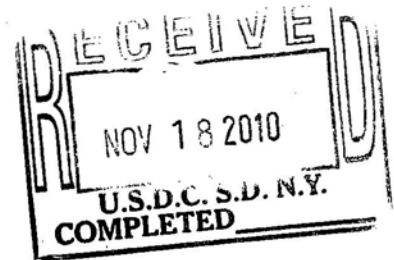


**GEORGE S. CANELLOS**  
**REGIONAL DIRECTOR**  
**Andrew M. Calamari**  
**Robert J. Burson** (*Not admitted in New York*)  
**Alexander M. Vasilescu**  
**Aaron P. Arnzen** (*Not admitted in New York*)  
**Kristine Zaleskas**  
**Attorneys for Plaintiff**  
**SECURITIES AND EXCHANGE COMMISSION**  
**New York Regional Office**  
**3 World Financial Center**  
**New York, NY 10281**  
**(212) 336-1100**



**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

-----X  
**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**- against -**

**ANNETTE BONGIORNO,**

**Defendant.**  
-----X

\_\_\_\_ Civ. \_\_\_\_

**COMPLAINT**

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

**SUMMARY**

1. For decades, Bernard L. Madoff ("Madoff") conducted a massive Ponzi scheme through the investment advisory ("IA") operations at Bernard L. Madoff Investment Securities ("BMIS"). Madoff, with assistance from BMIS employees and others, defrauded thousands of investors and caused billions of dollars in losses.

2. Bongiorno, a long-time BMIS employee, furthered Madoff's fraud by fabricating investor account statements that reported fictitious securities trades and positions. Bongiorno created trades that were chosen with the benefit of hindsight to generate large "gains" in BMIS IA accounts. In reality, almost without exception, the trades and positions reported in investor accounts were fictional.

3. Bongiorno regularly created false books and records while fabricating these trades, and helped to mislead investors in telephone conversations and through account statements and trade confirmations that reported securities transactions that never happened and positions that never existed.

4. Bongiorno also fabricated trades in her own BMIS IA accounts. From 1975 through December 2008, Bongiorno deposited approximately \$920,000 into these accounts, but during this same time period withdrew approximately \$14.5 million. These withdrawals are in addition to salary and bonuses (ranging from approximately \$200,000 per year between 1995 and 2006 to approximately \$623,000 in 2007) she received from BMIS.

### VIOLATIONS

5. By virtue of the conduct alleged herein, Defendant directly or indirectly, singly or in concert, has engaged in acts, practices, schemes and courses of business that violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)]; violated and aided and abetted violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and aided and abetted violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1) and

(2)], Sections 15(c) and 17(a) of the Exchange Act [15 U.S.C. §§ 78o(c) and 78q(a)] and Rules 10b-3 and 17a-3 thereunder [17 C.F.R. §§ 240.10b-3, and 240.17a-3 ], and Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 C.F.R. § 275.204-2].

#### **NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

6. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], seeking to restrain and enjoin permanently Defendant from engaging in the acts, practices and courses of business alleged herein.

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

#### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

9. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391. The Defendant, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, or of the mails and wires, in connection with the

transactions, acts, practices and courses of business alleged herein. A substantial part of the events comprising Defendant's fraudulent activities giving rise to the Commission's claims occurred in this District and Defendant committed her fraudulent activities while working in a business office in this District.

#### **THE DEFENDANT**

10. **Bongiorno**, age 62, maintains residences in Manhasset, New York and Boca Raton, Florida. Bongiorno began working for BMIS in an administrative capacity in 1968 and was employed there in a variety of roles until shortly after BMIS' fraud came to light in December 2008.

#### **RELEVANT INDIVIDUALS AND ENTITIES**

11. **Madoff**, age 72, was, until recently, a resident of New York City and the sole owner of BMIS. Until December 11, 2008, Madoff, a former chairman of the board of directors of the NASDAQ stock market, oversaw and controlled the fraudulent investment adviser operations at BMIS as well as the overall finances of BMIS. Civil and criminal charges were brought against Madoff for his role in a multi-billion dollar Ponzi scheme. On February 9, 2009, the District Court, with Madoff's consent, entered a partial judgment in the Commission's civil case against Madoff. On March 12, 2009, Madoff pleaded guilty to eleven felony counts in the criminal action against him. In his allocution, Madoff admitted that he orchestrated the massive Ponzi scheme that is the subject of the present charges. On June 29, 2009, Madoff was sentenced to 150 years in prison and ordered to forfeit his assets. Madoff is currently incarcerated in a federal prison in North Carolina.

12. **Frank DiPascali, Jr.**, age 54, was, until recently, a resident of Bridgewater, New Jersey. DiPascali, who never graduated from college, began working at BMIS in 1975. Over the years, at Madoff's direction, DiPascali became involved in, and eventually oversaw, the day-to-day operations of the bulk of BMIS' multi-billion dollar advisory operations. On August 11, 2009, DiPascali pled guilty to ten felony counts relating to his role in Madoff's Ponzi scheme. DiPascali admitted in his allocution that, among other things, he and others were involved in creating false account statements and trade confirmations for customers, lying to auditors and regulators who reviewed BMIS' operations and books and records, and that he knew that purported trades in investor accounts never took place. In addition, the Commission filed civil charges against DiPascali on August 11, 2009. On August 13, 2009, the District Court, with DiPascali's consent, entered a partial judgment in the Commission's case against him.

13. **BMIS** registered with the Commission as a broker-dealer in 1960 and as an investment adviser in August 2006. BMIS occupied floors 17-19 of the Lipstick Building in Manhattan, New York City. BMIS purportedly engaged in three different operations: investment adviser services, which largely operated on the 17<sup>th</sup> floor; and market-making services and proprietary trading, which largely operated out of the 18<sup>th</sup> and 19<sup>th</sup> floors. BMIS is currently under the control of a trustee appointed pursuant to the Securities Investor Protection Act of 1970 (15 U.S.C. § 78aaa et seq.).

## FACTS

### **I. BMIS' Investment Advisory Accounts and Ponzi Scheme**

14. Since at least the 1980's, Madoff and others orchestrated a massive Ponzi scheme through BMIS' investment advisory operations. Madoff solicited funds from

direct investors and feeder funds by promising to invest those funds in debt and equity securities and hedge the related downside risk, and thereby make certain rates of return. BMIS fabricated monthly account statements and trade confirmations that reported securities trades and positions to IA clients consistent with Madoff's purported investing strategies.

15. In fact, however, neither Madoff nor BMIS invested these funds in the manner described. Instead, Madoff directed that investor funds be kept in highly liquid form, including cash, certificates of deposit, and treasury bills. A large portion of these funds were used to pay investor redemption requests and to line Madoff's pockets and the pockets of those around him.

## **II. Bongiorno's Roles and Responsibilities at BMIS**

16. Bongiorno began working at BMIS in 1968 as an office assistant. By the early 1970's, she was handling some of Madoff's communications with investors. As time passed, Bongiorno gained increasing responsibility over a significant portion of IA accounts, eventually fabricating all trades and positions reported to investors under her management based on a benchmark rate of return given to her by Madoff. As of December 2008, when BMIS' fraud came to light, Bongiorno managed nearly 200 IA accounts purportedly having a cumulative balance of approximately \$8.5 billion.

17. Bongiorno did not execute actual trades on behalf of investors – except for rare instances in select accounts, all trades and positions reflected in IA accounts were entirely fictional. Instead, Bongiorno's job primarily consisted of fabricating monthly account statements that reported fictitious trades chosen with the benefit of hindsight.

18. Most of Bongiorno's fake trades were backdated within the prior month, and therefore were reflected on account statements as they were prepared in BMIS' normal course of business, i.e., within a few days after month-end. However, many of Bongiorno's fabricated trades were backdated by several months, and by twelve years in at least one instance involving the account of Daniel Bonventre ("Bonventre"), BMIS' Director of Operations.

### **III. Bongiorno's Preparation of False Account Statements**

19. For at least the two decades before Madoff's fraud collapsed, Bongiorno managed a substantial number of BMIS' IA accounts. Bongiorno did this by creating fake, backdated trades to include on investor account statements, usually with the goal of producing a specific, pre-determined rate of return. This included several steps, as alleged below.

#### **A. Generating Routine Fabricated Account Statements**

20. Madoff determined a "benchmark" rate of return that investors were to "earn" in their BMIS accounts. Benchmark returns varied depending on the investor, and ranged from approximately 11% to 40% or more. Madoff communicated benchmark returns for each account or group of accounts to Bongiorno, who in turn caused the benchmark returns to be entered into an IBM AS/400 mainframe computer, called "House 17," which housed and processed BMIS' IA account data.

21. Near the end of most months, Bongiorno compared the benchmark returns assigned to clients under her management to year-to-date returns based on the fictitious trades and positions previously reflected in their account statements. Bongiorno used

these comparisons to determine the gains or losses she needed to fabricate in order to bring reported returns in line with benchmark returns.

22. If a group of accounts was not in line with its benchmark return, Bongiorno selected individual accounts within the group in which to report fictitious trades based on which accounts were substantially below their benchmarks and which had sufficient balances to make the "trades."

23. Bongiorno then picked the specific securities "trades" to reflect in investor accounts on a monthly basis. Notes in Bongiorno's handwriting show that she used print outs from a Bloomberg terminal (such terminals facilitate access to financial information) and similar reports to identify particular stocks, usually between 10 and 30, with substantial movement during a given month.

24. Based on her notes, Bongiorno wrote up purported trade tickets setting forth the parameters of specific fabricated trades to be reflected on individual BMIS account statements. Bongiorno gave the completed trade tickets to her assistants to review for accuracy, and then to keypunch operators for entry into House 17.

25. Programs on the House 17 computer captured the data entered by keypunch operators from trade sheets. House 17 programs also incorporated data from these supposed trades into previously recorded (and fabricated) securities positions that were reported internally and to investors at the end of prior months. This data was saved on computer back-up tapes at the end of each month, and was carried over to the following month as the starting point for new "trading."

26. As Bongiorno knew or recklessly disregarded, after all trade tickets were entered for a given month, keypunch operators ran the statement generating program on



House 17 for Bongiorno's accounts, and account statements were printed. Depending on a code that was input into House 17, account statements were mailed to investors monthly or quarterly, or held and not mailed (usually because they were hand-delivered to employees with BMIS accounts).

B. Generating Non-Routine, Fabricated Account Statements

27. If Bongiorno backdated trades by more than one month, she and her staff often created another type of fabricated account statement to reflect such trades. For example, if Bongiorno was working on March account statements at the end of March, and she input a fake trade that supposedly took place in January, she and her staff would then create falsified account statements to replace the January and February statements that previously had been sent to investors.

28. This was accomplished using a computer program on House 17 called "STMTPRO" (pronounced "statement-pro"). STMTPRO statements were usually produced at least fifteen times during a given year, and in some years, substantially more often.

29. When Bongiorno wanted to include backdated trades from earlier months, she and her staff sometimes asked certain investors to return previously issued statements. Bongiorno often crossed out and wrote on these returned statements to reflect the changes that were to be made, and gave the interlineated documents to keypunch operators, who used STMTPRO to create updated statements reflecting the newly fabricated transactions and balances. These new, fake statements were then distributed to investors.

30. Bongiorno often fielded telephone calls directly from investors regarding their IA account statements. On these calls, Bongiorno misled investors in a manner consistent with the falsities and fabrications set out in the investors' monthly account statements.

C. Specific Examples of Trades Fabricated by Bongiorno

31. As alleged above, Bongiorno managed nearly 200 IA accounts at the time Madoff's scheme collapsed. She fabricated almost all securities trades in these accounts. Several egregious examples of fabricated trades – most of them involving quick, exorbitant gains generated through backward-looking purchase or short transactions – are described in the allegations below.

i. Fabricated Trades for BMIS Investors

32. Investor B – On at least one occasion, Bongiorno fabricated exceptional gains in an IA account that supposedly occurred before the account was even established. In April 2006, an entity (“Investor B”) controlled by a wealthy acquaintance of Madoff wired \$125 million to the principal bank account used in BMIS' IA operations (the “Main Ponzi Scheme Bank Account”), and Bongiorno opened a new IA account for Investor B. Madoff provided Bongiorno with handwritten instructions regarding this deposit: “Use 125 mil to set up trading with 51 mil in gains[;] 11-Stks[,] 3 are losses[,] 8 – gains[,] net 51 mil gains[,] no margins.” Other documents show that Madoff promised, and instructed Bongiorno to generate, a 40%+ annual return in this account through fake trades.

33. Bongiorno carried out these instructions. On or about April 28, 2006, Bongiorno fabricated trades that purportedly took place in January 2006 and generated

approximately \$39 million in “gains” as of April 30, 2006. In May, June, August, and September 2006, Bongiorno cancelled several trades and fabricated new trades. The net effect of these fake trades generated purported gains of approximately \$74.5 million as of May 31, 2006, and approximately \$81 million as of September 30, 2006.

34. In September 2006, Investor B withdrew its original investment of \$125 million, leaving a balance representing gains in the account of approximately \$81 million. In April 2007, Investor B withdrew an additional \$55 million.

35. Investor C - Bongiorno also manipulated an IA account held for Investor C, another wealthy acquaintance of Madoff. In early November 2000, Bongiorno fabricated a purchase of Qualcomm stock for \$4.0 million that purportedly took place almost two years earlier, in January 1999. Qualcomm’s stock price increased dramatically throughout 1999, and the purported shares in the account were valued at over \$100 million as of December 31, 1999.

36. As of early November 2000, when Bongiorno was fabricating the Qualcomm trades, the stock’s value had decreased, but was still well above the purported purchase price and reflected a false gain of over \$34 million. Bongiorno and her staff used the STMTPRO program to fabricate more than 20 account statements to reflect these fabricated trades for each month between January 1999 and October 2000 in Investor C’s account.

ii. Fabricated Trades for BMIS Employees

37. A substantial number of BMIS employees had IA accounts at BMIS. Bongiorno fabricated trades in these accounts in a manner similar to the fake trades that she reflected in outside investor accounts. For example, Daniel Bonventre, BMIS’

Director of Operations, maintained an IA account at BMIS from at least as early as 1990 through December 2008. At Bonventre's request, Bongiorno created a number of fabricated, backdated trades to generate false gains in his account.

38. One series of trades involving Big Lots (or its predecessor, Consolidated Stores) was backdated by 12 years, and produced a gain of over \$999,000. In November 2002, Bongiorno recorded on Bonventre's November 2002 account statement a January 1990 purchase of 40,000 shares of Consolidated Stores for \$90,000 and a September 2002 sale of the same shares for over \$1 million. Two more series of backdated trades were fabricated in 2004 and 2006 for illicit "profits" of over \$977,000. Bonventre supplied specific parameters to Bongiorno regarding one of these backdated trades: "As per our phone conversation, I need a long term capital gain of \$449,000 on an investment of \$129,000 for a sale proceed of \$578,000." At Bonventre's instruction, checks were cut to him against the Ponzi Scheme Bank Account in relation to each of these series of trades.

#### **IV. Bongiorno Helped Falsify Records When a Madoff Feeder Was Liquidated in 1992.**

39. Before 1992, many of BMIS' clients invested through feeder funds. In 1992, the Commission brought charges against some of these feeders for offering securities in unregistered transactions to investors in violation of Section 5 of the Securities Act. One such feeder was Avellino & Bienes ("A&B"). A receiver was appointed by the court in the Commission's enforcement action against A&B to liquidate A&B's accounts and distribute the proceeds to investors. Because A&B's funds were invested in BMIS IA accounts, the receiver demanded that BMIS provide account records substantiating the values and trading in the accounts.

40. Bongiorno and others had created monthly A&B account statements and related records prior to 1992. However, Madoff and others determined that these pre-existing statements and records could not be produced to the receiver because the transactions and positions reflected therein were inconsistent with representations made by A&B to its investors about the type of trading that took place in A&B's BMIS accounts.

41. Bongiorno was instrumental in the effort to fabricate historical records and account statements that purported to reflect trading consistent with A&B's representations to its investors – an effort that lasted several months. As Bongiorno knew or recklessly disregarded, the resulting records and fabricated account statements were provided to the receiver. Bongiorno's handwritten notes on account statements and other documents show several iterations of revisions to these account statements and related records.

42. Bongiorno also made revisions to hide from the receiver the existence of, and transactions in, certain IA accounts. For example, an IA account held in the name of Avellino & Alpern ("A&A") periodically transferred funds to and from an A&B account. An account statement issued to A&B in 1989 shows a transfer of funds that A&B received from A&A. In order to hide from the receiver the existence of the A&A account and the 1989 transfer, Bongiorno fabricated revised A&B account statements to reflect this inflow of funds as a dividend from General Motors, instead of a transfer from A&A. As Bongiorno knew or recklessly disregarded, none of these revisions would have been necessary if the trades and positions reflected on account statements were real in the first place.

V. **Bongiorno Obtained Millions of Dollars in Ill-Gotten Gains from BMIS.**

43. BMIS paid Bongiorno a salary and occasional bonuses ranging from approximately \$200,000 between 1995 and 2006, to approximately \$623,000 in 2007 and approximately \$313,000 in 2008.

44. Additionally, Bongiorno fabricated trades in her own BMIS accounts to reflect extraordinary gains. Although Bongiorno deposited approximately \$920,000 into her own accounts since 1975, she withdrew approximately \$14.5 million during the same period. The accounts' peak purported value was approximately \$69 million in October 2007, and its purported value on November 30, 2008 was approximately \$53 million. As Bongiorno knew or recklessly disregarded, these high balances and withdrawals were made possible only through sham, backdated, highly profitable "trades" that Bongiorno fabricated in her own accounts.

45. During the several years leading up to December 2008, Bongiorno maintained at least seven BMIS accounts for the benefit of herself and her husband, and regularly managed the activity in at least three of these accounts. Most of the fabricated trades in her accounts were backdated within the then-current month. However, from time to time, she backdated trades to a greater extent to fabricate extraordinary gains or to avoid losses. Bongiorno's handwritten notes and files and House 17 back-up tapes show that these trades were entered well after the phony trades purportedly occurred. Several specific examples of fabricated trades in Bongiorno's own BMIS accounts are alleged below.

a. WorldCom - In June 2002, Bongiorno backdated by almost 5 months her entry into a purported short position on WorldCom stock. In May 2002,

WorldCom's share price had declined rapidly as the company's financial performance and credit ratings came under pressure. As a result, Bongiorno's account reflected an unrealized gain of approximately \$1 million as of the day she fabricated the trade. Later in June 2002, Bongiorno secured approximately \$650,000 of this gain by backdating a purported short cover position.

b. Apple - In August 2006, Bongiorno backdated the purchase of Apple stock to take advantage of a recent 30%+ increase in share price. Her unrealized gain at the time she fabricated the trade was approximately \$2.8 million. Bongiorno later backdated a short trade to avoid a loss of approximately \$9.5 million she would have otherwise incurred due to a drop in Apple's stock price in September 2008.

c. Fannie Mae - In August 2008, in the midst of the recent financial crisis, Bongiorno backdated a sale of Fannie Mae stock she purported to hold in her BMIS accounts to avoid losses of approximately \$2.3 million related to the rapid decline in the company's share price.

d. SPDRs - Bongiorno fabricated approximately \$11.1 million in gains in her accounts in the fall of 2008 by backdating shorts on SPDR's (securities designed to track the performance of the S&P 500 index), which were declining with the overall market at that time.

e. Aetna - Bongiorno avoided losses of approximately \$3.7 million in the fall of 2008 by backdating the sale of Aetna stock she purportedly held in one of her accounts and which was rapidly declining in value.

46. Bongiorno did not create fake trades since in or around 1983 in two of the IA accounts she maintained on behalf of herself and her husband. These accounts

essentially functioned as draw accounts from which Bongiorno withdrew hundreds of thousands of dollars since January 1990.

47. Monthly account statements reflected these withdrawals and an increasing debit (i.e., negative) balance over time, much like an owner's draw account would reflect withdrawals by a firm's principals. These accounts had a cumulative negative balance of approximately \$915,000 as of November 30, 2008. Payments to Bongiorno from these accounts were separate and apart from the payroll system.

48. Bongiorno used her illicit gains from BMIS to support a luxurious lifestyle. She purchased a home in Manhasset, New York, for over \$2.8 million, and a luxury home in Boca Raton, Florida, for \$1.25 million. When the fraud collapsed, Bongiorno and her husband were in the process of purchasing another multi-million dollar condominium in Florida, on which they had already made \$1.3 million in down payments. Until recently, Bongiorno and her husband drove a Bentley and at least two late model Mercedes automobiles.

### **FIRST CLAIM FOR RELIEF**

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

49. Paragraphs 1 through 488 are realleged and incorporated by reference as if set forth fully herein.

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



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

**SECOND CLAIM FOR RELIEF**

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

52. Paragraphs 1 through 48 are realleged and incorporated by reference as if set forth fully herein.

53. From at least the 1990s through December 11, 2008, the Defendant, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce or by the use of the mails and/or wires, directly and indirectly, has obtained money and property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and has engaged in transactions, practices or courses of business which have operated as a fraud and deceit upon investors.

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

**THIRD CLAIM FOR RELIEF**

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

55. Paragraphs 1 through 48 are realleged and incorporated by reference as if set forth fully herein.

56. From at least the 1990s through December 11, 2008, the Defendant, in connection with the purchase and sale of securities, directly and indirectly, by the use of

the means and instrumentalities of interstate commerce or of the mails and/or wires, has employed devices, schemes and artifices to defraud; has made untrue statements of material fact and has omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and has engaged in acts, practices and courses of business which operated as a fraud and deceit upon investors.

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

58. In addition, from at least the 1990s through December 11, 2008, Madoff and BMIS, in connection with the purchase and sale of securities, directly and indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails and/or wires, have employed devices, schemes and artifices to defraud; have made untrue statements of material fact and have omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and have engaged in acts, practices and courses of business which operated as a fraud and deceit upon investors.

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

**FOURTH CLAIM FOR RELIEF**

**Aiding and Abetting Violations of Sections 206(1) and  
206(2) of the Advisers Act**

**(Fraud upon Advisory Clients and Breach of  
Fiduciary Duty by Investment Adviser)**

60. Paragraphs 1 through 48 are realleged and incorporated by reference as if set forth fully herein.

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

62. 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.

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

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

**FIFTH CLAIM FOR RELIEF**

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

65. Paragraphs 1 through 48 are realleged and incorporated by reference as if set forth fully herein.

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

67. From at least the 1990s through December 11, 2008, BMIS, while a broker, by engaging in the conduct described above, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of securities (other than commercial paper, bankers' acceptances or commercial bills) otherwise than on a national securities exchange of which BMIS was a member, by means of manipulative, deceptive, or other fraudulent devices or contrivances.

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

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

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

thereunder [17 C.F.R. § 240.10b-3]. Specifically, Defendant knowingly provided substantial assistance to BMIS in committing such violations.

**SIXTH CLAIM FOR RELIEF**

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

71. Paragraphs 1 through 48 are realleged and incorporated by reference as if set forth fully herein.

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

73. As set forth above, BMIS failed to make and keep certain books and records current and accurate. BMIS, among other things, manufactured and maintained ledgers, journals and other records reflecting fictitious securities holdings and fictitious securities transactions in investors' accounts, and/or omitting and mischaracterizing material transactions.

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

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

76. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], the Defendant aided and abetted the violations of Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. §

240.17a-3]. Specifically, Defendant knowingly provided substantial assistance to BMIS in committing such violations.

**SEVENTH CLAIM FOR RELIEF**

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

77. Paragraphs 1 through 48 are realleged and incorporated by reference as if set forth fully herein.

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

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

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

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

## **PRAYER FOR RELIEF**

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

### **I.**

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

### **II.**

Permanently restraining and enjoining the Defendant, her agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing future violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

### **III.**

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

### **IV.**

Permanently restraining and enjoining the Defendant, her agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them,

from committing or aiding and abetting future violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

**V.**

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

**VI.**

Permanently restraining and enjoining the Defendant, his agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. § 240.17a-3].

**VII.**

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

**VIII.**

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



**IX.**

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

**X.**

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

Dated: New York, New York  
November 17, 2010

SECURITIES AND EXCHANGE COMMISSION

By:



George S. Canellos

Regional Director

Attorney for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

3 World Financial Center

New York, NY 10281-1022

(212) 336-1100

Of Counsel:

Andrew M. Calamari

Robert J. Burson (*Not admitted in New York*)

Alexander M. Vasilescu

Aaron Arnzen (*Not admitted in New York*)

Kristine Zaleskas