FDA POA is the most fair, reasonable and adequate resolution of the positions advanced by investors in prior objections and in the Mediation process. Joint FDA Decl. at ¶23.

The participation of Settlement Class Representatives and Lead Plaintiffs, who were invested in the various Funds, offered structural assurance of fair and adequate representation of all Fund Distribution Claimants. At the same time, the involvement and supervision of the Mediator assured that the Mediation and related proceedings were free of collusion and undue pressure. The fact that the FDA POA arises from protracted Mediation and related discussions, providing all prior objectors and interested parties with standing to participate, with the aid of extremely experienced and sophisticated counsel, provides additional assurance of fair and adequate representation. Joint FDA Decl. at ¶12-21.

Defendants did not participate in the Mediation because the Settlement empowered Class Counsel to act on behalf of the Fund Distribution Claimants and charged Class Counsel with acting in the best interests of the FDA and the Fund Distribution Claimants as a whole. The fact that Defendants did not participate in the Mediation underscores the fact that the entire POA process was non-adversarial. To be sure, the various groups participating in the Mediation vigorously advocated for their self-interest and the FDA POA clearly reflects various compromises hammered out by Class Counsel, but the absence of the Defendants from the Mediation makes it quite clear that the FDA POA is not a settlement in the usual sense. Rather, the FDA POA is a proposal for how the assets that have poured over (and will pour over) into the FDA from the Rye Funds are to be allocated and distributed. As such, unlike a settlement negotiated among adverse parties that might occur without full participation by interested parties (*e.g.*, class members) until after the fact, the FDA POA approval process here provided numerous opportunities for any interested party to advance their concerns, before and during the Mediation and now in the form of an objection to the FDA POA proposed by Class Counsel. Joint FDA Decl. at ¶¶12-21. It is hard to imagine a more direct and complete process for the participation by interested Fund Distribution Claimants and their chosen counsel.[9]

[9] While we will respond separately to the putative subclass motion made by FutureSelect (ECF No. 1076), it is worth noting the fact that the FDA POA is not a settlement in the traditional sense underscores that the cases cited by FutureSelect in its subclass motion are inapt. Even if one were to accept the baseless notion that groups of Fund Distribution Claimants required separate court-appointed representation (as opposed to the representation of their choice, which is what occurred during the Mediation), we would simply end up exactly where we are now -- with an FDA Plan of Allocation proposed by Class Counsel following a Mediation process involving vigorous advocacy by skilled counsel on behalf of sophisticated clients previously invested in the various Funds. In addition to the Settlement Class Representatives and Lead Plaintiffs, each of the various Fund Distribution Claimant groups that might reasonably be imagined (for example, banks and hedge funds invested in Rye Onshore and Rye Offshore, Insurance Companies and other investors in a large Tremont Fund, groups of investors in the XL and Prime Funds -- including FutureSelect, which participated in the Mediation -- and groups of

It is important to note that the FDA POA proposed here: (i) provides that all eligible Fund Distribution Claimants previously invested in eligible Rye or Tremont Funds that contributed to the Trustee Settlement will be treated equivalently in that all will receive the benefit of a claim in the FDA equal to their *pro rata* share of 80% of their Fund's contribution to the Madoff Trustee Settlement;[10] (ii) preserves all net Cross Investments and gives every Fund Distribution Claimant previously invested in a Fund with net Cross Investments a claim equal to their *pro rata* share of their Fund's Cross Investments; and (iii) allocates to Fund Distribution Claimants their respective net *pro rata* share of the assets poured over into the FDA as a result of the Settlement here and the Trustee Settlement. Joint FDA Decl. at ¶¶23-24.

By contrast, the FutureSelect Proposal recently submitted to the Court is, in reality, the proverbial wolf in sheep's clothing. *See* ECF No. 1083-1. It cloaks itself in the guise of treating all investors equitably, when it does no such thing. To be sure, the FutureSelect Proposal gives all investors a *pro rata* share of the FDA, but to do that, it takes the bulk of the assets contributed by the three Funds that poured their Trustee Settlement claims into the FDA, ignores the Cross Investments by other Funds that the Settlement requires be preserved and ignores the need to

---

investors in other Tremont Funds, etc.) were represented by some of the leading firms in the world during the Mediation and related proceedings. No purpose will be served by resetting the clock and redoing the entire Mediation (the only natural consequence of the FutureSelect subclass application), given the vigorous advocacy and broad participation here, and the fact that no rights of any Fund Distribution Claimant to contest the proposed FDA POA were impaired in any way. Simply stated, we gave the original objectors and other interested persons a chance to fully participate in the Mediation, and those entities and any other person or entity may yet come before the Court to comment on, support or object to the FDA POA.

[10] We note that while the Trustee did not recognize any bankruptcy claim for many of the Funds contributing to the Trustee Settlement, it did recognize a claim under Section 502(h) of the Bankruptcy Code for three of the Rye Funds, including recognized bankruptcy claims in the amount of 80% of the total contribution by the Funds to the Trustee Settlement. Thus, the proposed FDA POA treats on an equivalent basis all Fund Distribution Claimants invested in Funds contributing to the Trustee Settlement.

address Trustee Settlement contributions in an equitable way. As "simple" as the FutureSelect Proposal appears, it is neither fair nor equitable to those whose assets fund the FDA. Taking assets from those who contributed them, to give them to investors who contributed little or nothing to fund the FDA, does not serve equity or comport with the approved Settlement here.

While the FDA POA proposed by Class Counsel does not resolve every issue raised by every investor in the context of the Mediation, many of those issues have nothing to do with the FDA, itself, or FDA-related equities (*e.g.*, attempts to re-litigate or otherwise bring into the allocation process issues resolved by the Settlement of the Actions or issues being litigated in opt-out proceedings, or to assert purely self-interested arguments directed to increasing or accelerating a claimant's direct distribution). In simplest terms, the proposed FDA POA is the embodiment of an arm's-length compromise by the vast majority of the net aggregate investors to facilitate distribution of the FDA on as expedited a basis as possible. As such, we respectfully seek the Court's approval of the following as fair, reasonable, adequate and in the best interests of the Fund Distribution Claimants: (i) the proposed FDA POA; (ii) the proposed distribution and related procedures; and (iii) the requested award of attorneys' fees and reimbursement of expenses paid in the prosecution of the Actions since May 2011.

FACTUAL BACKGROUND

A. Overview Of The Litigation

As is now well known, the Actions arise from the collapse of Bernard L. Madoff Investment Securities in December of 2008. Investors in the Rye and Tremont Funds filed several putative class actions and derivative complaints against the Defendants, alleging violations of state and federal law. On March 26, 2009, the Court entered an order that: (i)

created three separate groups of consolidated actions;[11] (ii) consolidated specific cases within each group; and (iii) assigned a master caption of *In re Tremont Securities Law, State Law and Insurance Litigation,* Master File No. 08 CIV. 11117 (TPG). The Court also consolidated several other actions alleging substantially similar facts and asserting similar legal theories against the Defendants. Plaintiffs filed amended complaints in the Actions and certain Defendants moved for dismissal on May 20, 2009. While dismissal was pending, the parties discussed possible settlement of the Actions.

On March 18, 2010, following hard-fought, arm's-length settlement discussions and related investigation and review of complex materials, the parties reached an agreement in principle to settle the Actions and reduced that agreement to a memorandum of understanding setting forth the principal terms of the agreement. Resolution of open issues and vigorous negotiations over the structure, and related efforts to achieve resolution of the Trustee bankruptcy litigation, delayed submission of the Stipulation until February 25, 2011.

On May 4, 2011, Class Counsel filed a motion asking the Court to enter an order approving the Settlement, plans of allocation and an initial request for fees and expenses through May 2011. ECF No. 440. The Court subsequently held hearings on June 1, 2011 and August 8, 2011 regarding approval of the Settlement, the plans of allocation and the fee and expense application.

At the August 8, 2011 hearing, Class Counsel agreed with the Court to postpone until a later date consideration and resolution of all issues regarding the NSF and FDA plans of allocation, and that portion of Class Counsel's global fee application payable from the FDA. Class Counsel also agreed with the Court to work to create as broad a consensus as possible with

[11] The three groups were the Securities Actions, the State Law Actions and the Insurance Actions.

respect to the relevant plans of allocation. *See* Hr'g Tr. 36, 66-67, Aug. 8, 2011, ECF No. 599. The Court approved the Settlement on August 19, 2011. ECF No. 604. There were various related post-Settlement proceedings that required substantial efforts by Class Counsel but, for the sake of brevity, we focus here on those proceedings having the most direct impact on the FDA.

1. The Bankruptcy Proceedings and Trustee Settlement

The Trustee Settlement was the culmination of proceedings that began on December 11, 2008, when the Securities and Exchange Commission ("SEC") filed a complaint in this District against Madoff and related defendants. The complaint alleged that Madoff *et al.* engaged in fraud through the investment advisor activities of BLMIS.

On December 15, 2008, pursuant to section 78eee(a)(4)(A) of the Securities Investor Protection Act ("SIPA"), the SEC consented to a combination of its action with an application of the Securities Investor Protection Corporation ("SIPC"). Thereafter, SIPC filed an application alleging, *inter alia*, that Madoff was not able to meet his obligations to securities customers and, thus, his customers needed the protection afforded by SIPA. On April 13, 2009, an involuntary bankruptcy petition was filed against Madoff. On June 9, 2009, the Bankruptcy Court entered an order substantively consolidating the Chapter 7 estate of Madoff into the SIPA proceeding.

Prior to July 2, 2009, the bar date for filing claims in the bankruptcy proceedings, Rye Onshore, Rye Offshore, Rye Insurance, the Prime Fund and Rye Select Broad Market Insurance Portfolio, LDC ("Insurance Portfolio LDC ") filed customer claims with the Trustee (the "Customer Claims"). The Trustee denied the Prime Fund's Customer Claim; the Prime Fund did not file an objection to that determination.

On December 7, 2010, the Trustee filed an adversary proceeding against Tremont Group Holdings, Inc. and related entities seeking to recover more than $2.1 billion in direct transfers

made from Madoff to the Funds, which could have wiped out any assets remaining in the Funds and any related claims in the Madoff bankruptcy. The Settlement here facilitated the structuring of the Trustee Settlement with the participation of Class Counsel, Defendants and the Madoff Trustee, which required: (1) the defendants in that proceeding to pay to the Trustee $1 billion in cash; (2) upon the effective date of the Trustee Settlement, the Trustee to allow Customer Claims in the SIPA proceedings for the Rye Onshore, Rye Offshore and Rye Insurance Funds in the aggregate amount of $2,186,177,715.88 (comprised of (a) $1,647,687,625.00 for Rye Onshore, (b) $498,490,000.88 for Rye Offshore and (c) $40,000,000.00 for Rye Insurance); and (3) the Trustee to allow additional claims for Rye Onshore and Rye Offshore under Section 502(h) of the Bankruptcy Code in the aggregate amount of $800,000,000 (80% of the $1 billion in cash paid to fund the Trustee Settlement). The defendants in that proceeding also exchanged releases with the Trustee. To facilitate the payment required under the Trustee Settlement, Fortress and related entities loaned Rye Onshore and Rye Offshore approximately $650 million (the "Fortress Loan"). Certain Rye and Tremont Funds that invested with Madoff contributed the remainder of the balance owed under the Trustee Settlement.

2. The Appeals Process

Following approval of the Settlement of the Actions, various objectors engaged in post-approval motion practice and vigorously contested appeals both of the Settlement and the Trustee Settlement (the predominant source of funding for the FDA, without which there would be virtually no assets to distribute in the FDA). Joint FDA Decl. at ¶7. In this regard, Class Counsel defended against multiple objectors to the Settlement and the related Trustee Settlement. Joint FDA Decl. at ¶¶9-10. In the course of doing so, Class Counsel addressed multiple legal and factual arguments contained in thousands of pages of filings concerning subject matter

jurisdiction, the adequacy of the Settlement Class Representatives and Lead Plaintiffs, class certification and the overall fairness of the Settlement, all of which required extensive research and legal memoranda. *Id.* This necessarily involved numerous rounds of briefing on motions to dismiss the appeals, related post-approval motions in the District Court, appellate briefing and arguments in multiple courts, a motion for reconsideration of the Second's Circuit's dismissal, a motion to vacate the Second Circuit's judgment affirming the Settlement, a motion for reconsideration of the Second Circuit's decision and a petition for *Writ of Certiorari* before the U.S. Supreme Court, as well as oral argument before the Second Circuit and related negotiations, strategic discussions and legal and factual analyses concerning each of the foregoing issues. *In re Tremont Sec. Law, State Law, & Ins. Litig.*, 561 F. App'x 61 (2d Cir. 2014); *In re Tremont Sec. Law, State Law, & Ins. Litig.*, 542 F. App'x 43 (2d Cir. 2013). The Settlement became final when the Supreme Court denied *Certiorar*i on October 6, 2014. *Haines v. Arthur E. Lange Revocable Trust*, 135 S.Ct. 270 (2014).

In the bankruptcy context, Class Counsel participated in strategic discussions with the Trustee and counsel for Defendants, performed legal research and drafted various legal memoranda in opposition to a complex set of objections to the Trustee Settlement, filed by a formidable group of institutional investors that purchased interests in the XL Fund and the Prime Fund, each of which argued, among other things, that the Trustee Settlement's proposed allocation of Section 502(h) credits to only Rye Onshore and Rye Offshore was inequitable, and that adversary claims against Tremont and various bank defendants were unfairly released. Joint FDA Decl. at ¶11. The Bankruptcy Court overruled those objections, finding the allocation of the $800 million to Rye Onshore and Rye Offshore was appropriate, the adversary claims were properly released and, thus, the Trustee Settlement was a "complete, good faith compromise of

the Trustee's claims." *See Picard v. Tremont Grp. Holdings., Inc.*, Adv. Pro. No. 10-05310 (Bankr. S.D.N.Y. Sept. 22, 2011) (ECF No. 38-1, at 2).

The objectors appealed that decision to the District Court and Class Counsel were actively involved in the appeal, working directly with the Trustee and Counsel for Defendants on various research assignments and legal memoranda. Joint FDA Decl. at ¶11. The District Court ultimately found the appellants lacked standing to challenge the Trustee Settlement and, on that basis, dismissed the appeal. *In re Bernard L. Madoff Inv. Sec. LLC*, No. 11 CV 7330 (GBD), 2012 WL 2497270, at *1 (S.D.N.Y. June 27, 2012). The Bankruptcy Court's order is, therefore, final regarding approval of the terms of the Trustee Settlement.

B. The Mediation Process

During the appeals process and thereafter, Class Counsel engaged in countless telephone discussions and in-person meetings, both as a group and individually, with scores of investors in the various Rye and Tremont Funds regarding the terms of the Settlement, the operation of the NSF and FDA, the plans of allocation, anticipated distribution of the NSF and FDA and various other procedural issues and developments. Joint FDA Decl. at ¶¶12-21. These communications regularly required the review and analysis of extensive underlying transactional documents, structural documents regarding the Rye and Tremont Funds, swap transaction documents in connection with the XL Fund and related materials that impacted the issues raised during these often extended discussions. Joint FDA Decl. at ¶¶12, 16. At the same time, Class Counsel continued to investigate, develop and prosecute related claims that could potentially lead to further recovery for investors in the Rye and Tremont Funds.

Class Counsel also worked extensively with prior objectors and various interested parties who invested in one or more of the Rye and Tremont Funds and expressed a desire to participate

post-Fairness Hearing ("Interested Parties" or "Parties") through Mediation before Judge Phillips in an attempt to achieve a consensus on the allocation of the NSF and the FDA. In this regard, Class Counsel created a process by which they first contacted in April 2014 persons who objected or appeared at the Fairness Hearing as well as other persons expressing a desire to participate post-Hearing, and solicited proposed FDA plans of allocation (or related commentary) from those individuals in advance of a two-day mediation that would take place in late July 2014. ECF No. 989 at ¶11; *see also* Mediation protocol memorandum attached hereto as Exhibit B. Class Counsel also provided these individuals with a proposed NSF plan of allocation, substantially similar to the NSF plan of allocation filed with the Court during the Settlement approval process, and advised that Class Counsel would take comments on the NSF plan of allocation as well. Finally, Class Counsel invited each of the Interested Parties to contact us via telephone or e-mail in advance of the July Mediation, so that we could address any questions or concerns and further facilitate the process.

We received various inquiries regarding the confidentiality of proposed plans of allocation and related materials that would be submitted by Interested Parties, and advised the Parties by memorandum that all Mediation submissions would be viewed solely by Class Counsel and the Mediator, and that the submissions and other Mediation documents would be considered confidential material, consistent with the Model Standards of Conduct for Mediators. Thereafter, Class Counsel received submissions from eleven groups of Fund Distribution Claimants (almost all of which consisted of multiple investors) raising various issues concerning the FDA and NSF plans of allocation.[12] ECF No. 989 at ¶7. Supplemental submissions

[12] Because of the confidential nature of the Mediation, the agreement among the participants to the Mediation to maintain the confidentiality of the negotiations and the mandate of such confidentiality by Judge Phillips, the specific issues raised and the positions taken by the

regarding limited issues were also solicited in advance of the Mediation. Class Counsel agreed to provide to every participant a wide range of confidential documents detailing specific financial information for the Funds and the individual investors therein under strict confidentiality and solely for the purpose of mediation.

The July 2014 Mediation session was attended by investors in virtually all of the eligible Rye and Tremont Funds, each represented by sophisticated counsel vigorously advocating their positions. Joint FDA Decl. at ¶17. Indeed, the Mediation attendees consisted of some of the largest and most sophisticated financial institutions in the country. A large number of attendees had more than $50 million at stake, multiple parties had more than $100 million at stake, and some had in excess of $250 million at stake. *Id*. During the July 2014 Mediation sessions, which consisted of two full days, Class Counsel and the Mediator conducted numerous group sessions and individual sessions, in which the participants were able to express their views on various issues impacting the plans of allocation.

Class Counsel was ultimately able to confirm near-universal support for the NSF POA among the Interested Parties during the July 2014 Mediation session. Accordingly, Class Counsel subsequently moved for approval of the NSF POA on December 15, 2014. ECF No. 987. There were no objections and the Court approved the NSF POA on December 22, 2014. ECF No. 994. Thereafter, on February 27, 2015, Class Counsel moved for distribution of the NSF and in connection with that motion, sought the Court's approval to readmit to the Settlement Class a group of investors who had previously opted out of the Settlement Class. ECF No. 1003. After considering supporting and opposing arguments, the Court approved distribution of the NSF and permitted the opt-outs to re-enter the Settlement Class. ECF No. 1071; ECF No. 1072.

---

attendees are not disclosed in this memorandum.

On March 4, 2015, at the request of Class Counsel, Judge Phillips contacted via e-mail the Interested Parties who had not yet resolved their disagreements regarding the consensus FDA plan of allocation under consideration. *See* Joint FDA Decl. ¶20. Following additional submissions, the Mediator, in conjunction with Class Counsel, conducted a further confidential in-person Mediation session on May 8, 2015. *Id.*

Through the numerous discussions, meetings, vigorous negotiations among sophisticated counsel and investors and the extensive Mediation sessions over approximately the past two years, Class Counsel ultimately obtained broad-based support for the FDA POA of the Rye and Tremont Fund investors representing the vast majority of the aggregate net ownership interests in those Funds. Joint FDA Decl. at ¶21.

C. The Fund Distribution Account

The Settlement of the Actions established two separate funds: (i) the NSF (i.e., the gross settlement paid by Defendants plus certain recoveries and less taxes, fees and expenses) (Stipulation ¶¶1.20, 1.34, 2.1-2.19); and (ii) the FDA (Stipulation ¶1.19, 2.20-2.23). Only those investors in the Rye and Tremont Funds who were included in the definition of the Settlement Class could recover from the NSF. Stipulation ¶1.53. As described above, the FDA will be allocated among all eligible Fund Distribution Claimants pursuant to the proposed FDA POA. Stipulation ¶¶1.18, 5.6. The FDA consists of all assets remaining in the Rye Funds after the claims of the Madoff Trustee were settled, plus any recovery these Funds receive from the Trustee Settlement net of obligations related to the Fortress Loan.[13] Stipulation ¶¶1.19, 2.20-2.23. Only eligible Fund Distribution Claimants share in the FDA. Stipulation ¶1.18.

[13] The Stipulation defines the FDA as "the account for distribution of the Remaining Fund Proceeds to the Fund Distribution Claimants, and the distribution of all monies remaining in the Liquidating Funds after the Madoff Trustee Proceedings to the Liquidators of the Liquidating Funds." Stipulation at ¶1.19. The Remaining Fund Proceeds are defined as "(i) all amounts

D. Fund Distribution Account Plan of Allocation

As discussed above, the FDA is a pour over account that Class Counsel structured as part of the Settlement. The FDA consists of the remaining cash from the Rye Funds and claims (and related recoveries) the Funds received in connection with the Trustee Settlement. The proposed FDA POA allocates the FDA to eligible Fund Distribution Claimants based upon the following components, as applicable: (i) SIPC Claims in the Madoff bankruptcy proceedings or Virtual SIPC Claims based upon the Funds' contributions to the Trustee Settlement; (ii) Cross Investments in other Funds; and (iii) for the XL Fund, the XL Priority Allocation. *See* proposed FDA POA, Exhibit A, hereto.

Under the FDA POA, three of the Rye Funds -- Rye Onshore, Rye Offshore and Rye Insurance -- have SIPC Claims, as discussed above. The Trustee Settlement, approved by the Bankruptcy Court, granted these three Funds SIPC Claims in exchange for the nearly $1 billion contribution to the BLMIS estate (approximately $650 million was from loans provided by the Fortress-related entities). *Picard v. Tremont Grp. Holdings., Inc.*, Adv. Pro. No. 10-05310 (Bankr. S.D.N.Y) (See ECF Nos. 17-1 and 38-1). The Rye and Tremont Funds that contributed cash directly to the Trustee Settlement, but did not receive a SIPC Claim thereunder, receive a Virtual SIPC Claim equal to 80% of the amount of their contribution to the Trustee Settlement.[14] *Id*; *see Picard v. Tremont Grp. Holdings., Inc.*, Adv. Pro. No. 10-05310 (Bankr. S.D.N.Y) ECF. Nos. 17-1 at 14-15; FDA POA at 4-5. This 80% credit for Virtual SIPC Claims is equivalent to

---

remaining in the Rye Funds (with the exception of the Liquidating Funds) after resolution of the Settling Funds' claims in or relating to the Madoff Trustee Proceedings; and (ii) all amounts the Tremont Funds would otherwise be entitled to from the Fund Distribution Account as a result of the Tremont Funds' investments in the Rye Funds." *Id.* at ¶1.50.

[14] These Funds include Tremont Market Neutral Fund L.P.; Tremont Market Neutral Fund II, L.P.; Tremont Opportunity Fund II L.P.; and Tremont Opportunity Fund III L.P. and the Prime Fund.

the 80% 502(h) claim that the Rye Onshore and Rye Offshore Funds received as part of the Trustee Settlement. *Id.* In addition, the FDA POA preserves Cross Investments by the Rye and Tremont Funds on a net investment basis.[15] FDA POA at 1.

Lastly, the "XL Priority Allocation" is the priority distribution to XL Fund Distribution Claimants of the first $32,409,239 from the FDA. FDA POA at 5. This amount is equal to the cash contribution the XL Fund directly made to the FDA. While it may seem to some that this priority gives the XL Fund unfairly favorable treatment, the fact is, it simply returns to XL Fund investors the cash poured over at the time the FDA was created. In this regard, the XL Fund did not participate in the Trustee Settlement, but directly contributed funds to the FDA as part of the agreement governing that settlement. Thus, the XL Fund is the only Rye Fund that contributed to the FDA (in an amount that was anything but *de minimis*) and received no release in return, so it is in a unique position that is fully addressed by the XL Priority Allocation. Through long and hard-fought negotiations during the Mediation process, Class Counsel were able to secure a compromise among the Mediation participants, such that the investors in Funds, other than the XL Fund, ultimately agreed to forego any claims they may have had to the cash contributed by the XL Fund to the FDA, thereby allowing investors in the XL Fund to receive this additional recovery.

After combining the foregoing components for the respective Funds, the FDA POA uses Fund Distribution Claimants' net investment in each of the Funds to determine the Claimants' *pro rata* share of the Fund's allocated interest in the FDA.

[15] For example, the Prime Fund invested in both Rye Onshore and the XL Fund and, thus, receives credit for these investments under the FDA POA.

E. The Claims Administration

1. The Data the Claims Administrator Utilized Under the FDA POA

The Claims Administrator has utilized several sources of data to determine the proposed disbursements to Fund Distribution Claimants. Tremont provided the Claims Administrator with, among other things, documents containing: (i) a list of investors eligible to receive payment under the FDA; (ii) each investor's total net investment in each of the Rye and Tremont Funds; (iii) the Madoff exposures of each of the Funds; (iv) the cash remaining in each of the Rye and Tremont Funds; (v) Cross Investments among the Rye and Tremont Funds; (vi) the Rye and Tremont Funds' payments to the Madoff Trustee in accordance with the Trustee Settlement; and (vii) the Rye and Tremont Funds' SIPC Claims, if any. The Claims Administrator will also utilize the claim forms that certain investors submitted under the NSF which reflect those investors' contributions and withdrawals in the various Rye and Tremont Funds. Cirami FDA Affidavit ¶12; *see* ECF No. 988 at 10-11 (describing the NSF claims process in detail).

2. The Claims Administrator's Calculation of Fund Distribution Claimants' Disbursements Under the FDA POA

Based upon the information described above, the Claims Administrator has uploaded into its database the transaction data containing the contributions and withdrawals of each Fund Distribution Claimant in the Eligible Hedge Funds.[16] Cirami FDA Affidavit ¶9. The Claims Administrator will then determine each Eligible Hedge Funds' Allocated Interest under the FDA POA, and then calculate the Funds' shares of the FDA on a *pro rata* basis. Cirami FDA Affidavit ¶10; *see* FDA POA at 2, 5-6. GCG will review this information for quality assurance purposes, in order to ensure the data is recorded and processed accurately. Cirami FDA

[16] Under the FDA POA, the definition of "Eligible Hedge Funds" encompasses the Rye and Tremont Funds, as defined in the Stipulation. *See* FDA POA at 2.

Affidavit ¶10. The Claims Administrator will use each Fund Distribution Claimant's net investment data to calculate its Recognized Claim and Disbursement from the FDA. Cirami FDA Affidavit ¶10. GCG will repeat this process to the extent the FDA receives additional proceeds from the Madoff Trustee, pursuant to the Trustee Settlement.

ARGUMENT

I. THE FUND DISTRIBUTION ACCOUNT PLAN OF ALLOCATION SHOULD BE APPROVED

A plan for allocating settlement proceeds should be approved if it is fair, reasonable and adequate. *See In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012); *In re Bear Stearns Co., Inc. Sec., Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 270 (S.D.N.Y. 2012). A plan of allocation is fair and reasonable as long as it has a "rational basis." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM)(PED), 2010 WL 4537550, at *21 (S.D.N.Y. Nov. 8, 2010); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 497 (S.D.N.Y. 2009). Generally, a plan of allocation that reimburses class members based on the relative strength and value of their claims is reasonable. *See*, *e.g.*, *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 580 (S.D.N.Y. 2008). *See also Maley v. Del Global Tech. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) ("'[a] plan of allocation that reimburses class members based on the extent of their injuries is . . . reasonable.'") (citation omitted).

Plans of allocation, however, need not be tailored to fit each and every class member with "mathematical precision." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 133 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997). Rather, broad classifications may be used in order to promote "[e]fficiency, ease of administration and conservation" of the settlement fund. *Id.* at 133-35. In determining whether a plan of allocation is fair and reasonable, courts give great weight to the opinion of experienced counsel. *See In re Giant Interactive Grp., Inc.*

Sec. Litig., 279 F.R.D. 151, 163 (S.D.N.Y. 2011) ("[i]n determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel") (citation omitted); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 145 (S.D.N.Y. 2010) (same).

The method by which the proposed FDA POA allocates the funds in the FDA among the various Rye and Tremont Funds is fair, reasonable and adequate. Joint FDA Decl. at ¶23. It is consistent with the terms of the Trustee Settlement and Bankruptcy Court order approving that settlement, accords with Fund structure, preserves all Cross Investments between Funds (on a net basis) and treats on an equivalent footing all Funds participating in the Trustee Settlement by giving all Funds the equivalent 80% credit for their contribution to the Trustee Settlement. *Id*. Under the FDA POA, the Claims Administrator will determine each Fund Distribution Claimant's *pro rata* share of the FDA with respect to each Eligible Hedge Fund's Allocated Interest by the following three-step-methodology.

First, the Claims Administrator will determine the Eligible Hedge Fund Allocated Interest for each Eligible Hedge Fund by adding together any SIPC Claim, Virtual SIPC Claim and Cross Investments (and, for XL only, the XL Priority Allocation). For the avoidance of doubt, under this first step, the Claims Administrator will cause the XL Priority Allocation to be satisfied and distributed to Fund Distribution Claimants who have ownership interests in the XL Fund before any other distributions are made from the FDA. Once the XL Priority Allocation is satisfied, the Claims Administrator will determine that (i) Rye Onshore has an Eligible Hedge Fund Allocated Interest equivalent to 75.46%[17] of the remainder of the FDA, (ii) Rye Offshore has an Eligible Hedge Fund Allocated Interest equivalent to 20.05% of the remainder of the FDA, (iii) Rye

[17] The percentages in this discussion and in the proposed FDA POA reflect the combination of the Funds' SIPC Claims, as recognized by the Trustee Settlement and Bankruptcy Court, and Virtual SIPC Claims, and do not include the allocated value of any Cross Investments -- all of which are preserved under the proposed FDA POA.

Insurance has an Eligible Hedge Fund Allocated Interest equivalent to 1.29% of the remainder of the FDA, (iv) the Prime Fund, a net winner Fund, has an Eligible Hedge Fund Allocated Interest equivalent to .88% of the remainder of the FDA (plus the allocated value of its Cross Investments in both Rye Onshore and the XL Fund), and (v) the Tremont Funds, collectively, have an Eligible Hedge Fund Allocated Interest equivalent to 2.32% of the remainder of the FDA (plus the allocated value of each Fund's Cross Investments), which shall be allocated as follows: 0.127% to Tremont Market Neutral Fund L.P. (plus the allocated value of its Cross Investments); 0.516% to Tremont Market Neutral Fund II, L.P. (plus the allocated value of its Cross Investments); 0.217% to Tremont Opportunity Fund II L.P. (plus the allocated value of its Cross Investments); and 1.460% to Tremont Opportunity Fund III L.P. (plus the allocated value of its Cross Investments). For the avoidance of doubt and for illustrative purposes, the Prime Fund would recover 0.88% of the FDA plus the allocated value of any Cross Investments in Rye Onshore and the XL Fund.

Second, the Claims Administrator will then calculate the Net Investment of each Fund Distribution Claimant in each Eligible Hedge Fund in which it has an ownership interest and then apply such Net Investment to determine the *pro rata* share each Fund Distribution Claimant has in each such Eligible Hedge Fund's Allocated Interest in the FDA.

Finally, the Claims Administrator will then make disbursements directly to the Fund Distribution Claimants in accordance with the above calculations. Under the proposed FDA POA, no Fund Distribution Claimant will receive more than his, her or its Recognized Claim. Eligible Policyholders will be paid by their Eligible Carrier out of the Eligible Carrier's Disbursement, based on a methodology to be determined by the Eligible Carrier. For the International Fund Liquidations, distributions will be made at the direction of the Liquidators.

For all of the reasons described herein, the FDA POA is fair, reasonable and adequate in all respects and its adoption by the Court, together with the related administrative and distribution procedures set forth in the Cirami FDA Affidavit, is in the best interests of the Fund Distribution Claimants.

II. THE COURT SHOULD APPROVE THE ADMINISTRATIVE PROCEDURES AND DETERMINATIONS BY THE CLAIMS ADMINISTRATOR WITH RESPECT TO PROCESSING FUND DISTRIBUTION ACCOUNT DISBURSEMENTS

As set forth herein and in the Cirami FDA Affidavit, the Claims Administrator has performed the administrative work necessary to process disbursements with respect to the FDA, consistent with the Court's prior orders. The Court should approve those administrative determinations and related claim resolution procedures as fair, reasonable and adequate and in the best interests of the Fund Distribution Claimants.

III. THE COURT SHOULD APPROVE DISTRIBUTION OF THE FUND DISTRIBUTION ACCOUNT

A. Determinations By The Claims Administrator Concerning Each Fund Distribution Claimant's Recognized Loss Should Be Approved

Class Counsel and the Claims Administrator will effectuate distribution of the FDA consistent with the Court's prior Orders and the proposed FDA POA. In order to do so, the Claims Administrator will first determine which investors were eligible to recover under the FDA, and will then calculate the net investment of each Fund Distribution Claimant in the Rye and Tremont Funds. The Claims Administrator will calculate the Eligible Hedge Fund Allocated Interest for each Eligible Hedge Fund based upon the components described above, including the Funds' SIPC Claim or Virtual SIPC Claim, Cross Investments and, for XL only, the XL Priority Allocation. *See* FDA POA at 5-6. Thereafter, the Claims Administrator will use the Eligible Hedge Funds' Allocated Interests to divide the FDA among the Eligible Hedge Funds on a *pro*

rata basis. GCG will then use the net investments of each Fund Distribution Claimant, including Funds that had Cross Investments, to calculate their *pro rata* share of the Funds in which they invested. The Fund Distribution Claimants' *pro rata* share of each Fund will then be multiplied by the portion of the FDA allocated to Fund Distribution Claimants previously invested in that Fund, resulting in the amount of the disbursement each Fund Distribution Claimant receives.

Many of the determinations the Claims Administrator must make regarding distribution of the FDA are similar to the determinations that were made under the NSF distribution, especially in relation to Fund Distribution Claimants who filed claim forms under the NSF. Cirami FDA Affidavit ¶12. However, a number of Fund Distribution Claimants did not file claim forms for the NSF, either because they opted out of the Settlement Class or because they were not part of the Settlement Class to begin with. *Id.* For Fund Distribution Claimants who did not submit claims under the NSF, the Claims Administrator will analyze and use the data provided by Tremont to calculate their net investments in each of the various Funds.

The Claims Administrator has identified approximately 1,200 accounts at Eligible Hedge Funds for processing and determination pursuant to the FDA POA. *Id*. In that regard, the Claims Administrator has already processed and determined 734 claims in connection with the NSF and those same determinations will be used in connection with the FDA (with the exception that the step-up adjustments and swap-related discounts do not apply in the context of the FDA). However, Fund Distribution Claimants had the option, but were not required, to file a Proof of Claim form in order to be eligible to receive a distribution from the FDA. Therefore, determinations regarding those Fund Distribution Claimants who did not file claim forms in connection with the NSF are currently in progress. *Id.*

To date, the recognized losses of 578 Fund Distribution Claims have been preliminarily determined and a summary schedule of these recognized losses is provided in Exhibit A to the Cirami FDA Affidavit. *See* Cirami FDA Affidavit ¶14. For privacy reasons, the summary schedules attached to the Cirami FDA Affidavit do not contain the names, addresses, Taxpayer ID numbers or Social Security numbers of Fund Distribution Claimants. Class Counsel respectfully request the Court adopt the Claims Administrator's determinations regarding these recognized losses.

B. Claims Resolution Process

The Court did not require Fund Distribution Claimants to submit claim forms in order to participate in the disbursement of the FDA. ECF No. 419 at 10. Those Fund Distribution Claimants who did not file claim forms were not subject to a claims deficiency process and have not yet had a chance to dispute the treatment of their Recognized Claim under the FDA. *See* ECF No. 988 at 10-11. To ensure all Fund Distribution Claimants receive an opportunity to dispute the determinations the Claims Administrator makes with regard to their Claims, Class Counsel support the following process for Fund Distribution Claimants that do not have claim determinations for the NSF: (i) after the Claims Administrator makes a determination regarding a Fund Distribution Claimant's Recognized Claim (net investment) under the FDA, the Claims Administrator will send a letter to the Fund Distribution Claimant stating that amount; (ii) the Fund Distribution Claimant will be given 30 days from the date the letter is sent to dispute their Recognized Claim; (iii) if the Fund Distribution Claimant disputes their Recognized Claim, the Claims Administrator will re-examine the Fund Distribution Claimant's Claim and will make a final determination based on the best evidence available in consultation with Class Counsel ("Final Determination"); and (iv) once the Claims Administrator makes a Final Determination and informs the Fund Distribution Claimant of its finding, the Fund Distribution Claimant will

have seven days to dispute the Final Determination by bringing the dispute before a mediator working with Judge Phillips whose determination will be final and binding (the cost of the mediator's time will be borne by the Fund Distribution Claimant so as to avoid unnecessary cost to the FDA). Cirami FDA Affidavit ¶¶16-17.

C. The Court Should Authorize the Proposed Initial Distribution and FDA Reserve

The proposed FDA distribution plan provides for an Initial Disbursement and potential subsequent disbursements to the extent it is cost-effective. Cirami FDA Aff. at ¶28. The FDA distribution plan also provides for a 5% Fund Distribution Account Reserve ("FDA Reserve"), in order to address administrative contingencies. Cirami FDA Aff. at ¶19; *see also* Stipulation ¶2.21. Class Counsel submit that this structure is in the best interests of the Fund Distribution Claimants, and should be approved.

D. Disposition of Any Unclaimed/Un-cashed Balance

In order to encourage Fund Distribution Claimants to cash their disbursement checks promptly and to avoid or reduce future expenses relating to un-cashed checks, Class Counsel and the Claims Administrator propose that all disbursement checks bear the notation "CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY [DATE 120 DAYS AFTER ISSUE DATE]." *See* Cirami FDA Aff. at ¶25. Related procedures are set forth in more detail in the Cirami FDA Affidavit and will not be repeated here beyond noting that the Distribution Plan calls for subsequent distributions as needed, that uncashed checks will be finally void after a subsequent distribution occurs and that at such time as Class Counsel determine it is not cost-effective to conduct such Further Disbursement, or if following such Further Disbursement any balance still remains in the Fund Distribution Account, Class Counsel will, without further notice to the State Law Subclass and Securities Subclass Members, cause

the remaining balance to be disbursed equally to the American National Red Cross and the American Cancer Society, Inc. Cirami FDA Affidavit ¶28.

IV. THE COURT SHOULD APPROVE CLASS COUNSEL'S REQUEST FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES INCURRED IN THE LITIGATION OF THIS MATTER FOLLOWING THEIR MAY 2011 INITIAL FEE APPLICATION

A. The FDA Provides A Substantial Benefit For The Fund Distribution Claimants

The FDA is a common fund comprised of proceeds from several different sources that will be used to distribute cash to eligible investors in the Rye and Tremont Funds. Class Counsel's efforts were central to the creation, structuring and administration of the FDA and a substantial factor in bringing about the Madoff Trustee Settlement that is the principal source of funding for the FDA. Notably, Class Counsel will also continue to oversee the distribution of the FDA.

The FDA is similar to the NSF and, thus, many of the same considerations and precedents that are relevant to a request for attorneys' fees in a class action settlement also apply here. In fact, the Court will recall that the initial fee application contemplated that the total attorneys' fees here would be paid, in part, from the NSF and, in part, from the FDA. Class Counsel agreed with the Court to defer consideration of the portion of attorneys' fees payable from the FDA until such time as the FDA POA was submitted for approval, given the Court's anticipation that significant legal work would be required in defending the Settlement and Trustee Settlement, prosecuting related actions contemplated under the Settlement and, most significantly, bringing the NSF and FDA allocation issues to conclusion.

Attorneys who represent a class of investors and recover a common fund or produce a substantial benefit for members of the class are entitled to payment for their efforts. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). The purpose of this rule is to ensure

class counsel is fairly and adequately paid by all class members equally for the work performed. *Id.* Here, Class Counsel have secured meaningful benefits under the Settlement as a whole and, in particular, in connection with the FDA, worked tirelessly to defend the Settlement and bring about and defend the Trustee Settlement, developed the allocation protocol (further described in Exhibit B) and hammered out the proposed FDA POA through several Mediation sessions and countless related discussions to ensure the proceeds of the FDA are reasonably, fairly and adequately allocated among eligible claimants, and dedicated numerous hours to the administration of the FDA. These efforts have undoubtedly provided a substantial benefit to all Fund Distribution Claimants.

Class Counsel have also ensured that Defendants are not permitted to recover under the FDA. Stipulation ¶5.6 ("Settling Defendants shall not be entitled to receive any disbursement from the Net Settlement Fund, the Net Insurance Settlement Fund or the Fund Distribution Account"). Under the Stipulation, the excluded Defendants consist of several corporate entities, the Individual Defendants, the Settling Funds and persons related to the Settling Funds such as "trustees, directors, administrators, general partners, employees, attorneys and agents, and each and all of the heirs, executors, administrators and spouses." Stipulation ¶1.55. The exclusion of these parties from the FDA will cause a greater amount of funds to flow to investors harmed by the Madoff Ponzi scheme, and based upon on the recoveries thus far in the Madoff Trustee litigation, this benefit is likely worth tens of millions of dollars. ECF No. 452 at 20. In addition, Class Counsel have worked extensively with Defendants in connection with the Trustee litigation, the defense of the SIPC and BLMIS bankruptcy claims, and to address various issues related to the wind down of Tremont's operations in order to achieve the greatest amount of recovery for investors in the Funds. *See* Joint FDA Decl. at ¶7.

Moreover, as described above, Class Counsel have spoken or met with scores of investors in the course of preparing the proposed FDA POA, which investors represent the vast majority of the aggregate net ownership interests of the Rye and Tremont Funds. Joint FDA Decl. at ¶21. This process involved drafting and proposing alternative plans of allocation, soliciting and reviewing feedback, engaging various parties in mediation and regular coordination and conducting of discussions with claimants to achieve support for the proposed plan. Joint FDA Decl. at ¶16. The result is a proposed FDA POA that substantially benefits Fund Distribution Claimants because it protects each Claimant's interests and fairly and equitably allocates the proceeds of the FDA. Joint FDA Decl. at ¶23.

B. The Percentage Of The FDA Is Reasonable

1. The Applicable Standard in the Second Circuit

There are two primary methods courts use to determine whether the requested attorneys' fees are reasonable. *Goldberger*, 209 F.3d at 47. Under the "lodestar method," the court looks at the fee request to determine "the number of hours reasonably billed to the class and then multiplies that figure by an appropriate hourly rate," and then uses a multiplier depending on the following factors: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Id.* at 47, 50. Under the "percentage method," the court considers a proposed fee as a percentage of the overall recovery, in light of the same factors used to discern the multiplier in the lodestar method. *Id.* Courts in this Circuit generally award fees under the percentage method but use the lodestar method as a cross check. *See* ECF No. 453 at 16-17.

2. Class Counsel Have Expended Substantial Time and Effort in this Case

As discussed above and in the Joint Fund Distribution Account Declaration, Class Counsel have dedicated substantial time and effort post-May 6, 2011 to, among other things: (i) defending the Settlement and Trustee Settlement, the litigation of these and related proceedings and arbitrations anticipated by the Settlement, and structuring and administering the FDA; (ii) filing various legal memoranda in connection with the numerous appeals of the Settlement that created the FDA and the Trustee Settlement that funded the FDA; (iii) reviewing numerous documents containing investment data from Tremont to understand the Funds' losses and investors' projected recoveries under the various alternative plans of allocation under consideration; (iv) participating in mediation sessions and facilitating support for the proposed FDA POA; (v) working diligently with GCG regarding the distribution process and responding to Fund Distribution Claimant inquiries; and (vi) filing legal memoranda necessary to allocate and distribute the FDA. Joint FDA Decl. at ¶¶10-13. In total, Class Counsel have dedicated 23,871.75 hours to the prosecution of this and related post-May 6, 2011 proceedings, which clearly satisfies the first *Goldberger* factor. Joint FDA Decl. at ¶33.

3. The Magnitude and Complexity of the Litigation Warrant the Requested Fee Award

The second *Goldberger* factor used to determine if a fee request is reasonable is the "magnitude and complexities of the litigation." *Goldberger*, 209 F.3d at 50. This case presents substantial, complex issues, many of which were discussed at length in connection with the initial fee application which we incorporate by reference but will not repeat here. ECF No. 452; ECF No. 453. Indeed, the proposed FDA POA, itself, is a complex document, requiring an understanding of, among other things, the various Funds, the Cross Investments, the swap agreements and the Trustee Settlement. With this understanding, Class Counsel were able to

structure the Settlement containing the FDA and to work with Defendants to structure the Trustee Settlement in order to maximize the amount of funds available for the FDA. Joint FDA Decl. at ¶40. Class Counsel also reviewed detailed documents showing the transaction histories of the various Funds to understand the potential recoveries for Fund Distribution Claimants under various proposed plans of allocation. Joint FDA Decl. at ¶¶12, 15. In connection with drafting the proposed FDA POA, Class Counsel evaluated the equitable concerns of the parties involved and crafted a proposal that satisfied investors with the overwhelming majority of interests in the FDA. Over the past several years, Class Counsel also engaged in complex negotiations with parties represented by skilled counsel regarding the apportionment of hundreds of millions of dollars. These facts, which demonstrate the magnitude and complexity of the litigation, further support the requested fee.

4. The Risks of the Proceedings

The third factor examined in a request for attorneys' fees under *Goldberger* is the "risk of the litigation." *Goldberger*, 209 F.3d at 47. This factor is detailed extensively in the initial fee application (ECF No. 452; ECF No. 453) in connection with the overall litigation risks for the Settlement and Trustee Settlement. Subsequent case law has resulted in the dismissal of numerous feeder fund cases and the Settlement and Trustee Settlement, in combination, represent one of the best overall recoveries for investors in any feeder fund litigation. In this regard, we note that Class Counsel took on substantial risk in bringing the derivative claims that gave rise to the FDA portion of the Settlement and ultimately drove the Trustee Settlement. While the Settlement and the Madoff Trustee Settlements are long since final, the same risks that attended those Settlements (as discussed more fully in the initial fee application and approval order) are equally applicable here. This is particularly true where, as here, but for the creation by Class Counsel of the FDA structure and their contribution in securing the hundreds of millions of

dollars flowing in through the Madoff Trustee Settlement, there would effectively be no money to distribute to Fund Distribution Claimants. *See* ECF No. 453 at 20-23; *see also Goldberger*, 209 F.3d at 52, 54. Moreover, Class Counsel face the additional risk of further protracted litigation to defend the FDA POA and distribution of the FDA.

5. The Quality of the Representation Supports the Requested Fee

The "quality of representation" is the fourth factor district courts in the Second Circuit use to determine if an award of attorneys' fees is reasonable. *Goldberger*, 209 F.3d at 50. When evaluating the quality of the representation, courts examine the "recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *Taft v. Ackermans*, No. 02 Civ. 7951 (PKL), 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007). Class Counsel have extensive experience litigating complex cases in federal courts. This depth of expertise enabled Class Counsel to enhance the amount of funds available for distribution from the FDA and fairly allocate these proceeds to those investors who purchased interests in the diverse group of Rye and Tremont Funds. Moreover, Class Counsels' experience enabled them to conduct their work in an efficient and productive manner throughout the litigation, thus preserving funds for the Fund Distribution Claimants.

6. The Relationship of the Requested Fee to the Total FDA Amount Supports the Fee Award

Aside from the other factors, the fee awarded must "not exceed what is 'reasonable'" under the circumstances. *Goldberger*, 209 F.3d at 47. Here, Class Counsel request 3% of the total net amount recovered by Fund Distribution Claimants over time from the FDA, net of the repayment of the Fortress loan and net of the XL Priority Allocation (the "Net FDA Recovery") (currently approximately $623 million). The 3% fee request is clearly reasonable in light of the total FDA amount. *In re Weatherford Int'l Sec. Litig.*, No. 11 Civ. 1646 (LAK), 2015 WL

127847 (S.D.N.Y. Jan. 5, 2015); *Shapiro v. JPMorgan Chase & Co*., 11 Civ. 8331(CM)(MHD), 2014 WL 1224666 (S.D.N.Y. Mar. 24, 2014); *In re Beacon Assocs. Litig.*, No. 09 Civ. 777(CM), 2013 WL 2450960 (S.D.N.Y. May 9, 2013).

7. Public Policy Considerations Support the Fee Award

The last factor under *Goldberger* considers the public policy implications of the requested fee. *Goldberger*, 209 F.3d at 50. Public policy supports a 3% fee under these circumstances. In common fund cases, the awarded attorneys' fees often amount to 30% of the recovery. ECF No. 603 at 2; *see* ECF No. 453-2 (chart of recent cases illustrating that fees of approximately 30% of the recovery are commonly awarded). Here, Class Counsel request only 3% of the net FDA. Moreover, awarding the requested fee will encourage qualified plaintiffs' counsel to undertake extensive efforts to take on and resolve complex common fund cases through mediation, thus preserving judicial resources. Accordingly, the public policy considerations support the fee requested.

8. The Reasonableness of the Fee is Demonstrated by a Comparison of the Requested Fee and Class Counsel's Lodestar

The Second Circuit has also directed district courts to examine the reasonableness of the percentage of the fund requested for attorneys' fees by cross checking this amount with the counsel's lodestar. *Goldberger*, 209 F.3d at 50. Class Counsel and their paraprofessionals have, in total, spent 23,871.75 hours working on post-May 6, 2011 proceedings related to this matter (*see* Class Counsel's accompanying declarations), resulting in a lodestar of $15,988,621.75. Joint FDA Decl. at ¶33. The requested fee amounts to a multiple of only 1.17 of the total lodestar using the current value of the Net FDA Recovery of $623 million. *See Asare v. Change Grp. of New York, Inc.*, No. 12 Civ. 3371 CM, 2013 WL 6144764, at *19 (S.D.N.Y. Nov. 18, 2013) ("Typically, courts use multipliers of 2 to 6 times the lodestar") (citing cases).

Moreover, when examining the reasonableness of the attorneys' rates, a court should consider and apply the prevailing market rates in the relevant community, here, the Southern District of New York, for similar legal work by lawyers of reasonably comparable skill, experience and reputation. *Luciano v. Olsten Corp.*, 109 F.3d 111, 115 (2d Cir. 1997). In this District, the attorneys are prominent, experienced and well-regarded practitioners and the hourly rates charged are comparable to that of those within the geographic market. *See Asare*, 2013 WL 6144764, at *19; *In re Nissan Radiator/Transmission Cooler Litig.*, No. 10 CV 7493 (VB), 2013 WL 4080946, at *17 (S.D.N.Y. May 30, 2013); *Flag Telecom*, 2010 WL 4537550, at *25 (hourly rates for partners exceeding $900 per hour is reasonable in securities class actions).

V. CLASS COUNSEL'S EXPENSES WERE REASONABLY INCURRED AND NECESSARY TO THIS ACTION

It is appropriate for a court to reimburse counsel who create a common fund for those reasonable out-of-pocket expenses which are customarily charged to clients and are "incidental and necessary to the representation." *In re EVCI Career Colls. Holdings Corp. Sec. Litig.*, No. 05 Civ. 10240 (CM), 2007 WL 2230177, at *18 (S.D.N.Y. July 27, 2007). *See Teachers' Ret. Sys. of Louisiana v. A.C.L.N., Ltd.*, No. 01-CV-11814(MP), 2004 WL 1087261, at *6 (S.D.N.Y. May 14, 2004). Class Counsel respectfully request $975,322.56 for expenses billed at cost and incurred while performing work in this matter after May 6, 2011. Class Counsel have submitted a separate declaration attesting to the accuracy of these expenses. *See* Joint FDA Decl., Exs. A, B and C. Among other things, these expenses were essential to the defense of the Settlement and Trustee Settlement, the prosecution of this and related proceedings and the creation, funding, allocation and proposed distribution of the FDA. *See Beane v. Bank of New York Mellon*, No. 07 Civ. 09444 (RMB), 2009 WL 874046, at *9 (S.D.N.Y. Mar. 31, 2009) (permitting counsel to recover expenses such as court fees, photocopying and reproduction, deposition transcripts,

expert fees and electronic database fees). Accordingly, Class Counsel respectfully request payment for these expenses, plus interest earned on such amount at the same rate the FDA earns.

CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court enter the [Proposed] Order and Final Judgment Granting Settling Class Plaintiffs' Motion for Approval of Fund Distribution Account Plan of Allocation, Distribution Procedures, Attorneys' Fees and Reimbursement of Expenses.

Dated: July 10, 2015
New York, New York

ENTWISTLE & CAPPUCCI LLP

/s/ Andrew J. Entwistle
Andrew J. Entwistle
Arthur V. Nealon
Robert N. Cappucci
280 Park Avenue, 26th Floor West
New York, NY 10017
(212) 894-7200
(212) 894-7272 (fax)
aentwistle@entwistle-law.com

HAGENS BERMAN SOBOL SHAPIRO LLP

/s/ Reed R. Kathrein
Reed R. Kathrein
Lee Gordon
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
(510) 725-3000
(510) 725-3001 (fax)
reed@hbsslaw.com

Co-Lead Counsel for the State Law Actions

BERNSTEIN LIEBHARD LLP

/s/ Jeffrey M. Haber

Jeffrey M. Haber
Stephanie M. Beige
10 East 40th Street
New York, NY 10016
(212) 779-1414
(212) 779-3218 (fax)
haber@bernlieb.com

Lead Counsel for the Securities Actions

EXHIBIT A

FUND DISTRIBUTION ACCOUNT PLAN OF ALLOCATION

A. Preliminary Matters

The purpose of this Fund Distribution Account Plan of Allocation ("Plan of Allocation," "FDA POA" or "Plan") is to establish a reasonable, fair and equitable method of allocating for the benefit of and distributing to Fund Distribution Claimants the money remaining in the Fund Distribution Account ("FDA"). This FDA POA is the product of countless hours of discussions, calls and meetings in a mediation context over almost two years.

The Claims Administrator will distribute all money remaining in the FDA after payment of Court approved attorney's fees and expenses and the costs associated with the administration of the FDA and this FDA POA.

The Claims Administrator will determine the Eligible Hedge Fund Allocated Interest for each Eligible Hedge Fund by adding together any SIPC Claim, Virtual SIPC Claim and Cross Investments, and, for XL only, the XL Priority Allocation that is related to each Eligible Hedge Fund. The Claims Administrator will then calculate the Net Investment of each Fund Distribution Claimant in each Eligible Hedge Fund and then apply such Net Investment to determine the pro rata share of each Fund Distribution Claimant in each such Eligible Hedge Fund's Allocated Interest in the FDA. This process is described in greater detail in Section C below.

B. Principles and Definitions

This FDA POA is based on the following principles and definitions (listed alphabetically), among others contained in the Stipulation:

1. "Cross Investments" means any prior investment by any Eligible Hedge Fund in another Eligible Hedge Fund. All Cross Investments are preserved in the sense that the net amount of each such Cross Investment will form the basis of an allocation of FDA Funds for the benefit of Fund Distribution Claimants previously invested in Eligible Hedge Funds that held such Cross Investments. Allocation of Cross Investments will be made on a net basis.

2. "Contribution" is the amount paid on or before December 11, 2008 by an authorized Fund Distribution Claimant to an Eligible Hedge Fund for an Eligible Security.

3. "Court" means the United States District Court for the Southern District of New York.

4. "Disbursement" is the amount to be paid to a Fund Distribution Claimant from the FDA.

5. "Eligible Carrier" is one of the following insurance carriers that invested in Eligible Hedge Funds: (a) New York Life Insurance and Annuity Corporation;

(b) Metropolitan Life Insurance Company; (c) John Hancock Life Insurance Company (U.S.A.); (d) General American Life Insurance Company; (e) Pacific Life Insurance Company; (f) Hartford Life Insurance Company; (g) Pruco Life Insurance Company; (h) Security Life of Denver; (i) AIG Life Insurance Company; (j) Delaware Life Insurance Company (f/k/a Sun Life Assurance Company of Canada (U.S.)); (k) Scottish Annuity and Life; (l) Nationwide Life Insurance Company; (m) New England Life Insurance Company; (n) Acadia Life Limited; (o) The Scottish Annuity Life Insurance Co. (Cayman) Ltd.; (p) Lifeinvest Opportunity Fund LDC; (q) AGL Life Assurance Company; (r) BF&M Life Insurance Company Limited; and (s) The Scottish Annuity and Life Insurance Company (Bermuda) Ltd. Each Eligible Carrier shall be considered a Fund Distribution Claimant for all purposes in this Plan of Allocation. "Eligible Policyholder" is an owner of a variable universal life insurance policy or deferred variable annuity policy that was issued by an Eligible Carrier.

6. "Eligible Hedge Funds" shall mean:

- Rye Select Broad Market Fund, L.P. ("Rye Onshore");
- Rye Select Broad Market XL Fund, L.P. ("XL");
- Rye Select Broad Market Prime Fund, L.P. ("Prime");
- Rye Select Broad Market Insurance Fund, L.P. ("Rye Insurance");
- Rye Select Broad Market Insurance Portfolio, LDC (but only with respect to INTAC Independent Technical Analysis Centre Ltd., LifeInvest Opportunity Fund, LDC, Scottish Annuity Company (Cayman) Limited, The Scottish Annuity and Life Insurance Company (Bermuda) Ltd. and The Scottish Annuity Life Insurance Co. (Cayman) Ltd.);
- Rye Select Broad Market Portfolio Limited ("Rye Offshore");
- Rye Select Broad Market XL Portfolio Limited;
- Broad Market XL Holdings Limited;
- Tremont Market Neutral Fund L.P.;
- Tremont Market Neutral Fund II, L.P.;
- Tremont Market Neutral Fund Limited;
- Tremont Opportunity Fund Limited;
- Tremont Opportunity Fund II L.P.;
- Tremont Opportunity Fund III L.P.;
- Tremont Arbitrage Fund, L.P.;
- Tremont Arbitrage Fund-Ireland; and
- Tremont Strategic Insurance Fund, L.P.

7. "Eligible Hedge Fund Allocated Interest" means the sum of any SIPC Claim, Virtual SIPC Claim and Cross Investments (and, for XL only, the XL Priority Allocation) that is related to each Eligible Hedge Fund.

8. "Eligible Securities" means the limited partnership interests or shares purchased by Fund Distribution Claimants (as defined in paragraph 8 below) in Eligible Hedge Funds on or before December 11, 2008.

9. "Fund Distribution Claimant" means any limited partner or shareholder invested in Eligible Securities of any Eligible Hedge Fund as of December 11, 2008 or its successors pursuant to any merger or other business combination or by valid assignment (including secondary market purchasers of such claims), who is entitled under the Stipulation and this FDA POA to share in the disbursement of the Fund Distribution Account. Only those Fund Distribution Claimants who suffered a net loss on their investments in Eligible Securities (determined separately for each Eligible Hedge Fund in which the Fund Distribution Claimant invested), are entitled to a payment from the Fund Distribution Account. Only Fund Distribution Claimants who were limited partners or shareholders as of December 11, 2008, or their successors pursuant to any merger or other business combination or by valid assignment (including secondary market purchasers of such claims), may be entitled to a Disbursement from the Fund Distribution Account. For the avoidance of doubt, any person who purchased an interest in an Eligible Hedge Fund after December 11, 2008, shall receive distributions on account of such interest based on the net equity investment of the person who held such interest as of December 11, 2008. Nothing herein is intended to affect the Loan Agreements or the Claim Participation Agreement.

10. "Fund Distribution Account" ("FDA") shall have the meaning ascribed in the Stipulation.

11. "Net Investment" is the difference between Contributions and Redemptions for each Fund Distribution Claimant (or Eligible Hedge Fund in the case of Cross Investments). Net Investment is determined separately for the investments in each Eligible Hedge Fund on a Fund-by-Fund basis. Where a Fund Distribution Claimant (or an Eligible Hedge Fund) has investments in more than one Eligible Hedge Fund, the investments within each Fund are netted against the investments within that Fund but they are not netted against gains or losses on investments in other Eligible Hedge Funds.

12. "Recognized Claim" is the Fund Distribution Claimant's Net Investment in each Eligible Hedge Fund.

13. "Redemption" is the amount withdrawn on or before December 11, 2008 by a Fund Distribution Claimant from an Eligible Hedge Fund based on ownership of an Eligible Security.

14. "Remaining Fund Proceeds" means (i) all amounts remaining in the Rye Funds (with the exception of the Liquidating Funds) after resolution of the Settling Funds' claims in or relating to the Madoff Trustee Proceedings; and (ii) all amounts the Tremont Funds would otherwise be entitled to from the Fund Distribution Account under this Plan of Allocation as a result of the Tremont Funds' investments in the Rye Funds.

15. "Rye Funds" means (i) Rye Select Broad Market Fund, L.P.; (ii) Rye Select Broad Market XL Fund, L.P.; (iii) Rye Select Broad Market Prime Fund, L.P.; (iv) Rye

Select Broad Market Insurance Fund, L.P.; (v) Rye Select Broad Market Portfolio Limited; (vi) Rye Select Broad Market XL Portfolio Limited; (vii) Broad Market XL Holdings Limited and (viii) Rye Select Broad Market Insurance Portfolio LDC (but solely with respect to INTACT Independent Technical Analysis Centre Ltd., LifeInvest Opportunity Fund, LDC, Scottish Annuity Company (Cayman) Limited, The Scottish Annuity and Life Insurance Company (Bermuda) Ltd. and The Scottish Annuity Life Insurance Co. (Cayman) Ltd.). The Settlement Agreement provides that all Remaining Fund Proceeds poured over into the FDA from the Settling Funds upon final approval of the Settlement. This includes any money received from the Madoff Trustee Settlement on or after that time.

16. "SIPC Claim" means the amount allocated under this FDA POA for the benefit of Fund Distribution Claimants invested in Eligible Hedge Funds with an allowed claim against the BLMIS estate as approved in *Picard v. Tremont Grp. Hldgs., Inc.*, Adv. Pro. No. 10-05310 (Bankr. S.D.N.Y) (See Dkt. Nos. 17-1 and 38-1). Rye Select Broad Market Fund, L.P, Rye Select Broad Market Portfolio Limited, and Rye Select Broad Market Insurance Fund, L.P. are the only Eligible Hedge Funds that have a SIPC Claim against the FDA assets. Rye Onshore, Rye Offshore and Rye Insurance each have a SIPC Claim because they contributed nearly $1 billion to the BLMIS Estate (including by taking out over $650 million in loans) in exchange for specific allowed claims in the BLMIS estate and a release of claims asserted by the BLMIS Trustee. For purposes of this FDA POA only, Rye Onshore's SIPC Claim is $1,879,426,564, Rye Offshore's SIPC Claim is $1,075,695,583 and Rye Insurance's SIPC Claim is $40,000,000.

17. "Stipulation" means the Stipulation of Partial Settlement in *In re Tremont Securities Law, State Law and Insurance Litigation* (08 Civ. 11117 (TPG)) dated February 23, 2011 and filed with the Court on February 25, 2011. Capitalized terms that are not defined herein will have the same meaning as in the Stipulation. In the event that the definition of a term in this Plan conflicts with a definition in the Stipulation, the definition in this Plan will control.

18. "Tremont Funds" means (i) Tremont Market Neutral Fund L.P.; (ii) Tremont Market Neutral Fund II, L.P.; (iii) Tremont Market Neutral Fund Limited; (iv) Tremont Opportunity Fund Limited; (v) Tremont Opportunity Fund II L.P.; (vi) Tremont Opportunity Fund III L.P.; (vii) Tremont Arbitrage Fund, L.P.; (viii) Tremont Arbitrage Fund-Ireland; and (ix) Tremont Strategic Insurance Fund, L.P.

19. "Tremont Fund of Funds" means those Tremont Funds that contributed to the Trustee Settlement and therefore have a Virtual SIPC Claim: Tremont Market Neutral Fund L.P.; Tremont Market Neutral Fund II, L.P.; Tremont Opportunity Fund II L.P.; and Tremont Opportunity Fund III L.P.

20. "Virtual SIPC Claim" means a claim allocated for the benefit of Eligible Hedge Funds participating in the Madoff Trustee Settlement that did not receive a SIPC Claim. These include Prime and several of the Tremont Fund of Funds (Tremont Market Neutral Fund L.P.; Tremont Market Neutral Fund II, L.P.; Tremont

Opportunity Fund II L.P.; and Tremont Opportunity Fund III L.P.). The Virtual SIPC Claim is equal to 80% of the amount contributed by such Eligible Hedge Funds to the Madoff Trustee Settlement plus any Remaining Funds in the form of cash contributed by such Eligible Hedge Funds to the FDA following Final Approval of the Settlement. Although such Eligible Hedge Funds were not granted allowed claims in the BLMIS estate under the Madoff Trustee Settlement and Court Order in *Picard v. Tremont Grp. Hldgs., Inc.*, Lead Counsel has secured, through the mediation process, for each such Eligible Hedge Fund a claim for 80% of the money it contributed to the settlement agreement with the BLMIS Trustee – the same percentage that Rye Onshore and Rye Offshore received as their allowed 502(h) claim against the BLMIS estate. The Virtual SIPC Claim allocable to the Rye Select Broad Market Prime Fund, L.P is $28,616,540 and the total of the other Virtual SIPC Claims allocable to the Tremont Fund of Funds is $65,331,081, as follows: $3,576,239 to Tremont Market Neutral Fund L.P.; $14,522,000 to Tremont Market Neutral Fund II, L.P.; $6,109,770 to Tremont Opportunity Fund II L.P.; and $41,123,071 to Tremont Opportunity Fund III L.P.

21. "XL Fund Distribution Claimants" are Fund Distribution Claimants invested in XL as of December 8, 2008.

22. "XL Priority Allocation" means a priority distribution to XL Fund Distribution Claimants of the first $32,409,239 allocated under this FDA POA and distributed from the FDA to Fund Distribution Claimants previously invested in XL. All other amounts allocable to XL Fund Distribution Claimants under this plan, including because of XL-related Cross Investments, will receive the same priority as all other distributions under this FDA POA.

23. The scope of this FDA POA is limited to its terms and those terms contained in the Stipulation and is otherwise without prejudice to the rights of any party; provided that, notwithstanding anything to the contrary in this FDA POA or the Stipulation, if HSBC Bank plc ("HSBC") is determined to have enforceable rights to XL's Cross Investment in Rye Onshore, HSBC shall be treated as a Fund Distribution Claimant with respect to any FDA distributions calculated on the basis of XL's Cross-Investment in Rye Onshore and will be entitled to receive such distributions from the FDA to the extent of its enforceable rights therein.

C. Disbursements from the Fund Distribution Account

The Claims Administrator will determine each Fund Distribution Claimant's pro rata share of the Fund Distribution Account with respect to each Eligible Hedge Fund's Allocated Interest by the following three-step-methodology: (1) the Claims Administrator will first determine the Eligible Hedge Fund Allocated Interest for each Eligible Hedge Fund by adding together any SIPC Claim, Virtual SIPC Claim, and Cross Investments (and, for XL only, the XL Priority Allocation) that is related to each Eligible Hedge Fund. For the avoidance of doubt, under this first step, the Claims Administrator will then cause the XL Priority Allocation to be satisfied and distributed to Fund Distribution Claimants who were previously invested in XL before any other

distributions are made from the FDA. Once the XL Priority Allocation is satisfied, the Claims Administrator shall determine that (i) Rye Onshore has an Eligible Hedge Fund Allocated Interest equivalent to 75.46% of the remainder of the FDA, (ii) Rye Offshore has an Eligible Hedge Fund Allocated Interest equivalent to 20.05% of the remainder of the FDA, (iii) Rye Insurance has an Eligible Hedge Fund Allocated Interest equivalent to 1.29% of the remainder of the FDA, (iv) Prime has an Eligible Hedge Fund Allocated Interest equivalent to .88% of the remainder of the FDA (plus the allocated value of its Cross Investments) and (v) the Tremont Fund of Funds collectively have an Eligible Hedge Fund Allocated Interest equivalent to 2.32% of the remainder of the FDA (plus the allocated value of each Fund's Cross Investments), which shall be allocated as follows: 0.127% to Tremont Market Neutral Fund L.P. (plus the allocated value of its Cross Investments); 0.516% to Tremont Market Neutral Fund II, L.P. (plus the allocated value of its Cross Investments); 0.217% to Tremont Opportunity Fund II L.P. (plus the allocated value of its Cross Investments); and 1.460% to Tremont Opportunity Fund III L.P. (plus the allocated value of its Cross Investments). For the avoidance of doubt and for illustrative purposes, Prime would recover 0.88% of the FDA plus the allocated value of any Cross Investments.

(2) The Claims Administrator will then calculate the Net Investment of each Fund Distribution Claimant in each Eligible Hedge Fund and then apply such Net Investment to determine the pro rata share each Fund Distribution Claimant has in each such Eligible Hedge Fund's Allocated Interest in the FDA.

(3) The Claims Administrator will then make Disbursements directly to the Fund Distribution Claimants in accordance with the above calculations.

No Fund Distribution Claimant will receive more than it's Recognized Claim. Eligible Policyholders will be paid by their Eligible Carrier out of the Eligible Carrier's Disbursement based on a methodology to be determined by the Eligible Carrier. For the International Fund Liquidations, distributions will be made at the direction of the Liquidators.

Determinations by the Notice and Claims Administrator and payments made pursuant to this Plan of Allocation above shall be conclusive against all Fund Distribution Claimants. No person shall have any claim against the Settling Plaintiffs, Plaintiffs' Settlement Counsel or the Notice and Claims Administrator based on Disbursements, determinations or claim rejections made substantially in accordance with this Plan or further orders of the Court, except in the case of fraud or willful misconduct. No person shall have any claim under any circumstances against the Released Parties based on any Disbursements, determinations or claim rejections or the design, terms or implementation of this Plan. Distribution to Fund Distribution Claimants who previously failed to complete and file a valid and timely Proof of Claim form shall be determined solely on the basis of Tremont's records.

To the extent that the Court approves the Fund Distribution Plan of Allocation, the Fund Distribution Plan of Allocation will not be subject to further change as to any investor. Each Settling Fund shall use its best efforts to maximize the amount of the Remaining

Fund Proceeds allocable to that Settling Fund, without regard to the identity or status of the Settling Fund's shareholders or limited partners, and shall distribute those Remaining Fund Proceeds in accordance with the Fund Distribution Plan of Allocation, without regard to the identity or status of those shareholders or limited partners.

Except to the extent provided immediately above, the Court has reserved jurisdiction to modify, amend or alter the Plan of Allocation without further notice to anyone and it may allow, disallow or adjust any Fund Distribution Claimant's claim to ensure a fair and equitable distribution of the Fund Distribution Account.

If there is any balance remaining in the Fund Distribution Account (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 Fund Distribution Account to be disbursed to Fund Distribution Claimants, or (b) the date the Settlement is final and becomes fully effective, then Plaintiffs' Settlement Counsel shall, upon approval of the Court, disburse such balance among Fund Distribution Claimants as many times as is necessary, in a manner consistent with this Plan of Allocation, until each Fund Distribution Claimant has received its Recognized Claim (but no greater than its Recognized Claim) as defined in this Plan. If Plaintiffs' Settlement Counsel determines that it is not cost-effective to conduct such further disbursement, or following such further disbursement any balance still remains in the Fund Distribution Account, Plaintiffs' State Law and Securities Class Counsel shall, with the consent of the State Law and Securities Plaintiffs and upon approval of the Court, and without further notice to the State Law Subclass and Securities Subclass Members, cause the remaining balance to be disbursed *cy pres.*

EXHIBIT B

ENTWISTLE & CAPPUCCI

MEMORANDUM

TO: **All Persons Interested In The Funds Described Below**

FROM: **Entwistle & Cappucci LLP, Hagens Berman Sobol Shapiro LLP and Bernstein Liebhard LLP**

DATE: **April 30, 2014**

RE: **Notice of Plan of Allocation Protocol - *In re Tremont Securities Law, State Law and Insurance Litigation*, No. 08 Civ. 11117 (TPG) (SDNY)**

The Second Circuit Court of Appeals recently dismissed as moot the remaining appeal, filed by Madelyn Haines and Paul Zamrowski, of the District Court's order approving the partial settlement of the above-referenced class actions. Despite the fact that Haines and Zamrowski are seeking rehearing before the Second Circuit, Lead Counsel have decided to proceed with the allocation process because, in our view, Haines and Zamrowski's efforts are without merit.

The process that was discussed and submitted to the District Court during the final approval hearing anticipates giving interested persons an opportunity to be heard in connection with the proposed plans of allocation ("POA"). Toward that end, we have spoken or met with scores of interested persons during the past 18 months while the appeal was pending. As we have advised all who have contacted us, we believe that the District Court's prior ruling approving the settlement's two-fund structure (the Net Settlement Fund ("NSF") and the Fund Distribution Account ("FDA")) sets the framework for two separate approval motions -- one for the NSF POA and one for the FDA POA.[1]

To ensure that interested persons, as discussed below, have an opportunity to participate in the allocation process, Lead Counsel have established a Plan of Allocation Protocol as follows:

1) **Solicitation of Proposed FDA POAs**: Lead Counsel is soliciting proposed FDA POAs (or related commentary) from all persons who objected or appeared at the final approval hearing (whose claims or objections have not been satisfied), as well as other interested persons expressing a desire to participate post hearing. Please be sure to provide your

---

[1] The Settlement provides that the FDA is the single account for distribution of the "Remaining Fund Proceeds," which consists of: (i) all amounts remaining in the Rye Funds after resolution of the Settling Funds' claims in or relating to the Madoff Trustee Proceedings and any other matters required to be resolved in the ordinary course; and (ii) all amounts to which the Tremont Funds would otherwise be entitled from the Fund Distribution Account under the Fund Distribution Plan of Allocation as a result of the Tremont Funds' investments in the Rye Funds.

position on how to allocate the FDA. You may also include any other matter not related to the overall structure of the FDA, which is established by the now approved Class and derivative Settlement.

Please provide us with your proposed FDA POAs or views in this regard via e-mail no later than May 30, 2014.

2) **Circulation of "Proposed FDA POA"**: Lead Counsel will evaluate all FDA POAs submitted by interested persons and construct what it believes to be a fair and reasonable FDA POA (the "Proposed FDA POA"). Lead Counsel will circulate the Proposed FDA POA to all who have received this Notice of POA Protocol and/or have submitted FDA POAs or otherwise submitted comments prior to the scheduled mediation, described below.

3) **Mediation**: A two-day mediation is scheduled for July 28th and 29th, 2014 at the New York City offices of Skadden, Arps, Slate, Meagher & Flom LLP before retired U.S. District Court Judge Layn R. Phillips. Attendees who submitted proposals or comments will be grouped by position to the extent possible. Lead Counsel, with the assistance of Judge Phillips, will work with all participants through the mediation process to develop a Final Proposed FDA POA.

4) **Publication of Notice**: Following the mediation, the Final Proposed FDA POA, the previously submitted NSF POA and Notice of a hearing concerning final approval of the Proposed FDA POA and NSF POA will be provided to Class members. These documents will also be filed with the District Court, along with memoranda of law in support thereof.

Lead Counsel do not anticipate any changes to the NSF POA originally submitted to the District Court (a copy of the proposed NSF POA is attached). Nevertheless, we will take comments, if any, and will address the NSF POA at the mediation described above before we submit the NSF POA to the District Court for final approval.

In the interim, should you have any questions or require additional information concerning the mediation or the litigation in general, please do not hesitate to contact me or my partner, Robert N. Cappucci, at 212-894-7200, or via e-mail at aentwistle@entwistle-law.com or rcappucci@entwistle-law.com (with copies to Reed Kathrein, reed@hbsslaw.com, Lee Gordon, lee@hbsslaw.com, and Jeffrey M. Haber, haber@bernlieb.com).

Thank you.

Andrew J. Entwistle
For Entwistle & Cappucci LLP and Co-Lead Counsel

EXHIBIT 1

NET SETTLEMENT FUND PLAN OF ALLOCATION

A. Preliminary Matters

The initial settlement amount of $100 million in cash (the "Initial Settlement Amount"), the Fidelity Bond Recovery, the Remaining Tremont Funds, proceeds from Assigned Claims, and the interest earned thereon is the "Gross Settlement Fund." The Gross Settlement Fund less the 8.2% that was allocated to the Insurance Subclass and Individual Settling Insurance Plaintiffs pursuant to a binding mediation, Court-approved attorneys' fees and expenses, notice and administration expenses, and taxes and tax expenses is the "Net Settlement Fund." The Net Settlement Fund will be disbursed to State Law Subclass and Securities Subclass Members who submit timely and valid Proofs of Claim ("Authorized Claimants"), and whose payment from the Net Settlement Fund would equal or exceed ten dollars ($10.00).[1]

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. For purposes of determining the amount an Authorized Claimant may recover under this Plan, Plaintiffs' State Law and Securities Class Counsel have consulted with their damages consultants and others. This Plan is intended to be generally consistent with an assessment of, among other things, the damages that Plaintiffs' State Law and Securities Class Counsel and the State Law and Securities Plaintiffs believe could have been recovered had they prevailed at trial. The Plan is not intended to and does not exactly replicate such assessment of damages, however. Certain State Law Subclass and Securities Subclass Members who may not have had recoverable damages at trial may be eligible to receive a payment under this Plan.

Because the Net Settlement Fund is less than the total losses alleged to be suffered by State Law Subclass and Securities Subclass Members, the formulas described below for calculating Recognized Claims 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.

B. Eligible Securities

Authorized Claimants may be entitled to receive a payment from the Net Settlement Fund based on investments in securities ("Eligible Securities") offered by the following hedge funds ("Eligible Hedge Funds"):

---

[1] To the extent State Law and Securities Plaintiffs request and prosecute Assigned Claims and recover thereon, any such recovery will be part of the Net Settlement Fund and will be disbursed pursuant to this plan of allocation.

- Rye Select Broad Market Fund, L.P.;
- Rye Select Broad Market XL Fund, L.P.;
- Rye Select Broad Market Prime Fund, L.P.;
- Rye Select Broad Market Insurance Fund, L.P.;
- Rye Select Broad Market Insurance Portfolio, LDC (but only with respect to INTAC Independent Technical Analysis Centre Ltd., LifeInvest Opportunity Fund, LDC, Scottish Annuity Company (Cayman) Limited, The Scottish Annuity and Life Insurance Company (Bermuda) Ltd. and The Scottish Annuity Life Insurance Co. (Cayman) Ltd.);
- Rye Select Broad Market Portfolio Limited;
- Rye Select Broad Market XL Portfolio Limited;
- Broad Market XL Holdings Limited;
- Tremont Market Neutral Fund L.P.;
- Tremont Market Neutral Fund II, L.P.;
- Tremont Market Neutral Fund Limited;
- Tremont Opportunity Fund Limited;
- Tremont Opportunity Fund II L.P.;
- Tremont Opportunity Fund III L.P.;
- Tremont Arbitrage Fund, L.P.;
- Tremont Arbitrage Fund-Ireland; and
- Tremont Strategic Insurance Fund, L.P.

C. Principles and Additional Definitions

This Plan is based on the following principles and additional definitions (listed alphabetically), among others:

1. "Authorized Claimant" is a State Law Subclass and/or Securities Subclass Member who is entitled under the Stipulation and this Plan to share in the disbursement of the Net Settlement Fund and who submits a timely and valid Proof of Claim. Authorized Claimants do not include members of the Insurance Subclass or the Individual Settling Insurance Plaintiffs.

2. "Contribution" is the amount paid on or before December 11, 2008 by an authorized Claimant to an eligible Hedge Fund for an eligible Security. If an authorized claimant acquired an Eligible Security by means of a gift, assignment, inheritance or operation of law, the Contribution for that acquisition shall be calculated by using the amount paid for the eligible Security on the original date of Purchase and not the date of transfer, unless the transfer resulted in a taxable event or other change in the cost basis of the eligible Security.

3. "Disbursement" is the amount to be paid to an Authorized Claimant from the Net Settlement Fund.

4. "Eligible Carrier" is one of the following insurance carriers that invested in Eligible Hedge Funds: (a) New York Life; (b) Metropolitan Life Insurance Company; (c) John Hancock Variable Life; (d) General American; (e) Pacific Life Insurance Company; (f) Hartford Life Insurance Company; (g) Pruco Life Insurance Company; (h) Security Life of Denver; (i) AIG Life Insurance Company; (j) Sun Life (SLF) Assurance Company; (k) Scottish Annuity and Life; (l) Nationwide Life; (m) New England Life Insurance Company; (n) Acadia Life Limited; (o) The Scottish Annuity Life Insurance Co. (Cayman) Ltd.; (p) LifeInvest Opportunity Fund LDC; (q) AGL Life Assurance Company; (r) BF&M Life Insurance Company Limited; and (s) The Scottish Annuity and Life Insurance Company (Bermuda) Ltd.

5. "Eligible Policyholder" is an owner of a variable universal life insurance policy or deferred variable annuity policy that was issued by an Eligible Carrier.

6. "Purchase" is the acquisition of an Eligible Security by any means.

7. "Recognized Claim" is the amount of a claim under this Plan and is the number used to calculate an Authorized Claimant's Disbursement.

8. "Redemption" is the amount withdrawn on or before December 11, 2008 by an Authorized Claimant from an Eligible Hedge Fund based on ownership of an Eligible Security. For this purpose, Redemption is the amount requested and actually paid to an Authorized Claimant based on ownership of an Eligible Security.

9. "Swap Counterparty" means a party that entered into a swap transaction or similar arrangement with any of the Rye Funds or Tremont Funds in order to provide said funds with a leveraged return.

D. Recognized Claim

The Recognized Claim for each Authorized Claimant will be the total of all Contributions to Eligible Hedge Funds minus the total of all Redemptions from Eligible Hedge Funds, to the extent each such Eligible Hedge Fund was exposed to Madoff. Only those Authorized Claimants who suffered a net loss on their aggregate investments in Eligible Securities may be entitled to a payment from the Net Settlement Fund.

For Eligible Hedge Funds that were fully exposed to Madoff, each Authorized Claimant's Recognized Claim will reflect the entire net amount of the Authorized Claimant's Contributions and Redemptions. Thus, if an Authorized Claimant made Contributions totaling $100,000 and Redemptions totaling $25,000, the Authorized Claimant's Recognized Claim is $75,000 (*i.e.*, $100,000 minus $25,000).

For Eligible Hedge Funds that were partially exposed to Madoff, each Authorized Claimant's Recognized Claim will reflect the percentage that the Eligible Hedge Fund was exposed to Madoff as of December 11, 2008. Thus, if an Authorized Claimant made

Contributions totaling $100,000 and Redemptions totaling $25,000 in an Eligible Hedge Fund that was 10% exposed to Madoff, the Authorized Claimant's Recognized Claim is $7,500 (*i.e.*, 10% X ($100,000 minus $25,000)).

The Recognized Claim for an Eligible Carrier shall be determined by the same methodology as above.

The Recognized Claim for a Swap Counterparty shall be determined by the same methodology as described above, subject to a discount factor of 1%. Thus, if a Swap Counterparty had a net loss of $100,000 based solely on the Swap Counterparty's Contributions and Redemptions, its Recognized Claim would be $1,000 ($100,000 X1%).

Please note that the term "Recognized Claim" 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. Disbursements from the Net Settlement Fund

The Notice and 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 Recognized Claim and the denominator of which is the sum total of all Authorized Claimants' Recognized Claims, provided that no Authorized Claimant will receive more than its Recognized Claim. Eligible Policyholders will be paid by their Eligible Carrier out of the Eligible Carrier's Disbursement based on a methodology to be determined by the Eligible Carrier.

Payments made pursuant to this Plan of Allocation above shall be conclusive against all Authorized Claimants. No Person shall have any claim against the State Law and Securities Plaintiffs, Plaintiffs' State Law and Securities Class Counsel or the Notice and Claims Administrator based on Disbursements, determinations or claim rejections made substantially in accordance with this Plan or further orders of the Court, except in the case of fraud or willful misconduct. No Person shall have any claim under any circumstances against the Released Parties based on any Disbursements, determinations or claim rejections or the design, terms or implementation of this Plan. Authorized Claimants who fail to complete and file a valid and timely Proof of Claim form shall be barred from receiving Disbursements from the Net Settlement Fund, unless the Court otherwise orders. State Law Subclass and Securities Subclass Members who do not either submit a request for exclusion or submit a valid and timely Proof of Claim will nevertheless be bound by the Settlement and the Judgment of the Court dismissing the State Law and Securities Actions.

The Court has reserved jurisdiction to modify, amend or alter the Plan of Allocation without further notice to anyone, and to allow, disallow or adjust any Authorized Claimant's claim to ensure a fair and equitable disbursement of settlement funds.

Payments will be made to Authorized Claimants whose claims entitle them to a payment of no less than $10.00 after all claims have been processed and after the Court has finally approved the Settlement. 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' State Law and Securities Class 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 Recognized Claim (but no greater than its Recognized Claim) as defined in this Plan. If Plaintiffs' State Law and Securities Class 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' State Law and Securities Class Counsel shall, with the consent of the State Law and Securities Plaintiffs and upon approval of the Court, and without further notice to the State Law Subclass and Securities Subclass Members, cause the remaining balance to be disbursed *cy pres*.