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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

JEROME O'HARA, and
GEORGE PEREZ,

Defendants.

__ Civ. ___

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendants Jerome O'Hara ("O'Hara") and George Perez ("Perez," and collectively with O'Hara, "Defendants"), alleges:

SUMMARY

1. For over 15 years, Defendants O'Hara and Perez helped Bernard L. Madoff ("Madoff") conduct a massive securities and advisory fraud at Bernard L. Madoff

Investment Securities LLC ("BMIS") that victimized thousands of investors before it collapsed, causing tens of billions of dollars in investor losses.

2. Defendants were computer programmers at BMIS, and were responsible for programming and operating the computer systems that were used to perpetrate and conceal the fraudulent Ponzi scheme run out of the 17th floor at BMIS. Defendants knew that a number of their computer programs were used to fabricate a wide and varying array of fictitious books and records – all prepared for the sole purpose of misleading auditors and regulators into believing that BMIS was a legitimate enterprise. The sophisticated and credible records that Defendants fabricated were critical to the success of the Ponzi scheme for so many years.

VIOLATIONS

3. By virtue of the conduct alleged herein, Defendants directly or indirectly, singly or in concert, have engaged in acts, practices, schemes and courses of business that aided and abetted violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and aided and abetted violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1) and (2)], Sections 15(c) and 17(a) of the Exchange Act [15 U.S.C. §§ 78o(c) and 78q(a)], and Rules 10b-3 and 17a-3 thereunder [17 C.F.R. §§ 240.10b-3 and 240.17a-3], and Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 C.F.R. § 275.204-2].

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

4. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], and Section

209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], seeking to restrain and enjoin permanently Defendants from engaging in the acts, practices and courses of business alleged herein.

5. In addition to the injunctive relief recited above, the Commission seeks: (i) a final judgment ordering Defendants to disgorge their ill-gotten gains with prejudgment interest thereon; (ii) a final judgment ordering Defendants to pay civil penalties; and (iii) such other relief as the Court deems just and appropriate.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

7. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391. The Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, or of the mails and wires, in connection with the transactions, acts, practices and courses of business alleged herein. A substantial part of the events comprising Defendants' wrongful conduct giving rise to the Commission's claims occurred in the Southern District of New York, and Defendants engaged in their wrongful conduct while working in a business office in this District.

THE DEFENDANTS

8. **O'Hara**, age 46, resides in Malverne, New York. He was employed at BMIS as a computer programmer from 1990 through at least December 11, 2008. After graduating from a local technical school in 1988, O'Hara was a programmer and systems analyst for another company before joining BMIS. At BMIS, O'Hara wrote, modified

and maintained computer programs that processed investor account records and related data to create thousands of investor account statements and trade confirmations, as well as programs that created reports designed to mislead investor representatives and regulators reviewing BMIS' operations.

9. **Perez**, age 43, resides in East Brunswick, New Jersey. He was employed at BMIS as a computer programmer from 1991 through at least December 11, 2008. After graduating from Pace University in 1989, Perez was a programmer and systems analyst for another company before joining BMIS. At BMIS, Perez worked with O'Hara in writing, modifying and maintaining the computer programs that created investor account statements and trade confirmations, as well as programs that created reports to mislead investor representatives and regulators.

RELEVANT INDIVIDUALS AND ENTITIES

10. **Madoff**, age 71, was, until recently, a resident of New York City and the sole owner of BMIS. Until December 11, 2008, Madoff, a former chairman of the board of directors of the NASDAQ stock market, oversaw and controlled the fraudulent investment adviser business at BMIS as well as the overall finances of BMIS. Civil and criminal charges were brought against Madoff for his role in a multi-billion dollar Ponzi scheme. See S.E.C. v. Bernard L. Madoff and Bernard L. Madoff Investment Securities LLC, No. 08-CV-10791 (S.D.N.Y.) (LLS) (the "Civil Action") and United States v. Bernard L. Madoff, No. 09 Cr. 213 (S.D.N.Y.) (DC) (the "Criminal Action"). On February 9, 2009, in the Civil Action against Madoff, the District Court, with Madoff's consent, entered a partial judgment in the Commission's case against Madoff. On March 12, 2009, Madoff pleaded guilty to eleven felony counts in the Criminal Action against

him. In his allocution, Madoff admitted that he orchestrated the massive Ponzi scheme that is the subject of the present charges. On June 29, 2009, Madoff was sentenced to 150 years in prison and ordered to forfeit his assets. Madoff is currently incarcerated in a federal prison in North Carolina.

11. **Frank DiPascali, Jr.**, age 52, was, until recently, a resident of Bridgewater, New Jersey. DiPascali, who never graduated college, began working at BMIS in 1975. Over the years, at Madoff's direction, DiPascali became involved in, and eventually oversaw, the day-to-day operations of the bulk of BMIS' multi-billion dollar advisory business. On August 11, 2009, DiPascali pled guilty to ten felony counts relating to his role in Madoff's Ponzi scheme. See United States v. Frank DiPascali, Jr., No. 09 Cr. 764 (S.D.N.Y.) (RJS). DiPascali admitted in his allocution that, among other things, he and others were involved in creating false account statements and trade confirmations for customers, lying to auditors and regulators who reviewed BMIS' operations and books and records, and that he knew that purported trades in investor accounts never took place. In addition, the Commission filed civil charges against DiPascali on August 11, 2009. See S.E.C. v. Frank DiPascali, Jr., No. 09-CV-7085 (LLS). On August 13, 2009, the District Court, with DiPascali's consent, entered a partial judgment in the Commission's case against him which deems the facts of the complaint as established and cannot be contested by DiPascali.

12. **BMIS** registered with the Commission as a broker-dealer in 1960 and as an investment adviser in September 2006. BMIS used to occupy floors 17-19 of the Lipstick Building in Manhattan, New York City. BMIS purportedly engaged in three different operations: investment adviser services; market-making services; and

proprietary trading. BMIS is currently under the control of a trustee appointed pursuant to the Securities Investor Protection Act of 1970 (15 U.S.C. § 78aaa et seq.).

FACTS

I. Defendants' Roles and Responsibilities

13. Defendants had programming responsibilities relating to each of BMIS' three businesses. Unlike Madoff's investment advisory business, the market making and proprietary trading businesses entered into actual securities transactions, and Defendants were responsible for "back-end" processing of these trades.

14. Among other things, these back-end programs captured and processed information to comply with the Commission's books and records requirements. Rules and regulations of the Commission require that broker-dealers and investment advisors, including BMIS, create and maintain certain books and records relating to investor accounts. See, e.g., Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. § 240.17a-3]. These books and records include, among other things, trade blotters and stock ledgers, which constitute detailed, itemized daily records of all instructions, orders, purchases and sales of securities, positions, and cash transactions relating to investor accounts. Commission rules and regulations require many of these records to be maintained on an account-by-account basis for each of the firm's investors.

15. BMIS' back-end programs for the market making and proprietary trading businesses, on which Defendants worked, processed data captured during the order entry and execution process, and reconciled it with data received from third parties. These third parties included the Depository Trust Company ("DTC"). As the central securities

depository in the United States, DTC maintains records of securities trades and positions for its members. Because DTC determines who is accountable for the exchange of cash and securities needed for trade settlement, virtually all parties to a securities transaction reconcile their internal trade reports with DTC reports on a daily basis. Moreover, BMIS, as a broker-dealer, was required by Rule 17a-13(b) under the Exchange Act [17 C.F.R. § 240.17a-13(b)] to reconcile its records with depository records, including DTC records, on at least a quarterly basis.

16. In order to comply with the Commission's rules and regulations, the back-end processing for the market making and proprietary trading businesses also created various reports for internal and external audiences. The back-end programs that created these reports ran on an IBM AS/400 mainframe computer housed at BMIS called "House 5."

17. In addition to their responsibilities for programs on the House 5 computer, Defendants were also responsible for the programming on a separate IBM AS/400, this one called "House 17," which housed and processed BMIS' investment advisory account data. Defendants carried out their programming duties on House 17 at the direction of Madoff, DiPascali and others. As alleged below, the overwhelming majority of House 17 data surrounding these investor accounts were fabricated and used to perpetuate Madoff's Ponzi scheme.

II. Madoff's Investment Advisory Accounts and Ponzi Scheme

18. For decades, Madoff orchestrated a massive Ponzi scheme through BMIS' investment advisory business. Madoff solicited funds from direct investors and feeder funds by promising to invest those funds in equity securities and hedge the related

downside risk, and thereby make certain rates of return. Madoff, Defendants and others created a massive amount of records to make it appear that these investments actually took place. In fact, however, neither Madoff nor BMIS invested these funds in the manner described. Instead, Madoff directed that investor funds be kept in highly liquid form, including cash, certificates of deposit, and treasury bills. A large portion of these funds were used to pay investor redemption requests and to line Madoff's pockets and the pockets of those around him.

19. BMIS managed investor accounts as far back as the 1960's. Over time, the advisory business expanded when various accountants and financial advisors began soliciting individual investors around the country and feeding the investors' money to BMIS. In most cases, Madoff set up aggregate, pooled accounts at BMIS for each feeder, leaving it to the feeder to deal with the individual investors by issuing statements, making payments, and the like. There is no indication that any of these accounts reflected actual investments or trading.

20. In 1992, the Commission brought charges against some of these feeders[1] for unlawfully offering securities (promissory notes) in unregistered transactions. Madoff liquidated the feeders' supposed positions, giving back over $300 million. Many of these investors turned around and came right back to Madoff, investing this money in direct accounts at BMIS, instead of through a feeder fund. The sheer size and volume of these new accounts placed a great burden on BMIS' small advisory account staff, as Madoff now had hundreds of accounts to manage, possibly over 1,000.

[1] See SEC v. Avellino & Bienes et al., No. 92-CV-8314 (S.D.N.Y.); and SEC v. Telfran Assoc. et al., No. 92-CV-8564 (S.D.N.Y.), both of which were filed in November 1992.

21. To handle the volume, Madoff, DiPascali and others created a more efficient method for generating fictitious trade confirmations and account statements. The new method was less labor-intensive than the one it replaced, which required manual entry of fictitious, backdated trades on an account-by-account basis. Madoff, DiPascali and others also purported to adopt the "split strike conversion" strategy that could achieve a specific target rate of return across hundreds of different accounts.

22. Implementing this plan depended on the development of computer programs on the House 17 computer – programs written, maintained, and updated by O'Hara and Perez.

23. A number of preexisting friends and family accounts did not migrate to the new split strike conversion strategy. These friends and family accounts continued to be handled on an account-by-account basis through December 2008, with DiPascali and others helping to select and create backdated and phony trades to fabricate returns. Defendants' House 17 programs were also instrumental in processing purported trades for these non-split strike clients.

III. Programming for Madoff's Investment Advisory Accounts: Defendants Help Madoff Perpetuate the Fraud

24. Madoff's split strike scheme involved pretending that he entered into a set of trades (which he called a "basket") several times a year. With the benefit of hindsight, Madoff, DiPascali and others picked advantageous historical prices, often near the lows, to ensure an immediate profit once the purported trade was booked, at which point Madoff purported to "get into the market" by disseminating trade confirmations. Then, after several weeks ostensibly holding the position, Madoff and others pretended to sell

off the basket and book a modest profit. The basket was "sold" using the same artificial, backward-looking pricing tactic as the purchases.

25. Under DiPascali's oversight, Defendants developed programs for Madoff's split strike clients on the House 17 computer so that these fictitious basket trades could be entered on an aggregate basis for the thousands of BMIS investor accounts. Specifically, DiPascali, or others at his direction, created a computer file on a personal computer to reflect a given basket of fake trades made on behalf of investors. The file was then transferred from the personal computer to an optical disk reader on the 17th floor, and then to the House 17 computer. Using a file that already resided on House 17 containing investor account information – including investor names, addresses, account numbers, and prior month-end balances – Defendants' programs then allocated the basket trades, pro rata, to the individual investor accounts.

26. Defendants also developed, under DiPascali's oversight, programs for the non-split strike accounts. Defendants created a user interface that allowed keypunch operators to enter supposed trading data into House 17 for each non-split strike account. Defendants' programs then processed and saved this data so that it could be incorporated into a variety of internal and external reports.

27. After processing the trades, Defendants' programs generated hundreds of thousands of pages of confirmations (a separate one for each stock, for each account) which BMIS mailed out to each investor several times each year. These programs also generated thousands of account statements that were provided to investors each month. Millions of pages of paper and hundreds of hours of BMIS employee time were expended on these mailings.

IV. House 17 Was Missing Basic Programs to Execute Actual Securities Trades

28. Defendants knew that the House 17 computer was missing a host of functioning programs necessary for actual securities trading and reporting. Defendants knew from their roles and responsibilities on House 5 about the computer and programming functions necessary to execute actual securities transactions and to capture legitimate trade information in the firm's books and records. Defendants also knew that almost none of these functions existed on House 17. Defendants therefore knew that the trades entered into House 17 and reported to BMIS investors did not reflect actual trading.

A. Defendants' Knowledge about Processing and Reporting of Actual Trades

29. Over many years, BMIS developed and maintained a comprehensive computer system designed to execute genuine securities trades and to capture, process, and report trade-related data for the firm's market-making and proprietary trading businesses, at least portions of which appear to have been legitimate. This system included "front-end" and "back-end" programs. The front-end programs were written and maintained by other BMIS programmers (i.e., not Defendants O'Hara or Perez), and included programs to process:

- the receipt of securities transaction orders into the system;
- the execution of orders;
- the creation of an order execution file to capture data about executed trades, including dates, times, number of shares, share prices, and stock symbols; and

- the transmittal of data to be reported on a daily basis to external entities, including the NASDAQ stock market, DTC, and the Financial Industry Regulatory Authority ("FINRA," an independent regulator of all securities firms doing business in the United States).

30. Much of the data created and captured by the front-end system for BMIS' market making and proprietary trading businesses was compiled in a small number of files that were transferred to the back-end systems. These files included an execution file, a positions file, and a profit and loss file.

31. Although Defendants were not responsible for this front-end programming, they knew that the development and maintenance of these programs occupied at least ten full-time programmers at BMIS. It was also incumbent upon Defendants to understand, and they did understand, much of the data produced by the front-end system for purposes of processing the data on the back-end.

32. Defendants were also knowledgeable about the back-end programs for the market-making and proprietary trading businesses on House 5, and frequently worked on House 5-related projects. These back-end programs were designed to receive the execution, positions, and profit and loss files from the front-end, compare these files to data received from third parties and clearing agencies, and create various reports for internal and external audiences. More specifically, back-end programs on House 5 queried data generated on the front-end and received from DTC to:

- create reports used to verify and reconcile internal trade data with data received from DTC;

- create blue sheet request records and transmit them to SIAC[2] for distribution to regulators;
- re-tally trading profit and loss data and reconcile this data with the profit and loss calculated by front-end systems; and
- produce exception reports for un-reconciled items.

33. Defendants dedicated a substantial number of their working hours, day-in and day-out, to these systems – thousands of hours each over the course of their BMIS employment. Defendants therefore knew of, and were familiar with: (a) House 5; (b) the execution-related files transferred from the front-end to House 5; (c) the House 5 programs used to digitally communicate with and receive data from clearing agencies; (d) the processing and reconciliation of such data; and (e) the books and records created by House 5.

34. Based on their House 5 duties, both Defendants knew full well what it took, from a computer systems perspective, to process and report actual trades and the related need for internal computer systems to effectively interact and communicate with a host of different external systems. Defendants also knew that the investment advisory business's House 17 computer had no functioning programs whatsoever relating to the actual execution of trades.

[2] SIAC, an organization founded in 1972 by the New York Stock Exchange and American Stock Exchange, runs the computer systems and communications networks that power the exchanges, disseminate market information, and operate clearance and settlement systems on behalf of clearing agencies.

B. Defendants Knew of the Striking Contrasts between House 5 Programs and House 17 Programs

35. As alleged above, the majority of the back-end programs on House 5 processed data that was generated during the trade execution process on the front-end, compared it with data received from clearing agencies, and created reports based on these comparisons and data.

36. As Defendants knew, the programs on House 17 were very different. Most importantly, House 17 lacked any functioning programs necessary to execute or clear securities transactions. Indeed, the only actual securities held in BMIS' 17th floor investor accounts were deposited there by the investors themselves. These deposits, which were infrequent, were made when one of a small minority of investors made capital additions to their BMIS account by transferring debt or equity securities to BMIS, usually from their accounts at other broker-dealers.

37. Defendants also knew that there were no House 17 programs that transmitted or received bids, quotes, or other data to or from any counterparties. Nor did House 17 have any functioning programs that executed trades, or transmitted information to or from clearing agencies. Defendants also knew that House 17 lacked programs that processed information received from clearing agencies, verified the accuracy of internally-created data through reconciliation with DTC or any other outside sources, or generated routine trade reports for distribution to regulators.

38. In short, Defendants were aware that there were no legitimate front-end processes, programs, or systems that executed actual trades or captured real trade data for 17th floor investor accounts. Instead, as alleged above, the data for purported trades for split strike accounts came from a single data file created on a personal computer by

DiPascali, or others at DiPascali's instruction, that contained wholly fabricated basket trade information. Similarly, Defendants knew that trading data for non-split strike clients came solely from BMIS keypunch operators who simply entered fictional trading data into House 17.

39. Further, Defendants knew they were, for all intents and purposes, the only two programmers who worked on House 17. Defendants also knew that the types of programs necessary to execute and process actual trades took many of their BMIS programming colleagues hours a day to develop and maintain for the market making and propriety trading businesses. Defendants knew that none of these time- and labor-intensive programs were functioning on House 17.

40. In sum, based on the facts alleged herein, Defendants knew that the trades being entered into House 17, and the account statements and trade confirmations that BMIS sent to investors, did not reflect actual trades.

V. Lies to Investors and Regulators

41. Over the course of Madoff's extensive and far-reaching fraud, BMIS was subjected to several rounds of scrutiny by investor representatives and regulators.

42. Securities regulators reviewed certain aspects of BMIS' investment advisory business in 2004, 2005, and 2006. Separately, a European bank (the "European Bank") engaged auditors from a European branch of a Big Four accounting firm (the "European Accounting Firm") to review BMIS' operations in 2005 and 2008. The European Bank had approximately $2 billion invested with Madoff on behalf of up to eight of its own customers.

43. Madoff, DiPascali and others feared detection of the fraud and were anxious about these reviews. In response, they sought to: (a) convince external reviewers that BMIS was investing funds in a manner consistent with Madoff's promises to investors; (b) portray the number of investors, and the amount invested, in BMIS' investment advisory business as much smaller than it actually was; (c) fabricate third-party confirmation of actual securities trading to present to external reviewers; and (d) make it difficult for external reviewers to independently obtain such third-party confirmation themselves.

44. When Madoff received requests for information from external reviewers, he responded not only with oral and written misrepresentations, but also with an impressive array of phony reports and data to corroborate BMIS' fictitious trading. Defendants' House 17 programs created these reports and data in a way that made them believable, consistent with certain aspects of investor account statements, and supportive of Madoff's varying misrepresentations.

45. The need for these programs arose because no actual trading took place in the advisory accounts. Therefore, the fabricated books and records generated by the House 17 computer were incomplete and could have raised serious doubts in the eyes of an investor or regulator.

46. For example, because the fabricated stock record for the advisory accounts did not reflect any real holdings, it would not match the genuine DTC records showing BMIS' actual positions. Nor were there any specifically identified counterparties or brokers in House 17 files that corresponded with any of the purported trades. At the

direction of Madoff and others, Defendants created programs that addressed these issues in a number of ways.

47. Defendants' wrote and maintained these and similar programs on House 17 between around 1994, at the latest, and December 11, 2008. Many of these programs had file names, assigned by Defendants, that began with "SPCL," which is short for "special."

"Special" Programs: How Defendants Helped Madoff Deceive External Reviewers

48. Defendants wrote, maintained, and revised special programs that were designed to create, and did create, a wide array of reports corroborating misrepresentations by Madoff, DiPascali, and others to external reviewers. Defendants' programs varied in some respects based on the differing stories Madoff presented to different external reviewers.

49. **Special Accounts.** Although great effort was made to hide the existence of the advisory accounts to the fullest extent possible, questions posed during external reviews required an acknowledgment that the business existed. However, Madoff and DiPascali were careful to avoid disclosing the scope and magnitude of the accounts, hiding the fact that there were several thousand accounts. Accordingly, Madoff, with assistance from DiPascali, devised a subset of approximately 20 "special" accounts they would disclose. When external reviewers posed questions or made document requests, data and reports were created to reflect only the supposed activity and holdings in these special accounts. This way, external reviewers were given just enough information to support the credibility of Madoff's claim that he was managing a small number of

investor accounts, thus disguising the true magnitude of his advisory business. Defendants knew that the special accounts were only a small subset of BMIS' investment advisory accounts, but nevertheless generated reports purporting to show that the special accounts represented the full extent of the advisory business.

50. **Fabricated Trade Blotter Data.** Having picked the limited number of special accounts, the next step was to create believable, but nonetheless fake, trade blotter data. Defendants created a program that queried data for the special accounts from the larger mass of investor accounts maintained on the House 17 computer. Another function of their program would process this data to calculate a fictitious volume increment to be assigned to each fictitious trade. This involved taking the aggregate number of shares for each security and breaking it up into many smaller fake trades. It also involved adjusting reported prices for the $.04/share commission BMIS pretended to earn. A series of programs then fabricated and assigned various transaction characteristics to each of these trades, including:

- a transaction number for each trade;
- the date and time each trade took place;
- the number of counterparties through which each trade was executed;
- the identity of the counterparty through which each trade was executed; and
- the number of shares supposedly executed through each counterparty.

51. Defendants knew that all of this data was, for all intents and purposes, *randomly* generated and assigned to purported trades by programs they created. Defendants knew that this was unlike the House 5 system, on which trade blotter data

came from actual executed trades and was verified through data received from counterparties and clearing agencies. Some of the House 17 programs even included randomness checks, i.e., code that analyzed program results to ensure they were sufficiently random.

52. Defendants' extensive use of random selection arose from two related facts. First, there were no real trades from which to draw actual data. Second, Madoff and DiPascali were concerned that investor representatives and/or regulators would closely examine the data and notice implausible correlations (e.g., all fake trades with a certain counterparty were for a certain share volume, or were executed at uniform time intervals), which could lead to greater scrutiny. In fact, when Madoff, DiPascali, or Defendants reviewed the programs' results and found suspicious correlations and patterns, Defendants would have to make further revisions to the programs.

53. **Fabricated Reports Based on the Fake Trade Blotter.** The end result of Defendants' trade blotter programs was a complete, albeit fabricated, set of trade data. This data was the primary source for the trade blotter report, to which Madoff, DiPascali and others frequently pointed as corroboration for their story that actual trading took place.

54. The trade blotter data was also used to create various other reports generated to support Madoff's growing array of misrepresentations to external reviewers.

55. One such report was the order entry execution history report. This report contained much of the transaction data that was in the trade blotter report, but also added fake details regarding the placement of orders for each set of transactions. Defendants' programs used randomized algorithms to create order detail based on the trade blotter's

execution date and time. The end result was a report that showed individual orders supposedly made shortly before the corresponding trades were entered into.

56. Defendants knew that the trade blotter report, the order entry execution history report, and other related reports contained fabricated data that they created, and that the reports were given to investor representatives and regulators as needed to answer questions and respond to document requests.

57. **Other False Reports Created by Defendants' Programs.** In addition to false reports based on the trade blotter data, Defendants separately wrote and maintained programs that produced fake DTC records. Madoff, DiPascali and others asked for Defendants' help in creating records that combined actual positions and activity from BMIS' market-making and proprietary trading businesses with the fictional balances maintained in investor accounts.

58. Defendants responded by creating programs that utilized a file reflecting BMIS' actual positions, which was routinely received from DTC and maintained on House 5 month-end back-up tapes, combined these positions with the fake positions of the 20 or so special accounts, and generated a new report that reflected actual and fake positions at DTC. Defendants knew that their programs did this without referencing any actual trade data received from DTC or other clearing agencies reflecting positions and activity in the special accounts.

59. Madoff, DiPascali, Defendants and others took great pains to make the fake reports look almost identical to real DTC reports. Each small change Madoff called for to improve the appearance of the fake reports required Defendants to make iterative

revisions to their programs. In this way, Madoff, DiPascali, and others sought to pass fake DTC records off as third-party verification of reports generated on House 17.

60. Defendants' programs varied in some respects based on the differing stories Madoff presented to different reviewers. For example, Madoff and DiPascali told regulators during 2005 and 2006 that the investor trades were executed through foreign dealers, while they told the European Accounting Firm that the investor trades took place in the U.S. markets.

61. The intent of Madoff and DiPascali was to make it less likely that a regulator or auditor would approach BMIS' supposed counterparties for their corresponding records and compare the two. To support these misrepresentations, Defendants created trade blotter data and related reports for the European Accounting Firm that listed U.S. counterparties in 2005, and trade blotter and related reports for the 2005 and 2006 regulatory reviews that listed European counterparties.

62. Another example of varying programs based on the audience involves Madoff's canned response to possible questions about the custody of securities supposedly held in investor accounts. The investors' securities, Madoff would claim, were not custodied at BMIS because BMIS only functioned as an executing broker on an RVP/DVP (receive-versus-payment and delivery-versus-payment) basis.

63. At DiPascali's direction, Defendants wrote programs to corroborate this DVP/RVP fiction, and these reports were given to regulators in response to requests for information and documents. More specifically, Defendants' programs changed the titles for the special accounts to indicate that custody of the assets resided with various banks that carried the securities on behalf of their clients. For example, an account in the name

of "John Doe" was changed to "XYZ Bank for the benefit of John Doe" on the fictitious set of account statements and trade reports given to investor representatives and regulators.

64. For purposes of a regulatory review in 2004, Defendants also wrote a program that modified investor account statements to reflect newly fabricated transactions in an effort to mimic DVP/RVP accounts. These fabricated transactions had the effect of showing that the given customer held no long or short equity positions at month end.

65. These DVP/RVP programs were run only on the "special" accounts, and the resulting account statements were provided only to external reviewers. The account statements were not provided to the BMIS investors who held the accounts and, as Defendants knew, the fictions were not reflected on any future account statements sent to the these investors.

66. Notwithstanding these differences, the basics for responding to each of these external reviews remained the same: Defendants' programs randomly generated trade data for special accounts and processed this data for inclusion in various reports to substantiate fictitious trading that Defendants knew never took place.

VI. Defendants' State of Mind and Objections to Madoff's Lies

67. Defendants shared an office on the 17th Floor of the Lipstick Building. A printout of a May 7, 2001 email to O'Hara, which attached an article that appeared in Barron's the same day, was found in Defendants' office. The Barron's article was written by Erin Arvedlund and entitled "Don't Ask, Don't Tell: Bernie Madoff is so secretive, he

even asks his investors to keep mum." The article questioned the veracity of Madoff's trading strategy and purported returns.

68. At some point in time, Defendants began to regret their decision to develop and maintain programs used to support misrepresentations to investor representatives and regulators. Having doctored up reports given to regulators and the European Accounting Firm to such a great extent, Defendants knew they could not credibly claim they had no idea that the House 17 data, and the related account statements and trade confirmations sent to investors, reflected fictitious trades. If Defendants could distance themselves from programs written specifically for external reviewers, they could keep the proverbial blinders on and pretend that they were unaware of various aspects of the Madoff's fraud.

69. In or around April 2006, in an effort to cover their tracks after creating phony reports for a 2006 regulatory review, Defendants attempted to delete approximately 218 of the 225 special programs that resided on House 17. The special programs did, however, continue to exist on monthly House 17 back-up tapes.

70. Also in or around April 2006, Defendants submitted instructions, in identical type-written notes, to close their personal BMIS accounts, and cashed out hundreds of thousands of dollars each from these accounts.

71. Defendants also confronted Madoff in September 2006 about their "special" programs. During these confrontations, Defendants communicated to Madoff that they were uncomfortable with the lies they helped present to external reviewers.

72. Contemporaneous handwritten notes taken by O'Hara paraphrase the back and forth of a confrontation between Defendants and Madoff. One page of notes dated

September 2006 records a statement by either O'Hara or Perez that "I won't lie any longer. Next time, I say 'ask Frank,'" meaning that Madoff should rely on DiPascali alone to create the false data and reports that were needed.

73. Madoff responded to Defendants' objections by telling DiPascali to offer Defendants as much money as necessary to keep quiet and not expose the misrepresentations.

74. Defendants thought about it for a period of time, and demanded an increase in salary of almost 25%. Their salaries were, indeed, increased by 24.8% in November 2006. Defendants also both received one-time bonuses in late 2006 of over $60,000. Defendants stated to DiPascali at the time that they did not ask for more because a greater amount might appear too suspicious.

75. In line with the position that Defendants took with Madoff, they refused a subsequent request from DiPascali to create phony reports for the European Accounting Firm in 2008. However, DiPascali managed to convince Defendants to modify certain programs so that DiPascali and other 17th floor employees could create the necessary reports themselves.

76. Defendants modified the programs, DiPascali and others used those programs to create reports, and some of these reports were provided to the European Accounting Firm. Defendants communicated to DiPascali their hope that this arrangement would make it appear that they were not involved with the continued wrongdoing at BMIS.

FIRST CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5 (Antifraud violations)

77. Paragraphs 1 through 76 are realleged and incorporated by reference as if set forth fully herein.

78. From at least the 1980s through December 11, 2008, Madoff, DiPascali and BMIS, in connection with the purchase and sale of securities, directly and indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails and/or wires, have employed devices, schemes and artifices to defraud; have made untrue statements of material fact and have omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and have engaged in acts, practices and courses of business which operated as a fraud and deceit upon investors.

79. As described in the paragraphs above, Madoff, DiPascali and BMIS violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §§ 240.10b-5].

80. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Defendants aided and abetted Madoff's, DiPascali's and BMIS' violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §§ 240.10b-5]. Specifically, Defendants knowingly provided substantial assistance to Madoff, DiPascali, and BMIS in committing such violations.

SECOND CLAIM FOR RELIEF

Aiding and Abetting Violations of Sections 206(1) and 206(2) of the Advisers Act (Fraud upon Advisory Clients and Breach of Fiduciary Duty by Investment Adviser)

81. Paragraphs 1 through 76 are realleged and incorporated by reference as if set forth fully herein.

82. Madoff and BMIS at all relevant times were investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

83. Madoff and BMIS directly or indirectly, singly or in concert, knowingly or recklessly, through the use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)]: (a) have employed devices, schemes, and artifices to defraud any client or prospective client; or (b) have engaged in acts, practices, or courses of business which operate as a fraud or deceit upon any client or prospective client.

84. As described in the paragraphs above, Madoff and BMIS violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

85. By reason of the activities described herein, and pursuant to Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], Defendants aided and abetted Madoff's and BMIS' violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]. Specifically, Defendants knowingly provided substantial assistance to Madoff and BMIS in committing such violations.

THIRD CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 15(c) of the Exchange Act and Rule 10b-3 (Fraud Upon Customers by Broker-Dealer)

86. Paragraphs 1 through 76 are realleged and incorporated by reference as if set forth fully herein.

87. BMIS is a broker within the meaning of Section 3(a)(4) of the Exchange Act [15 U.S.C. § 78c(a)(4)].

88. From at least the 1980s through December 11, 2008, BMIS, while a broker, by engaging in the conduct described above, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of securities (other than commercial paper, bankers' acceptances or commercial bills) otherwise than on a national securities exchange of which BMIS was a member, by means of manipulative, deceptive, or other fraudulent devices or contrivances.

89. BMIS' manipulative, deceptive, and fraudulent devices or contrivances included misrepresentations to customers that securities transactions with certain characteristics occurred, and securities were held, in their accounts when no such transactions occurred and no such securities were held in customers' accounts.

90. As described in the paragraphs above, BMIS violated Sections 15(c) of the Exchange Act [15 U.S.C. § 78o(c)] and Rule 10b-3 thereunder [17 C.F.R. § 240.10b-3].

91. By reason of the activities described herein, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Defendants aided and abetted BMIS' violations of Section 15(c) of the Exchange Act [15 U.S.C. § 78o(c)] and Rule 10b-3 thereunder [17

C.F.R. § 240.10b-3]. Specifically, Defendants knowingly provided substantial assistance to BMIS in committing such violations.

FOURTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 17(a) of the Exchange Act and Rule 17a-3 (Broker-Dealer Books and Records Violations)

92. Paragraphs 1 through 76 are realleged and incorporated by reference as if set forth fully herein.

93. As a registered broker-dealer, BMIS was required to make and keep certain books and records current and accurate pursuant to Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. § 240.17a-3].

94. As set forth above, BMIS failed to make and keep certain books and records current and accurate. BMIS, among other things, manufactured and maintained account statements, ledgers, journals and other records reflecting fictitious securities holdings and fictitious securities transactions in investors' accounts.

95. As a result, BMIS violated Section 17(a) of the Exchange Act and Rule 17a-3 promulgated thereunder [15 U.S.C. § 78q(a) and 17 C.F.R. § 240.17a-3].

96. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Defendants aided and abetted the violations of Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. § 240.17a-3]. Specifically, Defendants knowingly provided substantial assistance to BMIS in committing such violations.

FIFTH CLAIM FOR RELIEF

Aiding and abetting violations of Section 204 and Rule 204-2 of the Advisers Act (Adviser Books and Records Violations)

97. Paragraphs 1 through 76 are realleged and incorporated by reference as if set forth fully herein.

98. BMIS at all relevant times was an investment adviser within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

99. BMIS failed to make, maintain on its premises, or keep accurate, certain books and records required by law. For example, BMIS failed to make, maintain on its premises or keep accurate, books and records concerning its assets, liabilities, finances, client accounts, closed client accounts, and correspondence with clients. Among other things, BMIS manufactured and maintained trade blotters, account statements, ledgers, journals and other records reflecting fictitious securities holdings and fictitious securities transactions in investors' accounts.

100. By reason of the foregoing, BMIS violated Section 204 of the Advisers Act [15 U.S.C. § 80b-4], and Rule 204-2 thereunder [17 C.F.R. § 275.204-2], and the Defendants aided and abetted BMIS' violations. Specifically, Defendants knowingly provided substantial assistance to BMIS in committing such violations.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a final judgment against Defendants granting the following relief:

I.

Finding that Defendants violated the securities laws and rules promulgated thereunder as alleged herein.

II.

Permanently restraining and enjoining Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

III.

Permanently restraining and enjoining Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

IV.

Permanently restraining and enjoining Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Section 15(c) of the Exchange Act [15 U.S.C. § 78o(c)] and Rule 10b-3 thereunder [17 C.F.R. § 240.10b-3].

V.

Permanently restraining and enjoining Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who

receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. § 240.17a-3].

VI.

Permanently restraining and enjoining Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Section 204 of the Advisers Act [15 U.S.C. § 80b-4], and Rule 204-2 thereunder [17 C.F.R. § 275.204-2].

VII.

Directing Defendants to disgorge their ill-gotten gains, plus prejudgment interest thereon.

VIII.

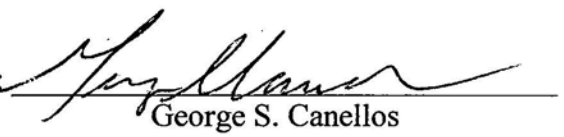
Directing Defendants to pay civil money penalties.

IX.

Granting such other and further relief as to this Court seems just and proper.

Dated: New York, New York
November 13, 2009

SECURITIES AND EXCHANGE COMMISSION

By: 
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