

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of  
Noble Trust Company**

**LIQUIDATOR'S MOTION FOR APPROVAL OF SETTLEMENT AND RELEASE  
AGREEMENT WITH INVESTORS INDEPENDENT TRUST COMPANY**

Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively), by his attorneys, the Office of the Attorney General and Sheehan Phinney Bass + Green, Professional Association, moves this Court for an entry of an order approving the Settlement and Release Agreement dated as of February 12, 2014 (the "Settlement Agreement")<sup>1</sup> by and between the Liquidator and Investors Independent Trust Company ("IITC"). This Motion is supported by the Affidavit of Robert A. Fleury dated February 21, 2014 (the "Fleury Affidavit"). In support of this Motion, the Liquidator states as follows:

**Background**

1. In 2003, Noble Trust was organized and chartered under the laws of the State of New Hampshire as a non-depository banking corporation, and subject to regulation by the New Hampshire Banking Department (the "Banking Department").
2. As a result of irregularities discovered by the Banking Department's 2008 examination of Noble Trust, on February 11, 2008, Commissioner Peter Hildreth commenced a liquidation proceeding by filing a Verified Petition for Liquidation (the "Liquidation Petition") in this Court, seeking the appointment of a liquidator for Noble Trust pursuant to RSA 395:1, as

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<sup>1</sup> A copy of the Settlement Agreement is attached hereto as Exhibit A.

well as related injunctive relief against Noble Trust pending the Court's ruling on the Liquidation Petition (the "Liquidation Proceeding").

3. On March 27, 2008, this Court entered an order (the "Liquidation Order") appointing Commissioner Hildreth as liquidator of both Noble Trust and its parent company, Aegean Scotia. The Liquidator is the duly appointed successor liquidator of Noble Trust and Aegean Scotia by order of this Court dated February 1, 2013.

4. Colin P. Lindsey ("Lindsey") was the president of Noble Trust and chairman of its board of directors. Fleury Affidavit, ¶ 3. During the course of its business, Noble Trust solicited and received funds from both new and existing clients. Id. Noble Trust's clients' funds were maintained as individual management accounts or individual retirement accounts established for the benefit of those clients, or held in charitable trusts for which Noble Trust clients were both the grantors and beneficiaries during their lives. Id.

5. Between June 2004 and September 2007, Noble Trust (acting as a trustee under its clients' trusts) invested approximately \$15 million in an entity known as Sierra Factoring, LLC ("Sierra"). Fleury Affidavit, ¶ 4. Based upon information available to the Liquidator, the \$15 million investment in Sierra became substantially or entirely worthless, a fact that Lindsey did not disclose to Noble Trust's clients. Id.

6. Instead, Lindsey attempted to conceal the loss from Noble Trust's clients and other parties in interest (including the Banking Department) through a fraudulent and illegal Ponzi scheme. Fleury Affidavit, ¶ 5. In 2006 and 2007, Sierra stopped paying monthly "interest" payments to Noble Trust, which had until that time, been paid to Noble Trust clients invested in Sierra. Id. To make the monthly payments its clients were accustomed to, Noble Trust began using, among other sources, money from newer investors to make the monthly

payments. Id. Noble Trust also used funds from newer investors to repay older investors' principal investment in Sierra. Id.

7. The Liquidator is in the process of marshaling the assets of Noble Trust in order to maximize the value of the liquidation of Noble Trust for the benefit of creditors. Among his other powers, the Liquidator is authorized to assert any claims that may be brought by or on behalf of Noble Trust or Aegean Scotia.

8. In October, 2003, Noble Trust contracted with IITC through a Service Agreement dated October 1, 2003 (the "Service Agreement") to serve as record keeper and custodian of accounts (including trusts, investment management accounts, or investment retirement accounts) held through Noble Trust, whether as trustee, trust or account administrator, or investment manager (collectively "Client Accounts"). Fleury Affidavit, ¶ 7. Under the Service Agreement, IITC had certain specified duties and responsibilities, including to collect, deposit, and post income and distribute it to the appropriate accounts. Id. In return, IITC collected a monthly fee from each account for which it was a custodian. IITC served Noble Trust under the Service Agreement until March 2007. Id.

9. In furtherance of maximizing the liquidation estate, on or about March 27, 2009, the Liquidator filed a demand for arbitration against IITC, which arbitration has been conducted by agreement of the parties at the Judicial Arbiters' Group, Case No. JAG No. 10-1552A (the "Arbitration"). In the Arbitration proceeding, the Liquidator has alleged that while custodian and administrator of the Client Accounts, IITC aided and abetted the breach of fiduciary duties owed to Noble Trust and its clients by Lindsey and Lisa Ordway Elliott, two officers of Noble Trust, breached fiduciary duties owed by IITC to Noble Trust and its clients, and breached the terms of its Service Agreement with Noble Trust. The Liquidator has alleged in the Arbitration

that total losses to Noble Trust and its clients arising from wrongful acts of IITC, after subtraction of recoveries obtained by the Liquidator range between \$4 million and \$5 million.

10. In the Arbitration, IITC denies both wrongdoing and liability with respect to the Liquidator's claims and has asserted a counterclaim in the Arbitration against the Liquidator, and, absent the Settlement Agreement, would assert numerous defenses to the Liquidator's claims. For example, IITC argued that the aiding and abetting claim was barred by Colorado's economic loss rule. IITC also asserted that the Liquidator could not prove a causal link between the violations that he was alleging and the damages he was seeking.

#### **Summary of Settlement Agreement<sup>2</sup>**

11. The Liquidator has reached a settlement with IITC. Under the Settlement Agreement, IITC shall pay to the Liquidator \$325,000.00 (the "Settlement Amount") within twenty days of the mutual execution of the Settlement Agreement. The Liquidator has agreed to hold the Settlement Amount in an escrow account pending Court Approval (defined below). Upon Court Approval, the Settlement Amount will become part of the liquidation estate to be distributed or used by the Liquidator as appropriate.

12. By its terms, the Settlement Agreement is subject to the entry of a final order by the Liquidation Court in the Liquidation Proceeding approving the Settlement Agreement (the "Court Approval"). Court Approval shall be deemed to occur on the date that this Court's order approving the Settlement Agreement shall have become non-appealable or, in the event of an appeal, has been affirmed after all appeals therefrom have been exhausted.

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<sup>2</sup> Notwithstanding the recitation in this Motion of the terms of the Settlement Agreement, this is a summary only and all parties in interest are urged to read the Settlement Agreement. In the event of any conflicts or inconsistencies between the summary contained in the Motion and the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

13. Upon Court Approval, Liquidator, in his capacity as Liquidator and on behalf of Noble Trust (for itself and in any and all capacities in which it is named or has acted with respect to the Client Accounts), shall release IITC from and against any and all claims, demands, obligations, liabilities, and causes of action, of any nature whatsoever, at law or in equity, asserted or unasserted, known or unknown, relating in any way to the IITC Custodianship; provided, however, that the release does not constitute a release of any claims of the Liquidator against any other person or entity.

14. Upon Court Approval, IITC, including without limitation successors in whole or in part of the operations of IITC as conducted during the period 2003 through 2008, shall release the Liquidator, Noble Trust and holders of the Client Accounts from and against any and all claims, demands, obligations, liabilities, and causes of action, of any nature whatsoever, at law or in equity, asserted or unasserted, known or unknown, relating to the IITC Service Agreement, the services provided, or not provided, by IITC or by Noble Trust pursuant thereto, or the conduct of any of the parties' reciprocal obligations in connection therewith or any other action or inaction relating to such Service Agreement, services, conduct or inaction (collectively, the "IITC Custodianship") except as set forth in the Settlement Agreement.

15. The Court Approval shall bar any and all third parties (including, but not limited to, all holders or beneficiaries of Client Accounts) and any and all other persons or entities claiming an interest in the IITC Custodianship (collectively "Third Parties") from pursuing claims against IITC, its directors, officers, employees, representatives, affiliates, successors and assigns related in any way to the IITC Custodianship, the accounts and monies administered by IITC (the "NTC and Client Accounts"), or the Settlement Agreement. The Court Approval shall further bar Third Parties from pursuing claims against IITC, the Liquidator or Noble Trust,

asserted by, through, or under the NTC and Client Accounts. All liens, claims, encumbrances and interests in such NTC and Client Accounts asserted by any and all Third Parties shall be administered and adjudicated in the Liquidation Proceeding in conjunction with the Liquidator's Plan of Liquidation and pursuant to further order(s) of the Liquidation Court. Notwithstanding any bar of claims, however, nothing in the Settlement Agreement shall prevent any Noble Trust investor or client that held a Client Account from continuing to assert a timely filed claim against the liquidation estate of Noble Trust and Aegean Scotia.

16. The Settlement Agreement is the result of arms-length negotiations between the parties and their counsel and is a fair, reasonable and adequate resolution of the parties' dispute. The Settlement Agreement will result in the payment of a material sum to the estate and resolve the Arbitration proceeding. Therefore, the Settlement Agreement maximizes the value of the liquidation of Noble Trust by creating a fund that will be available to claimants of the estate, subject to further order of the Court, and relieves the estate of further costs and from the inherent uncertainty of the pending litigation. The Liquidator believes that entering into the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment. Fleury Affidavit ¶ 16.

17. Accordingly, the Liquidator believes that approval of the Settlement Agreement is in the best interests of Noble Trust, its creditors, and all parties in interest. See In re Liquidation of The Home Ins. Co., 154 N.H. 472, 489-90 (2006).

WHEREFORE, the Liquidator requests that the Court (i) enter an order, in substantially the same form submitted herewith as Exhibit B, granting the Motion and approving the Settlement Agreement, and (ii) grant the Liquidator such other and further relief as is just.

Respectfully submitted,

Dated: February 27, 2014

GLENN A. PERLOW, BANK COMMISSIONER  
OF THE STATE OF NEW HAMPSHIRE,  
AS LIQUIDATOR OF NOBLE TRUST COMPANY

By his attorneys,

ANN M. RICE, DEPUTY ATTORNEY GENERAL

 w/pammarum AMC

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SHEEHAN PHINNEY BASS + GREEN  
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Christopher M. Candon (NH Bar 21243)  
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# **EXHIBIT A**

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Settlement Agreement") is entered into as of the 12<sup>th</sup> day of February, 2014 (the "Effective Date") by and between Investors Independent Trust Company, with its principal address located at 507 Canyon Blvd., Boulder, Colorado 80302 ("IITC"), and Glenn A. Perlow, Bank Commissioner of the State of New Hampshire, as Liquidator of Noble Trust Company ("NTC") (the "Liquidator") (IITC and the Liquidator being individually referred to herein as the "Party" or collectively as the "Parties").

RECITALS

WHEREAS, in October, 2003 NTC contracted with IITC through a Service Agreement dated October 1, 2003 to serve as record keeper and custodian of accounts (including trusts, investment management accounts, or investment retirement accounts) held through NTC, whether as trustee, trust or account administrator, or investment manager (collectively "Client Accounts"), with certain specified duties and responsibilities, and served in that capacity until March 2007; and

WHEREAS, on February 11, 2008, the Commissioner filed with the Superior Court for Merrimack County, New Hampshire (the "Liquidation Court") his Verified Petition for Liquidation of NTC, and appointed Robert A. Fleury, Deputy Bank Commissioner of the State of New Hampshire, as Conservator for NTC.

WHEREAS, on March 31, 2008, such Liquidation Court entered its Order Appointing Liquidator (the "Liquidation Order"), pursuant to which the Liquidator was vested with certain rights and powers concerning NTC (and all sub-trusts and protected trusts and other accounts in which it holds an interest, either directly or indirectly), including "exclusive possession, custody

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and control of all of the property, contracts and rights of action and all of the books and records of NTC, . . . wherever located and by whomever possessed." The Liquidation Order further provided the Liquidator with "all of the powers of the officers and managers of NTC." The Liquidator is the duly appointed successor liquidator by order of this Court dated February 1, 2013.

WHEREAS, the Liquidator has alleged, and IITC denies, that, while custodian and/or administrator of the Client Accounts, IITC aided and abetted the breach of fiduciary duties owed to NTC and its clients by Colin Lindsey and Lisa Ordway Elliott, two officers of NTC; breached fiduciary duties owed by IITC to NTC and its clients; and breached the terms of its Service Agreement with NTC; and

WHEREAS, on or about March 27 2009, the Liquidator filed a demand for arbitration against IITC, which arbitration has been conducted by agreement of the parties at the Judicial Arbiters' Group, Case No. JAG No. 10-1552A (the "Arbitration"); and

WHEREAS, the Liquidator has alleged in such arbitration that total losses to NTC and its clients arising from wrongful acts of IITC, after subtraction of recoveries obtained by the Liquidator range between \$4 million and \$5 million; and

WHEREAS, IITC has asserted a counterclaim in the Arbitration against the Liquidator; and

WHEREAS, the Parties each have claims against each other arising from and relating to the IITC Custodianship, as hereinafter defined, and desire to settle and compromise their claims against each other in the manner set forth herein, in order to avoid the considerable time, expense, resources and uncertainties that protracted litigation of such claims would entail.

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AGREEMENT

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein contained, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. The Parties agree that this Settlement Agreement is subject to the entry of a final order by the Liquidation Court in the Liquidation Proceeding approving this Settlement Agreement (the "Court Approval"). The Court Approval shall be deemed to occur on the date that such order shall have become non-appealable or, in the event of an appeal, has been affirmed after all appeals therefrom have been exhausted.

2. Upon Court Approval of this Settlement Agreement, and notwithstanding any other agreement between the Parties, the Liquidator and IITC agree that the Liquidator may utilize any documents, copies and electronic records generated or produced by or on behalf of IITC and relating to the Service Agreement or NTC or Client Accounts administered by IITC ("IITC Documents") as evidence in the course of administering the liquidation estate.

3. IITC agrees to pay to the Liquidator the aggregate sum of Three Hundred Twenty-Five Thousand and 00/100 dollars (\$325,000.00) (the "Settlement Amount") within twenty(20) days of the mutual execution of this Settlement Agreement. IITC shall deliver to the Liquidator the full amount of the Settlement Amount in immediately available funds within this timeframe, and the Liquidator shall deposit the same in a separate, segregated account (the "Settlement Account") and hold for the benefit of IITC pending Court Approval. If Court Approval does not become effective, the Liquidator shall thereupon return the Settlement Amount to IITC, without setoff or deduction on account of any claim that the Liquidator or any Third Party may otherwise have against IITC or any other claim that is made in the Liquidation

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Proceeding. Upon Court Approval, the Settlement Amount shall be released from the Settlement Account and accepted by the Liquidator.

4. For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Liquidator, in his capacity as Liquidator and on behalf of NTC (for itself and in any and all capacities in which it is named or has acted with respect to the Client Accounts), its representatives, parent organization, and their respective successors and assigns, hereby releases, acquits and discharges IITC, together with its directors, officers, employees, attorneys, agents, insurers, representatives, heirs, assigns, affiliates, predecessors, successors, related entities, and subsidiary and parent organizations from and against any and all claims, demands, obligations, liabilities, and causes of action, of any nature whatsoever, at law or in equity, asserted or unasserted, known or unknown, relating in any way to the IITC Custodianship; provided, however, that this release does not constitute a release of any claims of the Liquidator against any other person or entity.

5. For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, IITC, and its directors, officers, employees, representatives, affiliates, successors and assigns, including without limitation successors in whole or in part of the operations of IITC as conducted during the period 2003 through 2008, hereby release, acquit and discharge the Liquidator, NTC and holders of the Client Accounts and the NTC, clients together with their directors, officers, employees, attorneys, agents, insurers, representatives, heirs, assigns, affiliates, predecessors, successors, related entities, and subsidiary and parent organizations (all, collectively, the "NTC Parties") from and against any and all claims, demands, obligations, liabilities, and causes of action, of any nature whatsoever, at law or in equity, asserted or unasserted, known or unknown, relating to the IITC Service Agreement, the services provided,

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or not provided, by IITC or by NTC pursuant thereto, or the conduct of any of the parties' reciprocal obligations in connection therewith or any other action or inaction relating to such Service Agreement, services, conduct or inaction (collectively, the "IITC Custodianship") except as set forth in this Agreement.

6. The Court Approval shall bar any and all third parties (including, but not limited to, all holders or beneficiaries of Client Accounts) and any and all other persons or entities claiming an interest in the IITC Custodianship (collectively "Third Parties") from pursuing claims against IITC, its directors, officers, employees, representatives, affiliates, successors, and assigns related in any way to the IITC Custodianship, the accounts and monies administered by IITC (the "NTC and Client Accounts"), or this Settlement Agreement. The Court Approval shall further bar Third Parties from pursuing claims against IITC, the Liquidator, or NTC asserted by, through, or under the NTC and Client Accounts. All liens, claims, encumbrances and interests in such NTC Client Accounts asserted by any and all Third Parties shall be administered and adjudicated in the Liquidation Proceeding in conjunction with the Liquidator's Plan of Liquidation and pursuant to further order(s) of the Liquidation Court. Notwithstanding any bar of claims set forth in this paragraph, however, nothing in this Settlement Agreement shall prevent any interested party that holds a Client Account from continuing to assert a timely filed claim against NTC or Aegean Scotia.

7. Notwithstanding paragraph 5, no Party to this Settlement Agreement shall be barred from taking action for breach of this Settlement Agreement.

8. All of the claims and defenses impacted by this Settlement Agreement are denied and contested by each of the Parties, and nothing contained herein shall in any way be construed as or constitute an admission of fault, liability, or responsibility on the part of either of the

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Parties. Each of the Parties denies liability and responsibility and is entering into this Settlement Agreement in order to resolve further litigation with each other and the costs and expenses associated therewith, and in so doing, each of the Parties denies any and all liability and defenses and state that the settlement made herein is entirely a compromise.

9. The Parties acknowledge that neither they, nor anyone acting or purporting to act on their behalf, have made any representations nor warranties to the other as to any tax issues relating to this Settlement Agreement.

10. This Settlement Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire applicable to agreements made and to be wholly performed within that state, without regard to its conflicts of law provisions or the conflict of law provisions of any jurisdiction that would cause the application of any law other than that of the state of New Hampshire. Venue of any action arising out of this Settlement Agreement will be exclusively in the Liquidation Court.

11. The Liquidator agrees to file all necessary pleadings to obtain entry of the Court Approval as soon as possible. The Notice and Procedures used to obtain approval for this Settlement Agreement will be those approved by the Liquidation Court in its Order Establishing Settlement Agreement Review Procedures dated December 5, 2012.

12. Each Party represents that it has carefully read and fully understands all of the provisions of this Settlement Agreement, that it has been given the opportunity to fully discuss the contents of this Settlement Agreement with independent counsel of its choice and has done so, and that by executing the Settlement Agreement, each Party relies entirely on its own judgment and the advice of its respective counsel and not upon any representation, statement or promise, not otherwise set forth in this Settlement Agreement, of any of the other Parties, their

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attorneys or other individual or entity, and that it is voluntarily and without duress entering into this Settlement Agreement.

13. This Settlement Agreement may be signed in counterparts that are provided to the other party by facsimile or by electronic mail transmission of a copy of the executed document (in .pdf or .tiff format), each of which shall be deemed an original, and all counterparts so executed shall constitute one Settlement Agreement binding on all of the Parties, notwithstanding that all of the Parties are not signatory to the same counterpart.

14. The language of all parts of the Settlement Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly construed for or against any Party. The Parties agree that this Settlement Agreement shall be deemed to have been jointly drafted for purposes of applying any rules of construction.

15. Each of the Parties represents to the other that its signature on this Settlement Agreement has been duly authorized, subject (as to the Liquidator) only to Court Approval.

16. Each party shall be responsible for its own attorneys' fees, its share of the cost of the Arbitration, and all other costs in connection with this Settlement Agreement.

17. Upon mutual execution of this Settlement Agreement, the parties shall vacate the Arbitration hearing set to commence February 17, 2014, and, upon Court Approval shall take whatever further steps are necessary to dismiss the Arbitration.

18. This Settlement Agreement reflects the entire agreement between the Parties concerning the IITC Custodianship and the NTC and Investor Accounts, and its approval is not contingent or conditioned upon or subject to any other agreement that the Liquidator and IITC

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may enter. The execution and delivery of this written Settlement Agreement supersedes any and all prior representations, negotiations or agreements pertaining to the subject matter herein. The Settlement Agreement may not be modified in any way except by written consent of authorized representatives of the Parties.

19. This Settlement Agreement and the covenants, obligations, undertakings, rights or benefits hereof shall be binding upon and shall inure to the benefit of the Parties hereto and their respective representatives, successors and assigns, including but not limited to, any successor liquidators of NTC and any successor trustees, administrators, or beneficial owners of the NTC and Investor Accounts.

20. If, after Court Approval of this Settlement Agreement has been obtained, any part, term or provision of this Settlement Agreement is subsequently declared or determined by any Court or body of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term or provision shall not be deemed to be a part of this Settlement Agreement.

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*[Signature]*

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INVESTORS INDEPENDENT TRUST COMPANY

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By: Herbert J. McPherson  
Name: HERBERT J. MCPHERSON  
Title: PRESIDENT & CEO  
Date: FEBRUARY 13, 2014

**GLENN A. PERLOW,**  
Bank Commissioner of the State of New Hampshire,  
As Liquidator of Noble Trust Company

By: Glenn A. Perlow  
Name: Glenn A. Perlow  
Title: Bank Commissioner  
Date: 2/13, 2014

# **EXHIBIT B**

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of  
Noble Trust Company**

**ORDER APPROVING SETTLEMENT AND RELEASE AGREEMENT  
WITH INVESTORS INDEPENDENT TRUST COMPANY**

Upon consideration of the Liquidator's Motion for Approval of Settlement and Release Agreement with Investors Independent Trust Company dated February 27, 2014 (the "Motion"), pursuant to which Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively), seeks approval of a Settlement Agreement with Investors Independent Trust Company dated as of February 12, 2014 (the "Settlement Agreement") by and between the Liquidator and Investors Independent Trust Company ("IITC"); due written notice of the Motion having been given and served upon all creditors and other interested persons entitled thereto; the Court having reviewed the Motion and the Affidavit in Support of the Motion; there being no objections made to the relief requested; and having found that approval of the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, is fair and reasonable and is in the best interests of this estate and its creditors; and, after due deliberation and sufficient cause appearing therefor; it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted, and the Settlement Agreement is approved. The Liquidator, IITC and all other parties are authorized to take all steps and execute all documents necessary or convenient to consummate or otherwise enter into the Settlement Agreement.

Neither the Liquidator, nor IITC shall have or incur any liability to any person or entity with respect to any of the actions required or permitted to implement the Settlement Agreement or for having entered into the Settlement Agreement.

2. The Settlement Agreement is subject to the entry of a final order by this Court in the Liquidation Proceeding approving the Settlement Agreement (the "Court Approval"). The Court Approval shall be deemed to occur on the date that such order shall have become non-appealable or, in the event of an appeal, has been affirmed after all appeals therefrom have been exhausted.

3. IITC has paid to the Liquidator the aggregate sum of Three Hundred Twenty-Five Thousand and 00/100 dollars (\$325,000.00) (the "Settlement Amount"), which the Liquidator has deposited in a separate, segregated account (the "Settlement Account") pending Court Approval. If Court Approval does not become effective, the Liquidator shall thereupon return the Settlement Amount to IITC, without setoff or deduction on account of any claim that the Liquidator or any Third Party (defined below) may otherwise have against IITC or any other claim that is made in the Liquidation Proceeding. Upon Court Approval, the Settlement Amount shall be released from the Settlement Account and accepted by the Liquidator and will become part of the liquidation estate to be distributed or used by the Liquidator as appropriate.

4. Upon Court Approval, any and all third parties (including, but not limited to, all holders or beneficiaries of Client Accounts) and any and all other persons or entities claiming an interest in the IITC Custodianship (collectively "Third Parties") shall be barred from pursuing claims against IITC, its directors, officers, employees, representatives, affiliates, successors and assigns related in any way to the IITC Custodianship, the accounts and monies administered by IITC, or the Settlement Agreement. Upon Court Approval, Third Parties shall be further barred

from pursuing claims against IITC, the Liquidator or Noble Trust, asserted by, through, or under the Client Accounts. All liens, claims, encumbrances and interests in such Client Accounts asserted by any and all Third Parties shall be administered and adjudicated in the Liquidation Proceeding in conjunction with the Liquidator's Plan of Liquidation and pursuant to further order(s) of the Liquidation Court. Notwithstanding any bar of claims, however, nothing in the Settlement Agreement or this Order shall prevent any Noble Trust investor or client that held a Client Account from continuing to assert a timely filed claim against the liquidation estate of Noble Trust and Aegean Scotia.

5. Upon Court Approval, all releases by and between the Liquidator and IITC provided for in the Settlement Agreement shall become effective.

Dated: \_\_\_\_\_, 2014

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Hon. Larry M. Smukler

**CERTIFICATE OF SERVICE**

I, Christopher M. Candon, hereby certify that on February 27, 2014, a copy of the foregoing was served by first class mail, postage prepaid on the parties listed below.<sup>1</sup>

Stephen A. Serfass, Esq.  
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Christopher M. Candon

<sup>1</sup> Simultaneously herewith, the Liquidator has filed a Certificate of Service that evidences a broader service of the pleading on claimants and other parties in interest.