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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

DANIEL BONVENTRE,

Defendant.

____ Civ. ____

-----X
COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendant Daniel Bonventre ("Bonventre," or the "Defendant"), alleges:

SUMMARY

1. Bonventre, the Director of Operations at Bernard L. Madoff Investment Securities LLC ("BMIS") for over 30 years, enabled and helped perpetuate the now infamous fraud committed by Bernard L. Madoff ("Madoff"), BMIS, and others. As Director of Operations, Bonventre knew of BMIS' vast investment advisory operations

and the billions of dollars deposited by investors with BMIS, and knew that those funds were not used to purchase securities on behalf of investors.

2. To aid the scheme, Bonventre falsified accounting records to hide BMIS' multi-billion dollar liability to investors, and the fact that BMIS used hundreds of millions of dollars of investor funds to artificially improve BMIS' reported revenues and net income, and to line the pockets of Madoff, his family, and employees. These false accounting records allowed BMIS to report net income instead of net losses on its financial statements for many years, and to report healthy positive net capital when in fact the firm had negative net capital for years.

3. Bonventre also helped Madoff, DiPascali and others manufacture persuasive lies when BMIS' investment advisory operations came under review by investors and regulators. With Bonventre's assistance, Madoff, DiPascali, and others made serial misrepresentations to external reviewers by manufacturing reams of false reports and data.

4. Bonventre personally profited from the scheme in the amount of at least \$1.9 million. These illicit gains came from fake, backdated "trades" in Bonventre's own investor account at BMIS. Bonventre also was paid an annual salary of over \$900,000 from 2005 through 2008.

VIOLATIONS

5. By virtue of the conduct alleged herein, Defendant directly or indirectly, singly or in concert, has engaged in acts, practices, schemes and courses of business that violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)]; violated and aided and abetted violations of Section 10(b) of the Securities

Exchange Act of 1934 (“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), 206(2) and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1), (2), and (4)] and Rule 206(4)-2 thereunder [17 C.F.R. § 275.206(4)-2], Sections 15(c) and 17(a) of the Exchange Act [15 U.S.C. §§ 78o(c) and 78q(a)] and Rules 10b-3, 17a-3, and 17a-5 thereunder [17 C.F.R. §§ 240.10b-3, 240.17a-3 and 240.17a-5], 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

6. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], 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 Defendant from engaging in the acts, practices and courses of business alleged herein.

7. In addition to the injunctive relief recited above, the Commission seeks: (i) a final judgment ordering Defendant to disgorge his ill-gotten gains with prejudgment interest thereon; (ii) a final judgment ordering Defendant to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(d)]; and (iii) such other relief as the Court deems just and appropriate.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], 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].

9. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391. The Defendant, directly or indirectly, has 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. Defendant lives in the Southern District of New York, a substantial part of the events comprising Defendant's fraudulent activities giving rise to the Commission's claims occurred in this District, and Defendant committed his fraudulent activities while working in a business office in this District.

THE DEFENDANT

10. **Bonventre**, age 63, resides in New York City. Before starting at BMIS, Bonventre worked as an auditor at a large bank in New York City while studying for an Associate's Degree in Accounting, which he eventually obtained. Bonventre began working for BMIS as an auditor in 1968, and was the firm's Director of Operations from at least 1978 until shortly after BMIS' fraud came to light in December 2008.

RELEVANT INDIVIDUALS AND ENTITIES

11. **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 operations 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.

12. **Frank DiPascali, Jr.**, age 53, 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 operations. 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.

13. **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, which largely operated on the 17th floor; and market-making services and proprietary trading, which largely operated out of the 18th and 19th floors. 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. BMIS' Investment Advisory Accounts and Ponzi Scheme

14. For decades, Madoff and others orchestrated a massive Ponzi scheme through BMIS' investment advisory operations (the "IA" operations). 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.

15. 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.

16. BMIS managed investor accounts as far back as the 1960's. Over time, the advisory operations 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. No actual investments or trading ever occurred in these accounts on behalf of investors.

17. Bonventre helped hide Madoff's scheme by creating false accounting records and by helping Madoff and others deceive regulators and investors reviewing BMIS' operations. The allegations herein focus primarily on Bonventre's knowledge and conduct as BMIS' Director of Operations within the ten-year period before the firm's fraud came to light in December 2008, *i.e.*, from 1998 through 2008. However, Bonventre had the same or similar knowledge, and was involved in the same or similar wrongful practices, well before this time period. By virtue of the specific conduct alleged herein, Bonventre repeatedly violated and/or aided and abetted violations of the federal securities laws, including the anti-fraud provisions, and the books and records and reporting provisions for broker-dealers and investment advisers.

II. Bonventre's Roles and Responsibilities at BMIS

18. Bonventre served as BMIS' Director of Operations, reporting directly to Madoff, from at least 1978 through shortly after the fraud came to light in December 2008. In that role, Bonventre played an integral part in running the firm's back office operations. Bonventre had day-to-day and overall responsibility for a variety of functions that were essential not only to BMIS' operations generally, but also to the Ponzi scheme.

19. Bonventre supervised employees in BMIS' Accounting Department and the "Cage," the department in which, among other things, settlement and clearing functions took place and checks and wire transfers were sent or received.

20. Bonventre understood that three types of securities operations were run out of BMIS. First, BMIS served as a market maker by maintaining firm bid and offer prices in a range of securities and stood ready to buy or sell those securities at publicly quoted prices. Second, BMIS had proprietary trading operations, employing traders to

actively trade securities, purportedly with the firm's own money as opposed to its customers' money, so as to make a profit for itself. The market making and proprietary trading operations (the "MM & PT" operations, at least portions of which appear to have been legitimate, although unprofitable), did not directly involve the use of BMIS' investor funds. Third, Madoff ran his fraudulent IA operations from within BMIS.

21. Bonventre, and Bonventre's staff under his management and supervision, were responsible for managing many of BMIS' bank and brokerage accounts, clearing and settlement functions, DTC accounts and stock records, and the general ledger, financial statements and related books and records for all three operations.

III. Bonventre Knew or Recklessly Disregarded the Fact that BMIS was not Executing Trades with Investor Funds.

22. As Director of Operations, Bonventre regularly reviewed abundant facts that led to an obvious conclusion – BMIS was not executing trades as reported to investors and regulators.

23. Bonventre reconciled, or supervised the reconciliation of, bank accounts used in BMIS' MM & PT operations and to pay the general operating expenses of the firm (the "Operating Accounts"), and several of the bank and brokerage accounts used in the IA operations (the "Ponzi Scheme Accounts"). The Ponzi Scheme Accounts included, inter alia, the following accounts:

a. A bank account (the "Main Ponzi Scheme Account") maintained at a bank in New York, New York ("Bank A") that BMIS used, among other things, to receive investor deposits and pay investor redemptions. Billions of dollars of investor funds were deposited into the Main Ponzi Scheme Account while Madoff's Ponzi scheme was underway.

b. A separate account maintained at Bank A that BMIS used to deposit cash or securities that could be used as collateral to secure bank loans, and to hold custody of treasury bills that BMIS purchased with investor funds from the Main Ponzi Scheme Account.

c. At least four brokerage accounts (the “Brokerage Accounts”) that were held in the name of Bernard L. Madoff. BMIS used investor funds from other Ponzi Scheme Accounts to fund the Brokerage Accounts.

24. Had investor funds actually been used to buy and sell stocks and options on behalf of investors, billions of dollars of investor cash would have flowed into various securities positions. Bonventre never saw such cash flows because no such trades took place.

25. Instead, as Bonventre knew or recklessly disregarded, the overwhelming majority of the billions of dollars of investor deposits were maintained in the Ponzi Scheme Accounts in highly-liquid form, including cash, treasury bills, commercial paper, and overnight investments.

26. Bonventre also knew, or recklessly disregarded the fact, that BMIS was not executing trades as reported to investors based on his review of BMIS’ stock record. BMIS maintained a stock record that logged the actual securities transactions into which the firm entered, as required by the Commission’s rules and regulations governing broker-dealers and investment advisers.

27. Bonventre also regularly reviewed and reconciled, or supervised the reconciliation of, BMIS’ stock records to reports received from third party clearing agencies, including 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, all self-clearing broker-dealers, such as BMIS, reconcile their internal trade reports with DTC reports on a daily basis. Moreover, BMIS, as a broker-dealer, was required by the Commission's rules and regulations to reconcile its stock record with depository records, including DTC records, on at least a quarterly basis.

28. Based on these reviews and reconciliations, Bonventre knew, or recklessly disregarded the fact, that the trading activity and positions reflected on internal and external stock records pertained almost exclusively to the MM & PT operations – none of these records reflected any stocks, options, or other securities bought or sold by BMIS on behalf of investors.

29. While Bonventre managed and supervised the reconciliation of several of the Ponzi Scheme Accounts and BMIS' stock record, and therefore knew or recklessly disregarded the fact that there were no investor trades for at least the last two decades, this fact became especially obvious during and after a liquidity crisis at BMIS that lasted from late-2005 through mid-2006 (details regarding this crisis are alleged in more detail below).

30. After the liquidity crisis passed, investor deposits began to significantly exceed redemptions, and large amounts of cash were maintained in the Ponzi Scheme Accounts. Based on his knowledge of this liquidity crisis, Bonventre knew, or recklessly disregarded the fact, that virtually all funds in the Ponzi Scheme Accounts were received from investors after mid-2006, and that these funds were used for one of just three

purposes – to meet investor redemption requests, to artificially improve BMIS’ reported revenues and net income, and to channel money to Madoff, his family, and select BMIS employees. The funds were never used to make trades on behalf of investors.

IV. Bonventre Helped Hide Madoff’s Scheme by Creating False Accounting Records.

31. BMIS raised billions of dollars from investors but, as Bonventre knew or recklessly disregarded, BMIS failed to invest these funds as reported to investors.

Bonventre helped hide this fact by creating false accounting records.

32. BMIS was required to maintain a general ledger that reflected the firm’s asset, liability, reserve, capital, income and expense accounts. Further, Rule 17a-5 under the Exchange Act requires that broker-dealers, including BMIS, submit to the Commission Financial and Operational Combined Uniform Single Reports, or “FOCUS Reports,” containing the firm’s financial statements and supplementary schedules on a periodic basis.

33. As is typical, and as Bonventre knew was true at BMIS, the firm’s general ledger was used to create the financial statements that were shared with certain IA investors and included in the FOCUS Reports BMIS submitted to the Commission.

34. Bonventre knew, or recklessly disregarded the fact, that BMIS’ general ledger and financial statements, for which he and his staff were responsible, were materially misstated because they did not reflect the manner in which investor funds were maintained and used. Bonventre also knew, or recklessly disregarded the fact, that the general ledger and financial statements failed to accurately reflect transactions that allowed BMIS to survive a severe liquidity crisis that lasted from late-2005 through mid-2006.

A. Bonventre Helped Conceal Billions of Dollars of Liabilities to Investors.

35. BMIS' general ledger and FOCUS Reports recorded some, but not all, of the firm's asset, liability, reserve, capital, income and expense accounts. Specifically, the general ledger and FOCUS Reports recorded such accounts for the MM & PT operations (although Bonventre materially misstated some these accounts, as alleged in the sections below).

36. BMIS' general ledger and FOCUS Reports also reflected many of the operating expenses and operating liabilities of the firm' IA operations. Examples of such expenses and liabilities that were reflected include those related to rent for office space, payroll, utilities, computer-related costs, and paper and stationary (for the thousands of fabricated trade confirmations and account statements that the IA operations produced each month). Expenses related to the IA operations and reflected in the general ledger and FOCUS Reports amounted to millions of dollars each year.

37. However, the general ledger and FOCUS Reports did not reflect BMIS' massive liabilities to investors, or the corresponding assets received from investors.

38. BMIS undertook an obligation to investors for each dollar that investors deposited with the firm. Pursuant to Generally Accepted Accounting Principles and the Commission's recordkeeping rules and regulations, BMIS was required to reflect in its general ledger and FOCUS Reports a liability corresponding to these obligations to investors, as well as an asset reflecting the related cash held by BMIS. The Commission's books and records requirements also required BMIS' internal records to show, among other things, all daily receipts and disbursements of cash and all other

debits and credits, as well as all purchases, sales, receipts and deliveries of securities and all other debits and credits for each investor's account. Furthermore, these records should have included a record of the proof of money balances of all ledger accounts in the form of trial balances.

39. Bonventre ensured, however, that neither BMIS' liability to its investors nor the corresponding assets, which ranged between the millions and billions of dollars, were properly reflected in the general ledger or FOCUS Reports. Indeed, Bonventre did not reflect the balance or activity in any of the Ponzi Scheme Accounts in BMIS' general ledger or FOCUS Reports. Nor did Bonventre recognize any liability to investors arising from the deposit of funds in the Ponzi Scheme Accounts. Therefore, as Bonventre knew or recklessly disregarded, BMIS' books and records and FOCUS Reports were misstated for as long as BMIS received investor funds and deposited those funds into the Ponzi Scheme Accounts, *i.e.*, since at least as early as the 1980's.

B. Bonventre Facilitated, and Helped Hide, BMIS' Siphoning of Investor Funds to Artificially Improve Reported Revenue and Income.

40. BMIS normally operated at a significant loss. To hide this fact, from at least 1998 through 2008, BMIS used over \$750 million of investor funds to artificially improve the firm's reported revenue and income. Bonventre, and Bonventre's staff under his management and supervision, booked the transfer of funds from the Ponzi Scheme Accounts to the Operating Accounts in a manner that improperly increased the firm's reported income.

41. These transfers and the manner in which they were booked allowed BMIS to report net income instead of net losses in every year from at least as early as fiscal 2001 through 2008. (BMIS' fiscal year ran from November 1 through October 31.) The

chart below shows the net income that was reported by BMIS compared to net losses that would have been reported without the disguised infusion of investor funds.

<i>(In \$ millions)</i>	2001	2002	2003	2004	2005	2006	2007	2008*
Reported Net Income	35.0	38.0	40.0	34.0	42.0	50.0	63.9	42.0
Bogus Entries	72.8	99.1	97.3	73.7	81.1	69.8	103.1	86.8
Net Loss w/o Investor Funds	(37.8)	(61.1)	(57.3)	(39.7)	(39.1)	(19.8)	(39.2)	(44.8)

* Although a draft of the fiscal 2008 financial statements was complete, the fraud came to light before BMIS submitted these statements to the Commission or distributed them to investors.

42. Taking into account just the \$750 million in disguised transfers of investor funds since 1998, BMIS' ownership equity would have been negative \$7 million, instead of the positive \$604 million BMIS reported in its fiscal 2006 FOCUS Report filed with the Commission on or about December 22, 2006. Likewise, ownership equity would have been negative \$46 million instead of the positive \$668 million reported in BMIS' fiscal 2007 FOCUS Report filed with the Commission on or about December 20, 2007, and negative \$91 million instead of the positive \$710 million reported in BMIS' fiscal 2008 FOCUS Report. (Although a draft of the fiscal 2008 FOCUS Report was complete, the fraud came to light before BMIS submitted its financial statements to the Commission or distributed them to investors.)

43. To the extent that Bonventre, or Bonventre's staff under his management and supervision, made similar bogus entries before 1998, BMIS' ownership equity would have been negative even further back in time. Moreover, if the massive unrecorded liability to investors is taken into account, BMIS' deficit in ownership equity dates back many more years.

44. Taking into account just the \$750 million in disguised transfers of investor funds since 1998, BMIS' net capital computed and reported pursuant Rule 15c3-1 under

the Exchange Act – a computation that starts with owner’s equity and generally works downward from there – would have also been negative since fiscal 2006, and the firm would have failed the minimum net capital requirements for broker-dealers. Had this happened, BMIS would have had to (1) affirmatively notify the Commission of these deficiencies pursuant to Rule 17a-11, and (2) cease doing business until it could resolve the deficiencies under Rule 15c3-1. Bonventre’s accounting entries allowed BMIS to avoid this series of events and continue the Ponzi scheme.

45. There were at least three ways in which BMIS transferred investor funds to artificially improve the firm’s reported revenue and income. Bonventre, and his staff under Bonventre’s management and supervision, manipulated the accounting records in relation to all three types of transfers, and played an active role in at least one.

46. First, Bonventre and his staff transferred interest earned in the Main Ponzi Scheme Account to the Operating Accounts. Specifically, Bonventre, and his staff under Bonventre’s management and supervision, tallied the various interest payments received into the main Ponzi Scheme Account during a given month. Bonventre, and his staff under Bonventre’s management and supervision, then issued a check for the total interest to Madoff. These checks were endorsed and deposited into the Operating Accounts.

47. From March 1998 through March 2005, Bonventre, and Bonventre’s staff under his management and supervision, made over 100 such transfers of interest totaling over \$175 million.

48. Bonventre, and his staff under Bonventre’s management and supervision, improperly booked these transfers as trading revenue, which was clearly false. Bonventre

knew or recklessly disregarded that these transfers did not represent revenues from trading, but rather came from the Ponzi Scheme Accounts.

49. Second, BMIS transferred funds from the Main Ponzi Scheme Account to the Brokerage Accounts. After a period of time, BMIS then transferred these funds from the Brokerage Accounts to the Operating Accounts. Between 2000 and 2005, BMIS made over 40 of these transfers, which totaled over \$345 million.

50. Bonventre, and Bonventre's staff under his management and supervision, improperly booked these amounts as trading revenue, which was not accurate. Bonventre knew or recklessly disregarded that these transfers did not represent revenues from trading, but rather came from the Ponzi Scheme Accounts.

51. Third, BMIS transferred investor funds from the Ponzi Scheme Accounts to BMIS' London affiliate, Madoff Securities International Ltd. ("MSIL"). Almost all of these funds were later transferred from MSIL to BMIS' Operating Accounts. Between 2002 and 2008, BMIS made such transfers to MSIL totaling over \$280 million. In turn, between 2005 through 2008, MSIL made over 50 transfers to BMIS' Operating Account, also totaling over \$280 million.

52. Bonventre, and Bonventre's staff under his management and supervision, improperly booked such transfers from MSIL as trading revenue until the end of fiscal 2005. In fiscal 2006, Bonventre, and Bonventre's staff under his management and supervision, booked some of these transfers as trading revenue, and other such transfers as "commissions" revenue. In fiscal 2007 and 2008, Bonventre, and Bonventre's staff under his management and supervision, booked these transfers as "commissions" revenue. All of these accounting entries were clearly false. Bonventre knew, or

recklessly disregarded the fact, that these transfers were not actually generated by trades or commissions, but rather were simply a manner of propping up BMIS' liquidity and reported revenue and income with investor funds.

C. Bonventre Concealed Transfers of Investor Funds for Madoff's Personal Use.

53. Bonventre also failed to accurately record millions of dollars in transactions in which investor funds were diverted by Madoff for his own personal use, taken from the Ponzi Scheme Accounts. As the bank account records themselves reflect, Bonventre knew or recklessly disregarded that BMIS used the Ponzi Scheme Accounts, among other things, to:

- a. Make loans to Madoff's family members and key BMIS employees. BMIS extended more than 15 loans, totaling over \$50 million, to Madoff family members and key employees between April 2001 and October 2008. Several of these loans funded the purchase of luxury homes. BMIS purported to forgive most of these loans after a few years.
- b. Fund personal investments held by Madoff and his wife. These payments were made from the Ponzi Scheme Accounts to investments held in the name of Madoff and/or his wife. These payments exceeded \$17 million from August 2000 through December 2008.
- c. Make charitable contributions. These contributions exceeded \$10 million between June 2006 and December 2008.
- d. Make direct payments to Madoff, family members and employees. BMIS made millions of dollars in payments directly from the Ponzi Scheme Accounts to

Madoff, family members and certain employees, including Bonventre. These payments were separate and apart from payments made through the payroll system.

54. These transactions should have been recorded in BMIS' general ledger because they represent financial activity directly related to the firm. Bonventre should have recorded, or should have directed his staff to record, these transactions as draws, loan receivables or expenses in BMIS' general ledger and financial statements. Instead of recording these transactions in the firm's general ledger, Bonventre did not record, or cause others to record, these transactions at all.

D. Bonventre Facilitated, and Hid, a Transaction that Allowed the Ponzi Scheme to Survive a Liquidity Crisis in 2005 and 2006.

55. BMIS suffered a liquidity crisis from late-2005 through mid-2006, mainly because investor redemptions far exceeded investor deposits during this period. BMIS survived, in part, by borrowing bonds from a BMIS investor ("Investor A").

56. BMIS received Federal Home Loan Bank bonds with a value of approximately \$100 million from Investor A in November 2005. After BMIS received the bonds, Bonventre contacted Bank A and arranged to use these same bonds as collateral for a \$95 million bank loan.

57. BMIS received additional Federal Home Loan Bank bonds valued at approximately \$54 million from Investor A in January 2006. After receiving the bonds, Bonventre contacted Bank A again and arranged to use these bonds as collateral for an additional loan of \$50 million.

58. Bonventre instructed that the proceeds of the loans be deposited into the Ponzi Scheme Accounts, which enabled BMIS to continue to satisfy investor redemptions. Moreover, Bonventre concealed these transactions by not recording them

in the firm's general ledger. Thus, Bonventre did not record the \$145 million in loan proceeds, or a liability for the bank loan. Nor did he properly record a liability to Investor A.

59. Separately, the Ponzi Scheme Accounts got so low on cash during this period that BMIS used the Operating Accounts to meet four separate investor redemption requests totaling \$261.8 million. BMIS paid a \$28 million redemption on January 30, 2006; a \$38 million redemption on February 1, 2006; a \$76 million redemption on April 4, 2006; and a \$120 million redemption on April 13, 2006.

60. Because these redemptions were paid from the Operating Accounts, which were reflected on the general ledger, Bonventre had to reflect the use of these funds in the general ledger and financial statements. To conceal how the proceeds were being used, Bonventre devised phony transactions that he then caused to be recorded on the firm's general ledger. The accounting entries made it appear that the funds transferred from the Operating Accounts had been used not to pay redemptions, but rather to purchase bonds for investment purposes. The bonds that were purportedly purchased were a combination of (1) the Federal Home Loan Bank bonds received from Investor A; and (2) phantom government bonds that BMIS had previously, but no longer, owned.

61. As a result of these false and misleading entries, the financial statements submitted to the Commission in BMIS' FOCUS Reports for the months ended January 31, 2006, February 28, 2006, March 31, 2006, April 30, 2006, and May 31, 2006 were materially misstated. Specifically, as a result of just these false entries, the firm's assets were overstated by \$28 million as of January 31, 2006; \$66 million as of February 28 and March 31, 2006; and \$262 million as of April 30 and May 2006.

62. Later, in June 2006, after the liquidity crisis had subsided, BMIS transferred \$262 million of new investor money in the Ponzi Scheme Accounts to the Operating Accounts. This transfer effectively reimbursed the Operating Accounts for the investor redemptions paid from those accounts in January, February, and April 2006. Bonventre, and Bonventre's staff under his management and supervision, reversed the accounting entries that they had earlier made to disguise the nature of these redemption payments.

63. In reality, there was no factual link between Investor A's Federal Home Loan Bank bonds and/or the phantom government bonds recognized on BMIS' books, on the one hand, and the redemption payments to investors from the Operating Accounts, on the other hand. Simply put, the accounting entries input by Bonventre and his staff regarding these transactions were a complete fiction.

64. Further, because Bonventre chose to recognize Investor A's bonds on BMIS' general ledger as an asset, he should have also recorded a corresponding liability to Investor A in the amount of \$154 million. No such liability was recorded, which made the general ledger and related financial statements false and misleading.

IV. Bonventre Personally Siphoned \$1.9 Million in Investor Funds through Fake Gains in his Own BMIS Account.

65. Bonventre maintained a joint IA account with his wife at BMIS from at least 1990 through December 2008. Bonventre knew, or recklessly disregarded the fact, that a number of fabricated, backdated trades created fake "gains" in his account.

66. Big Lots – Bonventre obtained \$999,375 through fake trades in Big Lots stock that, in order to generate the desired "gain," were *backdated by 12 years*. Bonventre's month-end account statements from January 1990 through October 2002 did

not reflect any position in Big Lots Stock, or its predecessor, Consolidated Stores. Yet, his November 2002 account statement reflected purchases of 40,000 shares of Consolidated Stores in January 1990. Although the “purchase” was reported to have cost \$90,000, Bonventre had a negative balance (-\$90,304) in his account when he supposedly made these purchases, and Bonventre did not pay margin interest from 1990 through November 2002. The corresponding Big Lots shares were purportedly sold in September 2002 for \$1,089,375 million. Notes in Bonventre’s handwriting walk through the parameters of the trade, including trade and settlement dates, share volume, and the prices at which the shares were supposedly purchased and sold. These fake trades were entered into the BMIS computer system for the first time on or about November 22, 2002. At Bonventre’s instruction, a check in the amount of \$999,375 was cut on November 12, 2002 against the Main Ponzi Scheme Account, payable to Bonventre and his wife, which Bonventre endorsed and cashed shortly thereafter.

67. Lucent Technologies - Bonventre later obtained \$399,810 through a fake, backdated trade in Lucent stock. Bonventre’s account statements from March 2003 through March 2004 did not reflect any position in Lucent stock. However, in April 2004, his account statement reflected purchases of 157,000 shares of Lucent in March 2003. Although the “purchases” were reported to have cost \$246,510, Bonventre only had \$182,000 in his account at the time of these purchases. These shares were then purportedly sold in April 2004 for proceeds of \$646,320, resulting in a “gain” of \$399,810. A 17th floor employee took handwritten notes regarding Bonventre’s instructions surrounding the trade: “Dan had me put thru a profit trade for 399810.00, then add that figure to cap additions.” These fake trades were entered in BMIS’

computer system for the first time on or about July 12, 2004. At Bonventre's instruction, checks in the amount of \$200,000 and \$400,000 were written against the Main Ponzi Scheme Account, payable to Bonventre and his wife, in April 2004 and May 2005, respectively. Bonventre endorsed and cashed these checks shortly after they were issued.

68. Apple Computer - Bonventre obtained \$479,200 through a fake, backdated trade in Apple stock. Bonventre's account statements from January 2005 through February 2006 did not reflect any position in Apple stock. However, in March 2006, his account statement reflected purchases of 8,000 shares of Apple for a reported cost of \$577,760 in January 2005. These shares were then purportedly sold in March 2006 for \$1,056,960. Bonventre set forth instructions to a 17th floor employee, in his own handwriting, regarding these trades. "Hi ... As per our phone conversation, I need a long term capital gain of \$449000.-- on an investment of \$129000- for a sale proceed of \$578000.-- I'll be back in NY on March 30th but if you need to speak to me before then, call me.... Thanks[,] Dan." These fake trades were entered into BMIS' computer system on March 31, 2006.

69. Shortly after the fake Apple Computer trades were entered, Bonventre zeroed out his BMIS account. Bonventre withdrew \$577,954 from his account in April 2006, in the midst of BMIS' liquidity crisis. This payment was made from the Main Ponzi Scheme Account.

70. As alleged above, the Ponzi Scheme Accounts were effectively out of money during this time period, and the firm only survived through heavy borrowing, including the bank loan Bonventre arranged with Investor A's bonds. Bonventre knew the Ponzi scheme could collapse – if investors continued pulling out money, BMIS might

run out of borrowing options, and the scheme would have come to light – and sought to cash out before it was too late.

71. The balance in Bonventre’s account after this withdrawal was negative \$116,944. An entry reflected in his account, which did not correspond to any real trading, withdrawals, deposits, or other activity, had the effect of increasing his balance to zero. This was the last entry or activity in Bonventre’s BMIS account.

72. Bonventre later lied to investigators about why he closed his account, asserting that he did so as a result of a “bad” or “queasy” feeling that arose because the account’s returns were “eerily consistent” and “too good to be true.” This was untrue. Bonventre’s returns were highly irregular, which was expected given that they were sporadically manufactured from whole cloth by Bonventre with the help of a 17th floor employee.

73. In addition to his “gains” from fake, backdated trades, Bonventre was paid a salary by BMIS of over \$700,000 in 2004, over \$900,000 in 2005 and 2006, and over \$1 million in 2007 and 2008.

V. Bonventre Helped BMIS Deceive External Reviewers.

74. Over the course of Madoff’s extensive and far-reaching fraud, BMIS was subjected to several rounds of scrutiny by investor representatives and regulators. When Madoff received requests for information from these external reviewers, he responded not only with oral and written misrepresentations, but also with an impressive array of reports and data to corroborate BMIS’ fictitious trading. These misrepresentations varied over time and depending on which external reviewer was posing questions. Bonventre knew

of these misrepresentations and false documents given to external reviewers, and he participated in discussions about how to pull off the deception.

75. More specifically, Bonventre offered advice at the outset of these reviews about how to avoid detection. Madoff and DiPascali met with Bonventre and collaborated about how to anticipate the types of questions and issues that might arise during the reviews, and created a plan for responding to those questions with misrepresentations and falsified documents.

76. DiPascali also gave Bonventre frequent status updates regarding how the external reviews were going, and Bonventre offered advice about how to modify responses in light of the external reviewers' questions and reactions – all with the end goal of misleading the external reviewers.

77. Bonventre also ensured that the Ponzi Scheme Accounts were not disclosed during regulatory reviews of the IA operations. Bonventre instructed BMIS' Controller, who Bonventre supervised, to respond to an external reviewer's requests for a list of all BMIS bank accounts as well as the firm's general ledger and financial statements. The list of bank accounts did not include the Main Ponzi Scheme Account, as Bonventre knew or recklessly disregarded.

78. Moreover, as Bonventre knew, or recklessly disregarded, the financial records that were provided concealed BMIS' massive liability to investors, the transactions in which investor funds were used to prop up the firm's reported revenue and income, and the transactions in which Madoff used the Ponzi Scheme Accounts as a personal piggy bank.

79. Bonventre was also privy to many of the false documents that BMIS prepared for external reviewers. For example, fake DTC reports were found alongside real DTC reports in Bonventre's files. These fake reports combined actual positions and activity from the MM & PT operations with the fictional balances maintained in investor accounts. Bonventre consulted with BMIS programmers about various details needed to create these fake reports, and Bonventre, Madoff and others reviewed the end product in detail and made small adjustments so the reports would appear as legitimate as possible.

80. Similarly, Madoff directed DiPascali and others to create phony account statements for certain BMIS investors. If needed, these phony account statements could be used to falsely demonstrate to external reviewers that BMIS investors' securities were custodied at third-party financial institutions on an RVP/DVP (receive-versus-payment and delivery-versus-payment) basis. Copies of these phony statements, as well as another version of the statements actually sent to investors, were found in Bonventre's files.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a)(1) of the Securities Act (Antifraud violations)

81. Paragraphs 1 through 80 are realleged and incorporated by reference as if set forth fully herein.

82. From at least the 1990s through December 11, 2008, the Defendant, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce or by the use of the mails and/or wires, directly and indirectly, has employed devices, schemes and artifices to defraud.

83. The Defendant knew or was reckless in not knowing of the activities described above.

84. By reason of the activities herein described, the Defendant has violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

SECOND CLAIM FOR RELIEF

**Violations of Section 17(a)(2) and 17(a)(3) of the Securities Act
(Antifraud violations)**

85. Paragraphs 1 through 80 are realleged and incorporated by reference as if set forth fully herein.

86. From at least the 1990s through December 11, 2008, the Defendant, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce or by the use of the mails and/or wires, directly and indirectly, has obtained money and property by means of untrue statements of material fact or omissions 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 has engaged in transactions, practices or courses of business which have operated as a fraud and deceit upon investors.

87. By reason of the activities herein described, the Defendant has violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

THIRD CLAIM FOR RELIEF

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

88. Paragraphs 1 through 80 are realleged and incorporated by reference as if set forth fully herein.

89. From at least the 1990s through December 11, 2008, the Defendant, 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, has employed devices, schemes and artifices to defraud; has made untrue statements of material fact and has 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 has engaged in acts, practices and courses of business which operated as a fraud and deceit upon investors.

90. By reason of the activities herein described, the Defendant has violated Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

91. In addition, from at least the 1990s through December 11, 2008, Madoff 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.

92. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], the Defendant has aided and abetted Madoff's and BMIS' violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a), (b) and (c) promulgated thereunder [17 C.F.R. §§ 240.10b-5(a), (b) and (c)].

Specifically, the Defendant knowingly provided substantial assistance to Madoff and BMIS in committing such violations.

FOURTH CLAIM FOR RELIEF

**Aiding and Abetting Violations of Sections 206(1),
206(2) and 206(4) of the Advisers Act and Rule 206(4)-2
(Fraud upon Advisory Clients and Breach of
Fiduciary Duty by Investment Adviser)**

93. Paragraphs 1 through 80 are realleged and incorporated by reference as if set forth fully herein.

94. 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)].

95. 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.

96. 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)].

97. BMIS did not subject the Ponzi Scheme Accounts to an annual surprise examination by an independent accountant as required by Rule 206(4)-2 of the Advisers Act.

98. By reason of the activities described herein, and pursuant to Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], the Defendant has aided and abetted

Madoff's and BMIS' violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2) and (4)] and Rule 206(4)-2 thereunder [17 C.F.R. § 275.206(4)-2]. Specifically, the Defendant knowingly provided substantial assistance to Madoff and BMIS in committing such violations.

FIFTH 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)**

99. Paragraphs 1 through 80 are realleged and incorporated by reference as if set forth fully herein.

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

101. From at least the 1990s 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.

102. BMIS' manipulative, deceptive, and fraudulent devices or contrivances included representations to customers that securities transactions occurred, and securities were held, in their accounts when no such transactions occurred and no such securities were held in customers' accounts.

103. Defendant knew or recklessly disregarded the fact that these statements were false.

104. By reason of the activities described herein, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Defendant has 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, Defendant knowingly provided substantial assistance to BMIS in committing such violations.

SIXTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 (Broker-Dealer Books and Records, Reporting Violations)

105. Paragraphs 1 through 80 are realleged and incorporated by reference as if set forth fully herein.

106. 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 Rules 17a-3 and 17a-5 thereunder [17 C.F.R. § 240.17a-3].

107. 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, and/or omitting and mischaracterizing material transactions.

108. 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].

109. The Defendant knew that BMIS manufactured and maintained account statements, ledgers, journals and other records reflecting fictitious securities holdings and

fictitious securities transactions in investors' accounts, and/or omitting and mischaracterizing material transactions.

110. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], the Defendant 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, Defendant knowingly provided substantial assistance to BMIS in committing such violations.

SEVENTH CLAIM FOR RELIEF

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

111. Paragraphs 1 through 80 are realleged and incorporated by reference as if set forth fully herein.

112. 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)].

113. 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 account statements, ledgers, journals and other records reflecting fictitious securities holdings and fictitious securities transactions in investors' accounts, and/or omitting and mischaracterizing material transactions.

114. The Defendant knew that BMIS manufactured and maintained account statements, ledgers, journals and other records reflecting fictitious securities holdings and fictitious securities transactions in investors' accounts, and/or omitting and

mischaracterizing material transactions.

115. 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 Defendant aided and abetted BMIS' violations. Specifically, Defendant 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 the Defendant granting the following relief:

I.

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

II.

Permanently restraining and enjoining the Defendant, his 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 future violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

III.

Permanently restraining and enjoining the Defendant, his 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].

IV.

Permanently restraining and enjoining the Defendant, his 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), 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)] and Rule 206(4)-2 thereunder.

V.

Permanently restraining and enjoining the Defendant, his 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].

VI.

Permanently restraining and enjoining the Defendant, his 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 Rules 17a-3 and 17a-5 thereunder [17 C.F.R. § 240.17a-3].

VII.

Permanently restraining and enjoining the Defendant, his 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].

VIII.

Directing the Defendant to disgorge his ill-gotten gains, plus prejudgment interest thereon.

IX.


Directing the Defendant to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9].

X.

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

Dated: New York, New York
February 24, 2010

SECURITIES AND EXCHANGE COMMISSION

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