FINRA DISPUTE RESOLUTION SERVICES

Odeon Capital Group LLC,	:	
Claimant,	:	**Case No. _____**
v.	:	
Hilltop Securities Inc.,	:	
Respondent.	:	

STATEMENT OF CLAIM

Odeon Capital Group LLC ("Odeon" or "Claimant"), by and for its Statement of Claim against Respondent Hilltop Securities Inc. ("Hilltop" or "Respondent"), alleges as follows:

INTRODUCTION

In this case, Hilltop made a $2.8 million blunder and then covered its mistake by brazenly taking and ultimately converting over $3.5 million from Odeon. Hilltop, a firm with over $4.6 billion in assets and that is 65 times larger than Odeon, accomplished its scheme to convert Odeon's funds through lies and a flagrant abuse of its power as Odeon's clearing firm—a relationship that had absolutely nothing to do with Hilltop's error or the trade underlying it.

On or about January 10, 2023, Hilltop paid one of its own trading clients, Clear Haven Capital Management, LLC ("Clear Haven"), over $2.8 million that Clear Haven was not entitled to, despite being told not to by Odeon and in violation of both market practice and Hilltop's own policies and procedures. In fact, less than six weeks after its blunder, Hilltop sued Clear Haven in federal court, seeking the return of the funds it had improperly paid.[1]

[1] Complaint, *Hilltop Secs. Inc. v. Clear Haven Cap. Mgmt., LLC*, Civ. No. 3:23-cv-00432-B (N.D. Tex. Feb. 24, 2023) (the "Hilltop Complaint"). A copy of the Hilltop Complaint is annexed hereto as Exhibit 1.

Unfortunately, rather than taking responsibility for its own lapse, or continuing its pursuit of Clear Haven for a return of the funds, Hilltop concocted a shameless and deliberate plan to make itself whole at Odeon's expense, which has caused Odeon substantial damages well beyond the over $3.5 million that was taken. Based on the evidence that will be presented at the hearing, Odeon is entitled to substantial compensatory, consequential, and punitive damages.

The Underlying Trade: Hilltop Executes a Trade on Behalf of Clear Haven

Hilltop's wrongful payment to Clear Haven arose in connection with a sale of "zero-factor" residential mortgage-backed securities ("RMBS") from Odeon to Clear Haven, in which Hilltop acted as "executing" broker on behalf of its client, Clear Haven. The securities themselves were issued in 2006 and were among the thousands of mortgaged-backed securities issued in the years leading up to the collapse of the mortgage market and the onset of the financial crisis in 2008.[2]

Late in the afternoon on January 5, 2023, Clear Haven, an SEC-registered investment adviser and highly sophisticated buyer and seller of distressed RMBS, after conducting its own investigation, agreed to buy $30 million in the notional (or "face") amount of residential mortgage bond certificates of a security known as BSABS 2006-IM1 A7 (the "BSABS Bonds") from Odeon for $2,843,253 (the "BSABS Trade").[3] The trade was "booked" the following

[2] Mortgage-backed securities are typically issued in "tranches," with waterfall payment schedules that are designed to pay the more senior tranches first as individual mortgage loans are repaid followed by payments to the less senior (and therefore more risky) tranches. For many of these bonds, due primarily to loan repayment defaults by individual borrowers, the respective trustees of those bonds would often write down lower tranches to zero where there was no longer a present expectation that the tranche would receive any payments. Even though a tranche is written down to zero, because the trust remains in existence, and because of multiple factors such as loan forgiveness, forbearance conditions, and the potential future receipt of litigation proceeds, the securities representing that tranche continue to exist and have potential future value, and can still trade. These uncertainties make "zero-factor" bonds among the riskiest RMBS available in the secondary market.

[3] The official title of the BSABS Bonds is "Bear Stearns Asset-Backed Securities Asset-Backed Certificates Series 2006-IM1." The "A7" in the title refers to the tranche of the certificates. The A-7 tranche of the bonds had an original face value of $96,583,000, meaning the $30 million in certificates sold represented just under one-third

morning on Friday, January 6. Hilltop's role in this trade was the "executing" broker on behalf of its client, Clear Haven. *See* Ex. 1, Hilltop Complaint ¶ 10. In other words, while the trade itself was agreed to between Odeon and Clear Haven, Clear Haven directed Odeon to face (*i.e.*, sell the bonds to) Hilltop as the "riskless principal" broker who would, in turn, sell the bonds on to Clear Haven.

At the time Odeon and Clear Haven agreed to the terms of the trade on the afternoon of January 5, 2023, both parties evaluated the BSABS Bonds based, at least in part,[4] upon a report issued by the bonds' Trustee (the "Trustee") on or about December 19, 2022 that substantially increased the potential future payout on the bonds.[5] But all securities trading involves risk, and ***after the trade settled*** on the morning of Tuesday, January 10, 2023, Clear Haven advised Odeon, for the first time, that the Trustee had issued a revised report that wrote the payout expectation for the bonds back down to their pre-December 19 level.

Clear Haven Improperly Issues an SPO and Hilltop Improperly Pays It

Rather than accept the outcome of its trade, on or about January 10, 2023, Clear Haven improperly caused its prime broker, J.P. Morgan Securities LLC ("JPM"), to send a security

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of the total original face value of the tranche. Residential mortgage-backed securities trade based on (i) the original face or notional amount of the certificate; (ii) the remaining or "current" face amount of the certificate (the original face amount is subject to adjustment by the trustee over time due to loan repayments, write-downs, write-ups, and other factors); (iii) the negotiated price per $100 of "current" face value; and (iv) any accrued interest. Prices are quoted in increments of 1/32 (each 32d referred to as a "tick"). For example, if one were to buy a certificate with an original face value of $10,000,000 and a current face value of $5,000,000 at a price of 90-08 (90 and 8 "ticks" or 90.25), the cost (before adding any accrued interest) would be $4,512,500. Thus, at the time of the purchase, the buyer is speculating that the remaining principal of $487,500 will be paid, plus any accrued interest.

[4] As discussed in more detail below, Odeon also valued the bonds at least in part on contemporaneous transactions in the BSABS Bonds on January 5 with a major RMBS market participant, Citigroup Global Markets.

[5] The Trustee's report on December 19, 2022 had "written up" the A-7 tranche of the BSABS Bonds from zero to $9,795,464.61. This write-up was apparently based on a ruling from the New York State Supreme Court issued on November 23, 2022, related to the process of allocating billions of dollars from a settlement with JP Morgan that involved not only the BSABS Bonds but also hundreds of others. *See* Judgment, *In the Matter of Wells Fargo Bank, Nat'l Ass'n et al.*, Index No. 657387/2017 (NY Sup. Ct., NY Cnty. Nov. 23, 2022). By writing the A-7 tranche up to $9.795 million, the Trustee advised investors that approximately 10% of the original face amount of $96.5 million was back in the waterfall for potential future payments.

payment order ("SPO") to Hilltop seeking $2,843,253.62 based on an alleged "price adjustment" due to the revised Trustee report—in effect, trying to use the SPO adjustment process to essentially break the trade entirely. But, as discussed in more detail below, this is not a proper use of an SPO, which is used only in connection with ***open*** securities contracts (most commonly in the case of open stock loan contracts where the price of the loaned securities changes and the parties to the loan must therefore send cash to meet the loan requirements[6]). Here, the BSABS Trade was final and settled and was not an "open" securities contract and, therefore, there was absolutely no basis for an SPO.

Further, before paying the SPO, Hilltop's policies and procedures, as well as industry custom and practice, required it to obtain Odeon's approval. Yet, on January 10, 2023, when Hilltop asked Odeon whether Odeon would accept the SPO, Odeon clearly advised Hilltop that the trade was valid and that there was no basis for an SPO that would have the practical effect of completely re-writing terms of the trade and giving the bonds to Clear Haven for free. Hilltop, of its own volition and in violation of accepted practices, norms, and, on information and belief, its own internal policies, proceeded with the SPO anyway and paid out the $2,843,253.62 to Clear Haven.

In the aftermath of its wrongful payment to Clear Haven, Hilltop recognized its error in honoring the SPO and, on February 24, 2023, filed a federal lawsuit ***against Clear Haven*** seeking return of the $2,843,253.62. In its complaint, Hilltop (correctly) asserted that, "***Clear Haven is not entitled to the SPO funds and has been enriched at Hilltop's expense***." Ex. 1, Hilltop Complaint ¶ 16 (emphasis added).

[6] In the RMBS context, as discussed below, an SPO can also be used to adjust the total proceeds of a trade where the bond pays on a "delay"—but that is not the case with the BSABS Bonds.

Hilltop Abuses Its Clearing Relationship with Odeon to Wrongfully Seize Odeon's Funds

Odeon, like many small broker-dealers, uses the services of much larger clearing firms to custody both proprietary and customer securities, finance trading activities, and clear and settle trades. Clearing relationships between small broker-dealers and large clearing firms are some of the most important relationships in the securities industry and are subject to detailed contracts that must be reviewed and approved by the Financial Industry Regulatory Authority ("FINRA"). At the time of the BSABS Trade, Odeon maintained two clearing relationships: one with Hilltop, primarily for its custodial business as well as its non-custodial institutional equities business, and another with Industrial and Commercial Bank of China Financial Services LLC ("ICBC"), for its non-custodial fixed-income and treasuries business.

Critically, Odeon's clearing relationship with Hilltop had nothing to do with the BSABS Trade. Odeon did not clear the BSABS Trade through Hilltop; rather, Odeon cleared this trade through ICBC. In other words, Hilltop's role in the BSABS Trade is separate and distinct from its role as a clearing firm for Odeon. In the BSABS Trade, Hilltop acted as the executing broker for its entirely different client: Clear Haven.

After mistakenly sending Clear Haven over $2.8 million in connection with the improper SPO, Hilltop contrived a plan to force Odeon to cover Hilltop's error by abusing its unrelated clearing relationship with Odeon. Clearing firms require so-called "introducing brokers" (like Odeon) to maintain "clearing deposits" with the clearing firm in order to protect the clearing firm from liabilities ***arising out of the clearing relationship*** caused by either the introducing firm itself or clients "introduced" to the clearing firm by the introducing firm.

For years, Hilltop's required clearing deposit for Odeon was set at $350,000. Within two weeks of Hilltop suing Clear Haven for the return of the $2.8 million, on March 7, 2023, Hilltop advised Odeon that a "routine review" of Odeon's business led Hilltop to demand an increase in

the clearing deposit to $2.5 million—an increase of over 614%. Odeon had little choice but to agree to the increased deposit lest it face significant harm to its business if Hilltop refused to continue to provide its clearing services. Monies placed on deposit could not be used for Odeon's business, so the arbitrary and capricious increase in the clearing deposit by Hilltop sidelined $2.15 million from Odeon's proprietary trading operations. These funds represented a significant portion of Odeon's trading capital, and its inability to use them has caused, and continues to cause, Odeon substantial damages.

Following Hilltop's unilateral decision to demand the increased clearing deposit, Odeon accelerated its already-existing search for a new clearing firm. After informing Hilltop in April 2023 that it was ending their clearing relationship, and after preparing to transfer the bulk of Odeon's accounts to a new clearing firm, on August 27, 2023, Odeon requested a release of $2,150,000 from its clearing deposit account, thereby returning the remaining deposit to its original $350,000.

Seven days after Odeon requested the return of the $2.15 million, Hilltop simply seized the entirety of Odeon's $2.5 million clearing deposit. At the same time, Hilltop unilaterally, and again without any notice or justification, moved over $1 million from Odeon's principal trading account to its deposit account and subsequently took another $300,000 from the deposit account—for a total of $2.8 million. Adding insult to injury, Hilltop also without explanation took another $48,419 out of the clearing deposit for alleged "legal fees," which remain unspecified. Hilltop then retained the $700,000 balance in the deposit account as the "new" required clearing deposit, which it has also refused to return. Overall, Hilltop has converted and stolen over $3.5 million from Odeon, all to cover up its own internal error. Having seized these

funds from Odeon, thus completing its conversion and considering itself made whole, Hilltop voluntarily withdrew its lawsuit against Clear Haven.

Odeon is Entitled to Compensatory, Consequential, and Punitive Damages

Hilltop's actions in this matter are beyond the pale. Odeon is entitled not only to recover the misappropriated funds but also to substantial consequential damages due to Hilltop's past and continuing conversion of millions of dollars through the improper increase in the clearing deposit and ultimate conversion of those funds. Finally, Hilltop deserves the imposition of a substantial punitive award. Hilltop's conduct here was wanton and intentional. With reported assets in excess of $2.6 billion, and excess net capital of over $253 million, merely forcing Hilltop to compensate Odeon for its out-of-pocket and consequential losses will do little to (i) punish Hilltop for its willful and intentional actions, and (ii) deter it from future misconduct. In addition to punishing Hilltop for its clear abuse of power, only a substantial punitive award will make Hilltop think twice before blatantly taking advantage of another small introducing firm and send a message to all industry participants acting as fiduciaries that they should not abuse their fiduciary access to client capital to benefit themselves at the expense of their clients.

THE PARTIES AND OTHER RELEVANT ENTITIES

Claimant Odeon is a Delaware Limited Liability Corporation with its principal place of business at 750 Lexington Avenue, 27th Floor, New York, NY 10022. Odeon was formally organized on or about September 5, 2008, and became registered with FINRA on or about May 18, 2009. Odeon is a broker-dealer that provides sales and trading, investment banking, and research services for its clients. Until December 2, 2023, Odeon maintained a clearing relationship with Hilltop for its custodial business as well as its non-custodial institutional

equities business. At all relevant times, Odeon cleared certain non-custodial institutional fixed income (including RMBS) and its treasury business through ICBC.

Respondent Hilltop is a Delaware Corporation with its principal place of business at 717 N. Harwood Street, Suite 3400, Dallas, Texas 75201. On information and belief, Hilltop was formally incorporated on or about December 31, 1991, and, via a predecessor firm, became registered with FINRA on or about May 30, 1972. Hilltop provides various wealth management, structured finance, public finance and fixed income capital markets services. Relevant to this litigation, Hilltop also provides execution and clearing services for broker dealers and other financial institutions. Specifically, Hilltop provides execution services for Clear Haven.

Relevant non-party Clear Haven is an investment adviser registered with the SEC. Clear Haven's marketing materials advertise more than $600 million in assets under management. On information and belief, Clear Haven manages portfolios on behalf of individuals and small business, as well as various proprietary hedge funds.

Relevant non-party JPM is a registered broker-dealer and serves as Clear Haven's prime broker. In the BSABS Trade, on information and belief, the BSABS Bonds were delivered to JPM on behalf of Clear Haven, and Clear Haven instructed JPM to initiate the improper SPO to Hilltop.

Relevant non-party ICBC is a Delaware limited liability company with its principal place of business at 1633 Broadway, 28th Floor, New York, New York 10019. ICBC was formed on February 11, 2004, and has been registered with FINRA since November 11, 2004. At all relevant times, ICBC acted as Odeon's clearing firm for certain institutional corporate bond trading and its treasury business.

JURISDICTION AND VENUE

Jurisdiction before FINRA Dispute Resolution is proper under Rule 13200 of FINRA's Code of Arbitration Procedure for Industry Disputes, as the dispute involves the business activities of Odeon and Hilltop, which were at all relevant times registered with FINRA.

FACTS

I. The BSABS Trade

A. Characteristics of Distressed Residential Mortgage-Backed Securities

The BSABS Bonds are distressed residential mortgage-backed securities. RMBS securities are pools of residential mortgages that are "securitized" and sold to institutional investors. As described by the Federal Deposit Insurance Corporation:

> The securitization process was a way to pool individual mortgages into a bond, that is, a security, to be sold to investors. The resulting mortgage-backed security was often carved into different pieces, or tranches, with a range of risk and return to appeal to investors' differing appetites. Investors bought the tranche(s) that served their needs. The senior tranches were the highest rated and were considered to have the lowest risk and the highest priority for payment. The equity tranches were the lowest tranches; they had the highest return but also the highest risk because they would be the first to lose money if mortgage loan borrowers defaulted.[7]

The terms of any specific RMBS are detailed in the security's offering documents and typically involve a highly complex series of "waterfall" payments to the various tranches depending on cash flows received by the security's trustee as borrowers make their mortgage payments. As the financial crisis gathered steam, many borrowers began to default on their mortgages, resulting in corresponding "write downs" by trustees to various tranches of the securities based on either significantly lower, or in some cases zero, expected future cash flows.

[7] Federal Deposit Insurance Corporation, *Crisis and Response: An FDIC History, 2008-2013*, Chapter 1, at 16 (2017).

Investors in those lower tranches of RMBS securities in many cases saw the indicative value of their investments effectively go to zero.

In the wake of the financial crisis, dozens of lawsuits were filed on behalf of investors against various financial institutions, ratings agencies, servicers, and trustees. Additionally, regulators and government agencies brought actions against loan servicers, mortgage originators, and investment banks responsible for packaging and selling RMBS. As the lawsuits and regulatory actions wound their way through the judicial system, many bonds that had been written down to "zero" (*i.e.*, those bonds where the trustee believes no future cash flows will be forthcoming) continued to have speculative value based upon not only the outcome of those various litigations and regulatory actions, but also the future possibility of additional loan repayments following forbearance periods or other loan modifications.

The BSABS Bonds were among several RMBS offerings that were subject to a settlement agreement initially entered into on November 14, 2013, and modified on July 29, 2014 (the "RMBS Settlement Agreement"),[8] pursuant to which JPMorgan Chase & Co. agreed to pay $4.5 billion into a settlement fund. In December 2017, several banks filed an action in New York State Supreme Court seeking "judicial instructions . . . concern[ing] the administration and distribution of the Settlement Payment" for hundreds of bonds subject to the RMBS Settlement Agreement (the "Settlement Payment Litigation").[9] The issues in the Settlement Payment Litigation were complex and it was not until November 23, 2022 that the court issued its "Final

[8] *See* Settlement Agreement, *In the Matter of the Application of Wells Fargo Bank, Nat'l Ass'n, et al.,* Index No. 657387/2017 (NY Sup. Ct., NY Cnty. Dec. 15, 2017), NYSCEF no. 3.

[9] Petition at 1–2, *In the Matter of the Application of Wells Fargo Bank, Nat'l Ass'n, et al.*, Index No. 657387/2017 (NY Sup. Ct., NY Cnty. Dec. 15, 2017), NYSCEF no. 1.

Judgment and Order Concerning 15 Trusts" (the "15 Trusts Judgment"). The BSABS Bonds were among the RMBS that the 15 Trusts Judgment addressed.

B. The December 19, 2022 BSABS Trustee Report

Each month, trustees for the various RMBS trusts issue reports detailing the status of the tranches of the respective bonds. The November 2022 report for the BSABS Bonds showed the A-7 tranche of the bonds as having a "zero" certificate balance—indicating that the Trustee did not expect any future distributions to the tranche.

Following the court's issuance of the 15 Trusts Judgment on November 23, 2022, on December 19, 2022, the Trustee for the BSABS Bonds wrote the "ending certificate balance" of the A-7 tranche up from zero to $9,795,964.61 and reduced the cumulative realized losses for the tranche from $36.2 million to $26.4 million. In light of the December 19 Trustee report writing up the certificate balance of the A-7 tranche, the bonds began to generate interest from institutional investors.

C. Odeon Sells the BSABS Bonds to Citigroup

Citigroup Inc. ("Citigroup") was one such interested institutional buyer, and, on January 5, 2023, Odeon sold $30 million in face amount of the BSABS Bonds to Citigroup at a price of 92-00.[10] With accrued interest, the total price of the trade was $2,804,799.16. The trade was ticketed, or "booked," on the afternoon of January 5.

D. Clear Haven Wants the BSABS Bonds, So Odeon Buys Them Back from Citigroup and Sells to Clear Haven

At around the same time of the sale to Citigroup, Alexander Bashan of Clear Haven was also investigating the BSABS Bonds and indicated his desire to purchase them from Odeon.

[10] These bonds trade in increments of 1/32 (known as a "tick"), so when a bond is quoted at 92-00 it means 92 and 0/32. By way of further example, if the price is quoted at 92-06, that means ninety-two and six "ticks" or 6/32.

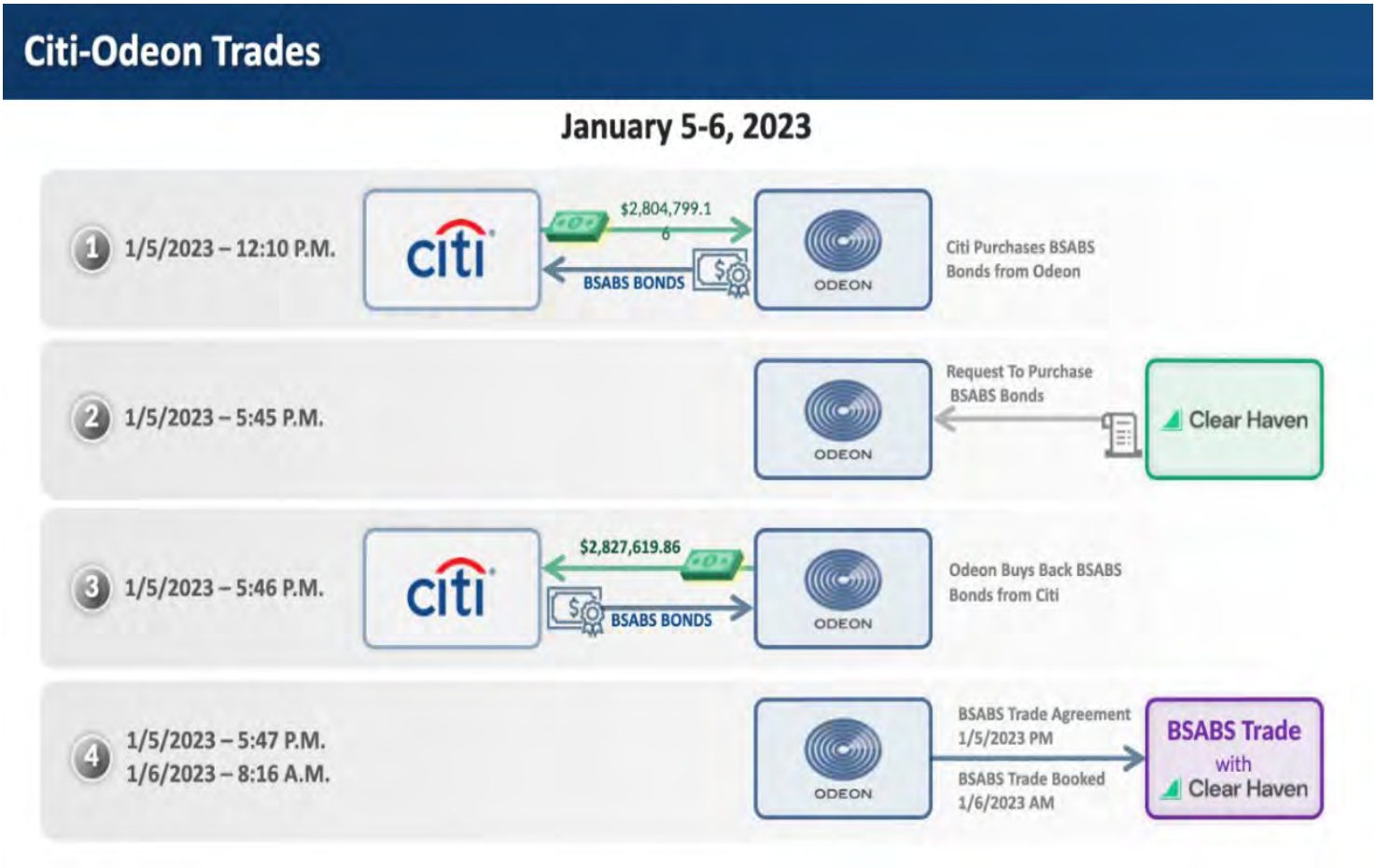
That afternoon, Odeon informed Citigroup that, if Citigroup still had the bonds, then Odeon may be able to get Citigroup an improved price if they were willing to sell the bonds. In response, Citi expressed its willingness to sell the bonds.

Clear Haven is a sophisticated hedge fund with current assets under management exceeding $600 million, and describes its approach to analyzing fixed income securities, including distressed mortgage-backed securities like the BSABS Bonds, in its Form ADV filed with the Securities and Exchange Commission. In its ADV, Clear Haven states:

> High yield bonds are below investment grade and may be considered to be distressed. Certain classes of MBS and ABS are considered distressed and speculative in nature. **Each investment is fully analyzed based on its own fundamental merits and in relation to its relative-value peers. The risks are analyzed and evaluated in relation to the return the investment may potentially yield.** In this sense, a risk-return profile is established so that each security as well as the portfolio as a whole can be properly understood. Potential future losses as well as potential future gains (returns) are viewed with objectivity.[11]

After conducting its own investigation, Clear Haven agreed to purchase the BSABS Bonds for a price of 93-08. As a result, on the evening of January 5, 2023, Odeon bought the bonds back from Citigroup at a price of 92-24, and sold them on to Clear Haven at 93-08.

[11] Clear Haven Capital Management, LLC, SEC Form ADV Part 2A Brochure, at 8 (March 30, 2023) (emphasis added).



(*See* Ex. 2 for full-sized graphic.).

E. The Mechanics of the BSABS Trade

While functionally the BSABS Trade was simply a sale by Citigroup to Odeon and then a purchase by Clear Haven from Odeon, the underlying mechanics of these transactions are more complex. In addition to Odeon and Clear Haven, Hilltop and ICBC played important roles: Hilltop acted as the "executing broker" for Clear Haven, and ICBC acted as the "clearing firm" for Odeon.

1. Hilltop Acted as Clear Haven's "Executing Broker"

Because Hilltop operates in several different capacities, it is important to understand that in the BSABS Trade, Hilltop was acting as the "executing broker" for Clear Haven and was not

acting on Odeon's behalf in any capacity. Hilltop, in addition to being a clearing firm for introducing brokers, also provides execution and settlement services for other institutional financial firms such as the hedge funds managed by Clear Haven. Clear Haven is a hedge fund client of Hilltop's. Thus, to execute certain trades, Hilltop will buy securities at Clear Haven's direction and immediately resell them to Clear Haven. Hilltop described this role in its complaint against Clear Haven:

> For some brokerage and investment-advisory firms, it is impractical or impossible to execute trades on national exchanges. In order to execute certain fixed-income trades, investment-advisory firms like Clear Haven retain clearing firms like Hilltop to execute trades on their behalf. Clear Haven regularly engages Hilltop to facilitate such trades with counter-parties, though Hilltop plays no role in determining who Clear Haven trades with or what kind of trades it makes.[12]

Hilltop admittedly played this "executing broker" role for Clear Haven with respect to the BSABS Trade. While Clear Haven negotiated the trade with Odeon, Hilltop (as Clear Haven's executing broker) purchased the securities from Odeon and then re-sold them to Clear Haven.[13] As Hilltop stated in its complaint against Clear Haven:

> As Clear Haven often does for its trades, Clear Haven directed the January 6 purchase to Hilltop for execution. Hilltop did not solicit the trade or otherwise recommend that Clear Haven make it. Hilltop simply acted as the go-between for the buyer and seller of the Securities: Odeon sold the Securities to Hilltop, then Hilltop sold the securities to Clear Haven. At all times, Hilltop acted as riskless principal and complied with the scope of its obligations to Clear Haven under the parties' agreement.[14]

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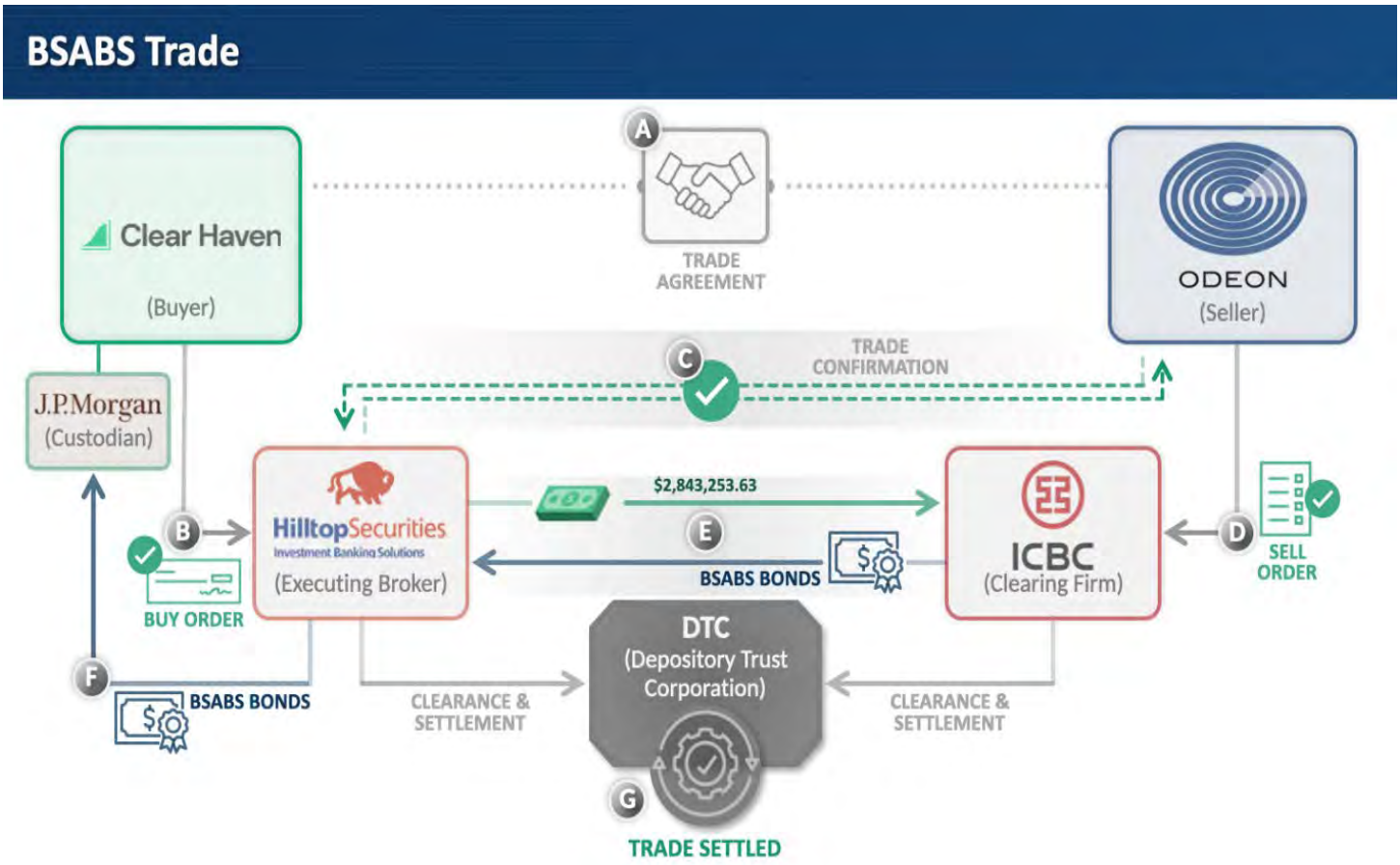
12 Ex. 1, Hilltop Complaint ¶ 7.

13 This is also called acting as a "riskless principal."

14 Ex. 1, Hilltop Complaint ¶ 10.

2. Odeon Cleared the BSABS Trade Through ICBC

Odeon maintains a clearing relationship with ICBC, which clears and settles these kinds of RMBS trades for Odeon. ICBC played that clearing role for Odeon here. Thus, the BSABS Trade occurred as follows:



(A) Around 5:45 p.m. on January 5, Odeon and Clear Haven agree to the terms of the BSABS Trade;

(B) Clear Haven then instructs Hilltop to "face" Odeon to execute the trade (meaning that Odeon will face Hilltop as a counterparty and purchase the BSABS Bonds from Odeon as a riskless principal and then sell them to Clear Haven);

(C) Odeon and Hilltop exchange a trade confirmation detailing the terms of the trade at 8:16 a.m. on January 6 for settlement on Tuesday, January 10;

(D) Odeon directs the trade to ICBC for clearance and settlement (meaning that ICBC was responsible for delivering the BSABS Bonds to Hilltop);

(E) At 8:42 a.m. on Tuesday, January 10, Hilltop delivers (through DTC) the purchase price of $2,843,253 to Odeon;

(F) At the same time, Hilltop receives the bonds from ICBC (through DTC) and subsequently delivers the bonds to JPM as Clear Haven's prime broker and custodian;[15] and

(G) following the exchange of cash for bonds at DTC, the trade is considered "settled," making it final and irrevocable.[16] (*See* Ex. 3 for full-sized graphic.)

II. Hilltop Pays Clear Haven's Improper SPO Request, Contrary to Odeon's Instructions

A. Clear Haven Improperly Seeks to Unwind the BSABS Trade via SPO

On January 10 at 12:23 p.m., Hilltop emailed Odeon's back office, saying it was "just informed" that "the factor on the bonds have adjusted to zero" and that Hilltop, on behalf of Clear Haven, would be "adjusting" the trade on its end by issuing a "security payment order," or "SPO" for the "entire amount of the trade." The adjustment noted by Hilltop apparently related to the Trustee's revised remit report that wrote the A-7 tranche of the bonds down to zero. Odeon had no knowledge of the revised Trustee report until ***after*** the BSABS Trade settled on

[15] The specific chronology of the BSABS Trade is as follows: while Clear Haven and Odeon agreed to the transaction on January 5, Hilltop told Odeon at 5:47 p.m. that it was "too late" in the afternoon to book the ticket and that they could book the ticket in the morning for a T+2 settlement—meaning that the trade would be "booked" on January 6 for settlement two business days later on January 10. On January 6, 2023, ICBC issued a confirmation to Hilltop confirming the trade and the January 10, 2023 settlement date. On Tuesday, January 10, 2023 at 8:16 a.m., the trade settled and the bonds were directed to Hilltop for ultimate delivery to Clear Haven's custodian, JPM, and Odeon's clearing account at ICBC was paid $2,843,253.61.

[16] As is common in the industry, the BSABS Trade settled via the Depository Trust Company ("DTC"). DTC is the central electronic clearinghouse for the vast majority of corporate securities in the United States. Securities such as the BSABS Bonds are custodied at DTC and held in "street name" allowing for the dematerialization of securities and the ease of their transfer through "book-entry" changes to ownership. In essence, DTC acts as a centralized ledger recording the ownership and transfer of corporate securities so that such securities do not need to be physically transferred from one financial institution to another. DTC Rules, which have been approved by the SEC and which form a part of the terms and conditions of every contract or transaction that a participant may make or have with DTC, specify with particularity when transactions processed in the DTC system become final and irrevocable. Specifically, "[f]ree and for-value deliveries of securities become final and irrevocable as to the deliverer when DTC debits the securities from the securities account of the deliverer. Free deliveries of securities become final and binding as to the receiver when DTC credits the securities to the securities account of the receiver." *The Depository Trust Company, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures*, March 2023, at 19–20. DTC debited and credited the BSABS bonds from ICBC's account (on behalf of Odeon) and JPM's account (on behalf of Clear Haven), respectively, on the morning of January 10, and, thus, the BSABS trade became final and irrevocable at that point.

the morning of January 10. Nevertheless, by directing the issuance of the SPO, Clear Haven, via Hilltop, sought to essentially unwind the BSABS Trade.

B. Clear Haven's and Hilltop's Use of an SPO Was Improper

Clear Haven's and Hilltop's use of an SPO in this situation was entirely improper. A security payment order (SPO) is "used to collect a mark-to-market payment based on the difference between the current and previous market values of an open securities contract."[17] An "open" securities contract is one where there are "open" obligations on each side (such as a stock loan contract, where the lender and borrower each have obligations under the stock loan agreement and where borrowing costs can change based on the market value of the security borrowed). In RMBS trading, SPOs are sometimes used when the bond pays interest or other distributions on a "delay" and therefore the total money owed on a particular trade cannot be determined on the trade date. Here, the BSABS Bonds did not pay on a delay, and there was no "distribution" scheduled to be paid to the A-7 tranche in the December remit report from the Trustee; therefore, all parties knew the total price of the trade as of the January 6 trade date. SPOs are never used, as Hilltop (on behalf of Clear Haven) attempted to do here, to essentially unwind a settled trade in its entirety. Further, SPOs, like all other transactions settled through DTC, require a "match"—that is, both parties to an SPO must agree on the terms and total money involved in an SPO. Here, Odeon specifically advised Hilltop that the SPO would not be accepted.

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[17] Depository Trust Clearing Corporation ("DTCC"), DTCC Learning Center, *Payment Orders*, Oct. 14, 2021, http://dtcclearning.com/products-and-services/settlement/payment-orders.html (last visited February 20, 2024). According to DTCC, a "typical" situation in which one would use an SPO would be where "[a] participant delivers securities to another participant through DTC in a stock ***loan*** transaction, after which the market value of the securities increases significantly. The ***lender*** (the payee participant) submits an SPO to DTC crediting its settlement account for the amount of the difference between the original and new market values and debiting the account of the borrower (the payor participant) for the same amount." DTCC Settlement Web, *Payment Orders*, https://dtcclearning.com/products-and-services/settlement/settlement-web.html (emphasis added) (choose "Login or Register"; then register for free account; then navigate to "Payment Orders").

C. Odeon Instructs Hilltop Not to Pay Clear Haven's SPO, but Hilltop Does So Anyway

At 1:07 p.m. on January 10, Odeon responded to Hilltop that the BSABS Trade was "a good trade and [Odeon] sees no basis for an SPO." On January 11, Hilltop again asked for consent to an SPO charge and Odeon again declined, noting that reversal of a trade based on information the parties learned after the trade settled was improper. Given Odeon's response, there was no "match" for the SPO and Hilltop never should have paid it out.

Nevertheless, Hilltop, ***on its own and without being required to by any law, rule, custom or practice***, elected to pay the SPO to Clear Haven's custodian, JPM, for the entire amount of the trade, or $2,843,253.62.[18]

III. Hilltop Realizes its Mistake and Sues Clear Haven Saying the SPO Was Not Proper

On February 24, 2023, Hilltop sued Clear Haven in federal court in Dallas, Texas. Hilltop's Complaint makes clear:

- Hilltop executed the BSABS trade on ***Clear Haven's*** behalf (Ex. 1, Hilltop Complaint ¶¶ 7, 10);
- Hilltop "simply acted as the go-between for the buyer and seller" (*Id.* ¶ 10);
- Hilltop paid the SPO charge issued by JPM (*Id.* ¶ 15); and
- Hilltop correctly alleged that "Clear Haven is not entitled to the SPO funds and has been enriched at Hilltop's expense." (*Id.* ¶ 16).

[18] *See* Ex. 1, Hilltop Complaint ¶ 15 ("JP Morgan issued Hilltop an SPO charge based on Clear Haven's instructions. Hilltop paid JP Morgan the charge, equaling about $2,843,253.62."). Odeon does not know whether Hilltop accepted and paid the SPO request from JP Morgan before or after Odeon specifically rejected the SPO as improper. In any event, Hilltop later acknowledged its error by suing Clear Haven for the improper SPO.

In response to Clear Haven's motion to dismiss the Hilltop Complaint, Hilltop told the court (correctly) that Clear Haven had no right to the funds delivered to JP Morgan by Hilltop.[19]

IV. Hilltop Abuses Its Unrelated Clearing Relationship with Odeon to Repay Itself for Wrongfully Honoring Clear Haven's Improper SPO

A. Hilltop Securities' Responsibilities and Functions as a Clearing Broker

Many small broker-dealers like Odeon utilize and rely on much larger "clearing" broker-dealers to provide certain critical services for their businesses. In general,

> "A clearing firm is hired by an introducing firm to provide back-office services and settlement functions. It plays no role in the introducing firm's sales activities. It does not recommend the purchase or sale of securities to introduced customers. Rather, the clearing firm's involvement in any transaction commences only *after* a trade has been ordered or otherwise authorized by the customer."[20]

After the execution of a trade, a clearing firm processes, settles and clears the transaction and prepares trade confirmations.[21] A clearing firm's contracts with introducing broker-dealers are subject to FINRA review and approval.

B. Odeon's Clearing Agreement with Hilltop

The clearing relationship between Odeon and Hilltop was memorialized in a "fully disclosed clearing agreement"[22] dated August 8, 2019 (the "Hilltop Clearing Agreement"). The

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[19] *See* Ex. 4, Hilltop Opposition to Motion to Dismiss, *Hilltop Secs. Inc. v. Clear Haven Cap. Mgmt., LLC*, Civ. No. 3:23-cv-00432-B (N.D. Tex. May 22, 2023) at 2 ("Clear Haven holds funds that, in equity and good conscience, belong to Hilltop"), 5 ("Clear Haven breached [its contract with Hilltop] by refusing to return the SPO charge"), 6 (". . . the funds Clear Haven received as a result of the SPO charge rightfully belong to Hilltop"), and 8 (". . . equity and good conscience militate against permitting Clear Haven to retain the SPO funds").

[20] Henry F. Minnerop, *Clearing Arrangements*, The Business Lawyer, Vol. 58, No. 3, at 923 (May 2003).

[21] *Id.*

[22] In this context, "fully disclosed" means that Hilltop is provided with the names of any customers whose accounts are "introduced" to Hilltop.

> "The relationship between the clearing firm and the introducing broker-dealers is set forth in a Fully Disclosed Clearing Agreement ('FDCA'), which is filed

Hilltop Clearing Agreement, like all other clearing agreements, is subject to FINRA review and approval. The Hilltop Clearing Agreement sets forth the terms and conditions under which Odeon has hired Hilltop to perform certain back-office clearing and settlement functions. Odeon maintains a similar fully-disclosed agreement with ICBC.

Pursuant to the Hilltop Clearing Agreement, Odeon maintained a clearing deposit with Hilltop. "Many clearing and carrying agreements (clearing agreements) require the introducing firm to deposit money with the clearing firm (clearing deposit) to cover any obligations that may arise from the clearance of the introducing firm's accounts (*e.g.*, unsecured customer debit balances)."[23] At the inception of the clearing relationship in August 2019, Hilltop set Odeon's clearing deposit at $250,000. This deposit was increased to $350,000 in February 2020 when Odeon began using subordinated loans from Hilltop in connection with certain underwriting activity. It remained $350,000 for the next three years until Hilltop's unilateral demand for an additional $2,150,000 in March 2023 (discussed below). The Hilltop Clearing Agreement obligated Hilltop to return Odeon's clearing deposit 30 days following the end of the clearing relationship. Nothing in the Hilltop Clearing Agreement permits Hilltop to unilaterally take funds from Odeon's clearing deposit (or any of its accounts for that matter) in order to compensate for Hilltop's own losses due to its mistake while acting as an executing broker-dealer on behalf of other clients or customers.

> with and approved by FINRA. FINRA Rule 4311 requires the allocation of certain responsibilities between a clearing firm and introducing firm be set forth in the FDCA and, for practical reasons, other responsibilities for which the rule does not require specific allocation are typically allocated in the FDCA."

The Securities Industry and Financial Markets Association ("SIFMA"), Comment Letter to FINRA Reg. Notice 11-44, Nov. 10, 2011, at 4.

[23] FINRA Regulatory Notice 08-46 (September 2008).

C. Hilltop Wrongly Demands That Odeon Increase Its Clearing Deposit by 614%

Shortly after Hilltop sued Clear Haven, on or about March 7, 2023, Hilltop's CFO, Michael Edge, informed Mathew Van Alstyne (Co-Founder and Managing Partner of Odeon) that Hilltop would be raising Odeon's clearing deposit requirement from $350,000 to $2,500,000—an astounding ***614%*** increase. Mr. Edge represented that the increase in the deposit was based on "a review of the overall relationship" and "was not related to any specific transaction," *i.e.*, purportedly not related to Hilltop's dispute with Clear Haven over the SPO. Hilltop never provided a report to Odeon or elaborated on its alleged "review." Likewise, Hilltop never explained why it suddenly believed that the clearing relationship with Odeon was somehow 614% more risky than before.

At the time of Hilltop's demand, Odeon was heavily dependent on its clearing relationship with Hilltop, and if Odeon did not comply with Hilltop's demand for the increased clearing deposit, it could have resulted in Hilltop refusing to clear and settle retail and equity trades with Odeon which in turn would have substantially harmed Odeon's business. Odeon acquiesced to Hilltop's demand and funded the $2.5 million clearing deposit on March 13, 2023.

In order to satisfy the demand for the increased clearing deposit, Odeon liquidated over $3.8 million of proprietary equity positions.[24] As a consequence, Hilltop's unilaterally-imposed clearing deposit requirement deprived Odeon of the use of over $2.15 million in trading capital.

D. Odeon Informs Hilltop It Will Not Renew the Clearing Relationship

Hilltop's demand accelerated Odeon's pre-existing search for a new clearing firm for its retail and equity business. On March 16, 2023, Odeon entered into a new FDCA with RBC

[24] Odeon had to liquidate over $3.8 million in equity positions to fund the clearing deposit demand because as it sold positions to raise cash, its margin requirements necessitated additional sales.

Clearing and Custody, a division of RBC Capital Markets, LLC ("RBC"). On April 24, 2023, Odeon advised Hilltop that it would not be renewing the Hilltop Clearing Agreement and thereby the agreement would terminate at the end of the then-current term on December 2, 2023. After Odeon notified Hilltop that it would not be renewing the clearing relationship, Odeon began the long and laborious process of working with RBC to migrate its equity and retail business from Hilltop to RBC. In contrast to Hilltop's sudden decision to demand $2.5 million for its clearing deposit in March 2023, RBC's requested clearing deposit from Odeon was, and remains, $250,000—which speaks volumes about Hilltop's bad faith.

E. Odeon Asks for the Return of Its Clearing Deposit, and, in Response, Hilltop Seizes It

On August 22, 2023, as the process to move accounts from Hilltop to RBC was well underway, Odeon wrote to Hilltop and requested the immediate release of $2,150,000 of the clearing deposit (leaving the $350,000 that had been the previous deposit requirement). In response, on August 29, 2023, Hilltop, through its outside counsel, said they were "issuing" a ***unilateral*** revision to the BSABS Trade, and that they would be "offsetting" the amounts due from Odeon's clearing deposit. Hilltop, without Odeon's consent, and utilizing Hilltop's access to Odeon's accounts as its clearing firm, proceeded to transfer $1,059,768.56 from Odeon's proprietary trading account to the Hilltop-controlled clearing deposit account. Then Hilltop simply took $2,843,253.62 from Odeon's clearing deposit account. Hilltop also unilaterally determined it would hold $700,000 in the deposit account for "future legal fees" and for any other expenses arising under the clearing agreement. Finally, adding insult to injury, Hilltop removed another $48,419.05 in unspecified "legal fees" from the deposit account. Thus, on its own behalf, willfully and deliberately, Hilltop improperly took $3,543,253 of Odeon's capital.

Two months after seizing Odeon's funds, and without any reasons given, Hilltop voluntarily dismissed its federal case against Clear Haven on November 3, 2023. On November 27, 2023, Odeon demanded the immediate return of the money seized from the clearing deposit. Hilltop refused.

On January 3, 2024, Hilltop was obligated under the Hilltop Clearing Agreement to return Odeon's remaining $700,000 deposit. Hilltop, despite Odeon's request for the deposit's return, and without any legitimate justification, has refused to do so.

CONCLUSION

Hilltop's actions in this matter are outrageous. To cover its own mistake, Hilltop resorted to taking millions of dollars from Odeon through an abuse of the power it had over Odeon as its clearing firm. It was not Hilltop's place to unilaterally decide to adjust the terms of a settled trade for its own benefit. Hilltop's conduct in arbitrarily demanding the increased clearing deposit and unilaterally taking funds from that clearing account for its own purposes has caused Odeon substantial damages and merits substantial and severe remedies.

CLAIM FOR RELIEF

COUNT I – Conversion

1. Claimant Odeon hereby repeats and realleges the facts and allegations contained in all of the foregoing paragraphs as if set forth at length herein.

2. The purpose of Odeon's clearing deposit was to provide security and cover any obligations that may arise from the clearance of the Odeon's accounts.

3. Odeon's deposit of $2.5 million into its clearing deposit account was intended to cover obligations arising out of clearing trades on its behalf. Such funds were Odeon's property,

and, absent any unfunded costs or obligations arising out of clearing trades on its behalf, Hilltop is obligated to return such funds to Odeon.

4. Hilltop has only identified $22,000 in fees and costs arising out of its clearing activities on behalf of Odeon; however, Hilltop has seized $2,843,253.62 from Odeon's clearing deposit and retained an additional $700,000 (ostensibly for the remaining "clearing deposit").

5. To date, Hilltop has taken and refused to return the seized funds to Odeon and, therefore, Hilltop has intentionally taken control of Odeon's property with the intent to permanently deprive Odeon of same, and thus has converted Odeon's funds to its use.

6. As a result of Hilltop's actions, Odeon has suffered significant damages, including, but not limited to, (i) the loss of $3,543,253, representing the funds improperly taken from Odeon's proprietary trading account and deposit account plus the funds continued to be held in the deposit account, and (ii) lost profits due to Hilltop's seizing of Odeon's proprietary trading capital.

COUNT II – Breach of Contract

7. Claimant Odeon hereby repeats and realleges the facts and allegations contained in all of the foregoing paragraphs as if set forth at length herein.

8. Hilltop owes Odeon contractual obligations under the Hilltop Clearing Agreement. Pursuant to Section 11.2 of the Hilltop Clearing Agreement:

> When this [Hilltop Clearing] Agreement has been terminated in accordance with the provisions hereof and [Hilltop] has received payment in full of any and all amounts owing to [Hilltop] hereunder and [Odeon] has satisfied each and every of Introducing Firm's outstanding obligations to [Hilltop] hereunder, [Hilltop] shall return the required clearing deposit to [Odeon] within thirty (30) calendar days of the date on which all of said payments have been received and obligations satisfied.

9. As set forth herein, Odeon maintained a clearing deposit with Hilltop and, on or about March 7, 2023, increased such deposit to $2.5 million. Shortly thereafter, Odeon informed Hilltop that it was not renewing its clearing relationship with Hilltop, and such relationship ended on or about December 2, 2023.

10. Hilltop has identified approximately $22,000 in fees and costs due to it in connection with its clearing activities on behalf of Odeon. On or about January 17, 2024, Odeon authorized Hilltop to deduct such amount from its clearing deposit. Therefore, Odeon has performed under the contract and satisfied its obligations.

11. Accordingly, per the terms of the Hilltop Clearing Agreement, Hilltop was obligated to return Odeon's entire clearing deposit by no later than January 3, 2024.

12. Hilltop has no legitimate basis to retain Odeon's clearing deposit. While Section 10.1.3 of the Hilltop Clearing Agreement permits Hilltop to "charge [Odeon] expenses incurred" by Hilltop, such charges are limited to expenses incurred by Hilltop "on behalf of [Odeon] pursuant to" the Hilltop Clearing Agreement. As set forth herein, Hilltop's unilateral decision to accept Clear Haven's SPO demand was not incurred on behalf of Odeon and did not arise out of its clearing duties on behalf of Odeon.

13. Likewise, while the Hilltop Clearing Agreement permits Hilltop to "setoff" against Odeon's clearing deposit, the term "setoff" definitionally refers to debt owed by Odeon. In its complaint against Clear Haven, Hilltop admitted that ***Clear Haven*** owed Hilltop the $2,843,2453.62 SPO charge that Hilltop paid to Clear Haven, and that Clear Haven "has been enriched at Hilltop's expense."

14. Hilltop has failed to return Odeon's clearing deposit in breach of the Hilltop Clearing Agreement. As a result of Hilltop's breach of contract, Odeon has suffered significant

damages, including, but not limited to, the loss of $3,543,253, representing the funds improperly taken from Odeon's proprietary trading account and deposit account plus the funds continued to be held in the deposit account.

COUNT III – Breach of the Implied Covenant of Good Faith and Fair Dealing

15. Claimant Odeon hereby repeats and realleges the facts and allegations contained in all of the foregoing paragraphs as if set forth at length herein.

16. The Hilltop Clearing Agreement is a valid contract to which Hilltop and Odeon are parties and in which the covenant of good faith and fair dealing is an implied term. Pursuant to the Hilltop Clearing Agreement, Hilltop was to ***clear and maintain cash, margin or other accounts*** . . . for [Odeon] or customers of [Odeon]."

17. Likewise, pursuant to Section 10.1.2 of the Hilltop Clearing Agreement, Hilltop was permitted to charge Odeon for "clearing services" to facilitate and enable Odeon's trading activity. Nowhere does the Hilltop Clearing Agreement permit Hilltop to demand a clearing deposit from Odeon for purposes other than facilitating trades it cleared on behalf of Odeon.

18. In demanding an excessive 614% increase to Odeon's clearing deposit as a pretext for insuring against the misconduct of its third-party customer, Hilltop charged Odeon for conduct separate and apart from the performance of Hilltop's contractual obligations. Hilltop's demand was made in bad faith, and, by tying up substantial funds and thus preventing Odeon from trading, frustrated the purposes of the Hilltop Clearing Agreement and constituted clear bad faith.

19. Likewise, the Hilltop Clearing Agreement does not permit Hilltop to seize Odeon's clearing deposit to compensate Hilltop for its losses from the misconduct of Hilltop's third-party customers or its own mistakes.

20. Hilltop's seizure of Odeon's funds to reimburse Hilltop for the SPO charge it incurred on behalf of Clear Haven was made in bad faith. Further, Hilltop's conduct denied Odeon the fruits of its contract with Hilltop by impairing Odeon's ability to conduct the trading activity contemplated and enabled by the Hilltop Clearing Agreement.

21. Hilltop's bad faith taking of Odeon's funds caused Odeon to lose not just the funds in Odeon's proprietary trading account and deposit account, but also the profits it typically earned from the use of such funds for proprietary trading, including, but not limited to (i) the loss of $3,543,253, representing the funds improperly taken from Odeon's proprietary trading account and deposit account plus the funds continued to be held in the deposit account, and (ii) lost profits due to Hilltops seizing of Odeon's proprietary trading capital.

COUNT IV – Money Had and Received

22. Claimant Odeon hereby repeats and realleges the facts and allegations contained in all of the foregoing paragraphs as if set forth at length herein.

23. Hilltop received $2.5 million from Odeon for use as a clearing deposit. Hilltop benefited from the receipt of such money by using it to compensate itself for losses it incurred on behalf of Clear Haven. Under principles of equity and good conscience, Hilltop should not be permitted to keep Odeon's clearing deposit.

COUNT V – Fraud

24. Claimant Odeon hereby repeats and realleges the facts and allegations contained in all of the foregoing paragraphs as if set forth at length herein.

25. Hilltop's stated basis for increasing Odeon's clearing deposit in March 2023 by 614% from $350,000 to $2,500,000 was, according to CFO Mike Edge, based on an "overall

review of the relationship" between Odeon and Hilltop and was not based on issues related to the BSABS Trade.

26. This statement was false and known to be false by Mr. Edge when it was made.

27. More critically, neither Mr. Edge nor anyone else at Hilltop disclosed that the true purpose for the increased clearing deposit was to reimburse Hilltop for its mistaken payment to Clear Haven. This failure of disclosure constituted an omission of material fact. Further, Hilltop had a duty to disclose this critical fact for two reasons: (i) it had a fiduciary relationship with Odeon; and (ii) disclosure that it was demanding the deposit increase because it was contemplating seizing such deposit in connection with the BSABs Trade was necessary to make its statements about the deposit increase non-misleading.

28. Had Odeon known that Hilltop's demand for a 614% clearing deposit increase was mere pretext to put itself in position to seize those funds to compensate itself for losses arising out of Hilltop's business relationship with Clear Haven, Odeon would never have funded the clearing deposit increase. Instead, Odeon was forced to liquidate millions of dollars in proprietary positions in order to meet Hilltop's unreasonable and arbitrary demand for an increased clearing deposit, and subsequently lost that deposit money when Hilltop wrongfully seized it in fulfillment of its fraudulent scheme.

29. As a result of Hilltop's willful misconduct, Odeon has suffered significant damages, including, but not limited to, (i) the loss of $3,543,253, representing the funds improperly taken from Odeon's proprietary trading account and deposit account plus the funds continued to be held in the deposit account, and (ii) lost profits due to Hilltops seizing of Odeon's proprietary trading capital.

COUNT VI – Breach of Fiduciary Duty

30. Claimant Odeon hereby repeats and realleges the facts and allegations contained in all of the foregoing paragraphs as if set forth at length herein.

31. In depositing cash with Hilltop to serve as a clearing deposit, Odeon reposed trust in Hilltop to hold such deposit safe and employ it for the sole purpose of covering necessary costs and fees incurred in connection with Hilltop's clearing activities on behalf of Odeon. Other than satisfying obligations incurred in connection with its clearing activities, Odeon's clearing deposit belonged to Odeon. Indeed, the Hilltop Clearing Agreement specifically requires its return to Odeon at the conclusion of the parties' contractual relationship.

32. Hilltop accepted the trust reposed in it, thus forming a fiduciary relationship with Odeon as to the clearing deposit.

33. Hilltop breached its fiduciary duty to maintain the clearing deposit on Odeon's behalf for use in connection with clearing Odeon's trades when Hilltop intentionally, and in bad faith, took the cash held in Odeon's clearing deposit to compensate itself for its mistaken payment to Clear Haven.

34. As a direct and proximate result of Hilltop's willful misconduct, Odeon has suffered significant damages, including, but not limited to, (i) the loss of $3,543,253, representing the funds improperly taken from Odeon's proprietary trading account and deposit account plus the funds continued to be held in the deposit account, and (ii) lost profits due to Hilltops seizing of Odeon's proprietary trading capital.

WHEREFORE, Odeon seeks an Award from the Panel representing:

(i) Compensatory damages of no less than $3,543,253 (plus applicable pre-judgment interest);

(ii) Consequential damages in an amount to be determined at the hearing;

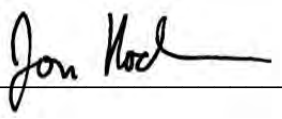
(iii) Punitive damages in an amount to be determined at the hearing;

(iv) Odeon's reasonable attorneys' fees and costs; and

(v) Such other relief as the Panel deems equitable and just.

Dated: New York, New York
February 21, 2024

SCHINDLER COHEN & HOCHMAN LLP

By: 

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Attorneys for Claimant Odeon Capital Group LLC

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HILLTOP SECURITIES INC.,	§	
	§	
Plaintiff	§	
	§	
v.	§	**Civil Action No. _____**
	§	
CLEAR HAVEN CAPITAL MANAGEMENT, LLC,	§	
	§	
	§	
Defendant	§	

PLAINTIFF HILLTOP SECURITIES INC.'S ORIGINAL COMPLAINT

Plaintiff Hilltop Securities Inc. ("Hilltop") files this Original Complaint against Defendant Clear Haven Capital Management, LLC ("Clear Haven"), and states as follows:

I.
PARTIES

1. Hilltop is a Delaware corporation with its principal place of business in Texas.

2. Upon information and belief, Clear Haven is a New York Limited Liability Company with its principal place of business at 370 Lexington Avenue, Suite 707, New York, New York 10017.

3. Clear Haven may be served with process by serving its registered agent Adam Joseph Young, at 530 West 149th Street, New York, New York 10031, or wherever he may be found.

II.
JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the parties and the amount in controversy, exclusive of interest and costs, exceeds $75,000.

5. This Court has personal jurisdiction over Clear Haven because: (1) Clear Haven has established minimum contacts with the State of Texas; and (2) the exercise of personal jurisdiction over Clear Haven does not offend traditional notions of fair play and substantial justice. At all relevant times, Clear Haven operated, conducted, engaged in, or carried out business in Texas. Specifically, the allegations in this lawsuit arise from Clear Haven's relationship and agreement with Hilltop, a Texas-based company.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(c) because a substantial part of the events or omissions giving rise to the claims at issue occurred in the Northern District of Texas. Specifically, the event giving rise to the allegations—Hilltop's execution of a particular trade on Clear Haven's express instruction—took place in Dallas, Texas.

III.
FACTUAL BACKGROUND

A. Relationship Between the Parties.

7. For some brokerage and investment-advisory firms, it is impractical or impossible to execute trades on national exchanges. In order to execute certain fixed income trades, investment-advisory firms like Clear Haven retain clearing firms like Hilltop to execute trades on their behalf. Clear Haven regularly engages Hilltop to facilitate such trades with counter-parties,

though Hilltop itself plays no role in determining who Clear Haven trades with or what kinds of trades it makes.

8. Clear Haven has a certificate on file with the Securities Industry and Financial Markets Association ("SIFMA") affirmatively indicating its ability to exercise independent judgment with respect to its own investment decisions. The certificate, which Clear Haven provided to Hilltop, states, *inter alia*, that Clear Haven is "capable of evaluating risks independently" and "will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons."

B. Clear Haven's Trade.

9. On January 6, 2023, Clear Haven purchased 30 million of BSABS 2006-IMI A7 securities (the "Securities") from Odeon Capital Group LLC ("Odeon"), a broker-dealer based in New York. At the time of the trade, the Securities were valued at $93.09 per unit, and total proceeds to Odeon equaled about $2,844,204.49.

10. As Clear Haven often does for its trades, Clear Haven directed the January 6 purchase to Hilltop for execution. Hilltop did not solicit the trade or otherwise recommend that Clear Haven make it. Hilltop simply acted as the go-between for the buyer and seller of the Securities: Odeon sold the Securities to Hilltop, then Hilltop sold the Securities to Clear Haven. At all times, Hilltop acted as a riskless principal and complied with the scope of its obligations to Clear Haven under the parties' agreement.

11. Clear Haven made this independent investment decision[1] based on a remit issued by Bear Sterns where the tranche of Securities at issue received settlement and wrote to a total tranche size of $96,583.00 original / $9,795,964.61 current.

12. On January 7, Bear Sterns made public a revised remit that included a factor change, where the tranche of Securities did *not* receive settlement and was valued at $0.00. The trade settled on January 10, and the Securities were delivered to Clear Haven's accounts, where they remain.

C. The Special Payment Order.

13. Clear Haven told Hilltop that, at the time the January 7 revised remit was issued, Clear Haven attempted to cancel the trade but failed to do so. It is not known whether Clear Haven attempted to resolve its concerns about the value of the Securities with Bear Sterns.

14. After failing to cancel the trade, Clear Haven instructed the custodian of the accounts to which it allocated the Securities, JPMorgan, to issue a special payment order ("SPO") charge based on the factor change.[2]

15. JPMorgan issued Hilltop an SPO charge based on Clear Haven's instructions. Hilltop paid JPMorgan the charge, equaling about $2,843,253.62.

16. Clear Haven is not entitled to the SPO funds and has been enriched at Hilltop's expense. Hilltop—a firm involved only to execute the trades directed by Clear Haven—asked Clear Haven for compensation for its damages that occurred under the SPO and gave it ample time

[1] Notably, Hilltop provides no input or direction as to Clear Haven's trade activity.
[2] SPO charges may occur when there is a factor change in a certain security during the settlement of the trade.

to comply. Clear Haven has refused to pay the amount owed, and Hilltop was forced to file this lawsuit.

IV.
CAUSES OF ACTION

COUNT I – Breach of Contract

17. Hilltop repeats and realleges each and every allegation set forth above and incorporates them by reference as if fully set forth herein.

18. Clear Haven and Hilltop entered into an agreement whereby Hilltop agreed to purchase the Securities from Odeon and sell them to Clear Haven. Hilltop complied with its obligation and delivered the Securities to Clear Haven.

19. Clear Haven's actions constitute a breach of that agreement, for which Hilltop is entitled to recover at least $2,843,253.62 in damages, plus interests and costs.

COUNT II – Money Had and Received

20. Hilltop repeats and realleges each and every allegation set forth above and incorporates them by reference as if fully set forth herein.

21. Clear Haven holds money that in equity and good conscience belongs to Hilltop. As a result, Hilltop is entitled to recover from Clear Haven the amount that rightfully belongs to Hilltop: at least $2,843,253.62.

COUNT III – Unjust Enrichment

22. Hilltop repeats and realleges each and every allegation set forth above and incorporates them by reference as if fully set forth herein.

23. Based on its own poor trading decisions, Clear Haven incurred a loss, and has received the SPO funds at Hilltop's expense. This is a benefit to which Clear Haven is not justly entitled, and Hilltop is legally entitled to full restitution of at least $2,843,253.62.

COUNT IV – Attorneys' Fees, Expenses, and Costs

24. Hilltop repeats and realleges each and every allegation set forth above and incorporates them by reference as if fully set forth herein.

25. Hilltop has retained the undersigned law firm to prosecute this action and obtain a judgment against Clear Haven. Accordingly, Hilltop is entitled to recover its reasonable and necessary attorneys' fees from Clear Haven pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code.

V.
JURY DEMAND

26. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all issues and claims so triable.

VI.
PRAYER FOR RELIEF

WHEREFORE, Plaintiff Hilltop request that the Court enter judgment:

a. In favor of Hilltop and against Clear Haven on Counts I through IV;

b. Awarding damages to Hilltop on the bases alleged in the Complaint;

c. Awarding Hilltop pre-judgment and post-judgment interest;

d. Awarding Hilltop its costs, expenses, and attorneys' fees;

e. Awarding Hilltop such other and further relief as the Court deems just and reasonable.

Dated: February 24, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2023, a copy of the foregoing document was filed electronically using the Court's Electronic Case Filing System. Notice of this filing will be sent electronically to counsel of record using the Court's electronic notification system. Parties may access this filing through the Court's Electronic Case Filing System.

/s/ *Jonathan D. Neerman*
Jonathan D. Neerman

Exhibit 2

Citi-Odeon Trades

January 5-6, 2023

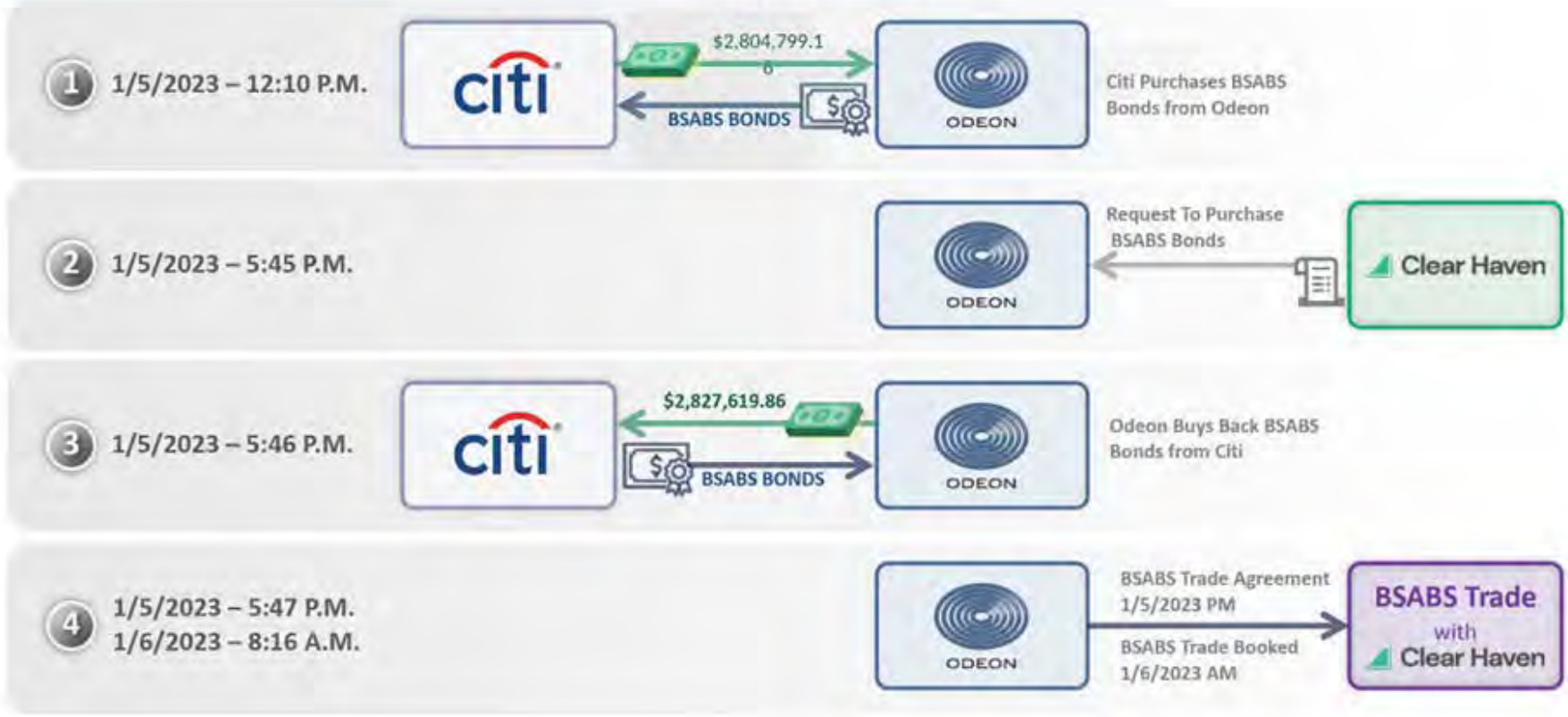

Exhibit 3

BSABS Trade

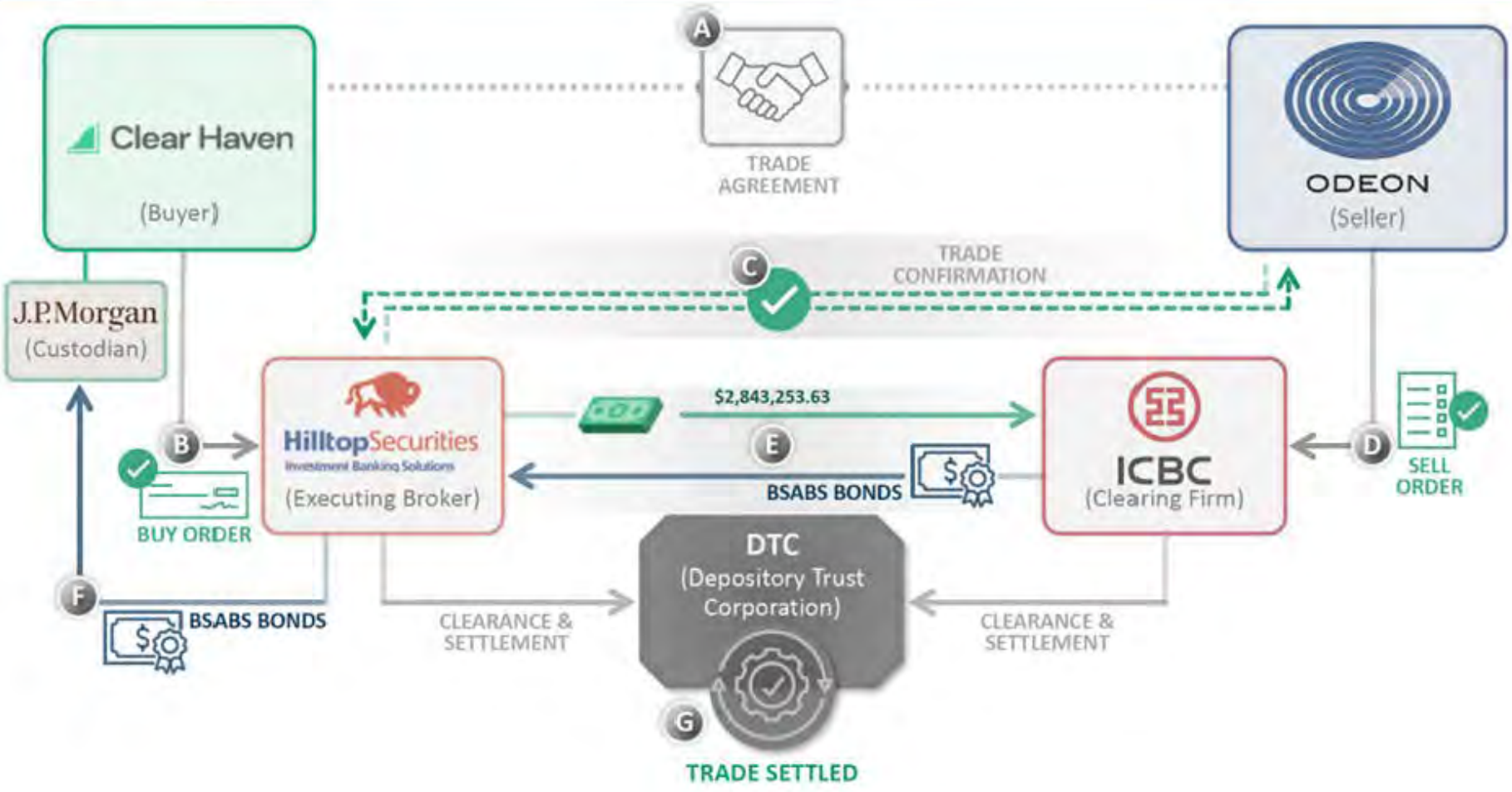
A
TRADE AGREEMENT
Clear Haven
(Buyer)
ODEON
(Seller)
C
TRADE CONFIRMATION
J.P.Morgan
(Custodian)
HilltopSecurities
Investment Banking Solutions
(Executing Broker)
$2,843,253.63
E
BSABS BONDS
ICBC
(Clearing Firm)
B
BUY ORDER
D
SELL ORDER
F
BSABS BONDS
CLEARANCE & SETTLEMENT
DTC
(Depository Trust Corporation)
CLEARANCE & SETTLEMENT
G
TRADE SETTLED

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HILLTOP SECURITIES INC.,	§	
	§	
Plaintiff	§	
	§	
v.	§	**CA No. 3:23-cv-00432-B**
	§	
CLEAR HAVEN CAPITAL MANAGEMENT, LLC,	§	
	§	
	§	
Defendant	§	

PLAINTIFF HILLTOP SECURITIES INC.'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE TO TRANSFER VENUE AND BRIEF IN SUPPORT

Plaintiff Hilltop Securities Inc. ("Hilltop") files this Response to Defendant Clear Haven Capital Management, LLC's ("Clear Haven") Motion to Dismiss, or in the Alternative to Transfer Venue ("Motion to Dismiss" or "Motion") and Brief in Support. Hilltop does not oppose transfer of this case to the Southern District of New York. Hilltop does, however, oppose dismissal under Federal Rule of Civil Procedure 12(b)(6) and respectfully requests that this Court allow the transferee court to decide the merits of that issue.[1]

I. INTRODUCTION

Hilltop acted solely as a *middleman* for a trade of securities between Clear Haven and Odeon Capital Group LLC ("Odeon"). The trade went wrong; yet the actual parties to the trade, Clear Haven and Odeon, are in the same position they were before the trade. Hilltop, meanwhile—despite its status as a riskless principal—is worse off by almost $3 million. By refusing to make

[1] Hilltop provides its brief and response to the Rule 12(b)(6) issues herein from an abundance of caution.

Hilltop whole, Clear Haven (a) breached its contract with Hilltop, (b) holds funds that in equity and good conscience belong to Hilltop, and (c) has been unjustly enriched at Hilltop's expense.

Clear Haven asserts that Hilltop has failed to adequately plead a breach of contract claim. But Hilltop has alleged that it and Clear Haven were parties to an agreement regarding the trade of the Securities on January 6, 2023, and that Clear Haven failed to comply with that agreement by refusing to return the SPO charge after the trade, thereby damaging Hilltop to the tune of almost $3 million. Clear Haven does not deny that that Hilltop played a role in the trade, nor that Clear Haven refused to return the SPO charge. Drawing reasonable inferences in Hilltop's favor, as the Court must, Hilltop has plausibly pled a claim for breach of contract.

Clear Haven further asserts that Hilltop has failed to adequately plead its money had and received claim. But in its Complaint, Hilltop alleges that Clear Haven holds funds that, in equity and good conscience, belong to Hilltop. The circumstances surrounding the trade—including Hilltop's limited role and its extensive damages despite not being a principal party to the transaction—raise an adequate factual basis for its this claim.

With respect to unjust enrichment, Clear Haven argues that (a) Texas law does not recognize a cause of action for unjust enrichment, and (b) Hilltop's claim for unjust enrichment is duplicative of its other claims under New York law. But Clear Haven ignores Northern District, Fifth Circuit, and Texas state caselaw recognizing unjust enrichment as an independent cause of action. And it ignores New York caselaw stating that a plaintiff may plead unjust enrichment as an alternative to breach of contract where the parties dispute whether a contract exists (as they do here).

Thus, Clear Haven's 12(b)(6) Motion to Dismiss Hilltop's claims should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

On January 6, 2023, Clear Haven engaged Hilltop to broker a trade of BSABS 2006-IM1 A7, an asset-backed security (the "Securities"). Compl. ¶ 9. Hilltop did not solicit the trade or otherwise recommend that Clear Haven make it. *Id.* ¶ 10. Odeon, at Clear Haven's direction, simply sold the Securities to Hilltop, then Hilltop sold the Securities to Clear Haven. *Id.* Clear Haven decided to make the trade based on a remit showing that the principal balance of the certificates underlying the Securities was $9,795,964.61. *Id.* ¶ 11. Based on that remit, Clear Haven bought the Securities for $2,844,204.49. *Id.* ¶ 9. But by the time the trade settled and the Securities landed in Clear Haven's account on January 10, a revised remit had been made public. *Id.* ¶ 12. The revised remit included a factor change under which the Securities were now worthless. *Id.*

Clear Haven tried and failed to cancel the trade. *Id.* ¶ 14. After the trade was cleared and fully executed, Clear Haven instructed the custodian of the accounts to which it allocated the Securities, JPMorgan, to issue a special payment order ("SPO") charge based on the factor change, [2] effectively requiring Hilltop to return its money. *Id.* JPMorgan issued Hilltop an SPO charge based on Clear Haven's instructions, and Hilltop paid JPMorgan the charge, equaling about $2,843,253.62. *Id.* ¶ 15. Clear Haven has refused to return these funds to Hilltop. *Id.* ¶ 16.

III. STANDARD OF REVIEW

"When reviewing a motion to dismiss, a court must accept as true all of the factual allegations set out in a plaintiff's complaint, draw all inferences from those allegations in the light most favorable to plaintiff, and construe the complaint liberally." *Rescuecom Corp. v. Google Inc.*, 562 F.3d 123, 127 (2d Cir. 2009). "To survive a motion to dismiss, a complaint must contain

[2] SPO charges may occur when there is a factor change in a certain security during the settlement of the trade.

sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (quoting *Bell Atl. Corp. v. Twombly* 550 U.S. 544, 570 (2007)).

IV. ARGUMENT AND AUTHORITIES

A. Hilltop does not oppose transfer of this case to the Southern District of New York; and if this Court does transfer the case, the transferee court should rule on the merits of the Rule 12(b)(6) motion.

Hilltop does not oppose transfer of this case to the Southern District of New York. If a court concludes that it lacks personal jurisdiction over a defendant or that venue is not proper in its district, the court should allow the transferee court to rule on a 12(b)(6) motion to dismiss for failure to state a claim. *See, e.g., Holdridge v. TricorBraun Inc.*, No. 3:13-CV-1202-L, 2013 WL 3213318, at *5 (N.D. Tex. June 26, 2013) (declining to rule on 12(b)(6) motion because it "should be determined by the transferee court"); *Siragusa v. Arnold*, No. 3:12-CV-04497-M, 2013 WL 5462286, at *1 (N.D. Tex. Sept. 16, 2013) ("[I]f transfer is proper, the transferee court should decide the motion to dismiss."). Thus, in the event the Court orders a transfer of this case, Hilltop respectfully requests that this Court also permit the transferee court to decide the merits of Clear Haven's 12(b)(6) motion.

B. Hilltop has pled sufficient facts to support each of its claims.

1. Breach of contract (Counts I & IV).

To successfully plead a claim for breach of contract, "a complaint need only allege (1) the existence of an agreement, (2) adequate performance of the contract by the plaintiff, (3) breach of contract by the defendant, and (4) damages." *Harsco Corp. v. Segui*, 91 F.3d 337, 348 (2d Cir. 1996). Here, Hilltop has alleged that it entered an agreement with Clear Haven regarding execution of the January 6, 2023 trade, in which Hilltop would receive and retain payment in exchange for the transfer of the securities. Clear Haven breached that agreement by failing to

return the SPO charge after problems with the trade arose. Compl. ¶¶ 7, 10, 16–19. Clear Haven does not dispute Hilltop's role in the trade between Clear Haven and Odeon, nor does it dispute that it failed to return to Hilltop the SPO charge giving rise to this lawsuit. *See* Motion to Dismiss at 15–16. This demonstrates the parties' mutual assent to an agreement regarding the trade of the Securities. *See CAC Grp., Inc. v. Maxim Grp., LLC*, No. 12 CIV. 5901 KBF, 2012 WL 4857518, at *3 (S.D.N.Y. Oct. 10, 2012), *aff'd*, 523 F. App'x 802 (2d Cir. 2013) ("The existence of the agreement is dependent upon allegations demonstrating, *inter alia*, the parties' mutual assent to the terms of the agreement.").

Construing the facts liberally in favor of Hilltop, as the Court must, Hilltop has sufficiently alleged that it and Clear Haven were parties to an agreement regarding the trade of Securities, which Clear Haven breached by refusing to return the SPO charge, thereby damaging Hilltop. *See E*Trade Savings Bank v. Nat'l Settlement Agency, Inc.*, No. 07 CIV. 8065 LTSGWG, 2008 WL 2902576, at *2 (S.D.N.Y. July 25, 2008) (plaintiff plausibly pled breach of contract where it alleged that "Defendants contracted with [Plaintiff] to act as closing agents" and "Defendants breached the contract by failing to disburse the funds" in an escrow account).

Because Hilltop has stated a cause of action for breach of contract, it has adequately pled its claim for attorneys' fees pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code. Compl. ¶¶ 24–25; *see Ryan, LLC v. Inspired Dev., LLC*, No. 3:12-CV-02391-O, 2013 WL 12137012, at *5 (N.D. Tex. July 18, 2013) ("Because the Court finds that [plaintiff] has properly stated a claim for breach of [contract], the Court also finds that [plaintiff] has properly stated a claim for attorney's fees pursuant to Section 38.001.").

2. Money had and received (Count II).

"To prove a claim for money had and received, a plaintiff must show that the defendant holds money that in equity and good conscience belongs to the plaintiff." *Newington Ltd. v. Forrester*, No. 3:08-CV-0864-G, 2011 WL 3652425, at *2 (N.D. Tex. Aug. 16, 2011); *see also FS Media Holding Co. (Jersey) v. Harrison*, No. 13 CIV. 3144 SAS, 2013 WL 5780771, at *4 (S.D.N.Y. Oct. 25, 2013) (articulating a similar standard under New York law). A claim for money had and received does *not* depend on a defendant's improper acts; rather, it is "an equitable claim that is based on the justice of the case." *Rapid Tox Screen LLC v. Cigna Healthcare of Texas Inc.*, No. 3:15-CV-3632-B, 2017 WL 3658841, at *11 (N.D. Tex. Aug. 24, 2017); *see also Blondell v. Bouton*, No. 17CV372RRMRML, 2019 WL 12338323, at *13 (E.D.N.Y. Mar. 29, 2019) ("[P]laintiffs are not required to allege that money was obtained in an improper manner to sustain a claim for money had and received.").

Here, Hilltop has alleged that the funds Clear Haven received as a result of the SPO charge rightfully belong to Hilltop. Compl. ¶ 21. And the factual circumstances surrounding the transaction—Hilltop's role as a middleman and lack of solicitation of or input into the trade decision (*see, e.g.*, *id.* ¶¶ 10–11)—adequately support its cause of action. *See, e.g.*, *Newington Ltd. v. Forrester*, No. 3:08-CV-0864-G, 2011 WL 3652425, at *2 (N.D. Tex. Aug. 16, 2011) (declining to dismiss money had and received claim where plaintiff "allege[d] that it [was] the rightful owner of the disputed funds"); *Bd. of Managers of Trump Tower at City Ctr. Condo. by Neiditch v. Palazzolo*, 346 F. Supp. 3d 432, 466 (S.D.N.Y. 2018) ("At [the motion to dismiss] stage, Plaintiff has adequately alleged . . . money had and received . . ., as it alleges that the funds withheld by ACC were rightfully the property of the Condominium, and that ACC withheld . . .

that money to the detriment of the Condominium."). Thus, dismissal of Hilltop's money had and received claim is improper.

3. Unjust enrichment (Count III).

In support of dismissal, Clear Haven argues that (a) Texas does not recognize a cause of action for unjust enrichment, and (b) Hilltop's unjust enrichment claim is duplicative of its other claims under New York law. Motion to Dismiss at 17–18. Both arguments fail.

The Northern District of Texas has acknowledged that both the Texas Supreme Court and the Fifth Circuit recognize claims for unjust enrichment. *Scott v. Wollney*, No. 3:20-CV-2825-M-BH, 2021 WL 4851852, at *4 (N.D. Tex. Sept. 10, 2021), *report and recommendation adopted sub nom. Scott v. Atlas Fin. Holdings, Inc.*, No. 3:20-CV-2825-M-BH, 2021 WL 4845779 (N.D. Tex. Oct. 18, 2021), *aff'd sub nom. Scott v. Wollney*, No. 21-11161, 2022 WL 4009050 (5th Cir. Sept. 2, 2022) (stating that "[b]oth the Texas Supreme Court and the Fifth Circuit have recognized claims for unjust enrichment as independent causes of action" and collecting cases); *JPM Restoration, Inc. v. ARES LLC*, No. 3:20-CV-3160-B, 2021 WL 487696, at *3 (N.D. Tex. Feb. 10, 2021) ("[T]he Court assumes, at the motion-to-dismiss stage, that unjust enrichment may serve as a standalone cause of action in Texas.") (Boyle, J.).

Under New York law, meanwhile, a claim for unjust enrichment is not duplicative where the existence of a contract covering the conduct at issue is disputed. *See Almazan v. Almazan*, No. 14-CV-311 AJN, 2015 WL 500176, at *14 (S.D.N.Y. Feb. 4, 2015) (claims for unjust enrichment and money had and received were "not duplicative in light of the fact that the existence of the contract is disputed"); *Hoyle v. Dimond*, 612 F. Supp. 2d 225, 231 (W.D.N.Y. 2009) ("[U]njust enrichment and money had and received claims [can] be alternative claims to a breach of contract claim."). Here, Clear Haven denies that a contract between it and Hilltop exists. Motion to

Dismiss at 14–15. Thus, Hilltop's unjust enrichment claim is not duplicative of its other claims. And because Hilltop has alleged that (a) Clear Haven was enriched (b) at Hilltop's expense, and (c) equity and good conscience militate against permitting Clear Haven to retain the SPO funds, Hilltop's unjust enrichment claim should proceed. *See* Compl. ¶ 23; *Mtume v. Sony Music EntertaimentA*, No. 18 CIV. 6037(ER), 2020 WL 4895360, at *6 (S.D.N.Y. Aug. 19, 2020) (declining to dismiss unjust enrichment claim where plaintiff alleged "the precise scenario the New York Court of Appeals has found most warrants a finding of unjust enrichment—one party, though not at fault, received money to which he was not entitled").

V. CONCLUSION

Hilltop does not oppose Clear Haven's motion to transfer the case to the Southern District of New York. If the Court does transfer the case, however, it should permit the Southern District of New York to rule on the merits of Clear Haven's Rule 12(b)(6) motion to dismiss; and that court should deny Clear Haven's motion as to each of Hilltop's claims.

Dated: May 22, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

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/s/ *Jonathan D. Neerman*
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