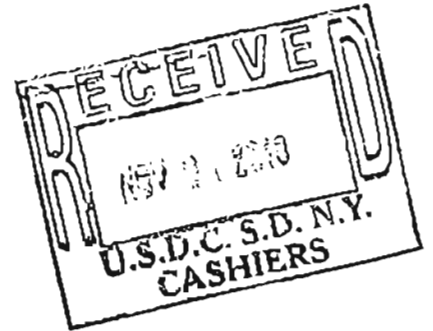


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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

- against -

COHMAID SECURITIES CORPORATION,
MAURICE J. COHN, MARCIA B. COHN, and
ROBERT M. JAFFE,

Defendants.

09 Civ. 5680 (LLS)

AMENDED COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Amended Complaint against defendants Cohmad Securities Corporation ("Cohmad"), Maurice J. Cohn ("Maurice Cohn"), Marcia B. Cohn ("Marcia Cohn") and Robert M. Jaffe ("Jaffe," and collectively with Cohmad, Maurice Cohn, and Marcia Cohn, the "Defendants"), alleges:

SUMMARY

1. This case alleges that the Defendants made material misrepresentations and omissions by referring hundreds of investors to Bernard L. Madoff (“Madoff”) and his firm, Bernard L. Madoff Investment Securities Corporation LLC (“BMIS”), while the Defendants were aware of and failed to disclose facts that should have raised serious questions about the propriety of the Madoff investment. The investors referred to BMIS by Defendants provided BMIS with more than one billion dollars.

Cohmad, Maurice Cohn and Marcia Cohn

2. Cohmad, Maurice Cohn and Marcia Cohn (collectively, the “Cohmad Defendants”) referred hundreds of investors to BMIS while aware of facts that should have raised serious questions about Madoff’s investment business and that should have been disclosed to their customers. They owed duties to the investors they referred that included investigating red flags and disclosing improper conduct and activities. Instead, among other things, the Cohmad Defendants told certain investors that Cohmad’s mission was to protect the investments of the investors Cohmad referred; that Cohmad monitored and serviced their accounts; and that Cohmad (with BMIS) used a very conservative strategy in a disciplined manner, using put options to protect investors’ accounts against major loss.

3. Among other things, Maurice Cohn and Marcia Cohn (together, “the Cohns”) were paid more than \$100 million through Cohmad for referring investors to BMIS. In addition, Maurice Cohn received millions of dollars in direct payments from BMIS. Moreover, during at least the ten years predating Madoff’s confession, commissions constituted the majority of Cohmad’s revenue.

4. In addition to their compensation, the Cohns were aware of other red flags that should have led them to question BMIS and Madoff, including the following:

- Madoff said that the Cohns should turn away any prospective BMIS investor who worked in the financial industry, because such investors would ask “too many questions.”
- Cohmad made repeated false filings and false regulatory disclosures to the Commission and other regulators, concealing their business of referring investors to BMIS.
- Madoff said that Cohmad and the Cohns should not use written marketing materials, not make cold calls to prospective BMIS investors, and not communicate with existing or prospective BMIS investors via email.

5. Madoff also sought to hide all aspects of his investment advisory business from regulators for fear that regulatory scrutiny would expose his massive fraud. To that end, not only did he conceal the existence and scope of BMIS’s advisory business in BMIS’s filings, but Cohmad and the Cohns made inaccurate regulatory filings on Cohmad’s behalf that concealed Cohmad’s relationship with BMIS’s advisory business.

6. Because of their positions as owners and officers of Cohmad, the Cohns’ knowledge and conduct is attributable to Cohmad.

Jaffe

7. Jaffe also acted as a broker, introducing scores of investors who opened at least 160 accounts with BMIS, while recklessly failing to disclose material facts to investors. Among other things, Jaffe was receiving tens of millions of dollars in transaction-based compensation from BMIS in the form of proceeds from fictitious securities transactions and recklessly disregarded facts indicating that these securities trades were fictitious. Jaffe disregarded his duty to the investors he brought into BMIS by failing to investigate Madoff’s and BMIS’s wider misconduct. Over more than a 15-

year period, through the 160 accounts that Jaffe established for investors at BMIS, Jaffe brought in more than \$1 billion into Madoff's fraudulent scheme.

8. In particular, while introducing customers who invested hundreds of millions of dollars with Madoff, Jaffe recklessly disregarded several material facts, including the following material facts that, if known to investors, would have raised serious questions about the propriety of the Madoff investment:

- Madoff and BMIS periodically provided Jaffe with a record that correctly kept track of transaction-based compensation due Jaffe with interest income thereon at a significant rate of interest.
- Madoff and BMIS also provided Jaffe with brokerage account statements for a securities account from which transaction-based compensation was purportedly paid. Jaffe recklessly disregarded facts indicating that this account was fictitious.
- For at least 15 years, Jaffe and BMIS kept track of the transaction-based compensation Jaffe was owed for his introductions, and this compensation was paid on a quarterly basis through the brokerage account.
- Each quarter, Jaffe communicated this transaction-based compensation figure to BMIS and requested that such amount be distributed from the brokerage account in the form of proceeds of securities transactions. Jaffe recklessly disregarded facts indicating that these transactions were fictitious. As a result of these fictitious transactions, BMIS generated bogus securities statements for Jaffe's account reflecting the fictitious transactions, as with all Madoff accounts, and the payments to Jaffe.
- On at least 16 occasions (out of at least 50 requests), BMIS executed fictitious backdated trades to achieve the proceeds requested. Jaffe recklessly disregarded that the monthly account statements he received from BMIS indicated backdating.
- From inception of the arrangement Jaffe withdrew more than \$35 million after initially investing just \$300,000 with BMIS.
- In many monthly statements generated for Jaffe's account at BMIS, BMIS listed securities transactions as occurring in months preceding the month of the statement. Jaffe recklessly disregarded that these statements indicated that BMIS was engaging in fictitious backdated transactions.

9. By recklessly disregarding these facts, Defendant Jaffe committed securities fraud and the other violations alleged in this Amended Complaint.

VIOLATIONS

10. By virtue of the conduct alleged herein,
- a. Cohmad, Maurice Cohn and Marcia Cohn directly or indirectly, singly or in concert, have engaged in acts and practices that violated Section 17(a)(2) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)(2)] and aided and abetted violations of Section 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. § 80b-6(4)] and Rule 206(4)-3 thereunder [17 C.F.R. § 275.206(4)-3].
 - b. Jaffe directly or indirectly, singly or in concert, engaged in acts, practices, schemes and courses of business that violated Section 17(a) of the Securities Act of 1933 (the "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 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], aided and abetted violations of Section 15(b)(7) of the Exchange Act [15 U.S.C. § 78o(b)(7)] and Rule 15b7-1 thereunder [17 CFR § 240.15b7-1], and aided and abetted violations of Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1), (2) and (4)], and Rule 206(4)-3 thereunder [17 C.F.R. § 275.206(4)-3];
 - c. Cohmad violated, and Maurice Cohn and Marcia Cohn each aided and abetted violations of, Section 15(b)(1) of the Exchange Act [15 U.S.C. § 78o(b)(1)] and Rule 15b3-1 thereunder [17 C.F.R. § 240.15b3-1]; and
 - d. Cohmad violated, and Maurice Cohn, Marcia Cohn and Jaffe each aided and abetted 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].

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

11. 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 the Defendants from

engaging in the acts, practices and courses of business alleged herein.

12. In addition to the injunctive relief recited above, the Commission seeks: (i) final judgments ordering Defendants to disgorge their ill-gotten gains with prejudgment interest thereon; (ii) final judgments ordering Defendants 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

13. 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].

14. 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' improper activities giving rise to the Commission's claims occurred in the Southern District of New York, and Defendants Cohmad and the Cohns maintained their main office in this District during the relevant time period.

THE DEFENDANTS

15. **Cohmad** is a New York corporation with its principal place of business formerly located at 885 Third Avenue in New York, NY (the "Lipstick Building"), the same address as BMIS. In 1985, Madoff and Maurice Cohn incorporated and registered

Cohmad as a broker-dealer with the Commission and the National Association of Securities Dealers ("NASD"). Cohmad was registered with the Commission until December 2009, and until January 2010 it was registered with, and a member of, the Financial Industry Regulatory Authority ("FINRA"), the self-regulatory organization that is the successor to the NASD. Cohmad is owned by Maurice Cohn (49%), Marcia Cohn (25%), Madoff (15%), Madoff's brother (9%), Maurice Cohn's brother (1%), and another Cohmad employee (1%). At one time, Robert Jaffe was a 1% owner of Cohmad. Cohmad had approximately 600 retail brokerage accounts which, for many years, Cohmad cleared through the broker-dealer Bear Stearns Securities Corp. ("Bear Stearns"), now J.P. Morgan Clearing Corp.

16. Maurice "Sonny" Cohn, age 79, resides in Manhasset, New York. He is an owner of Cohmad and served as its chairman, chief executive officer and principal. He is a former member of the New York Stock Exchange and specialist at the American Stock Exchange. Prior to forming Cohmad in 1985, Cohn had been a principal at a brokerage firm named Cohn, Delaire & Kaufman and its successor firms since 1967. He is also Madoff's former neighbor.

17. Marcia Cohn, age 51, is the daughter of Maurice Cohn and resides in Miami, Florida. She is a registered representative of Cohmad and served as its president, chief operating officer, chief compliance officer and principal. Marcia passed various licensing exams required for securities professionals, including Series 7, 63, 55, 24, and 4, and the Fin-Op exam. Since at least July 1999 through the end of 2009, Marcia Cohn signed all Forms BD and amendments that Cohmad submitted to the Commission, which number approximately 31 filings. She previously worked at another registered broker-

dealer in New York and joined Cohmad in 1988. On various occasions, while she was registered with the NASD as associated with Cohmad, Marcia Cohn was also registered with the NASD as associated with three other registered broker-dealers, none of which was BMIS.

18. Jaffe, age 66, resides in Palm Beach, Florida. He is Vice President of Cohmad, a registered representative and previously headed Cohmad's Boston office. Jaffe is the son-in-law of one of Madoff's longtime investors. Jaffe also owns M/A/S Capital. Jaffe previously worked at Cowen & Company in New York as a managing partner. Jaffe passed various licensing exams required for securities professional, such as the Series 1, 4, 5, 12, 24, and 63. Jaffe asserted the Fifth Amendment privilege and refused to provide answers to the Commission staff regarding his conduct.

RELEVANT INDIVIDUALS AND ENTITIES

19. Madoff, age 72, was the sole owner of BMIS. He is also a director and 15% owner of Cohmad. Until December 11, 2008, Madoff, a former chairman of the board of directors of the NASDAQ stock market, oversaw and controlled the investment adviser services at BMIS as well as the overall finances of BMIS. Madoff was charged civilly and criminally for his role in a multi-billion dollar Ponzi scheme orchestrated since at least 1991. (S.E.C. v. Bernard L. Madoff and Bernard L. Madoff Investment Securities LLC, S.D.N.Y. 08 CV 10791 (LLS) ("the Civil Action"); United States v. Bernard L. Madoff, S.D.N.Y. 09 Cr. 213 (DC) ("the Criminal Action")). On February 9, 2009, in the Civil Action, the District Court, with Madoff's consent, entered a partial judgment in the Commission's case against Madoff which deems the facts of the complaint as established and cannot be contested by Madoff. On March 12, 2009,

Madoff pled guilty to eleven felonies in the Criminal Action and admitted in his allocution to, among other things, committing a Ponzi scheme, securities fraud, investment adviser fraud, and filing false audited financial statements with the Commission on behalf of BMIS. 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.

20. BMIS, which was located in New York City, registered with the Commission as a broker-dealer in 1960 and as an investment adviser in 2006. BMIS occupies floors 17-19 of the Lipstick Building in New York City. BMIS purportedly engaged in three different operations: investment adviser services (housed on the 17th floor), market making services, and proprietary trading. BMIS reported to the Commission that it had over \$17 billion in assets under management as of January 2008. BMIS is currently under the control of a trustee appointed pursuant to the Securities Investor Protection Act of 1970.

FACTS

A. The Cohmad Defendants Referred Hundreds of Investors and Billions of Dollars to Madoff and BMIS While Aware of Red Flags that Should Have Raised Serious Questions About the Propriety of the Madoff Investment.

21. From Cohmad's inception in 1985 through Madoff's arrest in 2008, Cohmad and the Cohns referred to BMIS investors who opened more than 800 accounts and invested more than one billion dollars with BMIS.

22. Beginning in at least the 1990s, Maurice Cohn referred hundreds of investors who opened retail accounts at BMIS and told some of these investors that Madoff would implement BMIS's investment strategy involving securities transactions.

23. Similarly, Marcia Cohn referred at least 40 investors who opened retail accounts at BMIS and told these investors that Madoff would implement BMIS's investment strategy involving securities transactions.

24. Cohmad and the Cohns received lucrative compensation for these referrals, while aware of facts that should have raised serious questions about the propriety of the Madoff investment. They owed duties to the investors they referred that included investigating red flags and disclosing improper conduct and activities. Instead, among other things, Sonny Cohn told certain investors that Cohmad's mission was to protect the investments of the investors Cohmad referred; that Cohmad monitored and serviced their accounts; and that Cohmad (with BMIS) used a very conservative strategy in a disciplined manner, using put options to protect investors' accounts against major loss. Moreover, the Cohmad Defendants made repeated false filings and false regulatory disclosures to the Commission and other regulators, concealing the referral business with BMIS, which had the effect of avoiding scrutiny of BMIS's advisory business.

1. **From the 1980s through 2008, Cohmad and the Cohns Received Substantial Compensation from BMIS for Referring Investors to Madoff and BMIS.**

25. From 1985 through Madoff's arrest in 2008, Cohmad and the Cohns had a commission arrangement with BMIS that should have raised serious questions about the propriety of the Madoff investment.

26. During more than a 20-year period, Cohmad received more than \$100 million in commissions from BMIS for referring investors. Cohmad derived the vast majority of its revenue from referring investors on behalf of BMIS, which was Cohmad's primary business as measured by its share of Cohmad's overall earnings.

27. For all Cohmad representatives other than Maurice Cohn and Jaffe, who are addressed separately below, BMIS transmitted payments for commissions directly to Cohmad, and Cohmad then paid a large portion of those funds to the Cohmad representatives credited with the referrals.

28. Until 2002, Maurice Cohn's commissions were calculated like those of other Cohmad representatives and paid through Cohmad; from 2002 onward, Maurice Cohn received a flat rate of \$2 million per year, paid directly to him by BMIS.

29. As described in detail below, Jaffe dealt directly with BMIS regarding his commissions.

30. From at least January 1996 until December 2008, BMIS made payments to Cohmad on at least a monthly basis. For just the period from 1996 through 2008, BMIS's payments to Cohmad totaled at least \$98,448,678.84.

31. Cohmad calculated the commissions it was due based on the cash provided to BMIS by the investors referred by Cohmad representatives, less any cash withdrawals by those investors (together, the "invested capital") and without taking into account the purported profits in customer accounts. In other words, Cohmad's commissions were based neither on the amount of assets under management nor on the customers' initial investments alone.

32. Each year, a rate (that declined over time from 1% to .25%) was applied to the then-existing invested capital to calculate commissions. Cohmad thereby had an incentive (i) to refer investors who would park money and not withdraw it and (ii) to dissuade investors from withdrawing their funds.

33. Maurice Cohn was personally involved in the calculations of commissions paid by BMIS to Cohmad and its registered representatives. In the early years of the referral business, Maurice Cohn manually calculated and reported to BMIS amounts due Cohmad and its registered representatives (and in some instances amounts due BMIS, such as when Cohmad or Maurice Cohn had received advances that eclipsed the commissions).

34. Cohmad and Maurice Cohn augmented requests as new commissions were earned, identifying the new clients who had invested money with BMIS, the commissions owed, and the excess due to Cohmad.

35. Later, Maurice Cohn provided more detail in his requests for commissions from Madoff and BMIS. For example, in a request dated April 17, 1990 from Maurice Cohn to BMIS for commission earned in 1989, Maurice Cohn calculates the amount due himself, the amount due Marcia Cohn, and the amount due Cohmad. As support, he adds a listing, account-by-account, of expected return, target return, the applicable referral fee percentage, and the amount owed by BMIS.

36. As Cohmad's referral business grew, the calculation of Cohmad's commissions became automated. In 1994, Cohmad and BMIS created a database to track the invested capital that resided in the accounts of investors whom Cohmad representatives had referred to BMIS (the "Cohmad Commissions Database"). The database was developed by a BMIS employee, and BMIS provided technical support. Cohmad or BMIS employees inputted data into the database, and the data date back to the beginning of 1993.

37. Cohmad's payment arrangement with BMIS was different from payment arrangements typically used in the industry for referrals to a hedge fund or investment adviser.

38. The Cohmad Commissions Database consisted solely of the accounts of BMIS customers that had been referred by Cohmad representatives other than Jaffe and Maurice Cohn. For each investor account, the Cohmad Commissions Database includes or calculates the following:

- the name of the owner of the BMIS customer account;
- the tax identification information of the BMIS customer;
- the BMIS account number assigned to the BMIS customer account;
- the Cohmad representative associated with the referral for that BMIS customer account;
- the date and amount of each deposit into and each withdrawal from the BMIS customer account;
- the total amount of cash under management at BMIS in the account; and
- the amount of "commissions" due to the particular Cohmad representative.

39. In order to input the deposits and withdrawals of cash by the investors it had referred, and thereby calculate invested capital and commissions due, Cohmad relied in most instances on information provided by BMIS. Specifically, Cohmad received "Capital Movement" reports generated by BMIS employees.

40. The Cohmad Commissions Database did not include the purported profits that BMIS was achieving for investors. For example, if a client placed \$1 million with BMIS and it grew to \$5 million through the supposedly skilled money management of BMIS, and the client later withdrew \$2 million, Cohmad would no longer receive any

commissions from BMIS. In this scenario, the client's balance in the account would be \$3 million (the original \$1 million investment plus the \$4 million in appreciation, less the \$2 million withdrawal) but its invested capital would be negative \$1 million (\$1 million from the original investment less the \$2 million withdrawal). The Cohmad Commissions Database (and other internal records of Cohmad) would show a balance of negative \$1 million.

41. The Cohmad Commissions Database generated reports detailing the amount of money each investor referred by a Cohmad representative, other than Maurice Cohn and Jaffe, had under management at BMIS; the amount of the adjustment based on intra-year net cash activity; and the annual commissions to be paid to each Cohmad representative other than Maurice Cohn and Jaffe.

42. Cohmad hand-delivered to BMIS, generally on a monthly basis, requests for payment — sometimes stating that the requests were for “professional services” and other times not even referencing a particular reason for payment. Those requests correlate almost precisely with the fees recognized as income on Cohmad's income statements and the actual payments made by BMIS.

43. Despite the fact that certain BMIS customer accounts appeared to have significant positive balances due to purported profits, Cohmad and the Cohns knew that they would be paid less as customers withdrew cash, irrespective of purported profits.

44. Annual data from 2003 through 2008 show that the fees paid by BMIS to Cohmad for “account supervision” (*i.e.*, accounts referred to BMIS by Cohmad representatives) represented the vast majority of Cohmad's income, as set forth on the following chart:

YEAR	Fees for Account Supervision Listed on Income Statements	Total Income to Cohmad	Percentage of Cohmad's Total Income
2003	\$9,462,247.47	\$10,376,164.70	91.19%
2004	\$6,745,438.44	\$7,760,711.65	86.92%
2005	\$7,239,978.07	\$8,070,855.01	89.71%
2006	\$6,449,343.24	\$7,177,126.17	89.86%
2007	\$4,255,062.89	\$4,934,157.49	86.24%
2008	\$2,665,092.01	\$3,118,294.42	85.47%
TOTAL	\$36,817,162.12	\$41,437,309.44	88.85%

45. The foregoing chart does not include the fees paid to Jaffe or Maurice Cohn. When considering the amounts paid directly from BMIS to Maurice Cohn, the percentage of Cohmad's income paid by BMIS is considerably higher, as detailed in the following table, which extends back to 2003, when payments to Cohn were made separately:

<u>YEAR</u>	<u>Fees from BMIS to Cohn and Cohmad</u>	<u>Total Income to Cohmad Including Payments to Cohn</u>	<u>Percentage of Total Income to Cohn and Cohmad</u>
2003	\$11,812,847.47	\$12,726,764.70	92.82%
2004	\$8,628,269.49	\$9,643,542.70	89.47%
2005	\$9,170,595.17	\$10,001,472.11	91.69%
2006	\$8,449,343.24	\$9,177,126.17	92.07%
2007	\$6,255,062.89	\$6,934,157.49	90.21%
2008	\$4,665,092.01	\$5,118,294.42	91.15%
TOTAL	\$48,981,210.27	\$53,601,357.59	91.38%

46. For the time period from 2002 to the present, BMIS made direct payments to Maurice Cohn personally on at least a monthly basis. In more recent years, direct payments by BMIS to Maurice Cohn amounted to a flat \$2 million per year. During this period, BMIS paid Maurice Cohn at least \$14,601,213.15.

47. The amount and structure of the compensation BMIS paid Cohmad and its representatives should have alerted the Cohmad Defendants to the fact that there were serious questions about the propriety of the Madoff investment.

2. Madoff Needed to Pay Referral Fees to Obtain Investor Money, Notwithstanding His Apparent Skill and Prominence as an Investment Adviser.

48. Cohmad and the Cohns should have known that Madoff needed to pay referral fees to obtain investor money despite his purported investing prowess, a red flag that should have raised serious questions about the propriety of the Madoff investment.

49. Madoff had a clever marketing strategy. He cultivated an aura of success and secrecy surrounding BMIS, projecting to a social network of wealthy friends and investors that he was highly successful and did not need to market or solicit to obtain investments. Madoff played hard-to-get, shunning one-on-one meetings with most individual investors and arbitrarily refusing prospective investors for what appeared to be whimsical or snobbish reasons.

50. Many of BMIS's investors therefore felt privileged to be allowed to invest with Madoff and BMIS, and many prospective investors angled for ways to get in.

51. Madoff said that Cohmad and the Cohns should not use written marketing materials, not make cold calls to prospective BMIS investors, and not communicate with existing or prospective BMIS investors via email. Madoff was eager to secure new

investors and to pay Cohmad and its representatives for them, while projecting an image of exclusivity and indifference to new money.

52. To maintain this image, Madoff did not secure new money by asking for it. Instead, Madoff used Cohmad and its representatives to subtly market his advisory business.

53. Cohmad's representatives circulated among wealthy individuals. When prospective investors asked if the representatives could make an introduction to Madoff so they could invest with BMIS, the Cohmad representatives would agree to try to put in a good word with Madoff and see if they could get the investors in.

54. To maintain the aura of wealth and privilege, the compensation for Cohmad representatives was not formally disclosed. Neither BMIS nor any of the Defendants made any systematic written or oral disclosures to any investors brought into BMIS by Cohmad and its representatives concerning the compensation paid to Cohmad for these referrals. Moreover, neither BMIS nor the Cohmad Defendants disclosed to all investors that BMIS had agreed to pay Cohmad fees for referring investors.

3. The Cohmad Defendants Overlooked Other Facts that Should Have Raised Serious Questions About the Propriety of the Madoff Investment.

55. While referring investors to Madoff and BMIS, Cohmad and the Cohns overlooked other facts that should have raised serious questions about the propriety of the Madoff investment.

56. First, Madoff said that the Cohns should not refer any prospective BMIS investor who worked in the financial industry, because such investors would ask "too many questions."

57. Second, the Cohns knew or should have known that Madoff avoided registration as an investment adviser for decades, and Madoff categorically banned Cohmad representatives from using email.

58. Third, as indicated above, Madoff said that Cohmad and the Cohns should not use written marketing materials, not make cold calls to prospective BMIS investors, and not communicate with existing or prospective BMIS investors via email.

59. Fourth, as set forth in more detail below, the Cohns caused Cohmad to file inaccurate Forms BD for more than two decades. These false filings with the Commission concealed the existence of Cohmad's predominant source of business: the referral of accounts to BMIS.

B. The Cohmad Defendants Referred Investors to BMIS and Did Not Disclose All Relevant Information to Those Investors.

60. The Cohmad Defendants neglected to disclose material information while aware of the facts set forth above, which should have called into question the propriety of the Madoff investment.

61. In the early years after Cohmad's inception, Cohmad generated documents for BMIS investors that referred to Cohmad and BMIS's operations as being intertwined. For example, in what appear to be promotional materials, Maurice Cohn stated as follows (on Cohmad letterhead) to prospective investors: "As a result of [Cohmad]'s association with [BMIS] and the expertise of Cohmad's professional staff, we are able to offer our clients ... the type of service they deserve."

62. Similarly, in a July 17, 1992, letter on Cohmad letterhead to an existing customer, Maurice Cohn wrote:

[O]ur 'mission' is to protect your investment (and mine!). To accomplish this, we maintain our discipline and stick with the same strategy, by buying a portfolio of 'blue chip' equities, selling call (index) options on your portfolio, and buying put (index) options to protect your portfolio against violent bear markets. Once again, we are not economists or security analysts. We are risk managers and our associates are very good at what they know best—namely, trading.

He added that Cohmad monitored and serviced the customer's accounts with BMIS.

63. In a letter on Cohmad letterhead dated November 21, 1991, Maurice Cohn described the activities of BMIS as if they were Cohmad's activities. In writing to a prospective customer and enclosing account documents, Maurice Cohn stated: "Our primary business is not managing client accounts. We do manage accounts for family and friends using a simplistic and most important, a very conservative strategy in a disciplined manner, always 'insuring' the accounts against major loss by using put options."

64. In addition, Cohmad representatives at times informed investors that they were personally familiar with the Madoff system, that they knew how it worked, and that they personally tracked it and followed it for many years.

65. Moreover, for at least a period of time, certain Cohmad representatives provided customers with information about the purported profits in their BMIS accounts. For instance, using Cohmad letterhead, Maurice Cohn provided account summaries to certain customers, showing their account balance with BMIS, including purported profits in those accounts. For example:

- in a November 18, 1987 letter to a BMIS investor, Maurice Cohn tells the investor that his original investment of \$100,000 had grown to \$142,105.73, adding that "our hedging strategy ... does in fact protect the portfolio;"

- in a January 22, 1988 letter to the same BMIS investor, Maurice Cohn tells that investor that his investment was worth \$145,043.43 at the end of 1987, notes that “[w]e are very pleased with our results, which was [sic] due to our conservative and disciplined option strategy,” and promises that “we will send you all necessary tax information;” and
- in a July 17, 1992 letter to a BMIS investor, Maurice Cohn includes a Portfolio Management Report as of June 30, 1992, showing the investor’s initial investment and total equity.

66. Marcia Cohn was aware that her father, Maurice Cohn, had sent out letters to investors welcoming them to BMIS, which she called welcoming them to “the Madoff world.” Maurice Cohn made representations about BMIS’s “conservative... hedged” investment strategy to certain investors he brought into a particular pooled account at BMIS.

67. On BMIS account opening forms, the Cohmad representative who referred a particular investor is listed as the “Reg. Rep.,” or registered representative. For example:

- the Opening Form for the BMIS account bearing the number 1C0015 (opened on July 2, 1990) lists Maurice Cohn as the registered representative;
- the Opening Form for the BMIS account bearing the number 1CM418 (opened on October 3, 1996) lists Marcia Cohn as the registered representative;
- the Opening Form for the BMIS account bearing the number 1A0080 (opened on February 12, 1997) lists Jaffe as the registered representative;
- the Opening Form for the BMIS account bearing the number 1CM395 (opened on May 21, 1996) lists Alvin Delaire (“Delaire”) as the registered representative; and
- the Opening Form for the BMIS account bearing the number 1CM104 (opened on January 4, 1993) lists Richard Spring as the registered representative.

68. Cohmad representatives also provided customer service and assisted the investors they referred with maintaining their accounts. For example:

- in connection with IA Account No. 1CM050, Maurice Cohn received instructions to withdraw funds;
- in connection with IA Account No. 1B0020, Marcia Cohn received instructions to make transfers among various IA Accounts;
- in connection with IA Account No. 1H0073, Jaffe received instructions to make transfers among various IA Accounts;
- in connection with IA Account No. 1CM912, Delaire received instructions to provide duplicate copies of account statements; and
- in connection with IA Account No. 1CM005, Jonathan Greenberg received instructions to withdraw funds.

C. Cohmad's Relationship With BMIS.

69. Since its founding, Cohmad had a close business relationship with BMIS:

70. **Ownership.** Madoff and his brother own a combined 24% of Cohmad (15% for Madoff, 9% for Peter Madoff) and both served as directors. Even the name "Cohmad" is a contraction of Cohn and Madoff.

71. **Integration.** Cohmad leased office space from BMIS, and Cohmad's offices were located within BMIS's offices on the 19th floor, and later the 18th floor, of the Lipstick Building. Cohmad representatives sat either on the BMIS trading desk or in a single office surrounded by other BMIS offices. Cohmad shared reception, photocopiers, and bathrooms with BMIS. Cohmad's payroll and health benefits plans were administered through BMIS until approximately 2002, and until approximately that time Cohmad shared email servers with BMIS. Cohmad provided services to BMIS's market-making operation, executing trades on the floor of the NYSE (through Bear Stearns) for positions that the BMIS market-making desk wanted to lay off its book. Finally, when she had compliance questions, Marcia Cohn, Cohmad's chief compliance officer, occasionally raised them with BMIS's compliance staff.

72. **Revenue.** As set forth above in paragraphs 25 through 47, nearly all of Cohmad's revenue came from BMIS in the form of compensation for referring investors to BMIS (and, in the earlier years, for execution of layoff trades). For the period 1996 through 2008, payments by BMIS to Cohmad totaled \$98,448,678.84. For each year from 2000 to 2008, Cohmad's yearly revenue from BMIS ranged from \$10.4 million (year 2000) to \$2.6 million (year 2008), and accounted for as much as 91.2% of Cohmad's total revenue (year 2003) and no less than 63.98% of Cohmad's total revenue (year 1999). These numbers do not include the fees that BMIS paid directly to Maurice Cohn and Jaffe. BMIS's direct payments to Maurice Cohn for the period 2001 to 2008 total more than \$14 million. When the revenue BMIS paid directly to Maurice Cohn is included in the analysis concerning the years 2000 through 2008, the percentage of Cohmad's income paid by BMIS is considerably higher, ranging in those same years from 79.98% (year 2001) to 92.82% (year 2003). The vast majority of Cohmad's income came from BMIS and related to commissions and fees paid by BMIS for investors that Cohmad representatives had referred to BMIS. A very small portion of that revenue from BMIS came for the lay-off trades that BMIS's market-making operations made through Cohmad.

73. **Customer Service.** Cohmad and its representatives would sometimes assist prospective investors with the opening of their accounts at BMIS. In some instances, even after Cohmad had referred customers to BMIS, Cohmad and its representatives maintained relationships with investors. Customers referred to BMIS by Cohmad called Cohmad for all sorts of questions relating to their BMIS accounts such as what the returns were, whether BMIS accounts were "in the market" at a particular time

or in treasuries, how to read the complex BMIS statements, or how to convert direct accounts to trust accounts. The Cohns provided investors with answers to these inquiries, even checking with Madoff or employees on BMIS's 17th floor to find out the answers when necessary.

D. Cohmad Did Not Accurately Disclose Its Relationship with BMIS.

74. Since its inception, Cohmad held itself out in regulatory filings as an introducing retail brokerage operation that cleared through Bear Stearns.

75. Madoff played a shell game with regulators, concealing the existence of Madoff's advisory client business and pretending that Cohmad was primarily a retail brokerage operation. Cohmad, through the Cohns, did not accurately disclose in its regulatory filings and books and records the precise nature of its relationship with BMIS, including the hundreds of accounts that were referred to BMIS by Cohmad representatives and the over \$100 million in fees that BMIS had paid Cohmad for those referrals during more than a twenty-year period.

76. Under the Cohns' oversight, Cohmad did not accurately disclose its business arrangement with BMIS or the substantial compensation that Cohmad received for referring investors to BMIS, despite the fact that they were required by law to make and file with the Commission and FINRA such specific disclosures.

77. For example, in its Forms BD and amendments for the last six years, which were signed by Marcia Cohn, Cohmad made the following false responses:

- Question 7 on the Form BD asks: "Does *applicant* refer or introduce customers to any broker or dealer?" Cohmad answered "Yes," but only disclosed Bear Stearns, its clearing firm for the retail brokerage business, and failed to disclose any reference to BMIS, to which it referred hundreds of customers who opened more than 800 accounts.

- Question 12 asks the filer to identify “Types of Business” engaged in. Cohmad failed to identify its primary business, as measured by its share of Cohmad’s overall earnings, of obtaining investors for BMIS. Although the catchall box for “Other” was checked, Cohmad did not disclose its predominant business of referring customers to BMIS in response to the question, but instead identified its business as “Development of Trading, Hedging and Investment Strategies.”

78. Since at least 1999, Cohmad filed 31 amendments to its Form BD. None of these filings disclosed the facts identified above, including its referral to BMIS of hundreds of investors who opened more than 800 accounts with BMIS.

79. Although Cohmad’s Form BD filings identified Madoff as a control person of Cohmad, they failed to accurately disclose the nature and scope of the business arrangement between Cohmad and BMIS. This had the effect of assisting Madoff in avoiding regulatory scrutiny and shielding from regulators’ oversight Cohmad’s main business, as measured by its share of Cohmad’s overall earnings, of referring investors to BMIS.

80. Cohmad also failed to disclose the BMIS referral business in its financial statements filed with the Commission. For example, in its 2007 Annual Audit Report that Cohmad filed with the Commission, Cohmad’s fees from BMIS were classified as “brokerage service fees.” No reference was made to referral of investors to BMIS.

81. Also, in Cohmad’s internal books and records, subject to regulatory review, the referral fees were classified as “Fees for Account Supervision.” Cohmad’s quarterly FOCUS reports, which were signed by Marcia Cohn and filed with FINRA, similarly identified these as “Fees for account supervision, investment advisory and administrative services.” Again, these statements failed to accurately disclose that the fees were referral fees for Cohmad’s primary business of referring investors to BMIS.

82. In addition to the inaccurate filings and records, Cohmad maintained virtually no books and records reflecting its BMIS referral business. Other than an ongoing tally of the amounts invested (less withdrawals of principal), there are no meaningful records at Cohmad reflecting conversations, account openings, suitability analyses or anything else concerning the investors Cohmad referred to BMIS or BMIS's advisory business. Cohmad's failure to maintain accurate or complete records regarding the business relationship with BMIS continued during both Cohns' longtime supervision of Cohmad, and in the most recent decade, while Marcia Cohn was chief compliance officer for Cohmad.

83. These inaccurate filings and inadequate books and records helped Madoff succeed in concealing BMIS's advisory business and its relationship with Cohmad from the various regulators for many years.

84. The Cohns further understood that the BMIS advisory business was not something to be discussed openly.

E. Jaffe Solicited Investors for BMIS While Recklessly Disregarding and Failing to Disclose Facts That Raised Serious Questions About the Propriety of the Madoff Investment.

85. Jaffe was registered as a representative of Cohmad and, in that capacity as well as in the capacity of an unregistered representative of BMIS, acted as a broker and recklessly participated in carrying out a marketing campaign that was designed to – and did – induce prospective customers to flock to Madoff.

86. From at least 1989 through 2009, Jaffe brought into BMIS over 160 accounts, amounting to more than one billion dollars. Consistent with his role as a broker, Jaffe helped customers open their Madoff accounts, was available to answer

questions for customers about their accounts and their account statements, and regularly received from certain customers monthly Madoff account statements.

87. During this entire period, Jaffe received quarterly transaction-based compensation related to the accounts of the investors he introduced. Jaffe and BMIS kept track of the transaction-based compensation Jaffe was owed for his introductions, and each quarter Jaffe communicated this quarterly figure to BMIS and requested that such amount be distributed from Jaffe's account with BMIS, known as the M/A/S Capital account. Jaffe recklessly disregarded facts indicating that the account was fictitious.

88. BMIS and Jaffe maintained a written record of the transaction-based compensation due with interest credited thereon at very high interest rates that varied over time. A BMIS employee and Jaffe would reconcile this record at least quarterly. The record essentially was a running tally of the balance due Jaffe, consisting of small amounts of cash that Jaffe contributed to Madoff (totaling about \$300,000 over time) plus transaction-based compensation earned, plus interest at rates varying from over 30% in the early years and 20% in the later years, less quarterly withdrawals, which generally were in fixed amounts (generally ranging from \$750,000 to \$1 million in the more recent years of the scheme).

89. The transaction-based compensation payments themselves were paid through the M/A/S Capital brokerage account as proceeds of purported securities transactions. The quarterly withdrawals that Jaffe made from the M/A/S Capital account totaled approximately \$35 million.

90. Because Jaffe served as a broker, he shared a relationship of trust and confidence with the customers he solicited on behalf of BMIS. His customers entrusted

him with gaining entrance into the Madoff investment. Therefore, Jaffe had a duty to use reasonable efforts to give the customer information relevant to the affairs that have been entrusted to him.

91. In particular, while introducing more than one billion dollars from his customers for investment with Madoff, Jaffe recklessly disregarded several material facts and recklessly failed to disclose those facts to his customers, including the following material facts that, if known to investors, would have raised serious questions about the propriety of the Madoff investment:

- a. Rather than paying Jaffe transaction-based compensation denominated as such, for at least 13 years, Jaffe received transaction-based compensation for introducing investors via proceeds of securities transactions that purportedly occurred in his M/A/S Capital account.
- b. In at least 50 quarters over thirteen or more years, Jaffe communicated to BMIS his calculation of the quarterly transaction-based compensation that BMIS owed him, and BMIS would pay Jaffe via his M/A/S Capital account.
- c. On at least 16 of these 50 occasions, BMIS executed fictitious backdated trades to achieve the gain Jaffe had requested. Jaffe recklessly disregarded that the monthly account statements he received from BMIS indicated backdating.
- d. Jaffe's M/A/S Capital account provided him with purported returns of 20 percent per annum or more, which far exceeded the purported returns his clients were getting. Jaffe knew his clients' returns were lower than his because Jaffe requested and reviewed copies of their account statements.
- e. In many monthly statements generated for Jaffe's M/A/S Capital account at BMIS, BMIS listed securities transactions as occurring in months preceding the month of the statement, further evidencing that BMIS was engaging in backdated transactions.

92. As a broker, Jaffe had a duty to disclose these facts to investors.

Moreover, given these facts, which indicated that BMIS and Madoff were engaged in

fraudulent activities, the statements Jaffe made to investors concerning the exclusivity of the investment opportunity, the purported trading strategy and the purported rates of returns were, as Jaffe recklessly disregarded, false and misleading.

1. **Jaffe Acted As a Broker.**

93. From at least 1989 through 2008, Jaffe brought over 160 accounts into BMIS. Jaffe operated principally in two locations. First, Jaffe found investors while operating Cohmad's Boston office. Second, Jaffe traveled to South Florida and networked with investors in the tony Palm Beach area. Jaffe, who projected an air of wealth and success, found many investors from among the Palm Beach society and retiree community. At times, prospective investors approached Jaffe. On occasion, Jaffe actively solicited prospective investors. For example, in one instance Jaffe approached a friend after learning he had come into money, and offered to get that friend into BMIS. Altogether, Jaffe's customers invested at least one billion dollars in principal in BMIS.

94. With respect to these investors, Jaffe had an ongoing relationship from the time of the initial investment decision. Jaffe regularly sent letters to investors in connection with establishing their BMIS accounts. In at least seven letters to investors, Jaffe offered his assistance to the respective investor and directed each to complete account opening paperwork and send it, along with account opening funds, directly to BMIS. In an early letter to an investor in BMIS, Jaffe requested that the investor send copies of account statements so he can "do all of the required record keeping and provide you with printouts on a quarterly, semi-annual, or annual basis as you request." In later letters, Jaffe requested copies of account statements "so that I can follow the progress of the account."

95. When investors failed to provide Jaffe with BMIS account statements, he reminded them (or their accountants) by letter, email or telephone.

96. Jaffe regularly tracked the investors he had referred to BMIS and the invested capital in their accounts at BMIS. Jaffe regularly received a spreadsheet from his assistants that tracked (on a month-end basis) capital additions to investors' BMIS accounts, capital withdrawals, and account balances, and calculated "% Increase" by month and year-to-date. Jaffe's assistants input the underlying information from account statements they received from investors. One document intended to provide guidance to his assistants and employees describes how to track the receipt of account statements and how to update the spreadsheet, and it directs the employee to email the updated spreadsheet to Jaffe and to ask for his clearance to shred the file.

97. Jaffe also kept himself apprised of cash flows in the accounts. For example, in a letter dated January 23, 2001, to BMIS, Jaffe stated "I need cash flow information on some of the accounts I have introduced to Madoff." He then listed 13 accounts that he had referred.

98. Jaffe tracked the amounts that his investors invested at BMIS because it determined his transaction-based compensation; the capital that Jaffe's investors invested at BMIS was not tracked via the Cohmad database.

2. Madoff Provided Substantial Compensation to Jaffe for His Work on Behalf of BMIS.

99. Madoff provided Jaffe with substantial compensation in the form of (1) quarterly transaction-based compensation relating to the accounts Jaffe brought into BMIS and (2) large annual returns (20% per annum or more) on the principal balance (deposits plus transaction-based compensation and interest, less withdrawals) maintained

in his M/A/S Capital account, which was a substantially larger return than the high returns BMIS provided the investors Jaffe brought in to BMIS.

100. Unlike other Cohmad representatives, Jaffe was not compensated via Cohmad. Instead, Jaffe received compensation directly from BMIS via his M/A/S Capital account.

a. The Quarterly Transaction-Based Compensation Payments

101. Commencing at least as early as 1995 and continuing until 2008, BMIS and Jaffe arranged for BMIS to provide Jaffe with quarterly transaction-based compensation via an account at BMIS in the name of Jaffe's corporation, M/A/S Capital Corp.

102. From at least 1995 and continuing through 2008, Madoff, BMIS and Jaffe employed a system for Jaffe to communicate to BMIS the quarterly transaction-based compensation he was owed without revealing that the amounts were transaction-based compensation.

103. On at least 50 occasions from 1995 through 2008, Jaffe made written requests to put through "trades" in his M/A/S Capital account in amounts that corresponded to his quarterly transaction-based compensation. In each quarterly request, Jaffe quantified the amount of gain to the odd dollar.

104. One of Jaffe's first quarterly requests was in a letter to Madoff dated October 2, 1995, in which Jaffe requested that "Bernie" "put through a trade resulting in a \$28,400 profit for the account of M/A/S Capital Corp (1-SHO11-3)." He then provided the basis for the "profit" calculation by listing transaction-based compensation

he had earned for various investor accounts. According to the letter: "This [amount] will cover the period through September , 1995 for the following accounts:

[Customer Account 1]	\$2,500.00
[Customer Account 2]	\$2,500.00
[Customer Account 3]	\$2,500.00
[Customer Account 4]	\$665.00
[Customer Account 5]	\$10,185.00
[Customer Account 6]	\$2,500.00
[Customer Account 7]	\$2,500.00
[Customer Account 8]	\$2,500.00
[Customer Account 9]	<u>\$2,500.00</u>
Total	\$28,550.00
Less overage from July	<u>(150.00)</u>
Net Total	\$28,400.00"

(Note: Investor names redacted for this Amended Complaint.)

105. Each of these calculations represented the quarterly share of 1% of the monies each investor introduced.

106. The reference to an "overage from July" indicates that this was not the first quarter Jaffe requested transaction-based compensation payments from BMIS.

107. Although the subsequent 49 requests by Jaffe to BMIS for transaction-based compensation payments vary in terms of the language Jaffe used, they typically mentioned a "figure" or "number" for the amount that is Jaffe's calculation of a transaction-based compensation and then requested that BMIS execute a stock transaction in that amount.

108. As is often reflected in handwritten annotations on the letters, and in account statements for M/A/S Capital, in response to Jaffe's quarterly requests to BMIS, a BMIS employee would execute one or more fictitious transactions to achieve the figure or number in Jaffe's request. Jaffe recklessly disregarded facts indicating that many of these trades were fictitious, as further described below.

109. Altogether, these 50 transaction-based compensation withdrawals totaled more than \$23 million.

b. Jaffe Maintained and Provided to BMIS Worksheets that Further Show that He Received Quarterly Transaction-Based Compensation via His M/A/S Capital Account.

110. Jaffe maintained and shared with BMIS worksheets that tracked the transaction-based compensation he earned as well as his returns and cash withdrawals.

111. An example of this reconciliation that Jaffe and BMIS kept for the M/A/S Capital account is provided below, which reflects the period from January 1, 2005 through April 2006:

Exhibit A

NAME	MAVS			0.00048	20.00%	
DATE	YR	DAYS	BALANCE	DAYS	YTD GAIN	
JANUARY 1 TO 31		31	716891	0	121798	
		10	0	0	0	
		10	678730	0	3171	
		10	-1000000	0	-6478	118283
FEBRUARY 1 TO 28		28	674391	0	100460	
		12	0	0	0	
		18	0	0	0	222882
MARCH 1 TO 31		31	674391	0	117865	
		0	0	0	0	
		0	0	0	0	237288
APRIL 1 TO 30		30	674338	0	110890	
		15	0	0	4818	
		15	-1000000	0	-8218	444848
MAY 1 TO 31		31	632864	0	107817	
		0	0	0	0	
		0	0	0	0	622363
JUNE 1 TO 30		30	632864	0	106078	
		0	0	0	0	
		0	0	0	0	638444
JULY 1 TO 31	WITHHOLD	31	632864	0	107817	
		0	0	0	0	
		18	600000	0	4818	683164
		18	-800000	0	-8200	
AUGUST 1 TO 31		31	631284	0	106784	
		0	0	0	0	
		0	0	0	0	871403
SEPT 1 TO 30		30	631284	0	106078	
		0	0	0	0	
		0	0	0	0	974825
OCT 1 TO 31		31	631284	0	107817	
		15	0	0	4818	
		18	-1000000	0	-8218	1076008
NOV 1 TO 30		30	600714	0	97022	
		0	0	0	0	
		0	0	0	0	1176829
DEC 1 TO 31		31	600714	0	100758	
		0	0	0	0	
		0	0	0	0	1270050
		15	0	0	0	
TOTAL 1301000			600714		2802144	7178228

NAME	MAVS			0.00048	20.00%	
DATE	YR	DAYS	BALANCE	DAYS	YTD GAIN	
JANUARY 1 TO 31		31	7178228	0	131800	
		10	0	0	0	
		18	688790	0	3212	
		10	-1000000	0	-6178	118804
FEBRUARY 1 TO 28		28	678470	0	100784	
		12	0	0	0	
		18	0	0	0	223448
MARCH 1 TO 31		31	678470	0	116900	
		0	0	0	0	
		0	0	0	0	308332
APRIL 1 TO 30		30	678470	0	111107	
		15	0	0	4838	
		15	-1000000	0	-8318	448208

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112. This document (Exhibit A) indicates that BMIS provided Jaffe with 20% per annum return compounded annually beginning on the balance of the account on January 1, 2005, together with interest on the quarterly transaction-based compensation accruals, minus interest on the quarterly cash withdrawals by Jaffe. The 0.00548 figure at the top of the page is the daily return, calculated as 20% divided by 365 days in a year. At the top of this document, the "Balance" column reflects that the principal balance on

January 1, 2005 was \$7,164,641. To the right of that figure, under the column "Gains," is the return calculation for the 31 days of January on that amount -- \$121,701. The Balance is next credited with \$578,750 in transaction-based compensation. This amount corresponds to Jaffe's quarterly transaction-based compensation request to BMIS, articulated as a request for a "profit" on a purported securities transaction. That compensation credit accrues 10 days of interest in the month of January resulting in additional accrued interest for the month of January of \$3,171. Next in the "Balance" column, \$1 million dollars is debited in the month of January 2005, and this amount corresponds to Jaffe's request to withdraw \$1 million from the M/A/S Capital account. Next to this amount, the schedule reflects \$5,479 in interest that is deducted from accrued annual interest for 10 days in January (indicating that \$1 million was withdrawn on January 21, 2005, 10 days before the end of the month). The far right column, "YTD Gains," indicates that the total return on the account for the month of January 2005 was \$119,393. For 2005, this process is repeated with only three more quarterly transaction-based compensation credits and fund withdrawal debits. At the far bottom, at end of the 2005 period, Jaffe's total return of \$1,276,085 was added to the accrued balance of transaction-based compensation of \$5,902,144, to provide for an end-of-the-year total of \$7,178,229. This figure is then carried over to 2006 as the new beginning balance for the M/A/S Capital account.

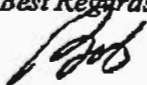
113. Jaffe carefully calculated his transaction-based compensation and return earned (less withdrawals) and provided this information to BMIS for purposes of reconciliation. Below is a portion of a May 15, 2006 letter from Jaffe to a BMIS

employee in which provided his calculations for 2005 (the handwriting are the annotations and corrections by BMIS):

Exhibit B

Attached is my summary of the account of M/A/S Capital Corp. from January, 2005 through April, 2006. I am also summarizing in this letter the way that I come to this number. If you have any questions please call me.

<u>Date</u>	<u>Withdraw</u>	<u>From Trades</u>	<u>From Principal</u>	<u>Interest Earned</u>	<u>Total Value</u>
1/1/05			421250 -		\$7,164,641
1/05	\$1,000,000	\$578,750	\$420,750	\$119,393	
2/05				\$103,460	
3/05				\$114,545	
4/05	\$1,000,000	\$586,253	\$413,747	\$107,450	
5/05				\$107,517	
6/05				\$104,049	
7/05	\$600,000	\$586,250	\$13,759	\$107,403	
8/05				\$107,284	
9/05				\$103,823	
10/05	\$1,000,000	\$586,250	\$413,750	\$103,883	
11/05				\$97,022	
12/05		337,503 -		\$100,256	
1/1/06					\$7,178,229
1/06	\$1,000,000	\$586,250	\$413,750	\$119,665	
2/06				\$103,784	
3/06				\$114,903	
4/06	\$1,000,000	\$600,815	\$399,185	\$107,916	
5/1/06					\$6,811,562

Best Regards,

4/1/06
My # II
\$ 7166.990

114. In this document (Exhibit B), Jaffe specifically identified the “interest” he earned on his M/A/S Capital account in 2005 and through May 1, 2006. Jaffe identifies the quarterly withdrawals he made in 2005 and the first half of 2006, each for \$1 million except for a withdrawal of \$600,000 in July 2005. Under the header “From Trades,” Jaffe identifies his quarterly transaction-based compensation; the “From Principal”

column identifies the balance of the withdrawal (Jaffe often withdrew more than the amount of his transaction-based compensation) that was deducted from the existing balance.

115. The information reflected in Exhibits A and B (and in comparable documents covering different time periods) constitute red flags that should have indicated to Jaffe that the M/A/S Capital account was fictitious. As a securities professional, he should have known that consistent returns of exactly 20 percent per annum were extremely unlikely, and that an investor (as he was with BMIS through the M/A/S Capital account) could not dictate the returns he would get.

116. Moreover, the brokerage statements sent to Jaffe for the M/A/S Capital account do not reflect that any of Jaffe's quarterly withdrawals relate to transaction-based compensation—another red flag.

117. For example, Exhibit C is the first page of the January 2006 brokerage statement for the M/A/S Capital account, which shows a check issued in the amount of \$1 million but does not break down that amount (as it is broken down in Exhibits A and B):

Exhibit C

DATE	DESCRIPTION	DEBIT	CREDIT	DESCRIPTION	DEBIT	CREDIT
				BALANCE FORWARD		10,912,371.61
1/20				CHECK	1,000,000.00	
2/31		15,000		AMALOG SERVICES		1,000,000.00
				NEW BALANCE		12,876,671.61
	70,000			SECURITY POSITIONS:		
				AMERCRONNY & FITCH CO	66,390	
	256,400			NETRA INC	66,000	
	49,000			AMALOG SERVICES	79,720	
	21,000			CMV, INC	21,000	
	2,000			CONSULTING ASSOC INTL INC	27,300	
	25,000			INTERNATIONAL PAPER CO	32,000	
	78,000			INTERSTATE CORP	28,130	
	53,000			VERIZON COMMUNICATIONS	31,660	
				MARKET VALUE OF SECURITIES		8,077,000.00

c. The Backdated Trades

118. Many of the purported trades that provided Jaffe with the gain to cover his transaction-based compensation occurred (per the statements and trade confirmations that Jaffe received) before he made his compensation request to Madoff/BMIS. These, too, were red flags that should have indicated to Jaffe that the account was fictitious and that something was awry with respect to BMIS's business.

119. Specifically, in 16 of the 50 instances where Jaffe requested by letter to BMIS a quarterly withdrawal of funds equating to his transaction-based compensation from his M/A/S Capital account, the trade or trades that are reflected on the M/A/S Capital account statements (and other documents Jaffe received, including trade confirmations) and that accomplished that gain actually pre-date Jaffe's request. The extent of backdating varies from one day to weeks to more than one month, sometimes

placing the backdated trades in the prior quarter. The 16 instances of backdating are as follows:

120. For the third quarter of 1996, Jaffe requested a "figure" of \$65,315.00 in a signed letter to Madoff dated October 7, 1996. The purchase and sale transactions that purportedly accomplished this gain (Chrysler securities) were a purchase that occurred five days earlier, on October 2, 1996, and two sales (for the same number of shares as the purchase) that settled on October 11, 1996. The proceeds from these transactions were \$65,318.75, less than four dollars more than his "figure." This is all the more suspicious because the trades that accomplished Jaffe's gain involved securities that Jaffe did not already "own," even though he had purported stocks in his account that were valued at almost \$10 million and could have been sold.

121. For the second quarter of 1998, Jaffe sent a letter to Madoff dated July 6, 1998, requesting a "figure" of \$360,632.42. The transaction reflected on the M/A/S Capital account statement that purportedly accomplished this gain occurred five days earlier, on July 1, 1998 (Microsoft securities).

122. For the third quarter of 2000, one day before the quarter had ended, Jaffe sent a letter to Madoff dated September 29, 2000, requesting a "figure" of \$427,952.00. The transaction reflected on the M/A/S Capital account statement that purportedly accomplished this gain, as indicated by a BMIS employee writing "Sell CA" on a copy of the letter), occurred two weeks before, on September 13, 2000.

123. For the first quarter of 2001, two days before the quarter had ended, Jaffe sent Madoff a letter dated March 29, 2001, requesting a "figure" of \$472,913.35. The transaction reflected on the M/A/S Capital account statement that purportedly

accomplished this gain occurred more than two weeks earlier, on March 12, 2001

(Microsoft securities)

124. For the second quarter of 2001, two days before the quarter had ended, Jaffe sent Madoff a letter dated June 28, 2001, requesting a “figure” of \$492,775.00. The transaction reflected on the M/A/S Capital account statement that purportedly accomplished this gain occurred three weeks earlier on June 5, 2001 (Oracle Corp securities).

125. For the third quarter of 2001, Jaffe sent a letter to Madoff dated October 26, 2001, requesting a “figure” of \$497,660.00. The transactions reflected on the M/A/S Capital account statement that purportedly accomplished this gain occurred on September 4 and 26, 2001 – one month before the date of Jaffe’s request and in the prior quarter (securities of Applied Materials Inc. and Altera Corp.).

126. For the fourth quarter of 2001, Jaffe sent a letter to Madoff dated January 4, 2002, requesting a “figure” of \$509,312. The transactions reflected on the M/A/S Capital account statement that purportedly accomplished this gain occurred on December 11, 13 and 18, 2001 – several weeks before the date of Jaffe’s request and in the prior year, not just the prior quarter (securities of Microsoft Corp., CNF Inc. and Oracle Corp.).

127. For the third quarter of 2002, Jaffe sent a letter to Madoff dated September 30, 2002, requesting a “figure” of \$562,160.00. The transaction reflected on the M/A/S Capital account statement that purportedly accomplished this gain occurred more than three weeks earlier, on September 5, 2002 (GE securities).

128. For the first quarter of 2003, Jaffe sent Madoff a letter dated April 1, 2003, requesting a “figure” of \$595,450.00. The transactions reflected on the M/A/S Capital

account statement that purportedly accomplished this gain occurred two weeks earlier (and in the prior quarter) on March 12 and 14, 2003 (securities of Altera Corp and Delta Airlines).

129. For the second quarter of 2003, six days before the quarter had ended, Jaffe sent a letter to Madoff dated June 24, 2003, stating that the "figure" is \$605,287.00. Jaffe also indicated in the letter that "[s]ince last quarter the gain that was taken was \$167,692.00 more than the amount requested," he was requesting only "a gain in the amount of \$437,595." The transaction reflected on the M/A/S Capital account statement that purportedly accomplished this gain (the covering of a short position in a related short account) occurred almost three weeks earlier, on June 5, 2003 (securities of Delta Airlines, Inc. and Xilinx Inc.); \$437,250.00 of the proceeds from that transaction were "later" transferred from the short account to the main account (per account statements, this occurred on June 26, 2003).

130. For the third quarter of 2003, four days before the quarter ended, Jaffe sent a letter to Madoff dated September 26, 2003, requesting a "figure" of \$603,725.00. The transaction reflected on the M/A/S Capital account statement that purportedly accomplished this gain occurred more than three weeks earlier, on September 3, 2003 (KKD securities).

131. For the second quarter of 2004, two days before the quarter had ended, Jaffe sent Madoff a letter dated June 28, 2004, requesting a "figure" of \$586,100.00. The transaction reflected on the M/A/S Capital account statement that purportedly accomplished this gain occurred three weeks earlier on June 7, 2004 (ADI securities).

132. For the third quarter of 2004, three days before the quarter had ended, Jaffe sent Madoff a letter dated September 27, 2004, requesting a “figure” of \$583,586.00. The transaction reflected on the M/A/S Capital account statement that purportedly accomplished this gain occurred more than two weeks earlier, on September 10, 2004 (IBM securities).

133. For the first quarter of 2006, Jaffe sent Madoff a letter dated April 5, 2006, requesting a “figure” of \$600,815.00. The transaction reflected on the M/A/S Capital account statement that purportedly accomplished this gain occurred the day before, on April 4, 2006 (Aetna securities).

134. For the second quarter of 2006, Jaffe sent Madoff a letter dated July 26, 2006, requesting a “figure” of \$590,650.00. The transaction reflected on the M/A/S Capital account statement that purportedly accomplished this gain occurred almost two weeks earlier, on July 14, 2006 (AET securities).

135. For the third quarter of 2007, Jaffe sent Madoff a letter dated October 28, 2007, requesting a “figure” of \$600,538.00. The transaction reflected on the M/A/S Capital account statement that purportedly accomplished this gain occurred more than one month earlier—and in the prior quarter—on September 14, 2007 (Aetna securities). (There were no other transactions in the account in September 2007, October 2007, November 2007, or December 2007.)

136. Two additional quarterly requests by Jaffe were also suspicious:

137. For the fourth quarter of 1995, Jaffe sent a letter to Madoff dated January 30, 1996, requesting a “number” ‘according to his figures’ of \$33,465.00. The purchase and sale transactions reflected on the M/A/S Capital account statement that accomplished

this gain were a purchase just three days later (on February 2, 1996) and a sale (of an equivalent amount of shares) four business days after the purchase (on February 8, 1996) (USX-US Steel Group). The proceeds from these transactions were sent to Jaffe by check without delay on February 8, 1996. (Jaffe had requested a check "when you take care of this.") What makes this transaction suspicious on its face is that the purported trades that accomplished the gain were purchases and sales of securities that Jaffe did not already "own," according to prior account statements, even though he purportedly had stocks in his account that were valued in excess of \$8.5 million and could have been sold.

138. For the fourth quarter of 1996, Jaffe sent a letter to Madoff dated January 9, 1997, requesting a "figure" of \$65,315.00. The purchase and sale transactions that purportedly accomplished this gain were a purchase that occurred on February 3, 1997 and a sale on February 20, 1997 (Aetna Inc.). The trades that accomplished Jaffe's gain again involved securities that Jaffe did not already "own," even though he purportedly had stocks in his account that were valued at almost \$10 million and could have been sold.

139. Jaffe also received numerous monthly account statements for the M/A/S Capital account that, in addition to reporting transactions within the relevant month, include securities transactions that occurred a month or two before the time period that the statements purport to cover. These are suspicious on their face and should have indicated misconduct at BMIS. For example:

- The M/A/S Capital statements for the month of July 1998 include a securities transaction dated June 12, 1998.
- The M/A/S Capital statements for the month of February 1999 include a securities transaction dated January 7, 1999.

- The M/A/S Capital statements for the month of March 2000 include a securities transaction dated January 6.
- The M/A/S Capital statements for the month of July 2001 include a securities transaction dated June 5.
- The M/A/S Capital statements for the month of October 2008 include nine securities transactions dated September 4 (two transactions), September 5 (four transactions), and September 8 (three transactions).
- The M/A/S Capital statements for the month of November 2008 include four securities transactions dated October 2 and 24 (two transactions on each date).

d. BMIS Also Compensated Jaffe with Extraordinary Returns.

140. Through his M/A/S Capital account at BMIS, which Jaffe opened in 1990, Jaffe obtained extraordinary returns of at least 20 percent per annum. Jaffe, who had substantial experience working in the securities industry, recklessly disregarded that such extraordinary returns were suspicious.

141. Moreover, Jaffe received these returns despite a minimal investment (or capital contribution) of less than \$1 million. The funds Jaffe withdrew from the M/A/S Capital account were approximately 100 times greater than the principal contribution that Jaffe made in that account. Moreover, when BMIS collapsed in December 2010, the remaining balance (including accrued transaction-based compensation and interest) in his M/A/S Capital account was approximately \$7 million, which would have provided a means for additional extraordinary withdrawals by Jaffe had BMIS not collapsed.

3. In the Face of Red Flags, Jaffe Failed to Conduct Due Diligence Into Madoff's Operations and Recklessly Made Statements Which Were False and Misleading and/or Failed to Disclose Facts that Would Have Raised Serious Questions About an Investment with Madoff.

142. While acting as a broker, Jaffe failed to conduct due diligence into Madoff's operations. This failure was reckless in light of the red flags known to Jaffe, as

alleged in paragraphs 85 through 141 above. Moreover, in the course of soliciting investors for BMIS, Jaffe made statements to investors concerning the purported rates of returns, the purported trading strategy and the exclusivity of the investment opportunity, which were recklessly false and misleading, because they omitted material facts.

143. Jaffe made various representations to investors about the Madoff investment opportunity. Among other things, Jaffe: (a) provided investors with historical rates of return, indicating that returns were properly earned and obtained by BMIS; (b) described Madoff's purported trading strategy indicating that trading was legitimately occurring; and (c) portrayed the investment as exclusive and told investors there was a minimum investment amount, which further gave comfort to investors that BMIS was a legitimate financial establishment.

144. Jaffe discussed historical rates of return with at least several investors, and in one instance Jaffe showed a prospective investor a redacted account statement.

145. Jaffe described Madoff's split-strike conversion strategy to many investors, although he may not have used that exact nomenclature. For example, one investor recalls the strategy as a "riskless collar" employing options to limit the risk associated with equity investments.

146. When prospective investors asked Jaffe if he could introduce them to Madoff so that they could invest, Jaffe agreed to try to put in a good word with Madoff and to see if Madoff would take the prospective investors' money.

147. Jaffe told many investors that BMIS required a minimum investment amount. The amount that Jaffe communicated to investors as a minimum investment amount varied and increased over time. When one investor asked Jaffe (via an email

dated June 8, 2000) whether he could withdraw funds, Jaffe replied that the minimum investment for new accounts was \$2 million, but since he was an existing investor he only needed to maintain \$1 million in his account.

148. Throughout this period, while Jaffe made the above statements to investors and brought them into BMIS, he failed to disclose that (a) Jaffe received transaction-based compensation based on how much new money was invested by people that Jaffe introduced, (b) Jaffe requested and received that compensation via his M/A/S Capital account with BMIS, (c) BMIS engaged in back-dated transactions in Jaffe's own accounts, and (d) Jaffe had failed to follow up and conduct due diligence in the face of these and other red flags.

F. Jaffe Improperly Associated Himself With BMIS While Aware He Was Not Registered as an Associated Person of BMIS.

149. Finally, Jaffe allowed himself to be held out in regulatory filings with FINRA and its predecessor, the NASD, as being registered and associated with Cohmad. In fact, Jaffe engaged in activity, if not his primary activity, that rendered him an associated person of BMIS. Jaffe knew that he was taking transaction-based compensation from BMIS while recommending that investors invest with BMIS and that he was not registered as an associated representative of BMIS.

FIRST CLAIM FOR RELIEF

**Violations of Section 17(a) of the Securities Act
(Against Jaffe)
(Antifraud violations; material misrepresentations and omissions)**

150. Paragraphs 1 through 149 are realleged and incorporated by reference as if set forth fully herein.

151. From at least 1985 through December 11, 2008, Jaffe, 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, (i) has employed devices, schemes and artifices to defraud and (ii) 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 (iii) has engaged in transactions, practices or courses of business which have operated as a fraud and deceit upon investors.

152. By reason of the activities herein described, Jaffe has violated Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), 77q(a)(2), and 77q(a)(3)].

SECOND CLAIM FOR RELIEF

Violations of Section 17(a)(2) of the Securities Act (Against the Cohmad Defendants) (Material misrepresentations and omissions)

153. Paragraphs 1 through 149 are realleged and incorporated by reference as if set forth fully herein.

154. From at least 1999 through December 11, 2008, the Cohmad Defendants, 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, have 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.

155. The Cohmad Defendants were aware of the facts and circumstances described above and should have known their possible implications and consequences.

156. By reason of the activities herein described, the Cohmad Defendants have violated Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

THIRD CLAIM FOR RELIEF

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

157. Paragraphs 1 through 149 are realleged and incorporated by reference as if set forth fully herein.

158. From at least 1999 through December 11, 2008, Jaffe, 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 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.

159. By reason of the activities herein described, Jaffe 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.

160. In addition, from at least 1999 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 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.

161. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Jaffe 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)].

FOURTH CLAIM FOR RELIEF

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

162. Paragraphs 1 through 149 are realleged and incorporated by reference as if set forth fully herein.

163. Madoff and BMIS at all relevant times were investment advisers within the meaning of Section 201(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

164. 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.

165. 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) and (2)].

166. By reason of the activities described herein, and pursuant to Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], Jaffe has aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

FIFTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 206(4) of the Advisers Act and Rule 206(4)-3 thereunder

(Against all Defendants)

**(Failing to Disclose Compensation Arrangement between
Solicitor/Referrer and Investment Adviser)**

167. Paragraphs 1 through 149 are realleged and incorporated by reference as if set forth fully herein.

168. BMIS at all relevant times was an investment adviser within the meaning of Section 201(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

169. Rule 206(4)-3, pursuant to Section 206(4) of the Advisers Act, restricts an investment adviser's ability to pay referral fees to those who solicit or refer clients, and if certain thresholds are met, the solicitor or referrer is required "at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, [to] provide the client with a current copy of the investment adviser's [brochure] and a separate written disclosure document described in paragraph (b) of [Rule 206(4)-3]." Paragraph (b) of Rule 206(4) requires the additional document to include:

- (1) The name of the solicitor;
- (2) The name of the investment adviser;

- (3) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;
- (4) A statement that the solicitor will be compensated for his solicitation services by the investment adviser;
- (5) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and
- (6) The amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

170. Rule 206(4)-3 applies to investment advisers that are registered or required to be registered.

171. Neither BMIS nor Cohmad, Maurice Cohn, Marcia Cohn or Jaffe provided investors with the written disclosures required by Rule 206(4)-3.

172. As described in the paragraphs above, BMIS violated Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-3 [75 C.F.R. § 275.206(4)-3].

173. Cohmad, Maurice Cohn, Marcia Cohn, Jaffe and other Cohmad representatives referred or solicited investors for BMIS while taking compensation from BMIS for such activity and while aware that BMIS was an investment adviser. Cohmad, Maurice Cohn, Marcia Cohn, Jaffe and other Cohmad representatives knew that they did not provide any written disclosures to investors they referred or solicited for BMIS.

174. Cohmad, Maurice Cohn, Marcia Cohn, Jaffe provided substantial assistance to the violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-3 [75 C.F.R. § 275.206(4)-3] by BMIS.

175. By reason of the foregoing, Cohmad, Maurice Cohn, Marcia Cohn, Jaffe aided and abetted the violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-3 [75 C.F.R. § 275.206(4)-3].

SIXTH CLAIM FOR RELIEF

**Violations of and Aiding and Abetting Violations of
Section 15(b)(1) of the Exchange Act and Rule 15b-3
(Against Cohmad, Maurice Cohn and Marcia Cohn)
(False Forms BD filed by a Broker-Dealer)**

176. Paragraphs 1 through 149 are realleged and incorporated by reference as if set forth fully herein.

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

178. Cohmad filed Forms BD and amendments with the Commission which failed to disclose that (1) Cohmad was referring and introducing customers to BMIS (question 7) and (2) Cohmad's primary business involved referring investors to BMIS's advisory business and earning fees for such referrals (question 12.z.).

179. By reason of the foregoing, Cohmad violated Section 15(b)(1) of the Exchange Act [15 U.S.C. § 78o(b)(1)] and Rule 15b3-1 thereunder [17 C.F.R. § 240.15b3-1].

180. Maurice Cohn, a principal of Cohmad, and Marcia Cohn, filed the Forms BD and amendments with the Commission which failed to disclose that (1) Cohmad was referring and introducing customers to BMIS (question 7) and (2) Cohmad's primary business involved referring investors to BMIS's advisory business and earning fees for such referrals (question 12.z.). Accordingly, Maurice Cohn and Marcia Cohn filed inaccurate forms with the Commission on behalf of Cohmad.

181. Maurice Cohn and Marcia Cohn thus knowingly provided substantial assistance to the violations of Section 15(b)(1) of the Exchange Act [15 U.S.C. § 78o(b)(1)] and Rule 15b3-1 thereunder [17 C.F.R. § 240.15b3-1] by Cohmad.

182. By reason of the foregoing, Maurice Cohn and Marcia Cohn aided and abetted the violations of Section 15(b)(1) of the Exchange Act [15 U.S.C. § 78o(b)(1)] and Rule 15b3-1 thereunder [17 C.F.R. § 240.15b3-1].

SEVENTH CLAIM FOR RELIEF

**Aiding and Abetting Violations of
Section 15(b)(7) of the Exchange Act and Rule 15b7-1
(Against Jaffe)
(Failing to Register as Associated with a Broker-Dealer)**

183. Paragraphs 1 through 149 are realleged and incorporated by reference as if set forth fully herein.

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

185. BMIS failed to register with the NASD and its successor, FINRA, various representatives who were associated with BMIS, including Maurice Cohn, Marcia Cohn, Jaffe and other Cohmad representatives.

186. By reason of the foregoing, BMIS violated Section 15(b)(7) of the Exchange Act [15 U.S.C. § 78o(b)(7)] and Rule 15b7-1 thereunder [17 C.F.R. § 240.15b7-1].

187. Jaffe engaged in activities that rendered him an associated person of BMIS while he was aware that BMIS did not register him with the NASD and its successor, FINRA.

188. Jaffe provided substantial assistance to the violations of Section 15(b)(7) of the Exchange Act [15 U.S.C. § 78o(b)(7)] and Rule 15b7-1 thereunder [17 C.F.R. § 240.15b7-1] by BMIS.

189. By reason of the foregoing, Jaffe aided and abetted the violations of Section 15(b)(7) of the Exchange Act [15 U.S.C. § 78o(b)(7)] and Rule 15b7-1 thereunder [17 C.F.R. § 240.15b7-1].

EIGHTH CLAIM FOR RELIEF

Violations of and Aiding and Abetting Violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder (Against all Defendants) (Inaccurate Books and Records by a Broker-Dealer)

190. Paragraphs 1 through 149 are realleged and incorporated by reference as if set forth fully herein.

191. As a registered broker-dealer, Cohmad 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].

192. As set forth above, Cohmad failed to make and keep certain books and records current and accurate relating to commissions, transaction-based compensation and/or other compensation that Maurice Cohn and Jaffe received from BMIS relating to referring or soliciting investors for BMIS and overseeing their accounts.

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

194. Maurice Cohn and Marcia Cohn knew that Maurice Cohn regularly received commissions and compensation directly from BMIS which was not recorded in

Cohmad's books and records. The Cohns continued to allow Maurice Cohn to receive such commissions and compensation without recording them on Cohmad's books and records.

195. Jaffe knew that he regularly received commissions and compensation from BMIS which he did not report to Cohmad and Cohmad did not record in its books and records.

196. By reason of the foregoing, Maurice Cohn, Marcia Cohn and Jaffe 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].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court grant the following relief:

I.

Enter judgments in favor of the Commission finding that the Defendants each violated the securities laws and rules promulgated thereunder as alleged herein;

II.

Final Judgments permanently restraining and enjoining Jaffe, his agents, servants, employees and attorneys and all persons in active concert or participation with him 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.

Final Judgments permanently restraining and enjoining Cohmad, Maurice Cohn and Marcia Cohn, 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 future violations of Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

IV.

Final Judgments permanently restraining and enjoining Jaffe, his agents, servants, employees and attorneys and all persons in active concert or participation with him 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].

V.

Final Judgments permanently restraining and enjoining Jaffe, his agents, servants, employees and attorneys and all persons in active concert or participation with him 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), (2) and (4)] and Rule 206(4)-3 thereunder [17 C.F.R. § 275.206(4)-3].

VI.

Final Judgments permanently restraining and enjoining Cohmad, Maurice Cohn and Marcia Cohn, 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 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-3 thereunder [17 C.F.R. § 275.206(4)-3].

VII.

Final Judgments permanently restraining and enjoining the Defendants Cohmad, Maurice Cohn and Marcia Cohn, 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(b)(1) of the Exchange Act [15 U.S.C. § 78o(b)(1)] and Rule 15b3-1 thereunder [17 C.F.R. § 240.15b3-1].

VIII.

Final Judgments permanently restraining and enjoining Jaffe, his agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from aiding and abetting future violations of Section 15(b)(7) of the Exchange Act [15 U.S.C. § 78o(b)(7)] and Rule 15b7-1 thereunder [17 C.F.R. § 240.15b7-1].

IX.

Final Judgments permanently restraining and enjoining the 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]

X.

An order directing the Defendants to disgorge their ill-gotten gains, plus prejudgment interest thereon.

XI.

Final Judgments directing the Defendants 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].

XII.

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

Dated: New York, New York
October 29, 2010

SECURITIES AND EXCHANGE COMMISSION

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