

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

In re: BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Debtor,	Adv. Pro. No. 08-01789 (BRL) SIPA LIQUIDATION (Substantively Consolidated)
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. SAUL B. KATZ, et al., Defendants.	Adv. Pro. No. 10-05287 (BRL) 11 Civ. 03605 (JSR) (HBP)

**DECLARATION OF DAVID J. SHEEHAN IN SUPPORT OF TRUSTEE'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

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*Attorneys for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L.
Madoff*

I, David J. Sheehan, declare pursuant to 28 U.S.C. § 1746, that the following is true:

1. I am an attorney at the firm of Baker & Hostetler LLP and counsel to Irving H. Picard, Trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. §§ 78aaa *et seq.*, and the estate of Bernard L. Madoff (“Madoff”).

2. I submit this Declaration in support of the Trustee’s motion for partial summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

3. Attached hereto as Ex. 1 is a true and correct copy of the defendants’ Answer, dated October 11, 2011. Answer, *Picard v. Katz, et al.*, No. 11 Civ. 3605 (S.D.N.Y. Oct. 11, 2011) (JSR), ECF No. 48.

4. Attached hereto as Ex. 2 is a true and correct copy of the Plea Hearing Transcript of Bernard L. Madoff, dated March 12, 2009. Plea Hr’g Tr. (“Madoff Plea”), *United States v. Madoff*, No. 09 Cr. 213 (S.D.N.Y. Mar. 12, 2009) (DC), ECF No. 57.

5. Attached hereto as Ex. 3 is a true and correct copy of the Sentencing Transcript of Bernard L. Madoff, dated June 29, 2009. Sentencing Tr., *United States v. Madoff*, No. 09 Cr. 213 (S.D.N.Y. June 29, 2009) (DC), ECF No. 103.

6. Attached hereto as Ex. 4 is a true and correct copy of the Plea Hearing Transcript of Frank DiPascali, Jr., dated August 11, 2009. Plea Hr’g Tr. (“DiPascali Plea”), *United States v. DiPascali*, No. 09 Cr. 764 (S.D.N.Y. Aug. 11, 2009) (RJS), ECF No. 11.

7. Attached hereto as Ex. 5 is a true and correct copy of the Plea Hearing Transcript of David G. Friehling, dated November 3, 2009. Plea Hr’g Tr. (“Friehling Plea”), *United States v. Friehling*, No. 09 Cr. 700 (S.D.N.Y. Nov. 3, 2009) (AKH).

8. Attached hereto as Ex. 6 is a true and correct copy of the Plea Hearing Transcript of Eric S. Lipkin, dated June 6, 2011. Plea Hr'g Tr. ("Lipkin Plea"), *United States v. Lipkin*, No. 10 Cr. 228 (S.D.N.Y. June 6, 2011) (LTS), ECF No. 148.

9. Attached hereto as Ex. 7 is a true and correct copy of the Plea Hearing Transcript of David Kugel, dated November 21, 2011. Plea Hr'g Tr. ("Kugel Plea"), *United States v. Kugel*, No. 10 Cr. 228 (S.D.N.Y. Nov. 21, 2011) (LTS), ECF No. 188.

10. Attached hereto as Ex. 8 is a true and correct copy of the Plea Hearing Transcript of Enrica Cotellessa-Pitz, dated December 19, 2011. Plea Hr'g Tr. ("Cotellessa-Pitz Plea"), *United States v. Cotellessa-Pitz*, No. 10 Cr. 228 (S.D.N.Y. Dec. 19, 2011) (LTS).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
January 26, 2012

/s/ David J. Sheehan
David. J. Sheehan

Exhibit 1

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

----- X
IRVING H. PICARD, :
 :
 Plaintiff, :
 :
 - against - : 11-CV-03605 (JSR)
 :
 SAUL B. KATZ, et al., :
 :
 Defendants. :
 :
----- X

ANSWER

Each of the Defendants in the above-captioned matter (“Defendants”), by and through their undersigned counsel, hereby states his, her, or its Answer and Defenses to the amended complaint (“Complaint”), dated March 18, 2011, as follows:

GENERAL RESPONSE

Each Defendant hereby answers the Complaint in its entirety, notwithstanding that the Court’s September 27, 2011 opinion and order dismissed nine of the Complaint’s eleven counts and rendered many of the Complaint’s allegations irrelevant. With respect to the table of contents, headings, subheadings, unnumbered paragraphs, appendices, exhibits, and requests for relief following paragraph 1402 of the Complaint, no response to such material is required. To the extent any response is required, any such averments are denied. Any allegation in the Complaint not specifically admitted is denied. Unless otherwise defined, all capitalized terms have the same meaning as in the Complaint.

SPECIFIC RESPONSES

1. Deny, except aver that each of the Defendants is one of the thousands of victims of Madoff’s massive Ponzi scheme, and also deny footnote 1.
2. Deny.
3. Deny, except admit that Sterling is a closely-held family business and that various Sterling Partners and related entities are involved in real estate, professional baseball, and private equity businesses, including ownership of the New York Mets baseball franchise.

4. Deny, except admit that approximately 483 1KW BLMIS accounts were opened by various individuals and entities, some of which are Sterling Partners and/or Sterling-related entities, over the course of twenty-five years, and that Sterling Partner Arthur Friedman provided administrative assistance with respect to the majority of the 1KW BLMIS accounts.

5. Deny.

6. Deny.

7. Deny.

8. Deny, except admit that debt of various Sterling-related entities was restructured following revelation of Madoff's fraud.

9. Deny.

10. Deny.

(a) Deny.

(b) Deny.

(c) Deny.

(d) Deny.

(e) Deny.

(f) Deny.

(g) Deny.

(h) Deny.

11. Deny.

12. Deny.

13. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except refer to the Complaint for the proceeding's purported purpose.

14. Admit, except deny that this adversary proceeding is now proceeding before the Bankruptcy Court because the reference has been withdrawn.

15. Admit.

16. Admit.

17. Admit.

18. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except refer to the SEC complaint against BLMIS and Madoff for its content, and footnote 2 alleges conclusions of law to which no response is required.

19. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except refer to the December 12, 2008 order for its content.

20. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except refer to the referenced SIPC application for its content.

21. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except refer to the December 15, 2008 Protective Decree for its content.

(a) Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except refer to the December 15, 2008 Protective Decree for its content.

(b) Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except refer to the December 15, 2008 Protective Decree for its content.

(c) Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except refer to the December 15, 2008 Protective Decree for its content.

22. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except refer to the referenced orders for their content.

23. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit, upon information and belief, that Madoff entered a guilty plea and refer to the transcript of his allocution for its content.

24. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit, upon information and belief, that DiPascali entered a guilty plea and refer to the transcript of his allocution for its content.

25. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

26. This paragraph alleges conclusions of law to which no response is required.

27. This paragraph alleges conclusions of law to which no response is required.

28. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny these allegations.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny these allegations.

(b) Deny.

(c) Deny that any BLMIS customer was injured as a result of any Defendant's alleged conduct.

(d) This paragraph alleges conclusions of law to which no response is required.

(e) Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

(f) This paragraph alleges conclusions of law to which no response is required.

(g) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

(h) This paragraph alleges conclusions of law to which no response is required.

(i) This paragraph alleges conclusions of law to which no response is required.

29. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that BLMIS was founded by Bernard L. Madoff, was a SEC-registered broker dealer and member of SIPC, and was comprised of at least the three business units alleged.

30. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Madoff ascribed the success of his investment advisory business to his use of his split-strike conversion strategy.

31. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Defendants received monthly statements from BLMIS, in addition to trade confirmations and quarterly reports.

32. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

33. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

34. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

35. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except aver that payments to investors were legally required.

36. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

37. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

38. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

39. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

40. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

41. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and refer to this and other complaints for their purported purposes.

42. This paragraph alleges conclusions of law to which no response is required.

43. Deny, except admit that Sterling Equities Associates is a general partnership, the partners of which own various entities that own and operate different businesses and invest in varied asset classes that include real estate, professional baseball, sports media, and private equity.

44. Admit, except deny that Leonard Schreier is a general partner.

45. Deny.

46. Deny, except admit that the Sterling Partners and their family members each held interests in different BLMIS accounts and at times in different capacities.

47. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

48. Deny and refer to Appendix I, Exhibit A for its content.

49. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are

Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to Appendix I, Exhibit B for its content. Defendants further deny footnote 3 and refer to Appendix I, Exhibit B for its content.

50. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

51. Deny and refer to Appendix II, Exhibit A for its content.

52. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

53. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to Appendix II, Exhibit B for its content.

54. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, deny that the transfers are

Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise, and refer to Appendix II, Exhibit B, Column 4 for its content.

55. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to Appendix II, Exhibit C for its content.

56. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

57. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to the Complaint for its content.

58. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

59. Admit.

60. Admit.

61. Deny, except admit that Saul Katz co-founded Sterling Equities in or around 1972 with his brother-in-law, Fred Wilpon, currently serves as Sterling's President and Chief Operating Officer and as President of the New York Mets and the Brooklyn Cyclones, is a Certified Public Accountant ("CPA"), has responsibility for Sterling's asset-based investments, is involved in strategic planning, and sits on the Board of Directors of Sterling Stamos.

62. Deny, except admit that Saul Katz was a customer of the IA business and opened his first account with BLMIS in or around October 1985.

63. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Saul Katz held interests in different BLMIS accounts.

64. Refer to the Complaint for its content.

65. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

66. Admit.

67. Admit.

68. Deny, except admit that Fred Wilpon co-founded Sterling Equities in or around 1972 with his brother-in-law, Saul Katz, currently serves as Sterling's Chairman of the Board and Chief Executive Office of the New York Mets and Chairman of the Brooklyn Cyclones.

69. Deny, except admit that Fred Wilpon was a customer of the IA business and opened his first account with BLMIS in or around October 1985.

70. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Fred Wilpon held interests in different BLMIS accounts.

71. Refer to the Complaint for its content.

72. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

73. Admit, except deny that Richard Wilpon maintains his residence in Port Washington, New York.

74. Admit.

75. Deny, except admit that Richard Wilpon joined Sterling in or around 1972, became a partner shortly thereafter, currently serves as Sterling's Senior Executive Vice President, is primarily involved in the real estate side of Sterling's business, is currently Co-Chief Executive Officer of SAP, where he manages its investments and oversees its real estate acquisitions and dispositions and is a Board member of the New York Mets.

76. Deny, except admit that Richard Wilpon was a customer of the IA business and opened his first account with BLMIS in or around December 1986.

77. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Richard Wilpon held interests in different BLMIS accounts.

78. Refer to the Complaint for its content.

79. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

80. Admit.

81. Admit.

82. Deny, except admit that Michael Katz joined Sterling in or around 1973, became a partner shortly thereafter, is a CPA, currently serves as Sterling's Senior Executive Vice President and, up until 2001, was Sterling's Chief Financial Officer, is primarily involved in the real estate side of Sterling's business, is currently Co-Chief Executive Officer of SAP where he is responsible for the day-to-day management of its investments, and is also a Board member of the New York Mets.

83. Deny, except admit that Michael Katz was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Michael Katz opened his first BLMIS account.

84. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Michael Katz held interests in different BLMIS accounts.

85. Refer to the Complaint for its content.

86. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

87. Admit.

88. Admit.

89. Deny, except admit that Jeffrey Wilpon joined Sterling in or around 1986 and became a partner thereafter, currently serves as Sterling's Senior Executive Vice President, and as Chief Operating Officer, Senior Executive Vice President, and Board member of the New York Mets, is the Senior Executive Vice President and Chief Operating Officer of the Brooklyn Cyclones, and is primarily responsible for overseeing the day-to-day baseball and business operations of the New York Mets.

90. Deny, except admit that Jeffrey Wilpon was a customer of the IA business and opened his first account with BLMIS in or around October 1987.

91. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Jeffrey Wilpon held interests in different BLMIS accounts.

92. Refer to the Complaint for its content.

93. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

94. Admit.
95. Admit.
96. Deny, except admit that David Katz joined Sterling in 1987 and became a partner thereafter, currently serves as Sterling's Executive Vice President and is a Board member of the New York Mets, holds responsibilities within Sterling's real estate business and private equity investments, and previously served as a board member of Sterling Stamos.
97. Deny, except admit that David Katz was a customer of the IA business and opened his first BLMIS account in or around December 1989.
98. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that David Katz held interests in different BLMIS accounts.
99. Refer to the Complaint for its content.
100. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.
101. Admit.
102. Admit.
103. Deny, except admit that Gregory Katz joined Sterling in 2001 and became a partner thereafter, currently serves as Sterling's Vice President and focuses on the real

estate aspect of Sterling's business where he acquires multi-family, commercial and retail real estate properties and arranges financing for SAP.

104. Deny, except admit that Gregory Katz was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Gregory Katz opened his first BLMIS account.

105. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Gregory Katz held interests in different BLMIS accounts.

106. Refer to the Complaint for its content.

107. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

108. Admit.

109. Admit.

110. Deny, except admit that Arthur Friedman is a CPA and holds a law degree, joined Sterling in or around 1986 and became a partner shortly thereafter, currently serves as Sterling's Senior Vice President and Board member of the Mets and, from the time he joined Sterling through December 11, 2008, provided administrative assistance with respect to the majority of the 1KW BLMIS accounts.

111. Deny, except admit that Arthur Friedman was a customer of the IA business and opened his first account with BLMIS in or around December 1986.

112. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Arthur Friedman held interests in different BLMIS accounts.

113. Refer to the Complaint for its content.

114. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

115. Admit.

116. Admit.

117. Deny, except admit that Thomas Osterman joined Sterling in or around 1975 and became a partner thereafter, currently serves as Sterling's Executive Vice President, is responsible for overseeing the development of Sterling's commercial and residential properties in Manhattan, as well as for the strategic management of SAP's real estate assets, and is also a Board member of the New York Mets.

118. Deny, except admit that Thomas Osterman was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Thomas Osterman opened his first BLMIS account.

119. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Thomas Osterman held interests in different BLMIS accounts.

120. Refer to the Complaint for its content.

121. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

122. Admit.

123. Admit.

124. Deny, except admit that Marvin Tepper joined Sterling in or around 1990 as general counsel and partner after serving as Sterling's outside counsel, retired from Sterling in or around 2005, retained (and currently retains) his partnership interests in Sterling and related entities, and remains listed as a partner on Sterling's website.

125. Deny, except admit that Marvin Tepper was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Marvin Tepper opened his first BLMIS account.

126. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Marvin Tepper held interests in different BLMIS accounts.

127. Refer to the Complaint for its content.

128. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

129. Admit.

130. Deny, except admit that Leonard Schreier served as a Sterling Partner until his death in 2001 and after his death, his partnership interests in Sterling and related entities were held and maintained by the Estate of Leonard Schreier by co-executors Fred Wilpon and Jason Bacher and that Leonard Schreier remains listed as a partner on Sterling's website.

131. Admit.

132. Deny, except admit that Leonard Schreier was a customer of the IA business and opened his first account with BLMIS in or around June 1987.

133. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Leonard Schreier held interests in different BLMIS accounts.

134. Refer to the Complaint for its content.

135. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

136. Admit.

137. Deny, except admit that Sterling Mets LP and Mets Limited Partnership are held by intermediate LLCs and partnerships that are ultimately owned by the Sterling Partners.

138. Admit, except deny that Marvin Tepper is a member of the Board of Directors of the Mets.

139. Deny, except admit that Mets Limited Partnership is a limited partnership formed under the laws of the state of Delaware and its principal place of business is located courtesy of the general partner, 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

140. Admit.

141. Admit.

142. Admit, except deny that Fred Wilpon is the managing partner.

143. Admit, except deny that Fred Wilpon and Arthur Friedman are the managing partners.

144. Deny.

145. Deny, except admit that Mets Limited Partnership was a customer of the IA business and opened its first account with BLMIS in or around December of 1990.

146. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

147. Deny, except admit that Mets Limited Partnership is a limited partnership formed under the laws of the state of Delaware and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

148. Admit.

149. Admit.

150. Admit.

151. Admit.

152. Admit, except deny that Fred Wilpon is the managing partner.

153. Admit, except deny that Fred Wilpon and Arthur Friedman are the managing partners.

154. Deny.

155. Deny, except admit that Sterling Mets LP was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Sterling Mets LP opened its first BLMIS account.

156. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

157. Deny, except admit that Sterling Mets Associates is a general partnership formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

158. Admit.

159. Deny.

160. Deny, except admit that Sterling Mets Associates was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Sterling Mets Associates opened its first BLMIS account.

161. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

162. Deny, except admit that Sterling Mets Associates II is a general partnership formed under the laws of the state of New York and its principal place of business is located at 575 Fifth Avenue, New York, New York 10017.

163. Admit, except deny that the “Thomas Osterman Family Trust” is a general partner and that Fred Wilpon and Arthur Friedman are the managing partners.

164. Deny.

165. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

166. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

167. Deny, except admit that Mets One LLC is a limited liability company formed under the laws of the state of Delaware and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

168. Admit.

169. Admit, except deny that Fred Wilpon is the managing partner.

170. Deny.

171. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

172. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

173. Deny, except admit that Mets II LLC is a limited liability company formed under the laws of the state of Delaware and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

174. Admit.

175. Admit.

176. Deny.

177. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

178. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

179. Deny, except admit that Mets Partners, Inc. is a corporation formed under the laws of the state of New York and that its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

180. Deny, except admit that Fred Wilpon is the sole shareholder of Mets Partners, Inc.

181. Deny.

182. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

183. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

184. Deny, except admit that C.D.S. Corp. is a corporation formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

185. Admit.

186. Deny.

187. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

188. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

189. Deny, except admit that Coney Island Baseball Holding Company L.L.C. is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

190. Admit.

191. Admit.

192. Admit.

193. Deny.

194. Deny.

195. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

196. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

197. Deny, except admit that Brooklyn Baseball Company L.L.C. is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

198. Admit.

199. Deny, except admit that FS Company LLC is a member of Coney Island Baseball LLC.

200. Admit.

201. Admit.

202. Deny.

203. Deny, except admit that Brooklyn Baseball Company L.L.C. was a customer of the IA business and opened its first account with BLMIS in February of 2001.

204. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

205. Deny, except admit that FS Company L.L.C. is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

206. Admit.

207. Admit.

208. Deny.

209. Deny.

210. Deny, except admit that FS Company L.L.C. was a customer of the IA business and opened its first account with BLMIS in October of 2001.

211. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

212. Deny, except admit that 157 J.E.S. LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

213. Deny, except admit that the members of 157 J.E.S. LLC are Fred Wilpon, Saul Katz, Richard Wilpon, Michael Katz, Thomas Osterman, Arthur Friedman, Jeffrey Wilpon and David Katz.

214. Deny.

215. Deny, except admit that 157 J.E.S. LLC was a customer of the IA business and opened its first account with BLMIS in October of 2001.

216. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

217. Deny, except admit that Air Sterling LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

218. Admit.

219. Admit.

220. Deny.

221. Deny, except admit that Air Sterling LLC was a customer of the IA business and opened its first account with BLMIS in March of 2001.

222. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

223. Deny, except admit that BAS Aircraft LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

224. Admit.

225. Deny.

226. Deny, except admit that BAS Aircraft LLC was a customer of the IA business and opened its first account with BLMIS in March of 2001.

227. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

228. Deny, except admit that Bon-Mick Family Partners LP is a limited partnership formed under the laws of the state of Delaware and its principal place of business is located at 575 Fifth Avenue, New York, New York 10017.

229. Admit, except deny that Arthur Friedman is the sole shareholder of Bon Mick, Inc.

230. Admit.

231. Deny.

232. Deny, except admit that Bon-Mick Family Partners LP was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Bon-Mick Family Partners LP opened its first BLMIS account.

233. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

234. Deny, except admit that Bon Mick, Inc. is a corporation formed under the laws of the state of Delaware and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

235. Admit, except deny that Arthur Friedman is the sole shareholder.

236. Deny.

237. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

238. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

239. Deny, except admit that Charles 15 Associates is a general partnership formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

240. Admit.

241. Admit.

242. Admit.

243. Admit, except deny that the Estate of Leonard Schreier is a shareholder.

244. Admit.

245. Admit.

246. Admit.

247. Admit.

248. Admit.

249. Deny.

250. Deny, except admit that Charles 15 Associates was a customer of the IA business and opened its first account with BLMIS in January of 1995.

251. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

252. Deny, except admit that Charles 15 LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

253. Admit.

254. Admit.

255. Admit.

256. Admit.

257. Admit.

258. Deny.

259. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

260. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

261. Deny, except admit that Charles Sterling LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

262. Admit.

263. Admit.

264. Admit.

265. Deny.

266. Deny, except admit that Charles Sterling LLC was a customer of the IA business and opened its first account with BLMIS in August of 2001.

267. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

268. Deny, except admit that Charles Sterling Sub LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

269. Admit.

270. Admit.

271. Admit.

272. Admit.

273. Deny.

274. Deny, except admit that Charles Sterling Sub LLC was a customer of the IA business and opened its first account with BLMIS in October of 2004.

275. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

276. Deny, except admit that College Place Enterprises LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

277. Admit.

278. Deny.

279. Deny, except admit that College Place Enterprises LLC was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when College Place Enterprises LLC opened its first BLMIS account.

280. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

281. Deny, except admit that FFB Aviation LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

282. Admit.

283. Deny.

284. Deny, except admit that FFB Aviation LLC was a customer of the IA business and opened its first account with BLMIS in May of 2006.

285. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

286. Admit.

287. Deny.

288. Deny, except admit that Iris J. and Saul B. Katz Family Foundation, Inc. was a customer of the IA business and opened its first account with BLMIS in July of 1990.

289. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

290. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

291. Admit.

292. Deny.

293. Deny, except admit that Judy and Fred Wilpon Family Foundation, Inc. was a customer of the IA business and opened its first account with BLMIS in February of 1989

294. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

295. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

296. Deny, except admit that Red Valley Partners is a general partnership formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

297. Admit.

298. Deny.

299. Deny, except admit that Red Valley Partners was a customer of the IA business and opened its first account with BLMIS in August of 1997.

300. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

301. Admit.

302. Admit.

303. Admit.

304. Deny.

305. Deny, except admit that Saul Katz, Fred Wilpon, Richard Wilpon, Michael Katz, Arthur Friedman, Jeffrey Wilpon, David Katz, and Thomas Osterman are the shareholders of Sterling Argent, Inc.

306. Deny.

307. Deny, except admit that Robbinsville Park LLC was a customer of the IA business and opened its first account with BLMIS in October of 2001.

308. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

309. Deny, except admit that Ruskin Gardens Apts. L.L.C. is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

310. Admit.

311. Deny.

312. Deny, except admit that Ruskin Garden Apartments LLC was a customer of the IA business and opened its first account with BLMIS in June of 1997.

313. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

314. Deny, except admit that SEE HoldCo LLC is a limited liability company formed under the laws of the state of Delaware and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

315. Admit.

316. Deny, except admit that SEE Management LLC is a Delaware limited liability company whose members and managers are Fred Wilpon and Saul Katz.

317. Deny, except admit that SEE Holdings I is a New York general partnership whose partners are Fred Wilpon, Jeffrey Wilpon, Saul Katz, Scott Wilpon, Richard Wilpon, Michael Katz, Marvin Tepper, Thomas Osterman, Arthur Friedman, Gregory Katz, the Estate of Leonard Schreier, the Fred Wilpon Family Trust, and the Saul B. Katz Family Trust.

318. Deny, except admit that the partners of SEE Holding II are Fred Wilpon, Jeffrey Wilpon, Saul Katz, David Katz, Marvin Tepper, Thomas Osterman, Arthur Friedman, the Thomas Osterman 2002 Grantor Trust, the Fred Wilpon Family Trust, the Saul B. Katz Family Trust, the Wilpon 2002 Descendants' Trust, and the Katz 2002 Descendants' Trust.

319. Deny.

320. Deny, except admit that SEE HoldCo LLC was a customer of the IA business and opened its first account with BLMIS in January of 2007.

321. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

322. Deny, except admit that SEE Holdings I is a general partnership formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

323. Deny, except admit that the partners of SEE Holdings I are Fred Wilpon, Jeffrey Wilpon, Saul Katz, Scott Wilpon, Richard Wilpon, Michael Katz, Marvin Tepper, Thomas Osterman, Arthur Friedman, Gregory Katz, the Estate of Leonard Schreier, the Fred Wilpon Family Trust, and the Saul B. Katz Family Trust.

324. Deny.

325. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

326. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

327. Deny, except admit that SEE Holdings II is a general partnership formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

328. Deny, except admit that the partners of SEE Holding II are Fred Wilpon, Jeffrey Wilpon, Saul Katz, David Katz, Marvin Tepper, Thomas Osterman, Arthur Friedman, the Thomas Osterman 2002 Grantor Trust, the Fred Wilpon Family Trust, the Saul B. Katz Family Trust, the Wilpon 2002 Descendants' Trust, and the Katz 2002 Descendants' Trust.

329. Deny.

330. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

331. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

332. Deny, except admit that Sterling 10 LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

333. Admit.

334. Admit.

335. Deny.

336. Deny, except admit that Sterling 10 LLC was a customer of the IA business and opened its first account with BLMIS in September of 2003.

337. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

338. Deny, except admit that Sterling 15C L.L.C. is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

339. Admit.

340. Deny.

341. Deny.

342. Deny, except admit that Sterling 15C L.L.C. was a customer of the IA business and opened its first account with BLMIS in March of 1996.

343. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

344. Deny, except admit that Sterling 20 LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

345. Deny, except admit that the members of Sterling 20 LLC include Fred Wilpon, Saul Katz, Richard Wilpon, Michael Katz, Thomas Osterman, Arthur Friedman, Jeffrey Wilpon, Marvin Tepper, Elise C. Tepper, David Katz, and the Fred Wilpon Family Trust.

346. Deny, except admit that Fred Wilpon, Saul Katz, Richard Wilpon, and Michael Katz are among the managing members of Sterling 20 LLC.

347. Deny.

348. Deny, except admit that Sterling 20 LLC was a customer of the IA business and opened its first account with BLMIS in February of 2002.

349. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

350. Deny, except admit that Sterling American Advisors II LP is a limited partnership formed under the laws of the state of Delaware and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

351. Deny, except admit that the partners of Sterling American Advisors II LP include Sterling R. I. II LLC and Sterling Internal II LLC, among others not listed as defendants in this action.

352. Deny.

353. Deny.

354. Admit.

355. Admit, except deny that Leonard Schreier is a member.

356. Deny.

357. Deny, except admit that Sterling American Advisors II LP was a customer of the IA business and opened its first account with BLMIS in September of 2006.

358. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

359. Deny, except admit that Sterling Brunswick Corporation is a corporation formed under the laws of the state of New Jersey and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

360. Admit.

361. Deny, except admit that Michael Katz is an officer of Sterling Brunswick Corporation.

362. Deny.

363. Deny, except admit that Sterling Brunswick Corporation was a customer of the IA business and opened its first account with BLMIS in March of 2000.

364. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

365. Deny, except admit that Sterling Brunswick Seven LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

366. Admit.

367. Admit.

368. Admit.

369. Deny.

370. Deny, except admit that Sterling Brunswick Seven LLC was a customer of the IA business and opened its first account with BLMIS in March of 2005.

371. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

372. Deny, except admit that Sterling DIST Properties LLC is a limited liability company formed under the laws of the state of Delaware and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

373. Admit.

374. Admit.

375. Deny.

376. Deny, except admit that Sterling DIST Properties LLC was a customer of the IA business and opened its first account with BLMIS in June of 2008.

377. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

378. Deny, except admit that Sterling Equities is a general partnership formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

379. Admit, except deny that Leonard Schreier's partnership interests are held by his estate.

380. Deny.

381. Deny, except admit that the Sterling Partners are general partners of Sterling Equities Associates.

382. Deny, except admit that Sterling Equities was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Sterling Equities opened its first BLMIS account.

383. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

384. Deny, except admit that Sterling Equities Associates is a general partnership formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

385. Admit.

386. Deny.

387. Deny, except admit that Sterling Equities Associates was a customer of the IA business and opened its first account with BLMIS in July of 2000.

388. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

389. Deny, except admit that Sterling Equities Investors is a general partnership formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

390. Admit.

391. Deny.

392. Deny, except admit that Sterling Equities Investors was a customer of the IA business and opened its first account with BLMIS in February of 1997.

393. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

394. Deny, except admit that Sterling Heritage L.L.C. is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

395. Admit.

396. Admit.

397. Deny.

398. Deny, except admit that Sterling Heritage L.L.C. was a customer of the IA business and opened its first account with BLMIS in May of 2000.

399. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

400. Deny, except admit that Sterling Internal V LLC is a limited liability company formed under the laws of the state of Delaware and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

401. Admit.

402. Deny.

403. Deny, except admit that Sterling Internal V LLC was a customer of the IA business and opened its first account with BLMIS in July of 2006.

404. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

405. Admit

406. Admit.

407. Deny.

408. Deny, except admit that Sterling Jet Ltd. was a customer of the IA business and opened its first account with BLMIS in May of 1999.

409. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

410. Admit.

411. Admit.

412. Deny.

413. Deny, except admit that Sterling Jet II Ltd. was a customer of the IA business and opened its first account with BLMIS in May of 1999.

414. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

415. Admit.

416. Admit.

417. Deny.

418. Deny, except admit that Sterling PathoGenesis Company was a customer of the IA business and opened its first account with BLMIS in November of 1996.

419. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

420. Deny, except admit that Sterling Third Associates was a general partnership formed under the laws of the state of New York and its principal place of business was 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

421. Deny.

422. Deny.

423. Deny.

424. Deny, except admit that Sterling Third Associates was a customer of the IA business and opened its first account with BLMIS in May of 1986.

425. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

426. Deny, except admit that Sterling Thirty Venture LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

427. Admit.

428. Admit.

429. Admit.

430. Deny.

431. Deny, except admit that Sterling Thirty Venture LLC was a customer of the IA business and opened its first account with BLMIS in November of 2000.

432. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

433. Deny, except admit that Sterling Tracing LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

434. Deny, except admit that the members of Sterling Tracing LLC are Michael Katz, Richard Wilpon, Gregory Katz, Scott Wilpon, Jeffrey Wilpon, Thomas Osterman and Arthur and Ruth Friedman as joint tenants

435. Deny.

436. Deny, except admit that Sterling Tracing LLC was a customer of the IA business and opened its first account with BLMIS in April of 2007.

437. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

438. Deny, except admit that Sterling Twenty Five LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

439. Admit, except deny that Arthur and Ruth Friedman are members as joint tenants.

440. Admit.

441. Deny.

442. Deny, except admit that Sterling Twenty Five LLC was a customer of the IA business and opened its first account with BLMIS in January of 2007.

443. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

444. Deny, except admit that Sterling VC IV LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

445. Admit, except deny that Natalie Katz O'Brien and Heather Katz Knopf are members.

446. Deny.

447. Deny, except admit that Sterling VC IV LLC was a customer of the IA business and opened its first account with BLMIS in June of 2008.

448. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

449. Deny, except admit that Sterling VC V LLC is a limited liability company formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021 and it accepts service of process courtesy of Sterling Equities at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

450. Admit.

451. Admit.

452. Deny.

453. Deny, except admit that Sterling VC V LLC was a customer of the IA business and opened its first account with BLMIS in June of 2008.

454. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

455. Deny.

456. Deny.

457. Deny.

458. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

459. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

460. Admit, except note that David Katz, Natalie Katz and Heather Katz Knopf are among the beneficiaries of the Saul B. Katz Family Trust.

461. Deny, except admit that the Saul B. Katz Family Trust was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when the Saul B. Katz Family Trust opened its first BLMIS account.

462. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that the Saul B. Katz Family Trust held interests in different BLMIS accounts.

463. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

464. Admit, except note that Jeffrey Wilpon, Bruce N. Wilpon, MINOR 1, MINOR 2, Robin Wilpon Wachtler, and Kimberly Wilpon Wachtler are among the beneficiaries of the Fred Wilpon Family Trust.

465. Deny, except admit that the Fred Wilpon Family Trust was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when the Fred Wilpon Family Trust opened its first BLMIS account.

466. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that the Fred Wilpon Family Trust held interests in different BLMIS accounts.

467. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

468. Admit, except note that Dayle Katz, Gregory Katz, Howard Katz and Todd Katz are among the beneficiaries of the Katz 2002 Descendants Trust.

469. Deny, except admit that the Katz 2002 Descendants' Trust was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when the Katz 2002 Descendants' Trust opened its first BLMIS account.

470. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that the Katz 2002 Descendants Trust. held interests in different BLMIS accounts.

471. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

472. Admit, except note that Debra Wilpon is also a beneficiary.

473. Admit.

474. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that the Wilpon 2002 Descendants Trust. held interests in different BLMIS accounts.

475. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

476. Admit.

477. Admit.

478. Deny, except admit that Iris Katz was a customer of the IA business, and lack knowledge or information sufficient to form a belief as to the when Iris Katz opened her first BLMIS account.

479. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Iris Katz held interests in different BLMIS accounts

480. Refer to the Complaint for its content.

481. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

482. Admit.

483. Admit.

484. Deny, except admit that Judith Wilpon was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Judith Wilpon opened her first BLMIS account.

485. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Judith Wilpon held interests in different BLMIS accounts.

486. Refer to the Complaint for its content.

487. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

488. Admit.

489. Admit.

490. Deny, except admit that Dayle Katz was a customer of the IA business and opened her first account with BLMIS in or around December of 1986.

491. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Dayle Katz held interests in different BLMIS accounts.

492. Refer to the Complaint for its content.

493. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

494. Admit, except deny that Debra Wilpon maintains her residence in Port Washington, New York.

495. Admit.

496. Deny, except admit that Debra Wilpon was a customer of the IA business and opened her first account with BLMIS in or around December 1986.

497. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Debra Wilpon held interests in different BLMIS accounts

498. Refer to the Complaint for its content.

499. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

500. Admit.

501. Admit.

502. Deny, except admit that Valerie Wilpon was a customer of the IA business.

503. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Valerie Wilpon held interests in different BLMIS accounts.

504. Refer to the Complaint for its content.

505. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

506. Admit.

507. Admit.

508. Deny, except admit that Amy Beth Katz was a customer of the IA business and opened her first account with BLMIS in October 2001.

509. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Amy Beth Katz held interests in different BLMIS accounts.

510. Refer to the Complaint for its content.

511. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

512. Admit.

513. Admit.

514. Deny, except admit that Heather Katz Knopf was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Heather Katz Knopf opened her first BLMIS account.

515. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Heather Katz Knopf held interests in different BLMIS accounts.

516. Refer to the Complaint for its content.

517. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

518. Admit.

519. Admit.

520. Deny, except admit that Howard Katz was a customer of the IA business, and lack knowledge or information sufficient to form a belief as to when Howard Katz opened his first BLMIS account.

521. Deny, except admit that Howard Katz was a customer of the IA business, and lack knowledge or information sufficient to form a belief as to when Howard Katz opened his first BLMIS account.

522. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Howard Katz held interests in different BLMIS accounts.

523. Refer to the Complaint for its content.

524. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

525. Admit.

526. Admit.

527. Deny, except admit that Natalie Katz O'Brien was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Natalie Katz O'Brien opened her first BLMIS account.

528. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Natalie Katz O'Brien held interests in different BLMIS accounts.

529. Refer to the Complaint for its content.

530. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

531. Admit.

532. Admit.

533. Deny, except admit that Todd Katz was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Todd Katz opened his first BLMIS account.

534. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Todd Katz held interests in different BLMIS accounts.

535. Refer to the Complaint for its content.

536. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

537. Admit.

538. Admit.

539. Deny, except admit that Bruce N. Wilpon was a customer of the IA business and opened his first BLMIS account or such account was opened on his behalf in or around February 1994.

540. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Bruce N. Wilpon held interests in different BLMIS accounts.

541. Refer to the Complaint for its content.

542. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

543. Admit.

544. Admit.

545. Deny, except admit that Daniel Wilpon was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when he opened his first BLMIS account.

546. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Daniel Wilpon held interests in different BLMIS accounts.

547. Refer to the Complaint for its content.

548. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

549. Admit.

550. Admit.

551. Deny, except admit that Jessica Wilpon was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Jessica Wilpon opened her first BLMIS account.

552. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Jessica Wilpon held interests in different BLMIS accounts.

553. Refer to the Complaint for its content.

554. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

555. Admit.

556. Admit.

557. Deny, except admit that Robin Wilpon Wachtler was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Robin Wilpon Wachtler opened her first BLMIS account.

558. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Robin Wilpon Wachtler held interests in different BLMIS accounts.

559. Refer to the Complaint for its content.

560. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

561. Admit.

562. Admit.

563. Deny, except admit that Philip Wachtler was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Philip Wachtler opened his first BLMIS account.

564. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Philip Wachtler held interests in different BLMIS accounts.

565. Refer to the Complaint for its content.

566. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

567. Admit.

568. Admit.

569. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Kimberly Wachtler held interests in different BLMIS accounts.

570. Refer to the Complaint for its content.

571. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

572. Admit.

573. Admit.

574. Deny, except admit that Scott Wilpon was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Scott Wilpon opened his first BLMIS account.

575. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Scott Wilpon held interests in different BLMIS accounts.

576. Refer to the Complaint for its content.

577. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

578. Admit.

579. Admit.

580. Deny, except admit that MINOR 1 was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when a BLMIS account was first opened on MINOR 1's behalf.

581. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that MINOR 1 held interests in different BLMIS accounts.

582. Refer to the Complaint for its content.

583. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

584. Admit.

585. Admit.

586. Deny, except admit that MINOR 2 was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when a BLMIS account was first opened on MINOR 2's behalf.

587. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that MINOR 2 held interests in different BLMIS accounts.

588. Refer to the Complaint for its content.

589. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

590. Admit.

591. Admit.

592. Deny, except admit that Ruth Friedman was a customer of the IA business and opened her first account with BLMIS in or around May 1991.

593. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Ruth Friedman held interests in different BLMIS accounts.

594. Refer to the Complaint for its content.

595. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

596. Admit.

597. Admit.

598. Deny, except admit that Phyllis Rebell Osterman was a customer of the IA business and opened her first account in or around October 1999.

599. Admit.

600. Refer to the Complaint for its content.

601. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

602. Admit.

603. Admit.

604. Deny, except admit that Elise C. Tepper was a customer of the IA business and opened her first account with BLMIS in December 1990.

605. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Elise C. Tepper held interests in different BLMIS accounts.

606. Refer to the Complaint for its content.

607. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

608. Admit.

609. Admit.

610. Deny, except admit that Jacqueline G. Tepper was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Jacqueline G. Tepper opened her first BLMIS account.

611. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Jacqueline G. Tepper held interests in different BLMIS accounts.

612. Refer to the Complaint for its content.

613. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

614. Admit, except deny that Edward M. Tepper maintains his residence in Madison, New Jersey.

615. Admit.

616. Deny, except admit that Edward M. Tepper was a customer of the IA business and lack knowledge or information sufficient to form a belief as to when Edward M. Tepper opened his first BLMIS account.

617. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Edward M. Tepper held interests in different BLMIS accounts.

618. Refer to the Complaint for its content.

619. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

620. Admit.

621. Admit.

622. Deny, except admit that Deyva Schreier Arthur was a customer of the IA business and opened her first account with BLMIS, or such account was opened on her behalf in December 1991.

623. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Deyva Schreier Arthur held interests in different BLMIS accounts.

624. Refer to the Complaint for its content.

625. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

626. Admit.

627. Admit.

628. Deny, except admit that Michael Schreier was a customer of the IA business and opened his first account with BLMIS, or such account was opened on his behalf in or around December 1991.

629. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Michael Schreier held interests in different BLMIS accounts.

630. Refer to the Complaint for its content.

631. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

632. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

633. Admit.

634. Admit.

635. Deny.

636. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

637. Deny, except admit that Sterling Acquisitions LLC is a general partnership formed under the laws of the state of New York and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

638. Admit, except note that Heather Katz Knopf and Dan Knopf are members as tenants-in-common, and further note that Thomas Osterman, Scott Wilpon, Jessica Wilpon, Daniel Wilpon and the Iris J. and Saul B. Katz Family Foundation are also members.

639. Deny.

640. Deny.

641. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

642. Deny, except admit that Sterling American Property III LP is a limited partnership formed under the laws of the state of Delaware and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

643. Admit.

644. Deny.

645. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

646. Deny, except admit that Sterling American Property IV LP is a limited partnership formed under the laws of the state of Delaware and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

647. Admit.

648. Deny.

649. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

650. Deny, except admit that Sterling American Property V LP is a limited partnership formed under the laws of the state of Delaware and its principal place of business is located at 111 Great Neck Road, Suite 408, Great Neck, New York 11021.

651. Admit.

652. Deny.

653. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

654. Deny, except admit that Sterling Equities is a general partnership that was founded in or around 1972 as a partnership by brothers-in-law Saul Katz, a certified public accountant (“CPA”), and Fred Wilpon to manage and acquire real estate, that Richard Wilpon and Michael Katz, a CPA who also holds a master’s degree in business administration, joined the partnership a year later, and that these four partners have been with Sterling since its inception and have extensive business experience.

655. Admit, except deny that all of the “next generation of Katz-Wilpon family members” joined the partnership in or around 1986.

656. Deny, except admit that the Sterling Partners and various Sterling-related entities own and operate a number of businesses and invest in asset classes that include real estate, professional baseball, sports media, and private equity. Defendants further admit that these businesses involve, among other things, the purchase, development, and management of commercial and residential real estate, both directly and through the Sterling American Property (“SAP”) funds, ownership of the New York Mets baseball franchise, a majority ownership interest in SportsNet New York (“SNY”), private equity and venture capital investments, and a passive ownership interest in Sterling Stamos Partners. Defendants admit the first sentence of footnote 4 and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in footnote 4.

657. Deny.

658. Deny.

659. Deny.

660. Deny.

661. Deny.

662. Deny.

663. Deny.

664. Deny.

665. Deny, except admit that Sterling's principal business has been, and continues to be, real estate, including the purchase, development, and management of commercial and residential real estate, both directly and through the SAP funds.

666. Deny, except admit that Richard Wilpon, Michael Katz, and Thomas Osterman are the Sterling Partners most closely involved in Sterling's real estate business.

667. Deny, except admit that the relationship between the Sterling Partners and American Securities started in or around 1990 and that Sterling-related entities partnered with American Securities over time to establish five SAP real estate funds.

668. Deny, except admit that Richard Wilpon, Michael Katz, and Thomas Osterman are the Sterling Partners most closely involved in Sterling's real estate business, including with respect to the SAP funds.

669. Deny, except admit that each of the Sterling Partners has held an interest in the Mets since 1980 when they initially shared ownership with Nelson Doubleday, that in 2002 the Partners and other related entities acquired full ownership of the Mets, and that a Sterling-related entity owns the Mets' Class A affiliate, the Brooklyn Cyclones.

670. Deny, except admit that Fred Wilpon, Jeffrey Wilpon, and Saul Katz are the Sterling Partners most closely involved in the business operations of the New York Mets.

671. Admit.

672. Deny, except admit that Fred Wilpon, Jeffrey Wilpon, and Saul Katz are the Sterling Partners most closely involved with the business operations of SNY.

673. Deny, except admit that each of the Sterling Partners and/or Sterling-related entities held or hold interests in private equity ventures, including Changing World Technologies, PathoGenesis, and Twistage.

674. Deny, except admit that Saul Katz and David Katz are the Sterling Partners most closely involved with private equity ventures.

675. Deny.

676. Deny.

677. Deny, except admit that a few Sterling Partners began investing with Madoff in 1985 and that many accounts of the Sterling Partners or related persons or entities were identified by a “KW” prefix followed by three distinct digits.

678. Deny and refer to Appendix I, Exhibit A for its content.

679. Deny.

680. Deny.

681. Deny, except admit that Arthur Friedman provided administrative assistance with respect to the majority of 1KW BLMIS accounts, which included communicating transaction and other requests of 1KW BLMIS customers to BLMIS, maintaining BLMIS paperwork, including regularly issued monthly account statements, and monitoring BLMIS account balances.

682. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as the truth of the allegations, except admit that some accounts held by some Sterling Partners and/or their family members were held individually or structured as joint tenancies or tenancies-in-common.

683. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

684. Deny.

685. Deny.

686. Deny.

687. Deny.

688. Deny.

689. Deny, except admit that certain accounts were opened by limited liability corporations in which one or more of the Sterling Partners held an interest.

690. Deny.

691. Deny.

692. Deny.

693. Deny.

694. Deny, except admit that Sterling Internal V LLC opened a BLMIS account.

695. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Ruth Madoff and Peter Madoff were limited partner investors in the SAP funds.

696. Deny, except admit that Mets-related entities and the Brooklyn Cyclones held different BLMIS accounts over time.

697. Deny.

698. Deny.

699. Deny.

700. Deny, except admit that Sterling Pathogenesis held a BLMIS account and that Sterling PathoGenesis used the securities in its BLMIS account as collateral to borrow funds to invest with BLMIS.

701. Deny.

702. Deny, except admit that Sterling Stamos was created as a partnership between Peter Stamos and the Sterling Partners, in which a Sterling-related entity holds a passive ownership interest.

703. Deny, except admit that a reason Sterling Stamos was formed was to provide the Sterling Partners with an alternative to investing with Madoff for diversification purposes.

704. Deny, except admit that the Sterling Partners, family members, and related entities had in the aggregate hundreds of millions of dollars of investments with BLMIS and with Sterling Stamos in 2008.

705. Deny.

706. Deny, except admit that Sterling Partner David Katz expressed concerns to the other Sterling Partners about the concentration of their respective securities investments with a single investment manager.

707. Deny.

708. Deny, except admit that Sterling Stamos was created as a hedge fund of funds operated and headed by Peter Stamos and refer to the deposition testimony of Peter Stamos taken by counsel for the Trustee with respect to footnote 5.

709. Admit.

710. Deny.

711. Deny, except admit that Sterling Stamos was formed as a partnership between Peter Stamos and the Sterling Partners and that the Sterling Partners had a 50% passive ownership interest in Sterling Stamos at its inception.

712. Deny, except admit that each of the Sterling Partners provided start-up capital for the venture.

713. Deny, except admit that each of the Sterling Partners individually was a limited partner in different Sterling Stamos funds and that some of each Partner's BLMIS holdings could have been a source of funding for these investments.

714. Deny, except admit that Sterling Stamos' offices were located at 575 Fifth Avenue in its early stages.

715. Deny, except admit that Chuck Klein worked for American Securities and admit, upon information and belief, that Ezra Merkin managed his own investment funds.

716. Deny, except admit that some Sterling Stamos investors were also customers of BLMIS, including the Sterling Partners.

717. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

718. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Merrill Lynch ultimately acquired an interest in Sterling Stamos, including 25% of the passive ownership interest held collectively by the Sterling Partners.

719. Deny.

720. Deny.

721. Deny.

722. Deny.

723. Deny and refer to the document for its content.

724. Deny and refer to the document for its content.

725. Deny.

726. Deny.

727. Deny.
728. Deny.
729. Deny.
730. Deny.
731. Deny.
732. Deny, except admit that Fred Wilpon met Madoff through their children and that Fred and Judith Wilpon became friendly with Madoff and his wife.
733. Deny, except admit that Fred Wilpon was a BLMIS customer and that Ruth Madoff was a limited partner, either directly or indirectly, in Sterling American Property funds.
734. Deny, except admit that, on occasion, Madoff was invited to and attended family events of the Katz and Wilpon families and that Madoff, on occasion, invited the Katz and Wilpon families to family celebrations.
735. Deny, except admit that Madoff and his wife accompanied Saul Katz and Fred Wilpon to Japan when the Mets played an exhibition game there.
736. Deny, except admit that Sterling was involved in development of the “Lipstick” building.

737. Deny, except admit that Fred Wilpon was a board member of “Gift of Life” and that the charity held a board meeting at BLMIS’ offices on December 8, 2008.

738. Deny.

739. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

740. Deny.

741. Deny, except admit that Fred Wilpon and Saul Katz met with Madoff in his office approximately once a year.

742. Deny.

743. Deny, except admit that each of Fred Wilpon, Saul Katz, and SEF opened a BLMIS account in or around 1985.

744. Deny, except admit that additional 1KW accounts were opened by different customers following the accounts that were opened in or around 1985.

745. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

746. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

747. Deny.

748. Deny.
749. Deny, except refer to the testimony of Arthur Friedman and Fred Wilpon regarding outside investor accounts for its content.
750. Deny.
751. Deny.
752. Deny, except admit that Sterling sponsored a self-directed 401(k) retirement plan and that BLMIS was one of the investment options offered to plan participants.
753. Deny.
754. Deny, except admit that Arthur Friedman provided administrative assistance with respect to the majority of the 1KW BLMIS accounts.
755. Deny, except admit that Arthur Friedman provided administrative assistance with respect to the majority of 1KW BLMIS accounts, which included communicating transaction and other requests of 1KW BLMIS customers to BLMIS, often by letter, maintaining BLMIS paperwork, including regularly issued monthly account statements, and monitoring BLMIS account balances.
756. Deny, except admit that Arthur Friedman provided administrative assistance with respect to the majority of 1KW BLMIS accounts, which included communicating transaction and other requests of 1KW BLMIS customers to BLMIS,

often by letter, maintaining BLMIS paperwork, including regularly issued monthly account statements, and monitoring BLMIS account balances.

757. Deny, except admit that Arthur Friedman provided administrative assistance with respect to the majority of 1KW BLMIS accounts, which included communicating transaction and other requests of 1KW BLMIS customers to BLMIS, often by letter, maintaining BLMIS paperwork, including regularly issued monthly account statements, and monitoring BLMIS account balances.

758. Deny, except admit that Arthur Friedman provided administrative assistance with respect to the majority of 1KW BLMIS accounts, which included communicating transaction and other requests of 1KW BLMIS customers to BLMIS, often by letter, maintaining BLMIS paperwork, including regularly issued monthly account statements, and monitoring BLMIS account balances.

759. Deny, except admit that Arthur Friedman generally was responsible for reporting on BLMIS' performance at Sterling Partner meetings.

760. Admit, except deny that Arthur Friedman calculated "purported equity in BLMIS."

761. Deny, except admit that the Partnership Accounting Department created a "Hell" sheet that reflected BLMIS account balances for certain 1KW BLMIS accounts and allocation of those balances among account interest holders where appropriate.

762. Deny, except admit that BLMIS provided tax-related information for the 1KW BLMIS accounts.

763. Deny, except admit that Arthur Friedman, from time to time, analyzed an “efficiency” factor for some 1KW accounts.

764. Deny, except admit that Arthur Friedman tried to replicate Madoff’s strategy on paper and viewed the exercise a success.

765. Deny.

766. Deny, except admit that the Sterling Partners and their family members created tenancies-in-common (“TICs”), which invested with BLMIS.

767. Deny.

768. Deny, except admit that Arthur Friedman verified that BLMIS was a member of SIPC and that SIPC protected joint and TIC accounts and refer to the document for its content.

769. Deny and refer to the documents for their content.

770. Deny, except admit that the allegations purport to describe a memorandum from Arthur Friedman and refer to that document for its content.

771. Deny.

772. Deny, except admit that Madoff was offered an opportunity to invest in certain Sterling real estate deals and business ventures.

773. Deny, except admit that investments in certain Sterling real estate deals and business ventures were made in the name of Ruth Madoff.

774. Deny, except admit that Madoff declined an opportunity to invest in the Mets in or around 2002.

775. Deny, except admit that an investment in SAP I in the name of Ruth Madoff was made through an entity called Madoff Realty Associates.

776. Deny, except admit that an investment in SAP II in the name of Ruth Madoff was made through an entity called Realty Assoc Madoff II” and that investments in SAP III, IV, and V were made in the name of Ruth Madoff.

777. Admit.

778. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

779. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that investments were made in the name of Ruth Madoff in Sterling Acquisitions, Sterling Carl Marks Capital, and Sterling Vessels.

780. Deny, except admit that the described investments were held in Ruth Madoff’s name and that any dealings concerning those investments were with Madoff.

781. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

782. Deny.

783. Deny.

784. Deny.

785. Deny.

786. Deny.

787. Deny, except admit that some Sterling-related entities that held BLMIS accounts used funds from those accounts for business purposes and that some Sterling-related entities were created for the purpose of investing in BLMIS.

788. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

789. Deny.

790. Deny, except admit that the losses caused by Madoff's fraud required the restructuring of certain Sterling-related borrowers' debt.

791. Deny.

792. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

793. Deny, except admit that funds from BLMIS accounts opened by Mets-related entities at times were used to fund Mets operations.

794. Deny, except admit that deposits and withdrawals by the Mets from BLMIS accounts opened by Mets-related entities were consistent with the baseball season.

795. Deny.

796. Deny.

797. Deny.

798. Deny.

799. Deny, except admit that a Sterling-related entity made a capital commitment to SAP V of \$150 million.

800. Deny.

801. Deny.

802. Deny, except admit that Sterling Internal V LLC borrowed \$75 million from Bank of America. Defendants lack knowledge or information sufficient to form a belief as to what, if anything, influenced Bank of America.

803. Deny, except admit that that, in or around June 2006, Sterling Internal V opened a 1KW BLMIS account and that it withdrew funds that it legally was owed to service its debt and meet certain SAP V capital calls.

804. Deny.

805. Deny.

806. Deny, except admit that Sterling collected approximately \$9 million in SAP V management fees in 2009.

807. Deny, except admit that SEF functions as an internal bank at Sterling for cash management purposes.

808. Deny, except admit that SEF funds were used for different business purposes.

809. Deny, except admit that SEF's credit lines were generally available to the Sterling Partners and certain Sterling-related entities so that they could conveniently borrow funds when necessary.

810. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

811. Deny.

812. Deny, except admit that SEF at times endorsed BLMIS checks made payable to tenancies-in-common when those TICs did not have a bank account.

813. Deny.

814. Deny, except admit that SEF did loan money to individual Sterling Partners or Sterling-related entities and that each such Partner or entity would repay SEF from sources that could include a Partner's or entity's BLMIS account.

815. Deny, except admit that certain Sterling-related individuals and entities borrowed funds to invest with BLMIS.

816. Admit.

817. Deny, except admit that certain Sterling-related individuals or entities borrowed funds pursuant to credit agreements with Fleet National Bank or Bank of America.

818. Deny, except admit that Madoff preferred that Fleet National Bank serve as the lender for funds to be invested in accounts at BLMIS.

819. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

820. Deny, except admit that certain Sterling-related individuals or entities borrowed funds to deposit into their BLMIS accounts for purposes of investment and that at least some Sterling-related individuals referred to such accounts as "double up" accounts.

821. Deny, except admit that some Sterling Partners and related entities were members of Sterling 20 LLC, an entity created for the purposes of investing with BLMIS.

822. Deny, except admit that this paragraph purports to describe pledged collateral account control agreements and refer to those documents for their content.

823. Deny.

824. Deny, except admit that Judith Wilpon and Iris Katz entered into loan agreements with Fleet National Bank, which were secured by certain of their BLMIS accounts, and deposited funds in certain of their accounts at BLMIS.

825. Deny, except admit that the listed entities held BLMIS accounts.

826. Deny, except admit that certain Sterling-related individuals and entities borrowed funds from Fleet National Bank and later Bank of America, which were secured by certain BLMIS accounts, and deposited borrowed funds in their accounts at BLMIS.

827. Deny.

828. Deny, except admit that Sterling Partners generally served as officers or directors or were members of these entities.

829. Deny.

830. Admit.

831. Deny, except admit that those Sterling-related individuals and entities that borrowed funds to deposit into BLMIS accounts entered into credit agreements with lenders and refer to these agreements for their terms.

832. Deny.

833. Deny.

834. Deny.

835. Deny.

836. Deny.

837. Deny.

838. Deny.

839. Deny.

840. Deny, except admit that certain Sterling-related entities pledged their BLMIS accounts as collateral for loans, the proceeds of which were used for purposes other than investment with BLMIS.

841. Deny.

842. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

843. Deny, except admit that the alleged entities were borrowers on loans collateralized by their respective parent entity's BLMIS account.

844. Deny, except admit that the referenced entities entered into loan agreements that provided for investment with BLMIS as an approved use of proceeds and refer to those agreements for their terms.

845. Deny.

846. Deny.

847. Deny.

848. Deny.

849. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

850. Deny.

851. Deny and refer to quoted document for its content.

852. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

853. Deny.

854. Deny, except admit that the Sterling Partners and related individuals and entities were harmed by BLMIS' fraud.

855. Deny.

856. Deny.

857. Deny, except admit that new credit facilities were put into place after disclosure of BLMIS' fraud and refer to the documentation of those facilities for its content.

858. Deny, except admit that new credit facilities were put into place after disclosure of BLMIS' fraud and refer to the documentation of those facilities for its content.

859. Deny, except admit that new credit facilities were put into place after disclosure of BLMIS' fraud and refer to the documentation of those facilities for its content.

860. Deny, except admit that new credit facilities were put into place after disclosure of BLMIS' fraud and refer to the documentation of those facilities for its content.

861. Deny, except admit that new credit facilities were put into place after disclosure of BLMIS' fraud and refer to the documentation of those facilities for its content.

862. Deny, except admit that new credit facilities were put into place after disclosure of BLMIS' fraud and refer to the documentation of those facilities for its content.

863. Deny.

864. Deny.

865. Deny.

866. Deny.

867. Deny.

868. Deny, except admit that Sterling Stamos was formed as a partnership between Stamos and the Sterling Partners.

869. Deny.

870. Deny.

871. Deny.

872. Deny, except refer to the quoted email dated December 12, 2008 for its content.

873. Deny, except refer to the quoted email dated December 13, 2008 for its content.

874. Deny, except refer to the quoted email dated December 15, 2008 for its content.

875. Deny.

876. Deny.

877. Deny, except admit that at least some of the Sterling Partners at times compared the performance of BLMIS to that of Sterling Stamos.

878. Deny, except admit that at least some of the Sterling Partners at times discussed the comparison.

879. Deny, except admit that Sterling Stamos's rates of return generally differed from BLMIS's rate of return.

880. Deny.

881. Deny and refer to the deposition of Peter Stamos taken by counsel for the Trustee for its content.

882. Deny and refer to the deposition of Peter Stamos taken by counsel for the Trustee for its content.

883. Deny and refer to the deposition of Peter Stamos taken by counsel for the Trustee for its content.

884. Deny and refer to the deposition of Peter Stamos taken by counsel for the Trustee for its content.

885. Deny.

886. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

887. Deny and refer to the deposition of Peter Stamos taken by counsel for the Trustee for its content.

888. Deny.

889. Deny.

890. Deny.

891. Deny and refer to the deposition of Peter Stamos taken by counsel for the Trustee for its content. Defendants also lack knowledge or information sufficient to form a belief as to the truth of the allegations in footnote 6.

892. Deny.

893. Deny, except admit that certain Sterling personnel communicated with BLMIS' auditor in 2008 concerning the Sterling-related investments held in Ruth Madoff's name.

894. Deny and refer to the deposition of Peter Stamos taken by counsel for the Trustee for its content.

895. Deny.

896. Deny.

897. Deny.

898. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

899. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

900. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that Merrill Lynch acquired a 50% interest in Sterling Stamos in or around July 2007.

901. Deny.

902. Deny.

903. Deny.

904. Deny.

905. Deny.

906. Deny, except lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Merrill Lynch.

907. Deny.

908. Deny.

909. Deny.
910. Deny and refer to the deposition of Peter Stamos taken by counsel for the Trustee for its content.
911. Deny.
912. Deny.
913. Deny.
914. Deny, except admit that at least one bank declined to act as custodian for Sterling's 401(k) plan.
915. Deny.
916. Lack knowledge or information sufficient to form a belief about the truth of the allegations.
917. Lack knowledge or information sufficient to form a belief about the truth of the allegations.
918. Lack knowledge or information sufficient to form a belief about the truth of the allegations.
919. Deny, except admit that David Katz, Saul Katz and Ivy representatives met in or around 2002 in connection with the creation of Sterling Stamos.
920. Deny.

921. Deny, except refer to the quoted email dated December 13, 2008 for its content.

922. Deny.

923. Admit.

924. Lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and in footnote 7, except admit that the Saul Katz Family Foundation made a donation to Brooklyn College Foundation.

925. Deny and refer to the May 2001 articles from MAR/Hedge and Barron's for their content.

926. Deny and refer to the May 2001 articles from MAR/Hedge and Barron's for their content and admit that the articles were circulated to the Sterling Partners.

927. Deny, except admit that the articles could have been discussed by or among the Sterling Partners.

928. Deny and refer to the May 2001 articles from MAR/Hedge and Barron's for their content.

929. Deny and refer to the May 2001 articles from MAR/Hedge and Barron's for their content and admit that at least one of the Sterling Partners believed that Madoff charged something similar to a commission on trades.

930. Deny.

931. Deny.
932. Deny.
933. Deny, except lack knowledge or information sufficient to form a belief as to the truth of the allegation concerning “financial professionals.”
934. Deny, except refer to the quoted October 30, 2000 fax for its content.
935. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.
936. Deny, except admit that at least one Sterling Partner maintained copies of select articles discussing Madoff and BLMIS and refer to those documents for their content.
937. Deny.
938. Lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning American Securities’ founding, except admit that Sterling and American Securities have a business relationship dating back to the early 1990s.
939. Lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning American Securities’ growth, except admit that Sterling Partners and related entities have invested in American Securities’ private equity funds.

940. Lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Chuck Klein's role with American Securities affiliates, except admit that Chuck Klein is a managing director at American Securities.

941. Deny, except admit that Chuck Klein was a trusted advisor to the Sterling Partners and that they informally consulted him in connection with the creation of Sterling Stamos.

942. Deny.

943. Deny.

944. Deny, except admit that Chuck Klein suggested that Mr. Katz look into certain insurance.

945. Deny, except refer to the quoted February 26, 2001 memorandum for its content.

946. Deny, except refer to the quoted June 13, 2001 memorandum for its content.

947. Deny, except refer to the quoted Arthur Friedman notes and Arthur Friedman's testimony for their content.

948. Deny, except admit that the Sterling Partners did not purchase fraud insurance.

949. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

950. Deny and refer to the March 19, 2011 declaration of Saul B. Katz (“Katz Declaration”) filed in support of Defendants’ motion to dismiss or, in the alternative, for summary judgment dismissing the Complaint.

951. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

952. Deny and refer to the Katz Declaration filed in support of Defendants’ motion to dismiss or, in the alternative, for summary judgment dismissing the Complaint.

953. Deny and refer to the Katz Declaration filed in support of Defendants’ motion to dismiss or, in the alternative, for summary judgment dismissing the Complaint.

954. Deny and refer to the Katz Declaration filed in support of Defendants’ motion to dismiss or, in the alternative, for summary judgment dismissing the Complaint.

955. Deny.

956. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

957. Deny and refer to the depositions of Saul Katz, David Katz, and Peter Stamos taken by counsel for the Trustee for their content.

958. Deny.

959. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

960. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

961. Deny, except admit that Sterling Stamos moved its offices to 450 Park Avenue.

962. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and refer to the deposition testimony of Peter Stamos taken by counsel for the Trustee for its content.

963. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and refer to the deposition testimony of Peter Stamos taken by counsel for the Trustee for its content.

964. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and refer to the deposition testimony of Peter Stamos taken by counsel for the Trustee for its content.

965. Deny and refer to the Katz Declaration filed in support of Defendants' motion to dismiss or, in the alternative, for summary judgment dismissing the Complaint.

966. Deny.

967. Deny.

968. Deny.
969. Deny.
970. Deny and refer to the Sterling Partner meeting agendas and minutes for their content.
971. Deny.
972. Deny.
973. Deny.
974. Deny.
975. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.
976. Deny.
977. Deny and refer to the quoted Arthur Friedman notes and Arthur Friedman's deposition testimony for their content.
978. Deny, except admit that Mr. Madoff was consulted with regard to the description of the BLMIS investment option offered to 401(k) plan participants and refer to the documents reflecting that description for their content.

979. Deny, except admit that Sterling maintained a description of the BLMIS investment option for the 401(k) plan between 1997 and 2008 and refer to that document for its content.

980. Deny.

981. Deny and refer to the quoted email dated April 28, 2005 for its content.

982. Deny, except admit that the description of the BLMIS investment option for Sterling's 401(k) plan was modified on at least one occasion after 2005.

983. Deny, except refer to the testimony of Arthur Friedman and Fred Wilpon regarding outside investor accounts.

984. Deny.

985. Deny, except admit that it was Saul Katz's understanding that Madoff did not accept investments from registered investment advisors.

986. Deny.

987. Deny, except admit that Madoff preferred using Fleet National Bank and later Bank of America as lenders for loans secured by BLMIS accounts because of his existing relationship with the institution.

988. Deny.

989. Deny.

990. Deny.
991. Deny and refer to the deposition testimony of Fred Wilpon, Saul Katz, and Arthur Friedman for their content.
992. Deny and refer to the deposition testimony of Fred Wilpon, Saul Katz, and Arthur Friedman for their content.
993. Deny, except admit that on or about May 26, 2004, Madoff wired \$54 million to a Sterling-related bank account.
994. Admit.
995. Deny, except admit that on or about May 27, 2004, \$54 million was returned to Madoff.
996. Deny and refer to the May 25, 2004 letter for its content.
997. Admit.
998. Deny and refer to the May 25, 2004 letter for its content.
999. Deny and refer to the May 25, 2004 letter for its content.
1000. Deny and refer to the May 25, 2004 letter for its content.
1001. Lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Ruth Madoff's signature, except admit that the May 25, 2004 letter was signed by Fred Wilpon and Saul Katz.

1002. Deny.

1003. Deny, except admit that neither Fred Wilpon nor Saul Katz had discussions with Ruth Madoff concerning a potential investment related to SNY and refer to the May 25, 2004 letter for its content.

1004. Deny.

1005. Deny.

1006. Deny.

1007. Deny.

1008. Deny and refer to the July 6, 2000 letters for their content.

1009. Deny and refer to the July 6, 2000 letters for their content.

1010. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1011. Deny and refer to the August 21, 2000 letter for its content.

1012. Deny and refer to the August 21, 2000 letter for its content.

1013. Deny and refer to the August 21, 2000 letter for its content.

1014. Deny and refer to the July 20, 2000 letter for its content.

1015. Deny and refer to the July 20 and 2000 August 21, 2000 letters for their content.

1016. Deny.

1017. Deny and refer to the deposition testimony of Peter Stamos taken by counsel for the Trustee for its content.

1018. Deny.

1019. Deny.

1020. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and refer to the deposition testimony of Peter Stamos taken by counsel for the Trustee for its content.

1021. Deny and refer to the deposition testimony of Peter Stamos taken by counsel for the Trustee for its content.

1022. Deny.

1023. Deny.

1024. Deny.

1025. Deny.

1026. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1027. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1028. Deny.

1029. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and refer to the deposition testimony of Peter Stamos and Ashok Chachra taken by counsel for the Trustee for their content.

1030. Deny.

1031. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and refer to the deposition testimony of Peter Stamos and Ashok Chachra taken by counsel for the Trustee for their content.

1032. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and refer to the deposition testimony of Peter Stamos and Ashok Chachra taken by counsel for the Trustee for their content.

1033. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and refer to the deposition testimony of Peter Stamos and Ashok Chachra taken by counsel for the Trustee for their content.

1034. Deny, except admit that certain of the Sterling Partners believed that “style drift” was the reason for Sterling Stamos’ Bayou redemption.

1035. Deny, except admit that certain of the Sterling Partners believed that “style drift” was the reason for Sterling Stamos’ Bayou redemption and refer to the deposition testimony of Peter Stamos and Ashok Chachra taken by counsel for the Trustee for their content.

1036. Deny, except admit that certain of the Sterling Partners believed that “style drift” was the reason for Sterling Stamos’ Bayou redemption and refer to the deposition testimony of Peter Stamos and Ashok Chachra taken by counsel for the Trustee for their content.

1037. Deny.

1038. Deny and refer to the Sterling Partner meeting minutes and agendas for their content.

1039. Deny.

1040. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1041. Deny.

1042. Deny, except admit that \$22 million was invested in 1KW427 on or about November 30, 2005.

1043. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1044. Deny and refer to the deposition testimony of Arthur Friedman for its content.

1045. Deny.

1046. Deny.

1047. Deny and refer to the quoted December 12, 2008 email for its content.

1048. Deny.

1049. Deny and lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence.

1050. Deny, except refer to the January 6, 2004 memorandum for its content.

1051. Deny.

1052. Deny.

1053. Deny, except admit that the Sterling Partners monitored the performance of their BLMIS investments and that BLMIS' performance was discussed at Sterling Partner meetings.

1054. Deny and refer to the November 2005 documents for their content.

1055. Deny.

1056. Deny.

1057. Deny.

1058. Deny.

1059. Deny.

1060. Deny.

1061. Deny.

1062. Deny.

1063. Deny and refer to the referenced documents for their content.

1064. Deny.

1065. Deny.

1066. Deny and refer to the entirety of the presentation for its content.

1067. Deny.

1068. Deny.

1069. Deny, except admit that Sterling Stamos generally provided performance results to Saul Katz or David Katz.

1070. Deny, except admit that Saul Katz and David Katz at times compared Sterling Stamos' performance to Madoff's performance and discussed those comparisons with Sterling Stamos personnel.

1071. Deny and refer to the deposition testimony of Peter Stamos taken by counsel for the Trustee for its content.

1072. Deny.

1073. Deny.

1074. Deny.

1075. Deny, except admit that the Sterling Partners have active business interests in real estate, professional baseball and sports media, and private equity.

1076. Deny.

1077. Deny.

1078. Deny.

1079. Deny.

1080. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1081. Deny.

1082. Deny.

1083. Deny.

1084. Deny.

1085. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1086. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1087. Deny.

1088. Deny.

1089. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1090. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1091. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1092. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1093. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1094. Deny.

1095. Deny.

1096. Deny.

1097. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1098. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1099. Deny and refer to the deposition testimony of Arthur Friedman for its content.

1100. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1101. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1102. Lack knowledge or information sufficient to form a belief as to the truth of the allegations, except admit that some Defendants maintained different BLMIS accounts and refer to Appendix I, Exhibit A for its content.

1103. Admit.

1104. Deny, except admit that many of the Defendants each deposited money with BLMIS and withdrew funds from his, her, or its respective BLMIS account(s) and refer to the BLMIS Account Agreements for their content.

1105. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1106. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1107. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1108. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1109. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information

sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1110. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1111. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1112. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to Appendix I, Exhibit A for its content.

1113. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to Appendix I, Exhibit B for its content.

1114. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to Appendix II, Exhibit A for its content.

1115. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to Appendix II, Exhibits B and C for their content.

1116. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to Appendix II, Exhibits B for its content.

1117. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to Appendix II, Exhibit B, column 4 for its content.

1118. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to Appendix II, Exhibit C for its content.

1119. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to Appendix II, Exhibits B and C for their content.

1120. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to Appendix II, Exhibits B and C for their content.

1121. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to the Complaint for its content.

1122. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to the Complaint for its content.

1123. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to the Complaint and Appendix II, Exhibit C for their content.

1124. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1125. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information

sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1126. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1127. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the

transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1128. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the

transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1129. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the

transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(d) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1130. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1131. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are

Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(d) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the

transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1132. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1133. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the

transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1134. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the

transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1135. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the

transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1136. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1137. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the

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1193. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

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1194. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1195. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(d) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1196. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1197. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1198. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1199. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1200. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

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1203. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

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1205. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

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1208. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

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1210. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

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(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1292. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1293. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1294. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1295. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(d) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1296. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1297. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(d) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1298. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1299. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1300. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1301. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1302. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1303. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1304. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1305. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1306. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1307. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1308. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1309. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1310. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1311. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1312. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1313. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1314. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1315. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1316. Lack knowledge or information sufficient to form a belief as to the truth of the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the

transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1317. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1318. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1319. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1320. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

(a) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(b) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

(c) This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the amount of the transfers alleged and deny that the

transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1321. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to the Complaint and Appendix II, Exhibit B for their content.

1322. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to the Complaint and Appendix II, Exhibit B for their content.

1323. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to the Complaint and Appendix II, Exhibit B for their content.

1324. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to the Complaint and Appendix II, Exhibit B for their content.

1325. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny that the transfers are

Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise and refer to the Complaint and Appendix II, Exhibit C for their content.

1326. Admit that a number of Defendants and other Sterling-related individuals and entities filed claims against the BLMIS estate with the Trustee and refer to the Complaint and Appendix II, Exhibit D for their content.

1327. Refer to Appendix II, Exhibit D for its content.

1328. Refer to the Claims Procedure Order for its content and lack knowledge or information sufficient to form a belief as to the truth of the Trustee's alleged intentions.

1329. Deny that the Customer Claims can be disallowed under the Bankruptcy Code or otherwise and refer to the Complaint and Appendix II, Exhibit D for their content.

1330. Incorporate by reference the responses contained in the previous paragraphs of this Answer as if fully rewritten herein.

1331. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1332. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1333. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1334. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1335. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1336. Consistent with Judge Rakoff's opinion and order of September 27, 2011, Count Two has been dismissed, and no response is required. To the extent a response is required, Defendants incorporate by reference the responses contained in the previous paragraphs of this Answer as if fully rewritten herein.

1337. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1338. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1339. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1340. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1341. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1342. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1343. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1344. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1345. Consistent with Judge Rakoff's opinion and order of September 27, 2011, Count Three has been dismissed, and no response is required. To the extent a response is required, Defendants incorporate by reference the responses contained in the previous paragraphs of this Answer as if fully rewritten herein.

1346. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1347. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1348. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1349. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1350. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1351. Consistent with Judge Rakoff's opinion and order of September 27, 2011, Count Four has been dismissed, and no response is required. To the extent a response is required, Defendants incorporate by reference the responses contained in the previous paragraphs of this Answer as if fully rewritten herein.

1352. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1353. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1354. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1355. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1356. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1357. Consistent with Judge Rakoff's opinion and order of September 27, 2011, Count Five has been dismissed, and no response is required. To the extent a response is required, Defendants incorporate by reference the responses contained in the previous paragraphs of this Answer as if fully rewritten herein.

1358. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1359. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1360. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1361. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1362. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1363. Consistent with Judge Rakoff's opinion and order of September 27, 2011, Count Six has been dismissed, and no response is required. To the extent a response were required, Defendants incorporate by reference the responses contained in the previous paragraphs of this Answer as if fully rewritten herein.

1364. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1365. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1366. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1367. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1368. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1369. Consistent with Judge Rakoff's opinion and order of September 27, 2011, Count Seven has been dismissed, and no response is required. To the extent a response is required, Defendants incorporate by reference the responses contained in the previous paragraphs of this Answer as if fully rewritten herein.

1370. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1371. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1372. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1373. Deny.

1374. Deny.

1375. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1376. Consistent with Judge Rakoff's opinion and order of September 27, 2011, Count Eight has been dismissed, and no response is required. To the extent a response is required, Defendants incorporate by reference the responses contained in the previous paragraphs of this Answer as if fully rewritten herein.

1377. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations, except admit that each Defendant/Customer was and is a creditor of BLMIS.

1378. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1379. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1380. Admit that all transfers to Defendants were made for or on account of an antecedent debt owed by BLMIS before such transfer was made.

1381. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1382. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1383. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1384. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1385. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1386. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1387. Consistent with Judge Rakoff's opinion and order of September 27, 2011, Count Nine has been dismissed, and no response is required. To the extent a response is required, Defendants incorporate by reference the responses contained in the previous paragraphs of this Answer as if fully rewritten herein.

1388. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1389. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1390. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1391. Lack knowledge or information sufficient to form a belief as to the truth of the allegations.

1392. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny

that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1393. Consistent with Judge Rakoff's opinion and order of September 27, 2011, Count Ten has been dismissed, and no response is required. To the extent a response is required, Defendants incorporate by reference the responses contained in the previous paragraphs of this Answer as if fully rewritten herein.

1394. Admit that certain Defendants filed Customer Claims in the SIPA proceeding that either have not yet been determined or are the subject of timely filed objections and refer to Appendix II, Exhibits D and E for their content.

1395. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations and deny that the transfers are Customer Property or are avoidable or recoverable under the Bankruptcy Code or otherwise.

1396. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of the paragraph and admit the existence of the Claims Procedures Order and refer to that document for its content.

1397. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1398. Incorporate by reference the responses contained in the previous paragraphs of this Answer as if fully rewritten herein.

1399. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1400. Deny.

1401. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

1402. This paragraph alleges conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations.

AFFIRMATIVE DEFENSES

In further answer to the Amended Complaint, and without assuming any burden of proof that would otherwise fall on the Trustee, Defendants state that the Trustee's claims are barred in whole or in part by the following affirmative or other defenses. Defendants reserve their right to assert additional defenses if and when they become appropriate.

FIRST AFFIRMATIVE DEFENSE

The Amended Complaint and each of its counts fail to state a claim on which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, by applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, because no Defendant was willfully blind to Madoff's fraud or scheme, and every Defendant acted in good faith and without fraudulent intent.

FOURTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, because each Defendant received every transfer for value, in good faith, and without knowledge of any voidability of such transfer.

FIFTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, because the debtor did not receive less than reasonably equivalent value in exchange for any transfer to any Defendant.

SIXTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, because each transfer to a Defendant was made for value and fair consideration.

SEVENTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, because each transfer to each Defendant was a transfer on account of an antecedent debt.

EIGHTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, by the single satisfaction rule set forth in Section 550(d) of the Bankruptcy Code.

NINTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, under Section 546(e) of the Bankruptcy Code.

TENTH AFFIRMATIVE DEFENSE

The Trustee's states no claim for assignment of Defendants' tax refunds.

ELEVENTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, because the Trustee has not demonstrated that he will not recover enough property to satisfy customer claims.

TWELFTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, by the doctrine of set-off.

THIRTEENTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, because the Trustee has failed to show that any transfer received by any Defendant was made in furtherance of a fraudulent scheme rather than because it was legally mandated.

FOURTEENTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, because the Trustee has failed to show that any transfer received by any Defendant was made with the actual intent to hinder, delay, or defraud any creditor rather than because it was legally mandated .

FIFTEENTH AFFIRMATIVE DEFENSE

The Trustee's claims are barred, in whole or in part, because the Trustee has failed to state any claim for imputation, veil-piercing, alter ego, or equitable ownership.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendants hereby assert all defenses available under federal law and under any applicable state law. Additional facts may be revealed in discovery or otherwise that support additional defenses presently available, but unknown, to Defendants. Defendants therefore reserve their right to assert additional defenses in the event discovery or investigation reveals additional defenses.

WHEREFORE, Defendants respectfully request that the Court deny the relief requested in the Complaint, and that the Court grant Defendants such other and further relief as the Court deems just and proper, including reasonable attorneys' fees and costs.

Dated: New York, New York
October 11, 2011

DAVIS POLK & WARDWELL LLP

By: /s/ Karen E. Wagner

Karen E. Wagner
Dana M. Seshens
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Of Counsel:
Robert B. Fiske, Jr.
Robert F. Wise, Jr.

Attorneys for Defendants

Exhibit 2

93CMMADP1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v. 09 CR 213 (DC)

5 BERNARD L. MADOFF,

6 Defendant.

7 -----x

8 New York, N.Y.
9 March 12, 2009
10 10:00 a.m.

11 Before:

12 HON. DENNY CHIN,

13 District Judge

14 APPEARANCES

15 LEV L. DASSIN
16 United States Attorney for the
17 Southern District of New York
18 MARC O. LITT
19 LISA BARONI
20 Assistant United States Attorneys

21 DICKSTEIN SHAPIRO LLP
22 Attorneys for Defendant
23 BY: IRA LEE SORKIN
24 DANIEL J. HORWITZ
25 NICOLE P. DE BELLO
MAURO M. WOLFE

ALSO PRESENT: STEVEN GARFINKEL, FBI
KEITH KELLY, FBI
JULIA SCHULTE HANISH, USDOJ, FBI
THEODORE V. CACIOPPI, FBI

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1 (Case called)

2 MR. LITT: Marc Litt for the United States. With me
3 at counsel table are Lisa Baroni, an Assistant U.S. Attorney,
4 and four FBI agents: Steven Garfinkel, Keith Kelly, Julia
5 Hanish, and Ted Cacioppi. Good morning, your Honor.

6 MR. SORKIN: Good morning, your Honor. On behalf of
7 the defendant Bernard L. Madoff, the law firm of Dickstein
8 Shapiro LLP. Mr. Madoff is sitting to my left. To my right is
9 Daniel Horwitz of my firm. To Mr. Madoff's left is Mauro Wolfe
10 from my firm, and to Mr. Wolfe's left is Nicole De Bello from
11 my firm. Good morning.

12 THE COURT: Good morning.

13 Mr. Sorkin, your client is still prepared to plead
14 guilty today as we discussed on Tuesday?

15 MR. SORKIN: Yes, your Honor.

16 THE COURT: Mr. Madoff, if you would stand, please,
17 and the deputy clerk will administer the oath.

18 (Defendant sworn)

19 MR. SORKIN: Your Honor, before you begin the
20 allocution, we have provided the government and the court
21 reporter with a copy of the allocution that Mr. Madoff will
22 read, and we have a copy if the Court wishes to see it as well.

23 THE COURT: Yes. Thank you.

24 MR. SORKIN: May I hand it up?

25 THE COURT: Yes.

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1 This statement is intended to cover all 11 counts?

2 MR. SORKIN: Yes, your Honor. After your Honor goes
3 through, he will give a statement which we believe will cover
4 all the elements. Thank you.

5 THE COURT: Mr. Madoff, do you understand that you are
6 now under oath and that if you answer my questions falsely,
7 your untrue answers may later be used against you in another
8 prosecution for perjury or making false statements?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Try to keep your voice up so that I can
11 hear you, please.

12 THE DEFENDANT: Yes, I do, your Honor.

13 MR. SORKIN: Can we get some water, your Honor?

14 THE COURT: Yes.

15 MR. LITT: I would note that the defendant has not yet
16 been arraigned on the information.

17 THE COURT: All right. That's true. Technically, we
18 did the first part of it. We never did the final part. Let me
19 just ask the final question.

20 Mr. Madoff, the other day you waived indictment and
21 you consented to being charged by an information of the
22 government, correct?

23 THE DEFENDANT: Yes.

24 THE COURT: And how do you now plead to the
25 information, guilty or not guilty?

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1 THE DEFENDANT: Guilty.

2 THE COURT: Before I accept the plea I will conduct
3 the allocution.

4 Would you state your full name for the record, please.

5 THE DEFENDANT: Bernard L. Madoff.

6 THE COURT: On Tuesday you told me your age and
7 educational background. We talked a little bit about your
8 medical condition. Has your medical condition changed since
9 Tuesday?

10 THE DEFENDANT: No, it has not.

11 THE COURT: In the past 24 hours, have you taken any
12 drugs, medicine, or pills, or have you drunk any alcohol?

13 THE DEFENDANT: No.

14 THE COURT: Is your mind clear today?

15 THE DEFENDANT: Yes, it is.

16 THE COURT: And are you feeling all right today under
17 the circumstances?

18 THE DEFENDANT: Yes, I am.

19 THE COURT: Do either counsel have any doubt as to Mr.
20 Madoff's competence to plead at this time?

21 MR. LITT: The government does not.

22 MR. SORKIN: No, your Honor.

23 THE COURT: Now, Mr. Madoff, as I understand it, you
24 wish to plead guilty today to all 11 counts of the information,
25 is that correct?

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1 THE DEFENDANT: Yes, it is correct.

2 THE COURT: Have you had a full opportunity to discuss
3 your case with Mr. Sorkin and to discuss the consequences of
4 pleading guilty?

5 THE DEFENDANT: Yes, I have.

6 THE COURT: You told me on Tuesday that you were
7 satisfied with Mr. Sorkin and his representation of you. Are
8 you still satisfied?

9 THE DEFENDANT: Yes, I am.

10 THE COURT: On the basis of Mr. Madoff's responses to
11 my questions and my observations of his demeanor, I find that
12 he is fully competent to enter an informed plea at this time.

13 Now, Mr. Madoff, before I accept any plea from you I
14 am going to ask you some additional questions that are intended
15 to satisfy me that you wish to plead guilty because you are
16 guilty and that you fully understand the consequences of your
17 plea. If you do not understand any of my questions, please ask
18 me or Mr. Sorkin to explain.

19 I am going to describe to you certain rights that you
20 have under the Constitution and laws of the United States. You
21 will be giving up these rights if you plead guilty, so please
22 listen carefully.

23 Under the Constitution and laws of the United States,
24 you have a right to a speedy and public trial by a jury on the
25 charges against you which are contained in the information. If

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1 there were a trial, you would be presumed innocent and the
2 government would be required to prove your guilt by competent
3 evidence beyond a reasonable doubt. You would not have to
4 prove that you were innocent if you were to go to trial.

5 If there were a trial, you would have the right to be
6 represented by an attorney. And if you could not afford one,
7 an attorney would be provided for you free of cost.

8 If there were a trial, you would have a right to see
9 and hear all the witnesses against you and your attorney could
10 cross-examine them. You would have a right to have your
11 attorney object to the government's evidence and to offer
12 evidence on your own behalf if you so desired, and you would
13 have the right to have subpoenas issued or other process used
14 to compel witnesses to testify in your defense.

15 If there were a trial, you would have the right to
16 testify if you wanted to, but no one could force you to testify
17 if you did not want to. Furthermore, no inference or
18 suggestion of guilt could be drawn if you chose not to testify
19 at trial.

20 Mr. Madoff, do you understand each and every one of
21 these rights?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Do you understand that by pleading guilty
24 today you are giving up each and every one of these rights, you
25 are waiving these rights, and you will have no trial?

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1 THE DEFENDANT: I do.

2 THE COURT: Do you understand that you have the right
3 even now to refuse to plead guilty?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: You do not have to enter a plea of guilty
6 if you do not want to, for any reason.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, did you receive a copy of the
10 information?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: And as we discussed on Tuesday and as we
13 discussed a moment ago, do you understand that you have waived
14 your right to be charged by an indictment, which is issued by a
15 grand jury, and you have consented to being charged by the
16 information which is issued by the prosecutor?

17 THE DEFENDANT: Yes.

18 THE COURT: And did you waive that right voluntarily
19 and knowingly?

20 THE DEFENDANT: Yes.

21 THE COURT: Now, I am going to review the counts with
22 you. As we said, the information contains 11 counts.

23 Count One charges securities fraud.

24 Count Two charges investment adviser fraud.

25 Count Three charges mail fraud.

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1 Count Four charges wire fraud.

2 Count Five charges international money laundering to
3 promote fraud in the sale of securities.

4 Count Six charges international money laundering to
5 conceal the proceeds of fraud in the sale of securities.

6 Count Seven charges money laundering.

7 Count Eight charges making false statements.

8 Count Nine charges perjury.

9 Count Ten charges making a false filing with the
10 Securities and Exchange Commission.

11 And Count Eleven charges theft from an employee
12 benefit plan.

13 Do you understand that those are the charges against
14 you?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: I'll ask the government to advise the
17 defendant of the elements of the crimes.

18 MR. LITT: Yes, your Honor. With respect to Count
19 One, securities fraud --

20 THE COURT: Hold on one second.

21 Mr. Madoff, you can be seated. Pour yourself some
22 water.

23 THE DEFENDANT: Thank you.

24 MR. LITT: With respect to Count One, securities
25 fraud, in order to prove the crime of securities fraud, the

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1 government must establish each of the following three elements
2 beyond a reasonable doubt:

3 First, that in connection with the purchase or sale of
4 a security, the defendant did any one or more of the following:
5 (1) employed a device, scheme, or artifice to defraud or (2)
6 made an untrue statement of a material fact or omitted to state
7 a material fact which made what was said under the
8 circumstances misleading; or (3) engaged in an act, practice,
9 or course of business that operated or would operate as a fraud
10 or deceit upon a purchaser or seller.

11 Second, that the defendant acted knowingly, willfully,
12 and with the intent to defraud;

13 And, third, that the defendant knowingly used or
14 caused to be used any means or instruments of transportation or
15 communication in interstate commerce or the use of the mails in
16 furtherance of the fraudulent conduct.

17 With respect to investment adviser fraud, the
18 government would have to prove beyond a reasonable doubt all
19 four of the following elements: First, that the defendant was
20 an investment adviser; second, that the defendant either (A)
21 employed a device, scheme, or artifice to defraud clients and
22 prospective clients; (B) engaged in a transaction, practice, or
23 course of business which operated as a fraud or deceit upon
24 those clients and prospective clients; or (C) engaged in an
25 act, practice, and course of business that was fraudulent,

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1 deceptive, and manipulative.

2 Third, that the defendant devised or participated in
3 such alleged device, scheme, or artifice to defraud or engaged
4 in such alleged transaction, practice, or course of business,
5 knowingly, willfully, and with intent to defraud.

6 And, fourth, that the defendant employed such alleged
7 device, scheme, or artifice to defraud or engaged in such
8 alleged transaction, practice, or course of business by use of
9 the mails or other instrumentality of interstate commerce.

10 In order to prove the crime of mail fraud, the
11 government must establish beyond a reasonable doubt the
12 following four elements:

13 First, that at or about the time alleged in the
14 indictment there was a scheme or artifice to defraud in order
15 to obtain property or money by false and fraudulent pretenses,
16 representations, or promises;

17 Second, that the false or fraudulent statements and
18 representations concerned material facts;

19 Third, that the defendant knowingly and willfully
20 devised or participated in the scheme or artifice to defraud
21 with knowledge of its fraudulent nature and with specific
22 intent to defraud;

23 And, fourth, that the United States Mails were used in
24 furtherance of the scheme as specified in the information.

25 In order to prove the crime of wire fraud the

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1 government must establish the following four essential
2 elements:

3 First, that at or about the time alleged in the
4 information there was a scheme or artifice to defraud in order
5 to obtain property or money by false and fraudulent pretenses,
6 representations, or promises;

7 Second, that the false or fraudulent statements and
8 representations concerned material facts;

9 Third, that the defendant knowingly and willfully
10 devised or participated in the scheme or artifice to defraud
11 with knowledge of its fraudulent nature and with specific
12 intent to defraud

13 And, fourth, that interstate or foreign wire
14 facilities were used in furtherance of the scheme to defraud as
15 specified in the information.

16 In order to prove the crime of unlawful transportation
17 of funds or monetary instruments with the intent to promote the
18 carrying on of specified unlawful activity, in violation of
19 Section 1956(a)(2)(A), the government must establish beyond a
20 reasonable doubt each of the following elements:

21 First, that the defendant transported a monetary
22 instrument or funds from a place in the United States to or
23 through a place outside the United States, or to a place in the
24 United States from or through a place outside the United
25 States;

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1 And, second, that the defendant did so with the intent
2 to promote the carrying on of specified unlawful activity.

3 In order to prove the crime of unlawful transportation
4 of funds or monetary instruments to conceal and disguise the
5 proceeds of specified unlawful activity, the government must
6 establish beyond a reasonable doubt each of the following:

7 First, that the defendant transported a monetary
8 instrument or funds from a place in the United States to or
9 through a place outside the United States, or to a place in the
10 United States from or through a place outside the United
11 States;

12 And, second, that the defendant did so with the
13 knowledge that the monetary instrument or funds involved
14 represent the proceeds of some form of unlawful activity;

15 And, third, that the defendant did so with knowledge
16 that the transportation was designed in whole or in part to
17 conceal or disguise the nature, location, source, ownership, or
18 control of the proceeds of securities fraud, mail fraud, wire
19 fraud, and theft from an employee benefit plan.

20 In order to prove the crime of engaging in monetary
21 transactions in property derived from specified unlawful
22 activity in violation of Section 1957, the government must
23 establish the following beyond a reasonable doubt:

24 First, that the defendant engaged or attempted to
25 engage in a monetary transaction in or affecting interstate

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1 commerce;

2 Second, that the monetary transaction involved
3 criminally derived property of a value greater than \$10,000;

4 Third, that the property was derived from specified
5 unlawful activity; in this case, from securities fraud, mail
6 fraud, wire fraud, or theft from a pension benefit plan;

7 Fourth, that the defendant acted knowingly; that is,
8 with knowledge that the transaction involved proceeds of a
9 criminal offense;

10 And, fifth, that the transaction took place in the
11 United States or that the defendant is a United States person.

12 In order to prove the crime of making false statements
13 to the SEC, in violation of 18 U.S.C. 1001, the government must
14 establish the following elements beyond a reasonable doubt:

15 First, that the defendant made a statement or
16 representation;

17 Second, that the statement or representation was
18 material;

19 Third, that the statement or representation was false,
20 fictitious or fraudulent;

21 Fourth, that the false, fictitious or fraudulent
22 statement was made knowingly or willfully;

23 And, fifth, that the statement or representation was
24 made in a matter within the jurisdiction of the government of
25 the United States.

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1 To prove the crime of perjury the government must
2 prove beyond a reasonable doubt each of the following:

3 First, that the defendant took an oath to testify
4 truly before the Securities and Exchange Commission, a body
5 authorized by law to administer oaths;

6 Second, that the defendant made false statements as to
7 matters about which the defendant testified under oath as set
8 forth in the information;

9 Third, that the matters as to which it is charged that
10 the defendant made false statements were material to the issues
11 under inquiry by the Securities and Exchange Commission;

12 And, fourth, that such false statements were willfully
13 made.

14 To prove the offense of making a false filing with the
15 SEC the government must prove beyond a reasonable doubt each of
16 the following:

17 First, that the defendant was required to file an
18 application, report, or document with the SEC under the
19 Securities Exchange Act of 1934 and the rules and regulations
20 thereunder;

21 Second, that the application, report, or document
22 filed with the SEC contained false or misleading statements;

23 Third, that the false or misleading statements were
24 material;

25 And, fourth, that the defendant acted knowingly and

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1 willfully.

2 To prove the offense of theft from an employee pension
3 benefit plan the government must prove beyond a reasonable
4 doubt the following elements:

5 First, that the defendant abstracted or converted to
6 his own use or the use of others the monies, funds, securities,
7 premiums, credits, property, or other assets of an employee
8 welfare benefit plan;

9 Second, that the funds abstracted or converted from --
10 excuse me, that the fund abstracted or converted from was an
11 employee welfare benefit plan within the meaning of the
12 statute;

13 And, third, that the defendant acted knowingly and
14 willfully.

15 THE COURT: Thank you.

16 Mr. Madoff, would you rise again, please.

17 Mr. Madoff, do you understand that if you were to go
18 to trial the government would have to prove all of those
19 elements beyond a reasonable doubt?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Now I am going to review with you the
22 maximum possible penalties for the crimes in question.

23 Count One charging securities fraud carries a maximum
24 sentence of 20 years' imprisonment, a maximum fine of the
25 greatest of \$5 million, or twice the gross gain or twice the

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1 gross loss, a mandatory special assessment of \$100, and a
2 maximum term of supervised release of three years.

3 In fact, each count carries a mandatory special
4 assessment of \$100, so I am not going to repeat that for each
5 of the 11 counts.

6 Count Two charges investment adviser fraud. It
7 carries a maximum sentence of five years' imprisonment, a
8 maximum fine of the greatest of \$10,000, or twice the gross
9 gain or twice the gross loss, and a maximum term of supervised
10 release of three years.

11 Count Three, the mail fraud count, charges a maximum
12 sentence of 20 years' imprisonment, a maximum fine of the
13 greatest of \$250,000, or twice the gross gain or twice the
14 gross loss, and a maximum term of supervised release of three
15 years.

16 In fact, all 11 counts carry the same maximum term of
17 supervised release of three years, so I won't repeat that
18 either.

19 I'm up to Count Four, the wire fraud count. That
20 carries a maximum sentence of 20 years' imprisonment, a maximum
21 fine of the greatest of \$250,000, or twice the gross gain or
22 twice the gross loss.

23 Count Five, the international money laundering count,
24 the first of those counts, carries a maximum sentence of 20
25 years' imprisonment, a maximum fine of the greatest of

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1 \$500,000, twice the value of the funds involved, or twice the
2 gross gain to any person or twice the pecuniary loss to any
3 person other than yourself.

4 Count Six, the second international money laundering
5 count, carries a maximum sentence of 20 years' imprisonment, a
6 maximum fine of the greatest of \$500,000, or twice the value of
7 the funds involved or twice the gross gain or twice the
8 pecuniary loss.

9 Count Seven, a money laundering count, charges a
10 maximum sentence of ten years' imprisonment, a maximum fine of
11 the greatest of \$250,000, or twice the gross gain or twice the
12 pecuniary loss.

13 Count Eight, which charges making false statements,
14 carries a maximum sentence of five years' imprisonment, a
15 maximum fine of \$250,000, or twice the gross gain or twice the
16 pecuniary loss.

17 Count Nine charges perjury. It carries a maximum
18 sentence of five years' imprisonment, a maximum fine of the
19 greatest of \$250,000, or twice the gross gain or twice the
20 pecuniary loss.

21 Count Ten charges making a false filing with the SEC.
22 It carries a maximum sentence of 20 years' imprisonment, a
23 maximum fine of the greatest of \$5 million, or twice the gross
24 gain or twice the pecuniary loss.

25 Finally, Count Eleven, which charges theft from an

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1 employee benefit plan, carries a maximum sentence of five
2 years' imprisonment, a maximum fine of the greatest of
3 \$250,000, or twice the gross gain or twice the pecuniary loss.

4 Do you understand that those are the possible maximum
5 sentences?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Now, taking all the counts together, do
8 you understand that the total maximum sentence of incarceration
9 that you face is 150 years' imprisonment?

10 THE DEFENDANT: I do.

11 THE COURT: In addition, do you understand that as
12 part of your sentence I can order restitution to any person or
13 entity injured as a result of your criminal conduct?

14 THE DEFENDANT: Yes.

15 MR. LITT: Your Honor, I would just note that
16 restitution is mandatory, not discretionary.

17 THE COURT: I will order restitution if it's
18 mandatory.

19 You understand that?

20 THE DEFENDANT: I do.

21 THE COURT: I mentioned supervised release. By that I
22 mean that you would be subject to monitoring when you were
23 released from prison under terms and conditions that could lead
24 to reimprisonment without a jury trial if you were to violate
25 them. And if you were to violate the terms of your supervised

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1 release you could be sent back to prison for the entire term of
2 your supervised release.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you a citizen of the United States?

6 THE DEFENDANT: Yes, I am.

7 THE COURT: Do you understand that as a result of your
8 guilty plea you may lose certain valuable civil rights, such as
9 the right to vote, the right to hold public office, the right
10 to serve on a jury, and the right to possess any kind of
11 firearm?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Now, have you talked to Mr. Sorkin about
14 the federal sentencing guidelines?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: Do you understand that the guidelines are
17 now advisory only and that they are no longer mandatory?

18 THE DEFENDANT: Yes.

19 THE COURT: Nonetheless, before I can sentence you I
20 still have to determine what your sentencing range is under the
21 guidelines. I can't do that until after the probation
22 department prepares a presentence report and you, your lawyer,
23 and the government have had a chance to review the report and
24 to make any objections.

25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: And even after I decide what your
3 guideline range is, I still have the authority in appropriate
4 circumstances to impose a sentence that is above or below the
5 guideline range.

6 Do you understand that?

7 THE DEFENDANT: I do.

8 THE COURT: Do you understand that parole has been
9 abolished in the federal system and, thus, you would not be
10 released from prison any earlier on parole?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that if your attorneys
13 or anyone else has attempted to predict what your sentence will
14 be that the prediction could be wrong?

15 THE DEFENDANT: Yes.

16 THE COURT: And that is because no one, not your
17 attorney, not the government, can or should make any promises
18 to you as to what your sentence will be as your sentence cannot
19 be decided until after the presentence report is completed, I
20 have ruled on any objections, and I have decided whether there
21 is any basis to go above or below the guideline range.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Finally, do you understand that even if
25 your sentence turns out to be different from what your attorney

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1 or anyone else has told you it might be, or even if your
2 sentence turns out to be different from what you expect, you
3 will still be bound to your guilty plea and you will not be
4 allowed to withdraw your plea of guilty?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that by pleading guilty
7 you may be giving up or waiving certain aspects of your right
8 to appeal?

9 THE DEFENDANT: Yes.

10 THE COURT: The government provided your lawyers with
11 a letter, dated March 10, 2009, which we call a Pimentel
12 letter?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you review that with your lawyers?

15 THE DEFENDANT: I did.

16 THE COURT: And that Pimentel letter explains that
17 your guideline sentence is 150 years.

18 Do you understand that?

19 THE DEFENDANT: I do.

20 THE COURT: That's the government's calculation.

21 That's the government's position and you and your lawyers will
22 have the opportunity to comment on that.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: And do you understand also that this

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1 calculation that's set forth in the government's letter is not
2 binding on the Court?

3 THE DEFENDANT: Yes.

4 THE COURT: Has anyone offered you any inducements or
5 threatened you or forced you to plead guilty?

6 THE DEFENDANT: No.

7 THE COURT: Mr. Sorkin, do you know of any valid
8 defense that would prevail at trial, or do you know any reason
9 why your client should not be permitted to plead guilty?

10 THE DEFENDANT: I do not, your Honor.

11 THE COURT: Mr. Madoff, tell me what you did.

12 MR. SORKIN: Your Honor, may I make one,
13 respectfully -- according to the Pimentel letter, we agree that
14 while the maximum statutory penalty in terms of imprisonment is
15 150 years, the guideline range -- and this can be found on page
16 6 of the Pimentel letter -- is life imprisonment. The criminal
17 history category I yields a sentencing range of life
18 imprisonment.

19 THE COURT: I understand. But the government goes on
20 further to take the position that when a count does not permit
21 life, then you look at the statutory maximum. That's the
22 government's position.

23 MR. SORKIN: I just want to make sure Mr. Madoff
24 understood that. Thank you, your Honor.

25 THE COURT: Mr. Madoff, you understand that?

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1 THE DEFENDANT: Yes, I do.

2 THE COURT: Technically, the guideline range is life,
3 but none of the counts in question carries a sentence that can
4 go up to life. The top is 20 years. According to the
5 government, in that circumstance then the guideline range is
6 the maximum and the government's position is that the guideline
7 range is 150 years. Again, I don't know whether Mr. Sorkin
8 agrees or disagrees, but we will deal with that before
9 sentencing.

10 MR. SORKIN: Thank you, your Honor.

11 THE COURT: Mr. Madoff, would you tell me what you
12 did, please.

13 THE DEFENDANT: Yes, your Honor.

14 Your Honor, for many years up until my arrest on
15 December 11, 2008, I operated a Ponzi scheme through the
16 investment advisory side of my business, Bernard L. Madoff
17 Securities LLC, which was located here in Manhattan, New York,
18 at 885 Third Avenue. I am actually grateful for this
19 opportunity to publicly speak about my crimes, for which I am
20 so deeply sorry and ashamed. As I engaged in my fraud, I knew
21 what I was doing wrong, indeed criminal. When I began the
22 Ponzi scheme I believed it would end shortly and I would be
23 able to extricate myself and my clients from the scheme.
24 However, this proved difficult, and ultimately impossible, and
25 as the years went by I realized that my arrest and this day

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1 would inevitably come. I am painfully aware that I have deeply
2 hurt many, many people, including the members of my family, my
3 closest friends, business associates, and the thousands of
4 clients who gave me their money. I cannot adequately express
5 how sorry I am for what I have done. I am here today to accept
6 responsibility for my crimes by pleading guilty and, with this
7 plea allocution, explain the means by which I carried out and
8 concealed my fraud.

9 The essence of my scheme was that I represented to
10 clients and prospective clients who wished to open investment
11 advisory and individual trading accounts with me that I would
12 invest their money in shares of common stock, options, and
13 other securities of large well-known corporations, and upon
14 request, would return to them their profits and principal.
15 Those representations were false for many years. Up until I
16 was arrested on December 11, 2008, I never invested these funds
17 in the securities, as I had promised. Instead, those funds
18 were deposited in a bank account at Chase Manhattan Bank. When
19 clients wished to receive the profits they believed they had
20 earned with me or to redeem their principal, I used the money
21 in the Chase Manhattan bank account that belonged to them or
22 other clients to pay the requested funds. The victims of my
23 scheme included individuals, charitable organizations, trusts,
24 pension funds, and hedge funds. Among other means, I obtained
25 their funds through interstate wire transfers they sent from

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1 financial institutions located outside New York State to the
2 bank account of my investment advisory business, located in
3 Manhattan, New York, and through mailings delivered by the
4 United States Postal Service and private interstate carriers to
5 my firm here in Manhattan.

6 I want to emphasize today that while my investment
7 advisory business, the vehicle of my wrongdoing, was part of my
8 firm, Bernard L. Madoff Securities, the other businesses my
9 firm engaged in, proprietary trading and market making, were
10 legitimate, profitable, and successful in all respects. Those
11 businesses were managed by my brother and two sons.

12 To the best of my recollection, my fraud began in the
13 early 1990s. At that time, the country was in a recession and
14 this posed a problem for investments in the securities markets.
15 Nevertheless, I had received investment commitments from
16 certain institutional clients and understood that those
17 clients, like all professional investors, expected to see their
18 investments out-perform the market. While I never promised a
19 specific rate of return to my client, I felt compelled to
20 satisfy my clients' expectations, at any cost. I therefore
21 claimed that I employed an investment strategy I had developed,
22 called the split strike conversion strategy, to falsely give
23 the appearance to clients that I had achieved the results I
24 believed they expected.

25 Through the split strike conversion strategy I

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1 promised to clients and prospective clients that client funds
2 would be invested in a basket of common stocks within the
3 Standard & Poors 100 index, a collection of the 100 largest
4 publicly-traded companies in terms of their market
5 capitalization. I promised that I would select a basket of
6 stocks that would closely mimic the price movements of the
7 Standard & Poors 100 index. I promised that I would
8 opportunistically time those purchases and would be out of the
9 market intermittently, investing client funds during these
10 periods in United States Government-issued securities, such as
11 United States Treasury bills. In addition, I promised that as
12 part of the split strike conversion strategy, I would hedge the
13 investments I made in the basket of common stocks by using
14 client funds to buy and sell option contracts related to those
15 stocks, thereby limiting potential client losses caused by
16 unpredictable changes in stock prices. In fact, I never made
17 those investments I promised clients, who believed they were
18 invested with me in the split strike conversion strategy.

19 To conceal my fraud, I misrepresented to clients,
20 employees, and others that I purchased securities for clients
21 in overseas markets. Indeed, when the United States Securities
22 and Exchange Commission asked me to testify as part of an
23 investigation they were conducting about my investment advisory
24 business, I knowingly gave false testimony under oath to the
25 staff of the SEC on May 19, 2006 that I executed trades of

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1 common stock on behalf of my investment advisory clients and
2 that I purchased and sold the equities that were part of my
3 investment strategy in European markets. In that session with
4 the SEC, which took place here in Manhattan, New York, I also
5 knowingly gave false testimony under oath that I had executed
6 options contracts on behalf of my investment advisory clients
7 and that my firm had custody of the assets managed on behalf of
8 my investment advisory clients.

9 To further cover up the fact that I had not executed
10 trades on behalf of my investment advisory clients, I knowingly
11 caused false trading confirmations and client account
12 statements that reflected the bogus transactions and positions
13 to be created and sent to clients purportedly involved in the
14 split strike conversion strategy, as well as other individual
15 clients I defrauded who believed they had invested in
16 securities through me. The clients receiving trade
17 confirmations and account statements had no way of knowing by
18 reviewing these documents that I had never engaged in
19 transactions represented on the statements and confirmations.
20 I knew those false statements and account statements would be
21 and were sent to clients through the U.S. Mails from my office
22 here in Manhattan.

23 Another way that I concealed my fraud was through the
24 filing of false and misleading certified annual reports and
25 financial statements -- excuse me. Another way that I

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1 concealed my fraud was through the filing of false and
2 misleading certified audit reports and financial statements
3 with the SEC. I knew that these audit reports and financial
4 statements were false and that they would also be sent to
5 clients. These reports, which were prepared here in the
6 Southern District of New York, among other things, falsely
7 reflected my firm's liabilities as a result of my intentional
8 failure to purchase securities on behalf of my advisory
9 clients.

10 Similarly, when I recently caused my firm in 2006 to
11 register as an investment adviser with the SEC, I subsequently
12 filed with the SEC a document called the form ADV uniform
13 application for investment adviser registration. On this form
14 I intentionally and falsely certified under penalty of perjury
15 that Bernard L. Madoff Investment Securities had custody of my
16 advisory clients' securities. That was not true, and I knew it
17 when I completed and filed the form with the SEC, which I did
18 from my office on the 17th floor of 885 Third Avenue, here in
19 Manhattan.

20 In more recent years, I used yet another method to
21 conceal my fraud. I wired money between the United States and
22 the United Kingdom to make it appear as though there were
23 actual securities transactions executed on behalf of my
24 investment advisory clients. Specifically, I had money
25 transferred from the U.S. bank account of my investment

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1 advisory business to the London bank account of Madoff
2 Securities International Limited, a United Kingdom corporation
3 that was an affiliate of my business in New York. Madoff
4 Securities International Limited was principally engaged in
5 proprietary trading and was a legitimate, honestly run and
6 operated business. Nevertheless, to support my false statement
7 that I purchased and sold securities for my investment advisory
8 clients in European markets, I caused money from the bank
9 account of my fraudulent advisory business, located here in
10 Manhattan, to be wire transferred to the London bank account of
11 Madoff Securities International Limited.

12 There were also times in recent years when I had
13 money, which had originated in the New York Chase Manhattan
14 bank account of my investment advisory business, transferred
15 from the London bank account of Madoff Securities International
16 Limited to the Bank of New York operating bank account of my
17 firm's legitimate proprietary and market making business. That
18 Bank of New York account was located in New York. I did this
19 as a way of ensuring that the expenses associated with the
20 operation of the fraudulent investment advisory business would
21 not be paid from the operations of the legitimate proprietary
22 trading and market making businesses.

23 In connection with the purported trades, I caused the
24 fraudulent investment advisory side of my business to charge
25 the investment advisory clients four cents per share as a

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1 commission. At times in the last few years, these commissions
2 were transferred from Chase Manhattan bank account of the
3 fraudulent investment advisory side of my firm to the account
4 at Bank of New York, which was the operating account for the
5 legitimate side of Bernard L. Madoff Investment Securities, the
6 proprietary trading and market making side of my firm. I did
7 this to ensure that the expenses associated with the operation
8 of my fraudulent investment advisory business would not be paid
9 from the operations of the legitimate proprietary trading and
10 market making business. It is my belief that the salaries and
11 bonuses of the personnel involved in the operation of the
12 legitimate side of Bernard L. Madoff Investment Securities were
13 funded by the operations of the firm's successful proprietary
14 trading and market making businesses.

15 Your Honor, I hope I have conveyed with some
16 particularity in my own words the crimes I committed and the
17 means by which I committed them. Thank you, your Honor.

18 THE COURT: Thank you, Mr. Madoff.

19 Mr. Sorkin, I don't think there was mention of an
20 employee benefit plan.

21 MR. SORKIN: The pension fund was mentioned, your
22 Honor.

23 THE COURT: What page that?

24 MR. SORKIN: I think it's page 2. If you look at the
25 top, the victim -- I'm quoting -- the victims of my scheme

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1 included individuals, charitable organizations, trusts, pension
2 funds, and hedge funds.

3 THE COURT: I see.

4 And those pension funds include employee welfare
5 benefit plans?

6 MR. SORKIN: Yes, your Honor.

7 Is that correct?

8 THE DEFENDANT: Yes.

9 THE COURT: Mr. Madoff, you can be seated for a
10 moment.

11 Does the government believe that Mr. Madoff's
12 admissions cover the elements of the crimes of each count?

13 MR. LITT: Yes, your Honor. The government does not
14 entirely agree with all of the defendant's description of his
15 conduct. However, the government does believe that his
16 allocution does cover each of the elements of the charged
17 offenses.

18 THE COURT: Would you summarize what the government's
19 evidence would be if the defendant were to go to trial?

20 MR. LITT: Yes.

21 Had this case proceeded to trial, the government would
22 have proven through testimony and evidence beyond a reasonable
23 doubt all of the facts set forth in the criminal information.

24 In summary, the government would have proven the
25 following: The defendant operated a massive Ponzi scheme

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1 through his company, Bernard L. Madoff Investment Securities,
2 beginning at least as early as the 1980s. Over the decades
3 working from his New York City office and elsewhere, Madoff
4 solicited and caused others to solicit prospective clients to
5 open accounts with his company. His clients included
6 individuals, charitable organizations, trusts, pension funds,
7 and hedge funds, among others, and those clients were also his
8 victims.

9 Madoff told those clients that he would invest their
10 funds in publicly-traded securities, options, and treasury
11 bills. In fact, over the life of his scheme Madoff did not buy
12 stocks or options as he had promised. Instead, Madoff used
13 client funds to pay other clients who sought to redeem their
14 investments, and used so-called commission revenue generated by
15 charging clients four cents per share for shares that he never,
16 in fact, purchased to generate revenue for his firm. At times,
17 his firm would have been unable to operate but for the cash
18 generated from this Ponzi scheme. Madoff repeatedly lied to
19 clients in person, on telephone calls, and through mailings,
20 including account statements and confirmations of purchases and
21 sales of securities that he mailed through the U.S. Postal
22 Service.

23 Some investors sent checks to Madoff through the
24 mails, others wired money to Madoff, and many of those wires
25 came from outside New York State into the Southern District of

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1 New York. Madoff also caused hundreds of millions of dollars
2 of client funds to be wired overseas to accounts in London.
3 Some of that money was sent back to his firm and used to pay
4 its expenses. Other money was sent back and forth between New
5 York and London to give the false impression that he was
6 actually buying and selling securities in European markets
7 when, in fact, he was not.

8 Madoff also used some of the money funneled through
9 London to support his lavish lifestyle. Madoff also used other
10 means of deception to hide his scheme. He lied when he told
11 clients that he was purchasing securities on their behalf.

12 He also lied to regulators, including the SEC. He
13 filed false and fraudulent certified financial statements with
14 the SEC that failed to disclose his fraud scheme, failed to
15 disclose his liabilities to the victims of his Ponzi scheme,
16 and contained false certifications that the audited statements
17 had been prepared in accordance with generally-accepted
18 auditing standards and principles.

19 Mr. Madoff lied in a form that he was required to file
20 with the SEC as an investment adviser, claiming that his
21 company had custody of client securities when, in fact, he had
22 not purchased any securities for those clients.

23 He also lied at least seven separate times in an SEC
24 deposition in 2006.

25 At the end, Madoff told his clients that he was

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1 holding nearly \$65 billion in securities on behalf of those
2 clients. In fact, he had only a small fraction of that amount.

3 (Continued on next page)

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1 THE COURT: Thank you. Mr. Madoff, please stand.

2 When you did the things you told me you did in your
3 statement, did you know that what you were doing was wrong and
4 illegal?

5 THE DEFENDANT: Yes, I did, your Honor.

6 THE COURT: How do you now plead to Count One of the
7 information, guilty or not guilty?

8 THE DEFENDANT: Guilty.

9 THE COURT: How do you now plead to Count Two of the
10 information, guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: How do you now plead to Count Three,
13 guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: How do you now plead to Count Four, guilty
16 or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: How do you now plead to Count Five, guilty
19 or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: How do you now plead to Count Six, guilty
22 or not guilty?

23 THE DEFENDANT: Guilty.

24 THE COURT: How do you now plead to Count Seven,
25 guilty or not guilty?

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1 THE DEFENDANT: Guilty.

2 THE COURT: How do you plead to Count Eight, guilty or
3 not guilty?

4 THE DEFENDANT: Guilty.

5 THE COURT: How do you plead to Count Nine, guilty or
6 not guilty?

7 THE DEFENDANT: Guilty.

8 THE COURT: How do you now plead to Count Ten, guilty
9 or not guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: And finally, how do you now plead to Count
12 Eleven, guilty or not guilty?

13 THE DEFENDANT: Guilty, your Honor.

14 THE COURT: Did you do the things that you are charged
15 with doing in all 11 counts of the information?

16 THE DEFENDANT: Yes, I did, your Honor.

17 THE COURT: And are you pleading guilty because you
18 are guilty?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: Are you pleading guilty voluntarily and of
21 your own free will?

22 THE DEFENDANT: Yes, I am.

23 THE COURT: All right. Mr. Madoff, you may be seated.

24 Based on what I have heard, I am inclined to accept
25 Mr. Madoff's guilty plea.

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1 As I stated the other day, the government received a
2 number of e-mails from victims objecting to any plea bargain or
3 any plea deal. As it is clear that there is no plea bargain or
4 plea deal, there is no basis for these objections. At this
5 time, nonetheless, if there is any victim who signed our
6 sign-in sheet who wishes to be heard on the question of whether
7 I should accept Mr. Madoff's guilty plea, you can have a chance
8 to speak now. We have a list.

9 Mr. Nierenberg, do you want to speak?

10 MR. NIERENBERG: Yes.

11 THE COURT: All right, sir. Come to the microphone.
12 And remember that today is not the sentencing. Victims will
13 have a chance to speak at sentencing. Go ahead.

14 MR. NIERENBERG: I am one of the many victims of
15 Madoff's egregious crimes. I don't know whether you had a
16 chance to turn around and look at the victims --

17 THE COURT: Mr. Nierenberg, Mr. Nierenberg --

18 MR. NIERENBERG: I just wanted to --

19 THE COURT: Remain at the podium, please.

20 MR. NIERENBERG: All right. I know that the
21 operation -- Madoff's operation was massive, that he didn't
22 commit these crimes alone, and I don't understand why
23 conspiracy is not a part of one of his pleas. Just to produce
24 the reams of documents that were received and the elaborate
25 data that went into them must have required an army of people

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1 to produce. And we all know that Madoff wasn't around a lot at
2 his operation. There were other people that were there who
3 handled it when he was gone. I --

4 THE COURT: I gather your point is that I should
5 reject the plea because the government has not charged
6 conspiracy?

7 MR. NIERENBERG: No. The question is -- I'm not
8 suggesting that you reject the plea. What I'm suggesting is
9 that there's an additional crime that was committed that wasn't
10 included in the plea that needs to be considered.

11 THE COURT: All right. What I want to hear from now
12 are victims who object to my accepting the plea.

13 MR. NIERENBERG: Okay.

14 THE COURT: Do you object to my accepting the plea?

15 MR. NIERENBERG: No, I don't.

16 THE COURT: Well, thank you, then. You can have your
17 seat.

18 MR. NIERENBERG: Okay.

19 THE COURT: Mark Labianca? No.

20 Brian Felsen? Mr. Felsen, do you want to be heard?

21 MR. FELSEN: I would like to be heard, but I do not
22 object to the plea.

23 THE COURT: All right. If you want to be heard with
24 respect to sentencing, we will make sure we have procedures to
25 give victims an opportunity to be heard at sentencing.

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1 MR. FELSEN: Okay.

2 THE COURT: All right. Thank you.

3 Bennett Goldwait? I can't quite read the handwriting.

4 MR. GOLDWORTH: Goldworth. No thank you.

5 THE COURT: Ronnie Sue and Dominic Ambrosino, do you
6 wish to be heard?

7 MS. AMBROSINO: Yes, I do.

8 THE COURT: All right. Come forward, please. And say
9 your name again when you get to the microphone.

10 MS. AMBROSINO: My name is Ronnie Sue Ambrosino, and I
11 would object to the plea -- I just need to find a spot. I have
12 taken a lot of notes. Judge, I believe that you have the
13 opportunity today to find out information as to where the money
14 is and to find out who else may be involved in this crime. And
15 if that plea is accepted without those two pieces of
16 information, then I do object. If you can ascertain that you
17 can get those two pieces of information, I would love to see
18 this man, who admits that he lied under oath in May of 2006 and
19 sat here and took an oath today -- I would like to see him
20 guilty.

21 THE COURT: All right. Thank you.

22 MS. AMBROSINO: Thank you, sir.

23 THE COURT: Maureen Aebel? Go ahead.

24 MS. AEBEL: Judge Chin, I would like to present you
25 with a different scenario that our country could witness if you

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1 reject Mr. Madoff's plea. If we go to trial, we will show our
2 people in this struggling country and the world, who looks to
3 us as the global moral leader, that we hold all people
4 accountable. If we go to trial, we can show all our world that
5 all crimes, all crimes, including crimes of greed, can be
6 dissected, ruled upon, and punished. And we can demonstrate
7 that we are a country that can learn from our mistakes, and we
8 will be then able to reexamine and improve the mechanisms that
9 exist for our protection that have failed so completely. If we
10 go to trial, we have more of a chance to comprehend the global
11 scope of this horrendous crime. At trial we can hear and bear
12 witness to the pain that Mr. Madoff has inflicted on the young,
13 the old, and the infirmed. No man, no matter who he knows or
14 who he is able to influence, is above the law. Thank you,
15 Judge Chin.

16 THE COURT: Thank you. All right. That is it with
17 respect to the victims who signed up on the acceptance of the
18 plea. Does the government or the defense want to respond to
19 anything? Does the government want to respond to anything?

20 MR. LITT: May I just have a moment?

21 THE COURT: Yes.

22 MR. LITT: I think the only thing the government would
23 say is that the government's investigation continues. It is
24 continuing. A lot of resources and effort are being expended,
25 both to find assets and to find anyone else who may be

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1 responsible for this fraud.

2 THE COURT: Thank you. Mr. Sorkin?

3 MR. SORKIN: Nothing at this time, your Honor. Thank
4 you.

5 THE COURT: First of all, I appreciate the comments
6 from the victims. With respect to Ms. Ambrosino's comments
7 about where the money is, as the government has just said, it
8 is continuing its investigation, and this guilty plea certainly
9 does not preclude the government from proceeding.

10 With respect to Ms. Aebel's comment about how a trial
11 would show the world that we hold all people accountable, I
12 believe that these proceedings will do the same thing.

13 Mr. Madoff, please stand. I am accepting the plea.
14 Mr. Madoff, because you acknowledge that you are guilty as
15 charged in Counts One through Eleven of the information,
16 because you know your rights and are waiving them, because your
17 plea is entered knowingly and voluntarily and is supported by
18 an independent basis in fact for each of the elements of the 11
19 offenses, I accept your guilty plea and adjudge you guilty on
20 Counts One through Eleven of the information. You can be
21 seated.

22 Mr. Madoff, the probation department will prepare a
23 presentence report to assist me in sentencing you. You will be
24 interviewed by the probation department, and it is important
25 that you give the probation officer truthful and accurate

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1 information, for the report is important in my decision as to
2 what your sentence will be. You and your attorney have a right
3 and will have an opportunity to review the report, to challenge
4 or comment upon it and to speak on your behalf before
5 sentencing.

6 Sentencing is set for June 16th at 1:30 p.m.

7 Turning to bail, is the government requesting that I
8 remand Mr. Madoff pending sentencing?

9 MR. LITT: Yes. The government moves for remand at
10 this time pursuant to 18 USC 3143, which puts the burden on the
11 defendant to show by clear and convincing evidence that he can
12 be trusted to appear for future court appearances.

13 The defendant has now pled guilty and been found
14 guilty of 11 -- or does the Court wish to hear argument now
15 or --

16 THE COURT: Well, let me ask Mr. Sorkin whether he
17 opposes remand.

18 MR. SORKIN: We do, your Honor, and I'd like to be
19 heard on that point.

20 THE COURT: Let me hear from Mr. Sorkin.

21 MR. SORKIN: Thank you, your Honor. May I go to the
22 podium, your Honor?

23 THE COURT: Yes, wherever you would like.

24 MR. SORKIN: Thank you. Thank you, your Honor. Your
25 Honor, let me take just a little bit of while, because I want

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1 to review the history of the bail as it related to this case.

2 THE COURT: Yes. The government provided me with the
3 transcripts and the letter briefs, and I've reviewed them too.

4 MR. SORKIN: I'm not going to go through every one of
5 them, but I think it's important that I list the chronology and
6 how we got to this point today.

7 THE COURT: That's fine. That's fine.

8 MR. SORKIN: Your Honor, this case started when
9 Mr. Madoff on December 10th confessed his wrongdoing to his two
10 sons, knowing full well that his two sons were going to turn
11 him in. He didn't run. He didn't attempt to flee at that
12 time. When he was arrested by the FBI the next morning, he
13 confessed to the FBI.

14 He appeared on December 11th before Magistrate Judge
15 Eaton, and a personal recognizance bond of ten million dollars
16 was signed by Mr. Madoff and his wife. There were three
17 additional cosigners that were required, and it was secured by
18 Mr. Madoff's residence in Manhattan. Surrender of Mr. Madoff's
19 travel documents took place, and his travel was restricted to
20 the Southern and Eastern Districts of New York and the District
21 of Connecticut.

22 The Pretrial Services at the time, your Honor, did not
23 recommend in its initial recommendation that Mr. Madoff be
24 remanded, and I add additionally that the government had no
25 difference and no objection with any of the conditions that

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1 were imposed on December 11th. That was before Magistrate
2 Judge Eaton.

3 On December 17th, your Honor, before another
4 magistrate judge, Magistrate Judge Gorenstein, Mr. Madoff --
5 and it was ratcheted up -- was placed on home detention in his
6 apartment with electronic ankle bracelet monitoring. He was
7 permitted to travel only to his attorney's offices and to the
8 court. A curfew of 7:00 p.m. through 9:00 a.m. was imposed,
9 and this was done in addition to the entry of confession of
10 judgments with respect to his wife's properties on Montauk, New
11 York, and Palm Beach, Florida, a surrender of Mrs. Madoff's
12 passport and a reduction of the number of cosigners on the bond
13 from four to two. This, too, your Honor, was consented to by
14 the government. Indeed, I believe it was done by stipulation
15 without argument before Magistrate Judge Gorenstein.

16 On December 19th, again, on consent of the government,
17 a ten million dollar personal recognizance bond was signed by
18 Mr. Madoff, his wife, and his brother, secured by confessions
19 of judgment on his wife's properties in Montauk, in New York,
20 and Palm Beach. The passports of both Mrs. Madoff had already
21 been surrendered, and other than scheduled court appearances,
22 Mr. Madoff was confined to his home 24 hours a day. He was no
23 longer permitted to visit his counsel. And they had, in
24 addition to the 24-hour-a-day confinement, an electronic
25 monitoring device, which is still attached to his ankle.

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1 At his wife's own expense --

2 THE COURT: Would the audience please remain quiet.

3 Go ahead.

4 MR. SORKIN: Because Mr. Madoff's assets were all
5 frozen, but his wife's were not, although she later voluntarily
6 committed to a freeze of her assets under certain restrictions.
7 So with the government's consent, Mrs. Madoff's own assets,
8 which were not frozen by Judge Stanton or any judge in this
9 court -- she agreed to pay a security firm acceptable to the
10 government to provide the following services to prevent harm or
11 flight.

12 And with these unfrozen assets, not objected to by the
13 government, Mr. Madoff has round-the-clock monitoring at his
14 building 24 hours a day, including video monitoring of all of
15 his apartment, doors, communications devices, and services
16 permitting security to send a direct signal from an observation
17 post to the FBI in the event of even the suspicion of harm or
18 flight. This is known as a panic button. There are additional
19 guards available on request, if necessary, to prevent flight or
20 harm, both inflicted by Mr. Madoff -- I'm dealing with the
21 danger to the community issue -- and also harm to Mr. Madoff.

22 On January 12th, your Honor -- and again, this was by
23 consent of the government. On January 12th, Magistrate Judge
24 Ronald Ellis imposed additional restrictions. This was
25 briefed, as your Honor well knows. It was argued by Magistrate

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1 Judge Ellis. And on that date, Magistrate Judge Ellis
2 incorporated the restrictions set forth in the order of Judge
3 Stanton, who has jurisdiction over the SEC matter, including
4 restrictions on the transfer of all property whatsoever
5 wherever located in the possession or under the control of
6 Mr. Madoff. And that was part of the SEC consent under the TRO
7 and also the consent under the preliminary injunction, which
8 Mr. Madoff consented to. Magistrate Judge Ellis incorporated
9 these restrictions to a voluntary restraint agreement, which
10 the government agreed to, involving Mrs. Madoff's assets and
11 restricted the transfer of all assets owned by her voluntarily,
12 your Honor.

13 Additionally, Magistrate Judge Ellis directed the
14 compilation of an inventory of all valuable portable items in
15 the Manhattan home, which is to be checked once every two weeks
16 by government-approved security, who are also required to
17 inspect all outgoing mail.

18 The government appealed Magistrate Judge Ellis'
19 ruling, and before District Judge Lawrence McKenna on January
20 16th, 2009, argument was held. The matter was briefed, and
21 Judge McKenna added additional conditions: One, a compilation
22 of any inventory of all valuable portable items in the homes in
23 Montauk, Palm Beach, as well as any property owned by
24 Mrs. Madoff in a small residence in France.

25 I quote, which your Honor, I'm sure, has read, from

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1 Judge McKenna's statement in court after hearing argument and
2 seeing papers, that, quote -- and this is from Judge McKenna --
3 I think the chances of Mr. Madoff fleeing at this point are as
4 close to nil as you can get in any bail package, period,
5 unquote.

6 Now, nothing has changed, your Honor, and I agree it
7 has changed substantially in terms of the plea. And I agree
8 with Mr. Litt that the burden is upon us to show by clear and
9 convincing evidence that Mr. Madoff is neither a flight risk
10 nor a risk to the community.

11 As far as we are aware, your Honor, Pretrial Services
12 has not found that Mr. Madoff has been negligent or careless in
13 complying with all of the bail conditions. There has been no
14 incident at all, as far as we are aware, that has been conveyed
15 to us by Pretrial or the government that Mr. Madoff has
16 attempted at any time to flee or certainly, which the
17 government conceded before Magistrate Judge Ellis and Judge
18 McKenna, posed any risk of harm. The argument before Judge
19 Ellis and Judge McKenna was the risk of harm was in the
20 financial world, that he would dissipate assets. That was
21 taken care of, your Honor, respectfully, by Magistrate Judge
22 Ellis and by Judge McKenna. All mail going out, all packages
23 going out are inspected by the security firm approved by the
24 government.

25 I respectfully submit, your Honor, that the change has

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1 been the media attention and the increased and, in many cases,
2 justifiable anger by people who claim they lost money, but the
3 Bail Reform Act doesn't deal with those two issues. I do not
4 believe, your Honor, that the precedent set in this court where
5 such individuals as Rigas in the Adelphia case, Ebbers in the
6 WorldCom case, Messrs. Skilling and Lay -- Mr. Lay passed away
7 before sentencing -- all of whom were facing substantial years
8 in prison, Rigas and Ebbers in this court, Mr. Skilling in
9 Texas. All were released on bail pending sentence. All went
10 to trial but did not plead guilty, and all, your Honor, as far
11 as I am aware, never once confessed at the get-go to the
12 wrongdoing that you heard Mr. Madoff confess to today.

13 So I would respectfully submit, your Honor, that there
14 is no chance that Mr. Madoff will certainly be a risk to the
15 community, a danger to the community. And his risk of
16 flight -- and I agree with Judge McKenna -- is virtually nil
17 with all of the restrictions that have been imposed on him. So
18 I respectfully request that his bail be continued.

19 I would also add, your Honor -- again, I refer to the
20 Bail Reform Act as not being relevant on those two other
21 issues. What is also relevant, your Honor, is that Mr. Madoff
22 is going to have the opportunity, I am sure, if the government
23 and the defense can come to some agreement, to review literally
24 thousands of thousands of documents which the trustee and the
25 government have been reviewing to discover where this

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1 forfeiture number comes from. And we've been able to
2 communicate with him in his apartment, and I think that is a
3 factor that your Honor should consider, even though that is not
4 my argument with respect to the Bail Reform Act. I think we
5 have met all the conditions under the act.

6 So by clear and convincing evidence, I don't think he
7 is a risk of either danger to the community, flight, and I
8 would respectfully request that his bail be continued. Thank
9 you, your Honor.

10 THE COURT: I don't need to hear from the government.
11 It is my intention to remand Mr. Madoff.

12 Please, ladies and gentlemen, please.

13 Now, I have a number of people who signed in who
14 wanted to be heard on the issue of bail, and I think you should
15 only be heard if you object to remand.

16 Adriane Biondo? Mr. Ross? Helen Chaitman?

17 MS. CHAITMAN: No objection.

18 THE COURT: Donald Schupak?

19 MR. SCHUPAK: I do not object.

20 THE COURT: Mark Labianca?

21 MR. LABIANCA: I do not object.

22 THE COURT: Sharon Lissauer?

23 As Mr. Madoff has pled guilty, he is no longer
24 entitled to the presumption of innocence. The exposure is
25 great, 150 years in prison. In light of Mr. Madoff's age, he

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1 has an incentive to flee, he has the means to flee, and thus,
2 he presents a risk of flight. Bail is revoked, and the
3 defendant is remanded.

4 MR. SORKIN: Your Honor, would your Honor consider,
5 respectfully, a stay so that we might appeal your Honor's bail
6 decision? We intend to do it expeditiously.

7 THE COURT: The request for a stay is denied.

8 MR. SORKIN: Thank you.

9 THE COURT: Sentencing, as I said, is set for June
10 16th, 1:30 p.m. Some of the victims may wonder why do we need
11 so much time. Well, the probation department has to prepare a
12 presentence report. By law, the defendant is entitled to 35
13 days to review the presentence report before sentencing. We
14 also have to give the parties an opportunity to submit written
15 materials.

16 Mr. Madoff, I will see you at sentencing. We are
17 adjourned.

18 o0o

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Exhibit 3

Transcript of Madoff Plea Hearing before Judge Chin held 6-29-2009.TXT

1

96TJMAD1 Sentence
 1 UNITED STATES DISTRICT COURT
 1 SOUTHERN DISTRICT OF NEW YORK
 2 -----x
 2
 3 UNITED STATES OF AMERICA,
 3
 4 v. 09 CR 213 (DC)
 4
 5 BERNARD L. MADOFF,
 5
 6 Defendant.
 6
 7 -----x
 7

New York, N. Y.
June 29, 2009
10:00 a.m.

12 Before:

HON. DENNY CHIN,
District Judge

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(212) 805-0300

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2

96TJMAD1 Sentence
 1 (In open court)
 2 (Case called)
 3 THE COURT: Please be seated. Good morning. Mr.
 4 Madoff, would you please stand.
 5 Mr. Madoff, you pled guilty on March 12th, 2009 to 11
 6 counts of securities fraud, investment advisor fraud, wire and
 7 mail fraud, money laundering, making false statements, perjury,
 8 filing false documents with the SEC and theft from employee
 9 benefit funds. You are here this morning to be sentenced for
 10 those crimes.
 11 Have you reviewed the presentence report?
 12 THE DEFENDANT: Yes, I have, your Honor.
 13 THE COURT: Did you discuss it with your lawyers?
 14 THE DEFENDANT: I have.
 15 THE COURT: Mr. Sorkin, have you reviewed the
 16 presentence report and discussed it with your client?
 17 MR. SORKIN: Yes, your Honor, we have.

Transcript of Madoff Plea Hearing before Judge Chin held 6-29-2009.TXT

18 THE COURT: Do you or your client have any objections
19 to the factual recitations or the guidelines calculation?
20 MR. SORKIN: We do not, your Honor.
21 THE COURT: Thank you. You can be seated.
22 Ms. Baroni, does the government have any objections to
23 the presentence report?
24 MS. BARONI: No, your Honor.
25 THE COURT: Thank you.
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1 I accept and adopt the factual recitations set forth
2 in the presentence report. I accept and adopt the guidelines
3 calculation set forth in the presentence report with one
4 clarification which I will discuss in a moment.

5 The total offense level is 52, the criminal history
6 category is I. The PSR concludes that the guideline range is
7 life imprisonment. That is not quite accurate, however,
8 because the guidelines range cannot be life imprisonment as no
9 count carries the possibility of a life sentence. Rather the
10 most serious counts carry a maximum of 20 years' imprisonment.

11 I look then to Section 5G1.2(d) of the guidelines,
12 which tells us that where there are multiple counts, and the
13 guideline range exceeds the statutory maximum for the most
14 serious count, the court must impose consecutive terms of
15 imprisonment to the extent necessary to achieve the total
16 punishment.

17 There is a little bit of ambiguity, however, as to
18 what is meant by "total punishment" where the guideline
19 calculation calls for life imprisonment, but Second Circuit
20 case law makes clear that in such a situation, the district
21 court is to stack or add up the maximum sentences for all the
22 counts.

23 In United States v. Evans, for example, 352 F.3d 65,
24 where the guideline calculation called for life imprisonment
25 but no count carried a life sentence, the court held that the

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96TJMAD1 Sentence

1 guideline range is 240 years, the maximum sentences for all the
2 counts added together.

3 Accordingly, here the guideline range is not life
4 imprisonment, but 150 years, the maximum sentences for each of
5 the 11 counts added together. Of course, in light of Booker
6 and the case law that followed, the guideline range is advisory
7 only. While I must give the guideline range fair and
8 respectful consideration, I am not bound by it. In fact, the
9 Probation Department recommends a sentence of 50 years.
10 Instead I must make an individualized assessment based on all
11 the facts and circumstances, including the factors set forth in
12 the statute. In the end, I must impose a sentence that is
13 reasonable.

14 We will proceed as follows:

15 First we will hear from the victims. Then Mr. Sorkin
16 will speak on behalf of Mr. Madoff. Next Mr. Madoff may speak
17 if he wishes. Finally, I will hear from the government.

18 First the victims. I have received several hundred
19 written statements from victims including the e-mails and
20 letters submitted back in March. Every victim who made a timed
21 request to speak will be permitted to speak today except in two
22 instances. Two members of the same family asked to speak, and

Transcript of Madoff Plea Hearing before Judge Chin held 6-29-2009.TXT
23 we will permit one person to speak on behalf of the family.
24 Two victims have now withdrawn their request. Accordingly, we
25 will hear from 9 victims today.

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96TJMAD1 Sentence

1 First we will hear from Mr. and Mrs. Ambrosino. The
2 Ambrosinos can step up to the microphone. Go ahead.
3 Mr. Ambrosino, go ahead. Come up to the microphone so everyone
4 can hear you.

5 MR. AMBROSINO: Thank you, your Honor. My name is
6 Dominic Ambrosino and my --

7 THE COURT: Sir, just keep your voice up.

8 MR. AMBROSINO: I thank the court for allowing me to
9 speak today. As a retired New York City Correction Officer, I
10 am very familiar with the inside of a courtroom. However, I
11 never in my wildest dreams ever expected to be sitting in one
12 as a victim of an indescribably heinous crime --

13 THE COURT: Mr. Ambrosino, slow down a touch so our
14 Court Reporter can transcribe what you're saying.

15 MR. AMBROSINO: That dream came true on March 12th as
16 I watched Bernie Madoff stand and be cuffed. However, the
17 dream really started as a nightmare on December 11th. I can
18 remember the exact second my wife told me the news. I
19 immediately knew all the ramifications, but I don't think she
20 did. The fallout from having your entire life savings drop
21 right out from under your nose is truly like nothing you can
22 ever describe. At first it was the obvious, and how will we
23 pay our bills? How can someone do this to us?

24 We worked honestly and we worked so hard. This can't
25 be real. We did nothing wrong.

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96TJMAD1 Sentence

1 I don't know if anyone other than another victim can
2 explain what the less obvious effects are, how every decision
3 directly and indirectly hinged on the fact that we had the
4 security of our savings. When I was able to leave the job, we
5 bought a motor home to travel the country. We took out a
6 mortgage since it was better to keep our savings in Madoff. We
7 sold the house my wife lived in for 27 years and also put all
8 those profits -- and they were high -- into our Madoff account.
9 We trusted that the savings and planning would see us through
10 our retirement.

11 We had ideas of traveling the country. It all stopped
12 abruptly on December 11th. As a result, we are left with no
13 permanent house, a depreciating motor home, we are upside down
14 on the loan and an income from my pension that is our life.
15 This pension used to be perceived as spending money before
16 December 11th, and now although it doesn't cover our monthly
17 expenses, we rely on it fully. It is all we have.

18 I sustained a 52 percent hearing loss on my job, and
19 at 49 years' old I can't go back to my previous career so I
20 have taken on a job this summer in Arizona as an construction
21 project coordinator. The job will only last until August.
22 Then I don't know what I am going to do.

23 My wife's foot was run over by a van while in New York
24 City. There was a plea hearing in March. She had a job lined
25 up before the trip. The expenses of the trip were given to us

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96TJMAD1 Sentence

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1 and we had to let it go since she was in a cast for eight
2 weeks. She is now rehabilitating and still feels pain when she
3 stands for long periods of time.

4 With that background as to who I am, I would like to
5 share some of the specific problems Madoff's crime brought to
6 us. My pension distribution, a one-time decision, and our
7 health insurance plan, also one-time decision, were based on
8 the fact that we had savings and security with Madoff. If I
9 should die, my wife is left without my income or health
10 insurance.

11 We sold our home in New York with the expectation that
12 someday we would have the finances to purchase another one. We
13 have no credit now and can't get a mortgage. We have been
14 forced to take care of people's homes while they are traveling
15 for the summer, as we used to do prior to December 11th.

16 We have through the generosity of friends been able to
17 stay rent free on the RV lots of people in the community. This
18 will come to a screeching halt in October when the owners
19 return for the winter season. We don't know where we'll go at
20 that time. We don't have enough income from my pension to pay
21 monthly rent.

22 The most devastating to us is we lost our freedom. We
23 lost the ability to share our life every day as we explore the
24 country every day. We lost the time to hold hands as we
25 walked. As they say in the commercial, this is priceless.

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96TJMAD1 Sentence

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1 In closing, I would like to say, Judge Chin,
2 sentencing Bernard L. Madoff to the fullest extent will
3 certainly not eliminate any of the issues I wrote about. It
4 probably won't even gain me satisfaction. As the guard who
5 used to be on the right side of the prison bars, I'll know what
6 Mr. Madoff's experience will be and will know that he is in
7 prison in much the same way he imprisoned us as well as others.

8 He took from us the freedom that we held so preciously
9 close to our lives, the very thing I always valued and never
10 took for granted. In a sense, I would like someone in the
11 court today to tell me how long is my sentence.

12 Thank you very much.

13 THE COURT: Thank you. Next we'll hear from Mr. and
14 Mrs. Fitzmaurice.

15 MS. EBEL: No, Judge Chin. I am next.

16 THE COURT: I saw the gentleman standing up next and I
17 thought you were Maureen Ebel.

18 MS. EBEL: Yes, I am. I am here with my brother,
19 William Thomas McDonough.

20 THE COURT: All right.

21 MS. EBEL: My name is Maureen Ebel and I am a victim
22 of Bernard L. Madoff.

23 I have lost all of my life's hard-earned savings. I
24 have lost my life savings because our government has failed me
25 and thousands and thousands of other citizens. There are many

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96TJMAD1 Sentence

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1 levels of government complicity in this crime. The Securities
2 & Exchange Commission, by its total incompetence and criminal
3 negligence, has allowed a psychopath to steal from me and steal

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4 from the world.
 5 I am a 61-year-old widow and I am now working full
 6 time. I have done many things to survive since December 11th,
 7 including selling a lot of my possessions and working three
 8 jobs at the same time. I have lost a home that my husband and
 9 I had owned for 25 years because of this theft.
 10 I have lost my ability to care for myself in my old
 11 age. I have lost the ability to donate to charity, especially
 12 the Leukemia & Lymphoma Society. I have lost my ability to
 13 donate my time working for that charity as I had done in the
 14 past because now I must work full time in order to eat.
 15 I have lost the ability to help future generations of
 16 my family get an education. I have lost the ability to help
 17 them with their housing needs. It pains my so much to remember
 18 my husband getting up in the middle of the night. He was a
 19 very fine physician. He would get up in the middle of the
 20 night year after year in all kinds of weather to go to the
 21 hospital to save someone's life in rain, ice and snow.
 22 He would save someone's life so that Bernie Madoff
 23 could buy his wife another party rock. I have lost the ability
 24 to move around the world freely at this stage in my life using
 25 the money my husband and I have worked so hard to earn. We had

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96TJMAD1 Sentence

1 worked, saved and planned for our old age so that we could
 2 leave something behind and not be a burden when we became sick
 3 and old.
 4 The emotional toll that this has taken on me has been
 5 devastating. I have had great pain and suffering at the hands
 6 of Bernie Madoff. My health deteriorated rapidly after
 7 December 11th. I could not eat or sleep. I was very agitated
 8 and hyperactive. I had all the signs and symptoms of someone
 9 undergoing great stress. I suffered rapid weight loss, rapid
 10 heart rate, sweating, insomnia and sometimes spells.
 11 I had the horrible feeling that I had been pushed into
 12 the great black abyss, but I could not indulge these paralyzing
 13 feelings too long. I had work to do. While experiencing all
 14 these symptoms, I had to sell my home of 25 years, sell my
 15 car, sell my possessions and go to work full time. I accepted
 16 gifts of money from family and friends to pay for heat,
 17 electricity, gasoline and food.
 18 I was the recipient of so many kindnesses and saw so
 19 much goodness in people. Goodness in people is something that
 20 you, Mr. Madoff, have been blind to your whole life, and that
 21 goodness is better than all the yachts and all the French homes
 22 in all the world put together.

23 Sadly, Mr. Madoff not only defrauded thousands of
 24 investors, he mastered the art of manipulating our government.
 25 FINRA and the Securities & Exchange Commission became his

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96TJMAD1 Sentence

1 tools. They were willing to relax all regulations that would
 2 have uncovered his fraud. The justification for relaxing the
 3 regulations was to ease the burden on Wall Street firms, the
 4 very firm that bankrupted the world economy.
 5 THE COURT: Ms. Ebel, this is not the time to
 6 criticize the agencies. That is not before me. What is before
 7 me is what sentence to impose, so if you would address that,
 8 please.

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9 MS. EBEL: I will, Judge Chin.
10 Mr. Madoff, I have read you will be making a statement
11 about your guilt and shame. I do not believe you. Judge Chin,
12 Mr. Madoff should stay in jail until every person who enabled
13 him to cause such a massive devastation is brought to justice.
14 He should stay in jail until the families of every one of his
15 victims are able to restore their financial stability. That
16 could easily take 150 years. Thank you.

17 THE COURT: Thank you. Next we'll hear from Mr. and
18 Mrs. FitzMaurice.

19 MR. FITZMAURICE: Thank you, Judge Chin, for allowing
20 us to be heard in your courtroom today.

21 My wife and I here are today representing the
22 thousands of Madoff victims. We have all suffered extensively
23 as a result of his actions. It has been well chronicled that
24 Madoff did not limit his treachery to a few. He stole from the
25 rich, he stole from the poor and he stole from the in-between.

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96TJMAD1 Sentence

1 He had no boundaries. He stole from individuals as well as
2 charitable organizations of all types and denominations.

3 My wife and I are not millionaires. He has taken our
4 entire life savings. We have not been overlooked just as many
5 of his other victims. We have worked hard, long and hard for
6 all of our lives to provide for our family and to be in a
7 position to retire someday. I am now forced to work three
8 jobs. My wife is working a full-time job only to make ends
9 meet, to allow us to pay our mortgage and put food on the
10 table.

11 We are 63 years' old. It will be no retirement for us
12 in the next two or three years. There will be no trips to
13 California to visit our one-year-old grandson. There will be
14 no vacations of any type. Again we are too old to recoup the
15 monies that he has taken from us. We can only work as long as
16 our health will hold up and then we will have to sell our home
17 and hope to survive on social security alone.

18 Madoff has shown no remorse. Please do not confuse
19 his prepared statement as remorse. His crime was premeditated
20 and calculated. He was attempting to scam investors only days
21 before his arrest. If he had the opportunity, he would still
22 be stealing from innocent investors. He has not truly
23 cooperated with the authorities to recover the money that
24 rightfully belongs to his investors, whom we are now known as
25 victims.

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96TJMAD1 Sentence

1 He cheated his victims out of their money so that he
2 and his wife Ruth and their two sons could live a life of
3 luxury beyond belief. This life is normally reserved for
4 royalty, not for common thieves.

5 Your Honor, we implore you to give him the maximum
6 sentence at a maximum prison for this evil lowlife. This would
7 be true justice. Minimum security prison would only allow
8 Madoff too many freedoms that he does not deserve. He would be
9 leading a life better than a lot of his victims. That is not
10 true justice. His was a violent crime without the use of a
11 tangible weapon.

12 His attorney will argue for a lenient sentence of up
13 to twelve years. That is both insulting and another example of

Transcript of Madoff Plea Hearing before Judge Chin held 6-29-2009.TXT

14 Madoff's arrogance. The scope of the devastation he has
15 wreaked is unparalleled. It is impossible to compare his crime
16 to any past criminal act. The pain he has inflicted will
17 continue for many years. My life will never be the same. I am
18 financially ruined and will worry every day about how I will
19 take care of my wife.

20 Where will we be able to live? How will we pay our
21 bills? How will we get medical insurance?

22 All of his victims worldwide will be waiting to see
23 that true justice is served. True justice is a maximum
24 sentence in a maximum security prison. I have a quotation from
25 my wife, since only one of us could speak. She wants to say:

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1 "I cry every day when I see the look of pain and
2 despair in my husband's eyes. I cry for the life we once had
3 before that monster took it away. Our two sons and
4 daughter-in-law have rallied with constant love and support.
5 You, on the other hand, Mr. Madoff, have two sons that despise
6 you. Your wife, rightfully so, has been vilified and shunned
7 by her friends in the community. You have left your children a
8 legacy of shame. I have a marriage made in heaven. You have a
9 marriage made in hell, and that is where you, Mr. Madoff, are
going to return. May God spare you no mercy."

11 THE COURT: Thank you.

12 Next we will hear from Carla Hirschhorn.

13 MS. HIRSCHHORN: Good morning and thank you, your
14 Honor, for allowing me to address you.

15 My husband and I write to you to explain the
16 devastation caused by Bernard L. Madoff to our lives. Since
17 1992 we were invested with Bernard L. Madoff Investment
18 Securities. We have never been rich people. We have worked
19 throughout all our adult lives. Over the years my husband has
20 worked hard to learn a trade as a glazer which afforded him the
21 opportunity to start a small business. I have been a physical
22 therapist and worked through to the day I was graduated from
23 college in 1980. We have both diligently saved our hard-earned
24 money to invest with Bernard Madoff over the years. We used
25 our money to raise our children, purchase our home and put our

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96TJMAD1 Sentence

1 savings in Bernard Madoff Securities.

2 On December 11th, 2008, our world crumbled beneath us
3 as news of the Bernard Madoff ponzi scheme became public. This
4 turn of events has been devastating to our family. We lost our
5 entire life savings. This money was being used to provide our
6 children with a college education they have worked so hard to
7 deserve and to provide us with savings for a secure retirement.

8 Since December 11th, 2008 life has been a living hell.
9 It feels like a nightmare that we can't wake from. I am so
10 thankful that my father died two years ago and was spared from
11 having to live in his terminal condition without the money to
12 provide him 24/7 health care which allowed him to die with
13 indignity.

14 My father died and left my mother believing she would
15 be able to live a safe and secure life with the money in her
16 Bernard Madoff accounts. Now all she has to live on is a
17 sparse social security check and a small pension which will
18 last less than one year. She may not have enough money to

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19 maintain her home and living expenses.
 20 It is our hope and in our prayers she does not become
 21 ill and require extraordinary means to sustain her. Our
 22 daughter who sits in this courtroom today to witness this
 23 horrific event is a junior at college and has worked two jobs
 24 since our Madoff accounts were stolen while going to school
 25 full time. The stress and worry about her family's financial
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1 situation and health of her parents has been devastating to
 2 her. We have no idea how we will continue to pay for college
 3 without it being a terrible financial burden and worry on all
 4 of us.

5 Immediately after hearing the news of the ponzi
 6 scheme, we filed papers for financial aid to sustain our
 7 daughter through college. We were informed we were not
 8 eligible for any grant money, that our only hope would be to
 9 take out loans. However, in this financial environment,
 10 without SIPIC insurance and with concern about claw-back
 11 litigation, we can't possibly take loans out to send our
 12 daughter to college. The turmoil caused by our financial
 13 devastation has caused us serious physical and emotional
 14 problems from which we need medical treatment.

15 Your Honor, please understand that we, the investors,
 16 have been punished by Madoff's crime. We were devastated by
 17 the SEC's failure to uncover Madoff's fraud and its continued
 18 stamp of approval behind Madoff over the decades of his crime.
 19 We have been abandoned by our elected officials which refuse to
 20 require the SEC to find income. We have been betrayed by
 21 SIPIC, which in order to save money, has invented a new
 22 definition of net equity to deprive us of the \$500,000 of
 23 insurance of which we were assured.

24 Please, your Honor, do not fail us. Please assure
 25 that Madoff is sentenced with the maximum possible time and he
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1 is required to serve his sentence in a maximum security prison.
 2 This is not a man who deserves a federal country club.

3 Respectfully, Carla Hirschhorn.

4 THE COURT: Thank you.

5 It is not up to me, by the way, where Mr. Madoff will
 6 be designated. A number of people have made that suggestion,
 7 but it is up to the Bureau of Prisons.

8 Next we'll hear from Sharon Lissauer.

9 MS. LISSAUER: My name is Sharon Lissauer. Thank you,
 10 your Honor, for letting me speak. I am very emotional, so
 11 please bear with me if I break down into tears. As everyone
 12 knows, this nightmare has begun six and a half months ago and
 13 yet it seems like a lifetime.

14 I keep on thinking I am going to wake up from it. It
 15 keeps on getting worse. My life and my future have been
 16 ruined. I was always so careful with my money, but I entrusted
 17 everything I had to Mr. Madoff, my whole life savings from
 18 modeling and the inheritance of my mom. She just died last
 19 year, and as soon as I got the money, because I just miss her
 20 and I trusted Mr. Madoff so much, I gave it all to him, but now
 21 I don't have my mom or the money.

22 I know I am not alone. I know he has ruined thousands
 23 of people's lives. In the March hearing he said that he was

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24 truly sorry, which I don't really believe, but even if it is a
25 little bit true, then I am not asking him, I am begging him, if
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1 he has any money from the offshore accounts or his family has
2 any money obtained from this horrible fraud, that they disgorge
3 it and give it back to the victims so they can have a little
4 bit of their lives back.

5 With respect to his sentencing, I used to think that
6 it didn't matter if he got 150 years, what would that do for
7 the victims? It wouldn't get their money back. But now upon
8 reflection, I think he should spend his whole life in jail
9 because what he has done is just despicable. He has ruined so
10 many people's lives. He killed my spirit and shattered my
11 dreams. He destroyed my trust in people. He destroyed my
12 life, and I have no other assets. I make very little money
13 from modeling and he left me in a very difficult position to
14 pay my bills and support myself. For the first time in my life
15 I am very, very frightened of my future.

16 Thank you, your Honor.

17 THE COURT: Thank you.

18 Next we'll hear from Burt Ross. Mr. Ross.

19 MR. ROSS: Your Honor, my name is Burt Ross and my
20 wife Joan and I lost \$5 million because of the criminal acts of
21 Bernard Madoff. Not only have I lost the inheritance of my
22 father who worked his entire life, not only have I lost the
23 inheritance of my father who worked for his entire life so that
24 his children and his children's children can leave a better
25 life, I have lost our retirement accounts and funds in trust

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1 for our children.

2 The fact is though we are one of the fortunate ones
3 because we still have a roof over our heads, food on our table,
4 unlike so many others who have been forced to sell their homes,
5 who have been forced to sell their homes and pick up the pieces
6 of their lives.

7 Years ago I attended a Friends secondary school where
8 we thought that in each person there was an inner light, that
9 of God and everyone. For the life of me, as far as I have
10 searched, I cannot find that inner light in Bernard Madoff.

11 What can we possibly say about Madoff, that he was a
12 philanthropist, when the money he gave to charities he stole
13 from the very same charities he ultimately devastated; that he
14 was a good family man when he leaves his grandchildren a name
15 that mortifies them, a name which will live in infamy; that he
16 is genuinely remorseful for his conduct when the statement he
17 read in this very court was totally without emotion, when even
18 after confessing he fought to keep assets away from those he
19 hurt, when we all know his only regret was getting caught.

20 Can we say Madoff was a righteous Jew who served on
21 the boards of Jewish institutions when he sank so low, when he
22 sank so low as to steal from Elie Weisel, as if Weisel hasn't
23 already suffered enough in his lifetime.

24 A righteous Jew, when in reality nobody has done more
25 to reinforce the ugly stereotype that all we care about is

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1 money the fact is there are no people on this earth more
2 charitable? But we will survive. We have survived worse than
3 Madoff.

4 What Bernard L. Madoff did far transcends the loss of
5 money. It involves his betrayal of the virtues people hold
6 dearest -- love, friendship, trust -- and all so he can eat at
7 the finest restaurants, stay at the most luxurious resorts, and
8 travel on yachts and private jets. He has truly earned his
9 reputation for being the most despised person to be in America
10 today.

11 Several hundred years ago the Italian poet Dante in
12 his "The Divine Comedy" recognized fraud as the worst of sins,
13 the ultimate evil more than any other act contrary to God's
14 greatest gift to mankind -- love. In fact, he placed the
15 perpetrators of fraud in the lowest depths of hell, even below
16 those who had committed violent acts. And those who betrayed
17 their benefactors were the worst sinners of all, so in the
18 three mouths of Satan struggle Judas for betraying Jesus
19 Christ, and Brutus and Cassius for betraying Julius Caesar.

20 Please Allow me to take a liberty now by speaking for
21 many of those victims who because of frailty, privacy,
22 distance, or other reasons are unable to bear witness today.
23 We urge your Honor to commit Madoff to prison for the remainder
24 of his natural life, and when he leaves this earth virtually
25 unmourned, may Satan grow a forth mouth where Bernard L. Madoff

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1 deserves to spend the rest of eternity.

2 Thank you.

3 THE COURT: Thank you. Next we'll hear from Michael
4 Schwartz.

5 MR. SCHWARTZ: Can everyone hear me?

6 My name is Michael Schwartz. I am 33 yearS' old. It
7 was my family's trust fund that helped fund the money for
8 Bernard Madoff's organization. Since I was a teenager, I
9 invested into what I thought was a forthright and legitimate
10 investment firm. During this time I made sure I lived well
11 within my means, nothing extravagant. I viewed my investment
12 as a safety net in case I should hit hard times or perhaps face
13 medical issues.

14 Unfortunately, several months ago, my job was
15 regionalized, eliminated. I was handed a letter of
16 recommendation and sent on my way. It didn't hit me until I
17 got home that the company that you ran had already taken my
18 life savings. At 33, I was wiped out.

19 I am one of the lucky ones by far. I have my health.
20 I am young, I have great friends, got a loving wife.

21 Unfortunately, the money you took from other members of my
22 family wasn't a minor setback. It was quite a bit more. Your
23 Honor, part of the trust fund wasn't set aside for a house in
24 the Hamptons, a large yacht or box seat to the Mets. No, part
25 of that money was set aside to take care of my twin brother who

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1 is mentally disabled, who at 33, he lives at home with my
2 parents and will need care and supervision for the rest of his
3 life.

4 In the final analysis, my family wants to remember

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5 that in addition to stealing from retirees, veterans, widows,
6 Bernard Madoff stole from the disabled. Every time he cashed a
7 check and paid for his family's decadent lifestyle, he killed
8 dreams. My parents had a simple dream for my brother, a week
9 at summer camp, someday being able to live in a good, a good
10 group home. Thanks to Bernard Madoff's greed, complete lack of
11 ethics, that dream will be delayed.

12 At the end of the day my twin brother will be taken
13 care of. My family is strong enough to weather this storm but,
14 your Honor, I say this without any malice, Bernard Madoff
15 should no longer be allowed back in society. I only hope that
16 his prison sentence is long enough so that his jail cell
17 becomes his coffin. Thank you.

18 THE COURT: Thank you.

19 We'll hear next from Miriam Siegman.

20 MS. SIEGMAN: I was born a few blocks from this
21 courthouse. I still live here. On a cold winter's day just
22 before my 65th birthday, the man sitting in front of me
23 announced to the world that he had stolen everything I had.
24 After that he refused to say another word to his victims. I am
25 here today to bear witness for myself and others, silent

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1 victims.

2 The streets of my childhood felt safe. The streets I
3 wander now feel threatening. The man sitting in this courtroom
4 robbed me. In an instant his words and deeds beat me to near
5 senselessness. He discarded me like road kill. Victims became
6 the byproduct of his greed. We are what is left over, the
7 remnants of stunning indifference and that of politicians and
8 bureaucrats.

9 Six months have passed. I manage on food stamps. At
10 the end of the month I sometimes scavage in dumpsters. I
11 cannot afford new eyeglasses. I long to go to a concert, but I
12 never do. Sometimes my heartbeats erratically for lack of
13 medication when I cannot pay for it.

14 I shine my shoes each night, afraid they will wear
15 out. My laundry is done by hand in the kitchen sink. I have
16 collected empty cans and dragged them to redemption centers.

17 I do this. People ask how are you? My answer always
18 is I'm fine, but it is not always true. I have lived with
19 fear. It strikes me at all hours. I calculate again and again
20 how long I can hold out.

21 It is only a matter of time. I will be unable to meet
22 my own basic needs, food, shelter, medicine. I feel grief at
23 no longer being able to help support my beloved sister. I feel
24 shame and humiliation asking for help.

25 I also feel overwhelming sadness. I know that another

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1 human being did this to me and to all victims, but I don't know
2 why. What I do understand frightens me. The man who did this
3 had deep contempt for his victims.

4 There are many victims including those we never hear
5 from or see; union members, pipe-fitters, laborers, women who
6 work in nursing homes, bricklayers, firemen, working people.
7 One victim shot himself. The inquest informs us he was a
8 highly decorated former soldier who could not face the shame of
9 his ruin, his last words on a humanitarian mission in

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10 Afghanistan. By self-admission, this thief among us knew his
11 victims were facing a kind of death at his hands, yet he
12 continued to play with us as a cat would with a mouse.

13 What shall be the punishment for such a man? What
14 sentence? Carry the burden we carry, feel his shame,
15 humiliation and isolation as I do. Feel it each day wherever
16 you are until life ends.

17 Face an acknowledge the murderous effects of your
18 life's work. I long for the truth that might become of a trial
19 and hope justice had placed a higher premium on truth and
20 expediency. Forgiveness for now, it will have to come from
21 someone other than me.

22 THE COURT: Thank you. Finally we'll hear from Sheryl
23 Weinstein.

24 MS. WEINSTEIN: Hello, your Honor.

25 THE COURT: Good morning.

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1 MS. WEINSTEIN: I was introduced to Bernard Madoff 21
2 years ago at a business meeting. At the time I was the chief
3 financial officer of Hadassah, a charitable women's
4 organization. I now view that day as perhaps the unluckiest
5 day of my life because of the many events set into motion that
6 would eventually have the most profound and devastating effect
7 on me, my husband, my child, my parents, my in-laws and all
8 those who depended upon us for their liveliness.

9 You have read and you appear from many of us, the old,
10 the young, the healthy and infirm about the unimaginable extent
11 of human tragedy and devastation. According to a Time Magazine
12 article, there are over 3 million individuals worldwide who
13 have been directly or indirectly affected. They, the press and
14 the media, speak of us as being greedy and rich. Most of us
15 are just ordinary working people, worker bees, as I like to
16 refer to us.

17 My husband and I are now both in our 60's and have
18 been married for 37 years. We have saved for most of our lives
19 by living beneath our means in order to provide for our
20 retirement. This past Thursday at 2:00 o'clock my husband and
21 I sold our home of 20 years. People are always asking how much
22 did we lose? My reply is that when you lose everything, it
23 really doesn't matter because you have nothing left, and we
24 have lost everything.

25 Many have told us we were lucky -- I no longer know --
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1 to be able to sell in this depressed market although at a
2 greatly reduced amount. We had to sell because four years ago
3 we refinanced our mortgage and gave the excess cash to Bernie
4 Madoff. There was very little left over after all was said and
5 done at the closing.

6 It is difficult to describe how it feels due to
7 circumstances outside of your control to be virtually forced
8 out of your home, to leave unwillingly. Last Tuesday I walked
9 out following the movers with a thought I would be back before
10 the closing, but knowing in the back of my mind that I
11 wouldn't.

12 My husband was the last to be in our home. He shared
13 with me his hesitation of not wanting to leave, of wanting to
14 remain, but realizing that staying was no longer an option. We

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15 chose not to go to the closing because it would have been too
16 difficult and painful for either of us to be there. For months
17 after December 11th I would wake in the dark hours of the night
18 and early morning and to my horror realize that there were no
19 calming, soothing words I could say to myself because it wasn't
20 a dream. The monster who visited me was true, a reality.
21 Those same thoughts would occur to me upon waking in the
22 morning and during the day and a deep, heavy depression would
23 surround me and not lift.

24 This went on for many months. I went on after bad
25 dreams, virtually not unable to eat. The sight of food was

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1 making me feel sick, unable to escape the reality of my
2 personal devastation. At times I could not even bear to be
3 alone. I would ask my friends to either stay with me at the
4 office even if there was very little work to do. It would
5 prompt me to pick up the phone to call my husband to be
6 reassured I was not alone.

7 This continued until March 12th when Madoff entered
8 his plea of guilty. I began to speak out to the media, and the
9 helpless and hopeless feelings began to retreat and I began to
10 feel empowered. It came together for me while being
11 interviewed by Katie Couric. She asked me wasn't I embarrassed
12 being a CPA losing all my money? At that moment I realized and
13 responded no, I am not embarrassed because I did not lose my
14 money. My money was stolen from me.

15 Ms. Couric said to me you sound angry, and I said yes,
16 you're right. When someone steals from you, you get angry.
17 That was the beginning of my healing process.

18 I felt it was important for somebody who as personally
19 acquainted with Madoff to speak. My family and I are not
20 anonymous people to him. He knows my husband's name is Rob and
21 my son's name is Eric. In fact, Eric worked for him one summer
22 while in college many years ago. Eric would continue to call
23 him over the years to ask for his advice and input. Eric
24 entrusted him with his money that he worked and saved. A few
25 months before all this happened Eric had spoken to him and

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1 thanked him for doing such a good job.

2 I would now like to have the opportunity to share with
3 you my personal feelings about Madoff and to speak to his
4 sentencing.

5 I remember when my son was perhaps a few weeks' old
6 and I would watch him as he slept and he would whimper, not a
7 cry of hunger, but a whimper. Even at a few weeks' old there
8 was something in his subconscious that could frighten him. It
9 amazed me such a young child, an infant can have nightmares.

10 All of us from our earliest ages remember those times
11 when the terror, the monsters and goblins would come visit us
12 in those dark hours. Eventually we would be so frightened that
13 we would awake sometimes calling out to our parents because of
14 the fear.

15 It was calming to have our parents remind us it was
16 only a dream. As we got older, we could wake ourselves and
17 self-assure ourselves it was only a dream. That terror, that
18 monster, that horror, that beast has a name to me, and it is
19 Bernard L. Madoff. I will now attempt to explain to you the

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20 nature of this beast who I called Madoff.
21 He walks among us. He dresses like us. He drives and
22 eats and drinks and speaks. Under the facade there is truly a
23 beast. He is a beast that has stolen for his own needs the
24 livelihoods, savings, lives, hopes and dreams and futures of
25 others in total disregard. He has fed upon us to satisfy his

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1 own needs. No matter how much he takes and from whom he takes,
2 he is never satisfied. He is an equal opportunity destroyer.

3 I felt it important for you to know in appearance, he
4 would be just like everybody else and it is for this reason I
5 am asking your Honor to keep him in a cage behind bars because
6 he has lost the privilege of walking and being among us mortal
7 human beings. He should not be given the opportunity to walk
8 into our society again.

9 I would like to suggest that while any man, woman or
10 child that has been affected by his heinous crime still walks
11 this earth, Madoff the beast should not be free to walk among
12 them. You should protect society from the likes of him. I
13 have reread Madoff's March 12th statement to you. Certain
14 quotes jumped out at me. His continuing self-serving
15 references, and I quote, that his proprietary trading in the
16 market making business managed by his brother and two sons was
17 legitimate, profitable and successful in all respects, or that
18 he felt, "compelled to satisfy my clients' expectations at any
19 cost."

20 It sounds as if he is laying the blame on his clients'
21 expectations and never admitting the truth he was stealing from
22 these clients and the lives he ruined. If he was attempting to
23 protect his family, he should not be given that opportunity
24 because we, the victims, did not have the same opportunity to
25 protect our families. Madoff the beast has stolen our ability

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1 to protect our loved ones away from us. He should have no
2 opportunity to protect his family.

3 We, the victims, are greatly disappointed by those
4 agencies that were set up to protect us. SIPIC has now
5 redefined what we are entitled to. The IRS approved their
6 office request to be a custodian of our IRAs and pension funds
7 and the SEC appears to have looked the other way on numerous
8 occasions. This is a human tragedy of historic proportions and
9 we ask -- no, we implore -- that those whose agencies may have
10 failed us in the past through acts of omissions, step up to the
11 plate, fulfill their responsibilities. I thank your Honor for
12 your indulgence and I feel comfortable you will make sure
13 justice is served.

14 Thank you.

15 THE COURT: Thank you.

16 Thanks to all the victims who spoke today and to all
17 those who wrote. I appreciate hearing your views.

18 Mr. Sorkin.

19 MR. SORKIN: Good morning, your Honor.

20 THE COURT: Good morning.

21 MR. SORKIN: Before I speak, would your Honor

22 respectfully acknowledge you have received both the
23 government's sentencing memorandum and two responses?

24 THE COURT: Yes, I have your initial letter I received

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25 yesterday and your reply brief. I have the government's
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1 memorandum as well.
2 MR. SORKIN: Thank you.
3 THE COURT: I have read them all.
4 MR. SORKIN: Thank you, your Honor.
5 May I proceed?
6 THE COURT: Yes.
7 MR. SORKIN: Your Honor, I know I speak on behalf of
8 all Mr. Madoff's counsel as well as Mr. Madoff who will speak.
9 We cannot be unmoved by what we heard. There is no way that we
10 cannot be insensitive to the victims' suffering.
11 This is a tragedy as some of the victims have said at
12 every level. There is no doubt Mr. Madoff will speak. We
13 represent a deeply flawed individual, but we represent, your
14 Honor, a human being. We don't represent a statistic. We
15 don't represent a number. We speak to the victims. We have
16 heard what they've had to say and we can only imagine, your
17 Honor, what we would have heard from others.
18 I say again, forgive me for being redundant, we
19 represent a very flawed individual, an individual who appears
20 before this court facing a sentence that is sufficient but not
21 unreasonably necessary to carry out the mandate that this court
22 has to carry out.
23 The magnificence of our legal system, your Honor, is
24 that we do not seek an eye for an eye. To be sure, if it is
25 any consolation to the victims, we have worked hopefully
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1 diligently with the U. S. Attorney's Office in an atmosphere of
2 trying to recover assets. To that extent, your Honor, we have
3 provided the government with what we believe to be the assets
4 that Mr. Madoff has gathered over the years which the victims
5 have referred to, and again if it is any consolation to them,
6 to the extent that the government has left him and his family,
7 his wife impoverished, we are just about there with respect to
8 everything the government believes it can show in order to
9 obtain the appropriate assets for forfeiture.
10 Vengeance is not the goal of punishment. Our system
11 of justice, your Honor, has recognized that justice is and must
12 always be blind and fair -- not blind to the criminal acts that
13 Mr. Madoff pleaded guilty to and certainly not blind to the
14 suffering of the victims, but blind to the extent that it will
15 achieve a sentence that has been set out over the years in the
16 guidelines and the cases interpreting the guidelines, and the
17 guidelines and the courts and the statutes, your Honor, do not
18 speak of vengeance and revenge.
19 There is something bordering on the absurd, and we
20 cited United States versus Ellison on this point, your Honor.
21 For the government to ask for 150 years so that Mr. Madoff gets
22 out of jail at the age of 221 because he is 71 now, he will
23 face supervised release. By the same token, your Honor, it
24 defies reason for the Probation Department to suggest that he
25 be sentenced to 50 years in prison for the very same reasons.
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1 I point out to the court, and forgive me, your Honor,
2 for repeating what is in the letter we sent you most recently,
3 that Mr. Madoff, as he pleaded to, as appears in the
4 presentence report and appears in the information in which the
5 government agrees, for most of the period of time that Mr.
6 Madoff is alleged to have engaged in this ponzi scheme and, in
7 fact, it was a ponzi scheme, it was money in and money out.
8 Most of the money, and I am quoting from the PSR, went
9 for redemptions. People who invested money were given back
10 money. To be sure, it was a fraud. To be sure, it was a ponzi
11 scheme. To be sure, it was a crime, but nevertheless, your
12 Honor, I point out, and in response respectfully to some of the
13 victims, the PSR noted, and I think it is common knowledge in
14 the industry that Mr. Madoff built up this firm on the
15 proprietary trading side to the point in 1991, as the
16 presentence report points out, the proprietary trading side
17 which at the point of his arrest had approximately 200
18 employees separate and apart from the fraudulent advisory
19 business, a hundred traders making markets and in 1991, your
20 Honor, accounted for almost 10 percent of all transactions on
21 the New York Stock Exchange.
22 Sufficient to provide revenue at the same time Mr.
23 Madoff engaged in taking money in and taking money out, most of
24 that money went for redemptions. As we point out in our letter
25 of yesterday, and as the government notes and as the PSR notes,
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1 the loans, the comingling, and we we do dispute this with the
2 government, but I don't think it is a relevant issue, the
3 comingling, the loans.
4 (Continued on next page)

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1 MR. SORKIN: The loans, the comingling, commenced
2 within the last eight to ten years. And as Mr. Madoff will
3 say, things began to collapse. And there was comingling with
4 \$250 million over the last eight or so years, of advisory
5 money, as well as money in, money out of investments.

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6 I think it's important to note, your Honor, again that
7 Mr. Madoff stepped forward. He chose not to flee. He chose
8 not to hide money. To the extent money is overseas, we are
9 still actively engaged -- we, his defense counsel -- in
10 assisting the government, at the request of the government, to
11 obtain assets located overseas, as we speak, and we submitted
12 that voluntarily, and we have been trying to help, with
13 Mr. Madoff's authorization, permission, and blessing.

14 Mr. Madoff is 71 years old, your Honor. Based upon
15 his health, which is in the PSR, his family history, his life
16 expectancy, that is why we ask for a sentence of 12 years, just
17 short, based upon the statistics that we have, of a life
18 sentence.

19 We also said, if your Honor is inclined, your Honor
20 obviously makes the decision, 15 to 20 years. So that if
21 Mr. Madoff ever sees the light of day, in his 90s, impoverished
22 and alone, he will have paid a terrible price. He expects,
23 your Honor, to live out his years in prison.

24 The PSR points out, your Honor, as we noted in our
25 letter to you, that the loss in this case is \$13,226,000,000.

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1 The exact numbers are in the PSR. What has not been heard
2 publicly, your Honor, is the fact that over \$1,276,000,000 is
3 held by the SIPC trustee, and we have no control over how that
4 money is disbursed. And I say this for the victims we have
5 heard. Again, we have no control over what the SIPC trustee
6 does with the money that he obtains, nor do we have any control
7 over what the SEC will do, nor do we have any control as to how
8 the government to whom we have forfeited all of the assets but
9 a few, which the government and we have agreed were weighed
10 against the risk of litigation, we have no control how that
11 money is disbursed.

12 Additionally to the \$1,276,000,000, the SIPC trustee,
13 according to the PSR, has recovered \$1,225,000,000, has sent
14 demand letters to individuals for 735 million, and has
15 commenced litigation to seek a clawback from some very large
16 funds to obtain redemptions and interest payments in the amount
17 of \$10,100,000,000. It is our hope, your Honor, our sincerest
18 hope, that all that money is collected, in an amount in excess
19 of \$13,226,000,000, that that will be provided to investors.

20 The frenzy, the media excitement, that Mr. Madoff
21 engaged in a Ponzi scheme involving \$65 billion and that he has
22 ferreted money away, as far as we know, your Honor, that is
23 simply not true, and it is not borne out either by the
24 government or by the PSR, and we take no issue with the PSR.

25 In closing, your Honor, there is no question that this
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1 case has taken an enormous toll, not only on Mr. Madoff and his
2 family, but to the victims to be sure. But it has also taken a
3 toll, your Honor, as Mr. Madoff will say, on the industry that
4 he helped revolutionize, that he helped grow, and now has
5 become the object of disrespect and abomination, and that is a
6 tragedy as well.

7 We ask only, your Honor, that Mr. Madoff be given
8 understanding and fairness, within the parameters of our legal
9 system, and that the sentence that he be given be sufficient,
10 but not greater than necessary, to carry out what this Court

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11 must carry out under the rules, statutes and guidelines.

12 Thank you, your Honor.

13 THE COURT: Thank you.

14 Mr. Madoff, if you would like to speak, now is the
15 time.

16 THE DEFENDANT: Your Honor, I cannot offer you an
17 excuse for my behavior. How do you excuse betraying thousands
18 of investors who entrusted me with their life savings? How do
19 you excuse deceiving 200 employees who have spent most of their
20 working life working for me? How do you excuse lying to your
21 brother and two sons who spent their whole adult life helping
22 to build a successful and respectful business? How do you
23 excuse lying and deceiving a wife who stood by you for 50
24 years, and still stands by you? And how do you excuse
25 deceiving an industry that you spent a better part of your life

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1 trying to improve? There is no excuse for that, and I don't
2 ask any forgiveness.

3 Although I may not have intended any harm, I did a
4 great deal of harm. I believed when I started this problem,
5 this crime, that it would be something I would be able to work
6 my way out of, but that became impossible. As hard as I tried,
7 the deeper I dug myself into a hole. I made a terrible
8 mistake, but it wasn't the kind of mistake that I had made time
9 and time again, which is a trading mistake. In my business,
10 when you make a trading error, you're expected to make a
11 trading error, it's accepted. My error was much more serious.
12 I made an error of judgment. I refused to accept the fact,
13 could not accept the fact, that for once in my life I failed.
14 I couldn't admit that failure and that was a tragic mistake.

15 I am responsible for a great deal of suffering and
16 pain. I understand that. I live in a tormented state now
17 knowing of all the pain and suffering that I have created. I
18 have left a legacy of shame, as some of my victims have pointed
19 out, to my family and my grandchildren. That's something I
20 will live with for the rest of my life.

21 People have accused me of being silent and not being
22 sympathetic. That is not true. They have accused my wife of
23 being silent and not being sympathetic. Nothing could be
24 further from the truth. She cries herself to sleep every night
25 knowing of all the pain and suffering I have caused, and I am

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1 tormented by that as well. She was advised to not speak
2 publicly until after my sentencing by our attorneys, and she
3 complied with that. Today she will make a statement about how
4 she feels about my crimes. I ask you to listen to that. She
5 is sincere and all I ask you is to listen to her.

6 Apologizing and saying I am sorry, that's not enough.
7 Nothing I can say will correct the things that I have done. I
8 feel terrible that an industry I spent my life trying to
9 improve is being criticized terribly now, that regulators who I
10 helped work with over the years are being criticized by what I
11 have done. That is a horrible guilt to live with. There is
12 nothing I can do that will make anyone feel better for the pain
13 and suffering I caused them, but I will live with this pain,
14 with this torment for the rest of my life.

15 I apologize to my victims. I will turn and face you.

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16 I am sorry. I know that doesn't help you.
17 Your Honor, thank you for listening to me.
18 THE COURT: Thank you.
19 Mr. Sorkin, did I understand Mr. Madoff to say that
20 Mrs. Madoff wanted to speak?
21 MR. SORKIN: No, your Honor. Mrs. Madoff after the
22 sentencing will be giving a statement. And I add what
23 Mr. Madoff said about belaboring it, that she was advised by
24 counsel to wait till after sentence.
25 THE COURT: I thought he was saying she wanted to
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1 speak. Thank you.
2 I will hear from the government.
3 MS. BARONI: This defendant carried out a fraud of
4 unprecedented proportion over the course of more than a
5 generation. For more than 20 years he stole ruthlessly and
6 without remorse. Thousands of people placed their trust in him
7 and he lied repeatedly to all of them. And as the Court heard
8 from all of the victims, in their words and in the letters, he
9 destroyed a lifetime of hard work of thousands of victims. And
10 he used that victims' money to enrich himself and his family,
11 with an opulent lifestyle, homes around the world, yachts,
12 private jets, and tens of millions of dollars of loans to his
13 family, loans of investors' money that has never been repaid.
14 The guideline sentence in this case, as your Honor
15 knows, is 150 years and the government respectfully submits
16 that a sentence of 150 years or a substantial term of
17 imprisonment that will ensure that he spends the rest of his
18 life in jail is appropriate in this case.
19 This was not a crime born of any financial distress or
20 market pressures. It was a calculated, well orchestrated,
21 long-term fraud, that this defendant carried out month after
22 month, year after year, decade after decade. He created
23 literally hundreds and hundreds of thousands of fake documents
24 every year. Every time he told his clients that he was making
25 trades for them he sent them trade confirmations filled with
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1 lies. At every month end he sent them account statements that
2 were nothing but lies. And the defendant knew that his clients
3 made critically important life decisions, as your Honor heard
4 today, based on these lies. Decisions about their children's
5 education, their retirement, how to care for elderly relatives,
6 and how to provide for their families. He knew this, and he
7 stole from them anyway.
8 In doing so, he drove charities, companies, pension
9 plans and families to economic ruin. And even on the most
10 dispassionate view of the evidence, the scale of the fraud,
11 which is at a conservative estimate, your Honor, \$13 billion,
12 when you look at the duration of the fraud, which is more than
13 20 years, when you look at the fact that the defendant could
14 have stopped this fraud and saved the victims' losses, all of
15 these facts justify a guideline sentence of 150 years.
16 And to address briefly some of Mr. Sorkin's arguments,
17 despite Mr. Sorkin's arguments, the defendant here deserves no
18 leniency and certainly does not deserve a sentence of 12 years'
19 imprisonment.
20 Mr. Sorkin tries to argue that the loss amount is

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21 actually going to be less than 13 billion because the trustee
22 may recover some assets in clawback proceedings. As your Honor
23 knows, that has nothing to do with the loss amount in this
24 case. Further, the defendant shouldn't get any credit for
25 anything the government or the trustee does after the fraud to

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1 recover money.

2 In asking for 12 years, your Honor, the defendant is
3 asking you to impose a sentence that a defendant would receive
4 in a garden variety fraud case in this district, a case with
5 about \$20 million of losses and far fewer victims. In imposing
6 a 12 year sentence in this case, on the facts and circumstances
7 here, would be profoundly unfair. Not only would it not
8 reflect the seriousness and the scope of the defendant's
9 crimes, but, also, it would not promote the goals of general
10 deterrence going forward.

11 Mr. Sorkin's argument that the defendant should get
12 some credit for coming forward and turning himself in is also
13 entirely meritless. The defendant continued his fraud scheme
14 until the very end, when he knew the scheme was days away from
15 collapse, when he was almost out of money and when he was faced
16 with redemption requests from clients that he knew he could not
17 meet. And even at that point, rather than turning himself in,
18 he tried to take the last of his victims' money. He prepared
19 \$173 million in checks that he planned to give to his family,
20 his friends, and some preferred clients. It was his final
21 effort to put his interests above those of his clients, and had
22 the FBI not arrested him when they did, he might well have
23 succeeded.

24 Your Honor, in sum, for running an investment advisory
25 business that was a complete fraud, for betraying his clients
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1 for decades, and for repeatedly lying to regulators to cover up
2 his fraud, for the staggering harm that he has inflicted on
3 thousands of people, for all of these reasons and all of the
4 reasons your Honor heard so eloquently from the victims, the
5 government respectfully requests that the Court sentence the
6 defendant to 150 years in prison or a substantial term of
7 imprisonment that ensures that he will spend the rest of his
8 life in jail.

9 Thank you.

10 THE COURT: Thank you.

11 I take into account what I have read in the
12 presentence report, the parties' sentencing submissions, and
13 the e-mails and letters from victims. I take into account what
14 I have heard today. I also consider the statutory factors as
15 well as all the facts and circumstances in the case.

16 In his initial letter on behalf of Mr. Madoff, Mr.
17 Sorkin argues that the unified tone of the victims' letters
18 suggests a desire for mob vengeance. He also writes that
19 Mr. Madoff seeks neither mercy nor sympathy, but justice and
20 objectivity.

21 Despite all the emotion in the air, I do not agree
22 with the suggestion that victims and others are seeking mob
23 vengeance. The fact that many have sounded similar themes does
24 not mean that they are acting together as a mob. I do agree
25 that a just and proportionate sentence must be determined,

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1 objectively, and without hysteria or undue emotion.
2 Objectively speaking, the fraud here was staggering.
3 It spanned more than 20 years. Mr. Madoff argues in his reply
4 letter that the fraud did not begin until the 1990s. I guess
5 it's more that the commingling did not begin until the 1990s,
6 but it is clear that the fraud began earlier. And even if it
7 is true that it only started in the 1990s, the fraud exceeded
8 ten years, still an extraordinarily long period of time. The
9 fraud reached thousands of victims.
10 As for the amount of the monetary loss, there appears
11 to be some disagreement. Mr. Madoff disputes that the loss
12 amount is \$65 billion or even \$13 billion. But Mr. Madoff has
13 now acknowledged, however, that some \$170 billion flowed into
14 his business as a result of his fraudulent scheme. The
15 presentence report uses a loss amount of \$13 billion, but as I
16 understand it, that number does not include the losses from
17 moneys invested through the feeder funds. That's what the PSR
18 states. Mr. Madoff argues that the \$13 billion amount should
19 be reduced by the amounts that the SIPC trustee may be able to
20 claw back, but that argument fails. Those clawbacks, if they
21 happened, will result in others who suffered losses. Moreover,
22 Mr. Madoff told his sons that there were \$50 billion in losses.
23 In any event, by any of these monetary measures, the fraud here
24 is unprecedented.

25 Moreover, the offense level of 52 is calculated by
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1 using a chart for loss amount that only goes up to \$400
2 million. By any of these measures, the loss figure here is
3 many times that amount. It's off the chart by many fold.
4 Moreover, as many of the victims have pointed out,
5 this is not just a matter of money. The breach of trust was
6 massive. Investors -- individuals, charities, pension funds,
7 institutional clients -- were repeatedly lied to, as they were
8 told their moneys would be invested in stocks when they were
9 not. Clients were sent these millions of pages of account
10 statements that the government just alluded to confirming
11 trades that were never made, attesting to balances that did not
12 exist. As the victims' letters and e-mails demonstrate, as the
13 statements today demonstrate, investors made important life
14 decisions based on these fictitious account statements -- when
15 to retire, how to care for elderly parents, whether to buy a
16 car or sell a house, how to save for their children's college
17 tuition. Charitable organizations and pension funds made
18 important decisions based on false information about fictitious
19 accounts. Mr. Madoff also repeatedly lied to the SEC and the
20 regulators, in writing and in sworn testimony, by withholding
21 material information, by creating false documents to cover up
22 his scheme.

23 It is true that Mr. Madoff used much of the money to
24 pay back investors who asked along the way to withdraw their
25 accounts. But large sums were also taken by him, for his

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1 personal use and the use of his family, friends, and
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 2 colleagues. The PSR shows, for example, that Mr. Madoff
 3 reported adjusted gross income of more than \$250 million on his
 4 tax returns for the ten year period from 1998 through 2007. On
 5 numerous occasions, Mr. Madoff used his firm's bank accounts
 6 which contained customer funds to pay for his personal expenses
 7 and those of his family, including, for example, the purchase
 8 of a Manhattan apartment for a relative, the acquisition of two
 9 yachts, and the acquisition of four country club memberships at
 10 a cost of \$950,000. Billions of dollars more were paid to
 11 individuals who generated investments for Mr. Madoff through
 12 these feeder funds.

13 Mr. Madoff argues a number of mitigating factors but
 14 they are less than compelling. It is true that he essentially
 15 turned himself in and confessed to the FBI. But the fact is
 16 that with the turn in the economy, he was not able to keep up
 17 with the requests of customers to withdraw their funds, and it
 18 is apparent that he knew that he was going to be caught soon.
 19 It is true that he consented to the entry of a \$100 billion
 20 forfeiture order and has cooperated in transferring assets to
 21 the government for liquidation for the benefit of victims. But
 22 all of this was done only after he was arrested, and there is
 23 little that he could have done to fight the forfeiture of these
 24 assets. Moreover, the SIPC trustee has advised the Court
 25 Mr. Madoff has not been helpful, and I simply do not get the

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1 sense that Mr. Madoff has done all that he could or told all
 2 that he knows.

3 Mrs. Madoff has stipulated to the transfer of some \$80
 4 dollars in assets to the government for the benefit of victims,
 5 but the record also shows that as it became clear that
 6 Mr. Madoff's scheme was unraveling, he made substantial loans
 7 to family members, he transferred some \$15 million of firm
 8 funds into his wife's personal accounts, and he wrote out the
 9 checks that the government has just described.

10 I have taken into account the sentences imposed in
 11 other financial fraud cases in this district. But, frankly,
 12 none of these other cases is comparable to this case in terms
 13 of the scope, duration and enormity of the fraud, and the
 14 degree of the betrayal.

15 In terms of mitigating factors in a white-collar fraud
 16 case such as this, I would expect to see letters from family
 17 and friends and colleagues. But not a single letter has been
 18 submitted attesting to Mr. Madoff's good deeds or good
 19 character or civic or charitable activities. The absence of
 20 such support is telling.

21 We have heard much about a life expectancy analysis.
 22 Based on this analysis, Mr. Madoff has a life expectancy of 13
 23 years, and he therefore asks for a sentence of 12 years or
 24 alternatively 15 to 20 years. If Mr. Sorkin's life expectancy
 25 analysis is correct, any sentence above 20 or 25 years would be

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1 largely, if not entirely, symbolic.

2 But the symbolism is important, for at least three
 3 reasons. First, retribution. One of the traditional notions
 4 of punishment is that an offender should be punished in
 5 proportion to his blameworthiness. Here, the message must be
 6 sent that Mr. Madoff's crimes were extraordinarily evil, and

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7 that this kind of irresponsible manipulation of the system is
8 not merely a bloodless financial crime that takes place just on
9 paper, but that it is instead, as we have heard, one that takes
10 a staggering human toll. The symbolism is important because
11 the message must be sent that in a society governed by the rule
12 of law, Mr. Madoff will get what he deserves, and that he will
13 be punished according to his moral culpability.

14 Second, deterrence. Another important goal of
15 punishment is deterrence, and the symbolism is important here
16 because the strongest possible message must be sent to those
17 who would engage in similar conduct that they will be caught
18 and that they will be punished to the fullest extent of the
19 law.

20 Finally, the symbolism is also important for the
21 victims. The victims include individuals from all walks of
22 life. The victims include charities, both large and small, as
23 well as academic institutions, pension funds, and other
24 entities. Mr. Madoff's very personal betrayal struck at the
25 rich and the not-so-rich, the elderly living on retirement

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1 funds and social security, middle class folks trying to put
2 their kids through college, and ordinary people who worked hard
3 to save their money and who thought they were investing it
4 safely, for themselves and their families.

5 I received letters, and we have heard from, for
6 example, a retired forest worker, a corrections officer, an
7 auto mechanic, a physical therapist, a retired New York City
8 school secretary, who is now 86 years old and widowed, who must
9 deal with the loss of her retirement funds. Their money is
10 gone, leaving only a sense of betrayal.

11 I was particularly struck by one story that I read in
12 the letters. A man invested his family's life savings with
13 Mr. Madoff. Tragically, he died of a heart attack just two
14 weeks later. The widow eventually went in to see Mr. Madoff.
15 He put his arm around her, as she describes it, and in a kindly
16 manner told her not to worry, the money is safe with me. And
17 so not only did the widow leave the money with him, she
18 eventually deposited more funds with him, her 401(k), her
19 pension funds. Now, all the money is gone. She will have to
20 sell her home, and she will not be able to keep her promise to
21 help her granddaughter pay for college.

22 A substantial sentence will not give the victims back
23 their retirement funds or the moneys they saved to send their
24 children or grandchildren to college. It will not give them
25 back their financial security or the freedom from financial

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1 worry. But more is at stake than money, as we have heard. The
2 victims put their trust in Mr. Madoff. That trust was broken
3 in a way that has left many -- victims as well as others --
4 doubting our financial institutions, our financial system, our
5 government's ability to regulate and protect, and sadly, even
6 themselves.

7 I do not agree that the victims are succumbing to the
8 temptation of mob vengeance. Rather, they are doing what they
9 are supposed to be doing -- placing their trust in our system
10 of justice. A substantial sentence, the knowledge that
11 Mr. Madoff has been punished to the fullest extent of the law,

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12 may, in some small measure, help these victims in their healing
13 process.

14 Mr. Madoff, please stand.

15 It is the judgment of this Court that the defendant,
16 Bernard L. Madoff, shall be and hereby is sentenced to a term
17 of imprisonment of 150 years, consisting of 20 years on each of
18 Counts 1, 3, 4, 5, 6, and 10, 5 years on each of Counts 2, 8,
19 9, and 11, and 10 years on Count 7, all to run consecutively to
20 each other. As a technical matter, the sentence must be
21 expressed on the judgment in months. 150 years is equivalent
22 to 1,800 months.

23 Although it is academic, for technical reasons, I must
24 also impose supervised release. I impose a term of supervised
25 release of 3 years on each count, all to run concurrently. The

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1 mandatory, standard, and special conditions are imposed, as set
2 forth on pages 58 and 59 of the PSR.

3 I will not impose a fine, as whatever assets
4 Mr. Madoff has, as to whatever assets may be found, they shall
5 be applied to restitution for the victims.

6 As previously ordered, I will defer the issue of
7 restitution for 90 days.

8 Finally, I will impose the mandatory special
9 assessment of \$1,100, \$100 for each count.

10 Mr. Sorkin, any requests?

11 MR. SORKIN: Yes, your Honor.

12 As you pointed out to one of the victims, you cannot
13 designate a prison, but we would ask, based upon an analysis
14 that we have done that in 75 percent of the cases
15 recommendations made by the court are followed by the Bureau of
16 Prisons, we respectfully request that your Honor recommend to
17 the Bureau of Prisons that Mr. Madoff be designated to
18 Otisville.

19 THE COURT: I will recommend to the Bureau of Prisons
20 that Mr. Madoff be designated to an appropriate facility in the
21 northeast region of the United States.

22 MR. SORKIN: Thank you.

23 THE COURT: Ms. Baroni?

24 MS. BARONI: Two issues. If you can specifically
25 incorporate by reference the forfeiture order of Friday,

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1 pronounce it as part of the sentence.

2 THE COURT: The forfeiture order is hereby
3 incorporated.

4 MS. BARONI: Special assessment.

5 THE DEFENDANT: I did the special assessment of
6 \$1,100.

7 MS. BARONI: Thank you.

8 THE COURT: Mr. Madoff, please stand one more time.

9 Mr. Madoff, you have the right to appeal at least
10 certain aspects of this judgment and conviction. If you wish
11 to appeal, you must do so within ten days. If you cannot
12 afford an attorney, the court will appoint one for you.

13 We are adjourned.

14 (Adjourned)

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Exhibit 4

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

09 CR 764 (RJS)

FRANK DIPASCALI,

Defendant.

-----x

New York, N.Y.
August 11, 2009
3:15 p.m.

Before:

HON. RICHARD J. SULLIVAN,

District Judge

APPEARANCES

LEV L. DASSIN

United States Attorney for the
Southern District of New York

MARC LITT

LISA BARONI

Assistant United States Attorney

BRACEWELL & GIULIANI

Attorneys for Defendant

MARC L. MUKASEY

CRAIG S. WARKOL

JAMIE RENNER

DANIEL S. CONNOLLY

Also Present:

Special Agent Keith D. Kelly

Special Agent Julia Hanish

Special Agent Steven Garfinkel

Natasha Ramesar, Pretrial Services

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1 (In open court; case called)

2 THE DEPUTY CLERK: All parties can state their
3 appearances for the record, please.

4 MR. LITT: Good afternoon, your Honor. Marc Litt for
5 the United States. With me at counsel table is Lisa Baroni,
6 Keith Kelley of the FBI, Julia Hanish, and Steven Garfinkel of
7 the FBI, and Natasha Ramesar of the U.S. Pretrial Services
8 Office.

9 THE COURT: Good afternoon to each of you.
10 For the defense.

11 MR. MUKASEY: Good afternoon, your Honor. Marc Mukasey
12 from the law firm Bracewell & Giuliani for the defendant Frank
13 DiPascali, who is seated to my left. With me are Dan Connolly,
14 Craig Warkol, and Jamie Renner.

15 THE COURT: Good afternoon to each you and to Mr.
16 DiPascali.

17 Let me just get a little bit of background so it is
18 clear since this is the first appearance of anyone on this
19 case. On Friday I received a letter from the government, Mr.
20 Litt and Ms. Baroni, advising me that the defendant, Mr.
21 DiPascali, was prepared to waive the indictment and plead
22 guilty pursuant to an information in this case.

23 The government also included a notice of intent to
24 file an information as opposed to an indictment, as well as a
25 motion pursuant to Title 18, United States Code, Section 3771

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1 regarding the right of victims. The government also provided a
2 disclosure statement setting forth a list of potential victims
3 of the criminal activity alleged in the case. This statement
4 contained a 61-page, single-spaced list of victims which the
5 government conceded was not an exhausted or complete list but
6 was a list that they had been able to put together over the
7 course of the investigation.

8 Mr. Litt, so far so good?

9 MR. LITT: Yes. I believe it is only institutional
10 victims, corporate parties.

11 THE COURT: That's right. 61 pages of institutional
12 victims.

13 In light of this fact that this case has not been
14 assigned a docket number, it will not receive a docket number
15 today after the defendant formerly waives indictment and pleads
16 here in open court.

17 The government requested that I issue an order
18 directing that its letter of August 7th be posted and the other
19 materials I mentioned be posted on the web page created by the
20 U.S. Attorney's Office for Madoff related cases. In the
21 government's view this was the most practical and efficient way
22 to notify potential victims of today's proceeding. So I issued
23 such an order on Friday, August 7th.

24 Late yesterday afternoon I received a copies of a
25 proposed information, a plea agreement, as well as a letter

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1 from the government setting forth the bail conditions proposed
2 by the parties in this case. I ordered that the last of these
3 be posted similarly on the and U.S. Attorney's Office web page
4 page. The information and plea agreement will presumably be
5 posted today presuming the defendant waives indictment and
6 executes the agreement that I received a draft of yesterday.

7 To ensure at least some notice to the victims,
8 including those who may be present here today, I directed the
9 government to summarize and post on the web page the charges
10 contained in the information and the nature of the proposed
11 plea agreement between the parties.

12 So are there any other additional facts that I left
13 out, Mr. Litt?

14 MR. LITT: I don't believe so. No, your Honor.

15 THE COURT: Mr. Mukasey, anything you think is
16 relevant to the record?

17 MR. MUKASEY: No, Judge. I think that is it.

18 THE COURT: Mr. Mukasey, I understand that your client
19 wishes to plead guilty pursuant to the information that has
20 been drafted and provided to me, is that correct?

21 MR. MUKASEY: That's correct, your Honor.

22 THE COURT: Mr. DiPascali, before I accept your guilty
23 plea -- you can sit for the moment. Before I accept your
24 guilty plea, I am going to ask you certain questions to ensure
25 first of all that you are pleading guilty because you are

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1 guilty and not for some other. And also to make sure that you
2 fully understand your rights, your Constitution and statutory
3 rights, including your right to a trial.

4 So if at any point during the course of my questioning
5 you don't understand my question or require some further
6 elaboration on my part, let me know and I will do everything to
7 clarify. If at any point you wish to confer with Mr. Mukasey
8 or your other attorneys, that is perfectly fine. I will give
9 you as much time as I need. I don't want you to feel rushed
10 into a plea in this matter.

11 At this point I am going to ask Ms. Levine to
12 administer the oath. This is an oath that I ask you to rise
13 for. This is an oath that you will answer truthfully my
14 questions.

15 THE DEPUTY CLERK: Please raise your right hand.

16 (Defendant sworn)

17 THE COURT: Mr. DiPascali, having taken that oath, do
18 you understand that any false answers to my questions could
19 subject you to the penalties for perjury or for making a false
20 statement, which would carry separate penalties and be accept
21 and distinct from any of the crimes charged in the information
22 in this matter?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: Again, if at any point you wish to confer
25 with your attorneys before answering, that is fine. If at any

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1 point you would like me to clarify a question before answering,
2 that is also fine. In fact, you should do that. But don't
3 make any false statements because that will compound any
4 problems that you may already have.

5 THE DEFENDANT: Understood.

6 THE COURT: Mr. DiPascali, could you state your full
7 name for the record?

8 THE DEFENDANT: Frank DiPascali, Jr.

9 THE COURT: How old are you, Mr. DiPascali?

10 THE DEFENDANT: 52.

11 THE COURT: How far you go in school?

12 THE DEFENDANT: High school.

13 THE COURT: Where was that?

14 THE DEFENDANT: Archbishop Malloy High School in
15 Briarwood, Queens.

16 THE COURT: Are you now or have you recently been
17 under the care of a doctor or a psychiatrist?

18 THE DEFENDANT: No.

19 THE COURT: Have you ever been treated for any type of
20 mental illness or any type of addiction, including drug or
21 alcohol addiction?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you taken any drugs or any medicine
24 or any pills or have you drunk any alcohol in the past 48
25 hours?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Tell me about that.

3 THE DEFENDANT: I had a glass of wine at dinner the
4 night before last.

5 THE COURT: The night before last?

6 THE DEFENDANT: That's correct.

7 THE COURT: No medication, no pills, no drugs of any
8 kind?

9 THE DEFENDANT: No, sir.

10 THE COURT: No other alcohol?

11 THE DEFENDANT: Correct.

12 THE COURT: Is your mind clear today?

13 THE DEFENDANT: Crystal clear, sir.

14 THE COURT: Do you understand the nature of this proceeding
15 and what is going to take place here today?

16 THE DEFENDANT: I do.

17 THE COURT: Mr. Mukasey, do you have any doubt as to
18 your client's mental competence to enter an informed plea at
19 this time?

20 MR. MUKASEY: None whatsoever.

21 THE COURT: Let me ask Mr. Litt and Ms. Baroni if they
22 share your confidence in that regard.

23 Mr. Litt?

24 MR. LITT: We do. We have no reason to think
25 otherwise.

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1 THE COURT: On the basis of Mr. DiPascali's responses
2 to my questions, my observations of his demeanor, and on the
3 representations of his counsel and the prosecutors, I find that
4 Mr. DiPascali is competent to enter an information plea at this
5 time.

6 Now, Mr. DiPascali, as I understand it you wish to
7 plead guilty to an information, is that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you had enough of an opportunity to
10 discuss this information and the charges contained in it with
11 your attorney, Mr. Mukasey?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you satisfied with Mr. Mukasey's
14 representation of you?

15 THE DEFENDANT: Absolutely.

16 THE COURT: Do you feel you need or require any
17 additional time to review the information or review any of the
18 other documents associated with this matter?

19 THE DEFENDANT: No, sir.

20 THE COURT: Now, have you received a copy of the
21 information that I've been referring to?

22 THE DEFENDANT: I have.

23 THE COURT: Have you read it yourself?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you discussed it with your attorney

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1 Mr. Mukasey?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you waive the public reading of that
4 information, or would you like me to read it to you here in
5 open court?

6 THE DEFENDANT: I would prefer it to be waived.

7 THE COURT: You will waive the public reading. That's
8 fine.

9 Now, do you have in front of you -- I don't know
10 whether you have the original in front of you -- a waiver of
11 indictment form?

12 THE DEFENDANT: I do.

13 THE COURT: Is that your signature on that document?

14 THE DEFENDANT: It is.

15 THE COURT: When did you sign that?

16 THE DEFENDANT: About 15 minutes ago.

17 THE COURT: Prior to signing that document had you
18 reviewed the information in this case and discussed it with
19 Mr. Mukasey?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Mukasey, is your signature on that
22 form as well?

23 MR. MUKASEY: It is, Judge.

24 THE COURT: And prior to signing it, did you review
25 the information and discuss it with your client?

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1 MR. MUKASEY: Extensively.

2 THE COURT: Now, I want to make sure you understand,
3 Mr. DiPascali, that you have a right, a constitutional right,
4 to proceed by way of an indictment, which is a charging
5 instrument returned by a grand jury rather than an information,
6 which is simply a charging instrument brought by prosecutors.

7 Do you understand that?

8 THE COURT: I do. Under the Constitution you have a
9 right to have evidence underlying the crimes charged in the
10 information brought before the grand jury, which is a group of
11 23 citizens who would decide by majority vote whether probable
12 cause had been established to demonstrate that you had
13 committed the crimes charged in the charging instrument.

14 Do you understand that?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Only if the grand jury reached that
17 determination of probable cause by a majority vote with a
18 proper quorum of grand jurors present could those charges be
19 returned against you.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: By waiving indictment, you will be giving
23 up that right and you will be agreeing to go forward on the
24 charges contained in the information without ever having the
25 evidence brought before a grand jury.

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1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you voluntarily and freely giving up
4 that right to proceed by a grand jury?

5 THE DEFENDANT: Absolutely.

6 THE COURT: Now, I want to explain to you your other
7 constitutional rights. Have you had a chance to review with
8 your attorney, Mr. Mukasey, a three-page document probably
9 entitled Advice of Rights Form that should have been provided
10 to you by my chambers?

11 THE DEFENDANT: I have.

12 THE COURT: Is your signature on the second page of
13 that document?

14 THE DEFENDANT: It is.

15 THE COURT: Before you signed that document, did you
16 review it carefully with your attorney, Mr. Mukasey?

17 THE DEFENDANT: Yes, we did.

18 THE COURT: Did you have an opportunity discuss with
19 him any questions you may have had or any further explanation
20 of the rights described in that document?

21 THE DEFENDANT: Thoroughly.

22 THE COURT: Mr. Mukasey, did you sign the third page?

23 MR. MUKASEY: I did, Judge.

24 THE COURT: Before signing it, did you have a full and
25 extensive opportunity to discuss the rights described in that

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1 document with your client?

2 MR. MUKASEY: Yes.

3 THE COURT: I am going to mark that as a court
4 exhibit. I will mark it as Court Exhibit 1. I will date it
5 and I will initial it.

6 I am also going to ask you in open court, Mr.
7 DiPascali, some questions about the rights that are contained
8 in this document. The reason I do that is because these rights
9 are so vitally important and it is so essential that you
10 understand these rights because they are there rights that you
11 will would be waiving. In addition to this document, I want to
12 make sure you have had an ample opportunity to consider them so
13 I will ask you questions that may seem redundant but I think is
14 it a price worth paying for rights that are this serious.

15 Mr. DiPascali, under the Constitution and laws of the
16 United States, you would be entitled to a speedy and public
17 jury trial on the charges contained in the information.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: At trial you would be presumed to be
21 innocent and the government would be required to prove you
22 guilty by competent evidence beyond a reasonable doubt before
23 you could be found guilty.

24 Do you understand that?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: Now, at trial a jury of 12 people would
2 have to agree unanimously that you were guilty before you could
3 be found guilty.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You would not have to prove that you were
7 innocent if you went to trial.

8 Do you understand that?

9 THE DEFENDANT: I understand.

10 THE COURT: The jury would have to be persuaded beyond
11 a reasonable doubt and they would have to be persuaded
12 unanimously of that fact before you could be found guilty.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, at trial and at every stage of your
16 case, you would be entitled to be represented by an attorney
17 and if you couldn't afford an attorney, one would be appointed
18 for you at no cost to you.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: During a trial, the witnesses for the
22 government would have to come into court and testify in your
23 presence.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: It is called your right to confront your
2 accusers. It is the confrontation clause of the Constitution.
3 What that means is the witnesses would have to come and sit
4 right here or in a box like it if it were in a different
5 courtroom and you would be able to see them and hear them and
6 they would be able to see you.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: At trial your attorney Mr. Mukasey would
10 have an opportunity to cross-examine those witnesses.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I have seen him do it. He is really good
14 at it. You would have that opportunity.

15 THE DEFENDANT: That is why I sit next to him.

16 THE COURT: He would also have an opportunity to
17 object to the government's evidence if he wished and if he felt
18 appropriate.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: At trial you would have the right to have
22 subpoenas issued, or other compulsory process used to compel
23 witnesses to testify if you wished.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: If there are witnesses who you felt had
2 valuable testimony, valuable to your defense and they didn't
3 wish to testify, you could compel them to testify through
4 subpoenas.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: At trial you yourself would have the right
8 to testify if you chose.

9 Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Would you also have the right not to
12 testify if you chose not to testify. If you chose not to
13 testify then no one, particularly the jury, could draw any
14 negative inference or any suggestion of your guilt by virtue of
15 the fact that you chose not to testify.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I would tell the jury that more than once.
19 I tell them at the beginning and I would tell them in the
20 middle and at the end that this was a fundamental right and
21 principle of bedrock proportions in our constitutional system,
22 that the criminal defendant never has any obligation to do
23 anything at a trial. The burden also rests with the
24 government. So if a defendant were not to testify, they could
25 not and must not draw any negative inference against that

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1 witness by virtue of that nontestimony.

2 Do you understand that?

3 THE DEFENDANT: I do.

4 THE COURT: Now, do you understand that if you went to
5 trial and you were convicted at trial, you would then have a
6 right to appeal the jury's verdict if you wished.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, if you plead guilty and if I accept
10 your guilty plea, you will give up your right to a trial and
11 all the other rights I have just described.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The only exception to that would be your
15 right to counsel. That right would continue through your plea,
16 through sentencing, and through appeal if you wished to appeal.

17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: But the other rights that I just described
20 and are described in the document that we talked about before,
21 Court Exhibit 1, those would be gone. You would be waiving
22 those.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand you have a right to

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1 change your mind even now?

2 THE DEFENDANT: Yes.

3 THE COURT: There are a lot of people here, and your
4 lawyers are here, the government is here. That is well and
5 good but if you want to go to trial, you have a right to go to
6 trial and nobody will be upset with you and annoyed at you.

7 Do you understand that?

8 THE DEFENDANT: I understand, sir.

9 THE COURT: Do you nevertheless wish to go forward
10 with your guilty plea at this time?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, do you understand that if you plead
13 guilty and if I accept your guilty plea then you will be
14 sentenced on the basis of that guilty plea among other things;
15 do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that if you plead
18 guilty, there will be no appeal on the question of whether or
19 not you committed the offenses to which you pled guilty; do you
20 understand that?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Do you also understand if you plead
23 guilty, I am going to ask you questions about what you did. I
24 am going to ask you basically to give up your right not to
25 incriminate yourself because I am going to need you to tell me

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1 what you did that makes you guilty of these crimes before I
2 will accept the plea; do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I said a minute ago if you went to trial
5 you would have a right not to testify and that of course is
6 true. No negative inference could be drawn against you or
7 considered by the jury. If you are going to plead guilty then
8 I will need to be persuaded that you are pleading guilty
9 because you are guilty and not for some other reason. So that
10 is why I am going to ask you questions about what you did and
11 how that makes you guilty of the offense.

12 Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand each and everyone of
15 these rights, Mr. DiPascali?

16 THE DEFENDANT: I do.

17 THE COURT: Are you waiving your rights to a trial and
18 all the other rights I just mentioned?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, the information that you have
21 indicated you've read charged you in 10 separate counts.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: I am not going to go through it in detail.
25 I am not going to read it. The first count charges you with

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1 conspiracy to commit securities fraud, investment advisory
2 fraud, falsify books and records of a broker/dealer, falsify
3 books and records of an investment fund, mail fraud, wire
4 fraud, money laundering all in violation of Title 18, United
5 States Code, Section 371-72.

6 Count Two charges you with a substantive count of
7 securities fraud violation of 15, United States Code, Section
8 78j(b), 78ff.

9 The third count charges you with investment adviser
10 fraud, in violation of Title 15, United States Code, Section
11 80b-6 and 80b-17.

12 The fourth count charges you with falsifying
13 broker/dealer books and records in violation of Title 15,
14 United States Code, Sections 78q(a) and 78ff as well as the
15 regulation that is promulgated thereafter 17, C.F.R., Section
16 240.17(a)(3).

17 The fifth count charges you with falsifying investment
18 adviser books and records in violation of 15, United States
19 Code, Section 80(b)(4) and 80b-17 as well as a code section of
20 the C.F.R.

21 Count Six charges you with mail fraud in violation of
22 18, United States Code, Section 1341.

23 Count Seven charges you with wire fraud in violation
24 of Title 18, United States Code, 1343.

25 Count Eight charges you with money laundering in

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1 violation of Title 18, United States Code, Section 1956(a)(2).

2 Count Nine charges you with perjury in violation of
3 Title 18, United States Code, Section 1621.

4 Count Ten charges you with income tax evasion in
5 violation of Title 26, United States Code, Section 7201.

6 So those are the 10 counts.

7 Do you understand that?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: In addition the information contains two
10 forfeiture allegations. The first calls for you to forfeit all
11 property and proceeds deprived from the crimes charged in
12 Counts One, Two, Six and Seven for a total amount of \$170
13 billion.

14 Do you understand that?

15 THE DEFENDANT: Yes I do.

16 THE COURT: Billion with a "B."

17 And the second forfeiture allegation charges or
18 contains an allegation which would call for you to forfeit all
19 the property derived from the money laundering count, Count
20 Eight. That is for a total amount of at least \$250 million.

21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I am going to ask the government now to
24 state the elements of the offense. These are the things that
25 the government would have to prove and the jury would have to

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1 find beyond a reasonable doubt for you to be convicted on those
2 counts of the information. These are the things that I will
3 have to find have been demonstrated before I will accept the
4 guilty plea on those counts. So I want you to listen very
5 carefully as Mr. Litt or Ms. Baroni describes these elements.
6 It may take a while frankly. But it is essential that you
7 understand these elements.

8 I assume you have discussed the elements of these
9 offenses with your attorney Mr. Mukasey.

10 MR. MUKASEY: In detail.

11 THE COURT: So, mr. Litt, do you want to go through
12 the counts in the indictment and the elements? In the
13 information. I think I said indictment. Information.

14 MR. LITT: With respect to Count One conspiracy, in
15 order to prove the crime of conspiracy the government must
16 establish each of the following elements beyond a reasonable
17 doubt:

18 First, that the conspiracy charged in the
19 information existed. In other words, that there was in fact an
20 agreement or understanding to violate the law of the United
21 States;

22 Second, that the defendant knowingly, willingly,
23 and voluntarily became a member of the conspiracy charged;

24 Third, that any one of the co-conspirators
25 knowingly committed at least one overt act in the Southern

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1 District of New York in furtherance of the conspiracy during
2 the life of the conspiracy.

3 Count Two, securities fraud. In order to prove the
4 crime of securities fraud, the government must prove each of
5 the following beyond a reasonable doubt:

6 First, that in connection with the purchase or
7 sale of a security the defendant did any one or more of the
8 following:

9 1: Employed a device, scheme or artifice to
10 defraud or,

11 2: Made an untrue statement of a material fact
12 or omitted to state a material fact which made what was said
13 under the circumstances misleading or,

14 3: Engaged in an act, practice, or course of
15 business that operated or would operate as a fraud or deceit
16 upon a purchaser or seller.

17 Second, that the defendant acted knowingly,
18 willfully, and with the intent to defraud; and,

19 Third, that the defendant knowingly used or
20 caused to be used any means or instruments of transportation or
21 communication in interstate commerce or the use of the mails in
22 furtherance of the fraudulent conduct.

23 Count Three, investment adviser fraud. In order to
24 prove the crime of investment adviser fraud, the government
25 must prove beyond a reasonable doubt the four following

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1 elements:

2 First, that the defendant was an investment
3 adviser;

4 Second, that the defendant either (A) employed a
5 device, scheme, or artifice to defraud clients and prospective
6 clients, (B) engaged in a transaction, practice, or course of
7 business which operated as a fraud and deceit upon those
8 clients and perspective clients, or (C) engaged in an act,
9 practice, and course of business that was fraudulent, deceptive
10 and manipulative;

11 Third, that the defendant devised or participated
12 in such allege device, scheme, or artifice to defraud, or
13 engaged in such alleged transaction, practice, or course of
14 business knowingly, willfully, and with the intent to defraud;

15 Fourth, that the defendant employed such alleged
16 device, scheme, or artifice to defraud or engaged in such
17 alleged transaction, practice, or course of business by use of
18 the mails or other instrumentality of interstate commerce.

19 Count Four, falsifying broker/dealer books and
20 records. In order to prove the crime of falsifying
21 broker/dealer books and records, the government must prove
22 beyond a reasonable doubt the following elements:

23 First, that at the time of the alleged offense,
24 Bernard L. Madoff Investment Securities was a registered
25 broker/dealer;

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1 Second, that that company failed to make and keep
2 certain accurate records as required under the SEC's rules and
3 regulations;

4 Third, that the defendant aided and abetted the
5 failure of that company to make and keep accurate records; and

6 Fourth, that the defendant acted knowingly and
7 willfully.

8 Count Five, falsifying books and records of an
9 investment adviser. In order to prove this crime, the
10 government must prove beyond a reasonable doubt each of the
11 following:

12 First, that at the time of the alleged offense,
13 the Madoff firm was an investment adviser;

14 Second, that the firm failed to make and keep
15 certain accurate records as required under the SEC's rules and
16 regulations;

17 Third, that the defendant aided and abetted the
18 failure of the firm to make and keep accurate records;

19 Fourth, that the defendant acted knowingly and
20 willfully;

21 Fifth, that the offense involved the use of the
22 mails and means of instrumentalities of interstate commerce.

23 In order to prove Count Six, mail fraud, the
24 government must establish beyond a reasonable doubt each of the
25 following:

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1 First, that on or about the time alleged in the
2 information, there was a scheme or artifice to defraud in order
3 to obtain money or property by false and fraudulent pretenses,
4 representations, or promises;

5 Second, that the false or fraudulent statements
6 and representations concerned material facts;

7 Third, that the defendant knowingly and willfully
8 devised or participated in the scheme or artifice to defraud
9 with knowledge of its fraudulent nature and with specific
10 intent to defraud;

11 Fourth, that the United States mails or a
12 commercial carrier were used in furtherance of the scheme
13 specified in the information.

14 In order to prove the crime of wire fraud, Count
15 Seven, the government must establish beyond a reasonable doubt
16 the following four elements:

17 First, that at or about the time alleged in the
18 information, it was a scheme or artifice to defraud in order to
19 obtain money or property by false and fraudulent pretenses,
20 representations, or promises;

21 Second, that the false or fraudulent statements
22 and representations concerned material facts;

23 Third, that the defendant knowingly and willfully
24 devised or participated in the scheme or artifice to defraud
25 with knowledge of its fraudulent nature and with specific

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1 intent to defraud; and

2 Fourth, that interstate or foreign wire
3 facilities were used in furtherance of the scheme to defraud
4 and specified in the information.

5 In order to prove the crime of unlawful transportation
6 of funds or monetary instruments with the intent to promote the
7 carrying on of a specified unlawful activity --

8 THE COURT: This is what we are referring to as the
9 money laundering count?

10 MR. LITT: Count Eight, money laundering count, the
11 government must establish the following elements:

12 First, that the defendant transported a monetary
13 instrument or funds from a place in the United States to or
14 through a place outside the United States, or to a place in the
15 United States from or through a place outside of the United
16 States;

17 Second, that the defendant did so with the intent
18 promote the carrying on specified unlawful activity.

19 In order to prove Count Nine, perjury, the government
20 must prove beyond a reasonable doubt each of the following
21 elements:

22 First, that the defendant took an oath to testify
23 truly before the Securities and Exchange Commission, a body
24 authored by law to administer oaths;

25 Second, that the defendant made false statements

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1 as to matters about which the defendant testified under oath
2 and set forth in the information;

3 Third, that the matters as to which it is charged
4 that the defendant made false statements were material to the
5 issues under inquiry by the Securities and Exchange Commission;
6 and

7 Fourth, that such false statements were willfully
8 made.

9 To prove the offense of the attempting to evade or
10 defeat a tax or the payment thereof, which is Count Ten, the
11 government must prove the following elements:

12 First, that the defendant attempted to evade or
13 defeat a tax;

14 Second, that additional taxes were due and owing
15 by the defendant;

16 Third, that the defendant acted knowingly and
17 willfully.

18 I should point out that there are aiding and abetting
19 charges as well with respect to the substantive counts set
20 forth in Counts Two through Eight. So if the defendant caused
21 or aided and abetted another in committing any of those crimes,
22 he would be guilty as if a principal.

23 THE COURT: I think I may have neglected to mention
24 the aiding and abetting counts.

25 You understand, Mr. DiPascali, in addition to the

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1 substantive crimes charged after the conspiracy count, Counts
2 Two through 10, some of those, most of those also charge aiding
3 and abetting so that even if you didn't commit the crime, it is
4 alleged that you aided and abetted others to commit the crime
5 and so each of the elements would have to be met for aiding and
6 abetting; all right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand those are the elements
9 of the offenses?

10 THE DEFENDANT: I do.

11 THE COURT: It took a long time but is that consistent
12 with what you discussed with your attorney?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Mukasey, do you agree those are the
15 elements to the offenses in the information?

16 MR. MUKASEY: I do, Judge.

17 THE COURT: I want to go over with you, Mr. DiPascali,
18 the maximum penalties you face for each of these offenses.
19 Count One, the conspiracy count, carries a maximum term of
20 imprisonment of five years, a maximum term of supervised
21 release of three years, a maximum fine of the greatest of
22 either \$250,000, or twice the gross pecuniary or financial loss
23 to persons, other than yourself, resulting from the offense, or
24 twice the gross pecuniary gain derived from the offense,
25 whichever is greatest of those three alternatives is the

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1 maximum fine. In addition as part of your sentence, I can
2 order restitution be paid to any victims and I can also order
3 that you forfeit the proceeds or least -- Count One carries at
4 least part of the forfeiture allegation, right?

5 MR. LITT: Yes.

6 THE COURT: In addition, Count One carries a mandatory
7 special assessment of \$100. That is in addition to any fine or
8 forfeiture or restitution.

9 Count Two, which is the securities fraud count,
10 carries a maximum term of imprisonment of 20 years, a maximum
11 term of supervised release of three years, a maximum fine of
12 the greatest of \$5 million, or twice the gross gain or twice
13 the gross loss as I previously described those things so
14 whichever is greatest of those three, as well as restitution
15 and forfeiture and \$100 special assessment. The 100-dollar
16 special assessment would be mandatory.

17 Count Three, which is the investment adviser fraud
18 count, carries a maximum term of imprisonment of five years, a
19 maximum term of supervised release of three years, a maximum
20 fine of the greatest of either \$250,000, or twice the gross
21 pecuniary gain deprived from the offense or twice the gross
22 pecuniary loss to persons, other than yourself, as well as
23 restitution to any persons injured by this conduct, and a
24 mandatory special assessment of \$100.

25 Count Four, which is falsifying books and records of a

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1 broker/dealer carries a maximum term of imprisonment of 20
2 years, a maximum term of supervised release of three years, a
3 maximum fine again of the greatest \$5 million, or twice the
4 gross gain or twice the gross loss to persons, other than
5 yourself, from the offense, as well as restitution, and again a
6 mandatory special assessment of \$100.

7 Counts Five, which is falsifying books and records of
8 an investment adviser carries a maximum term of imprisonment of
9 five years, a maximum term of supervised release of three
10 years, a maximum fine of the greatest of \$10,000, or twice the
11 gross gain derived from the offense, or twice gross pecuniary
12 loss to persons, other than yourself, resulting from offense,
13 as well as restitution and again a \$100 special assessment.

14 Count Six is the mail fraud count. It carries a
15 maximum term of imprisonment of 20 years, a maximum term of
16 supervised release of three years, a maximum fine of \$250,000,
17 or twice the gross gain or twice the gross loss, as well as
18 restitution, and a mandatory special assessment of \$100.

19 County Seven, wire fraud, carries similar penalties.
20 Again, a 20-year maximum term of imprisonment, a three-year
21 term of supervised release, a maximum fine of the greatest of
22 250,000, or twice the gross gain or twice the gross loss to
23 persons, other than yourself, as well as a potential for
24 restitution to any victims, and a \$100 special assessment.

25 Count Eight, which is a money laundering count,

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1 carries a maximum term of imprisonment of five years, a maximum
2 term of supervised release of three years, a maximum fine of
3 the greatest of \$500,000, or twice the gross gain or twice the
4 gross loss resulting from the offense, as well as restitution
5 to any victims, and a mandatory special assessment of \$100.

6 Count Nine carries a maximum term of imprisonment of
7 five years, the perjury count, a maximum term of supervised
8 release of three years, a maximum fine of the greatest of
9 \$250,000, or twice the gross gain or twice the gross loss, and
10 a mandatory special assessment of \$100.

11 Count Ten, which is the tax evasion count, carries a
12 maximum term of imprisonment five years, a maximum term of
13 supervised of three years, a maximum fine of the greatest of
14 \$250,000, or twice the gross gain or twice the gross loss,
15 whichever is the greatest, as well as restitution, and a
16 mandatory special assessment of \$100.

17 Do you understand those are the maximum penalties?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Litt, something you wanted to add?

20 Did I misstate something?

21 MR. LITT: Your Honor, with respect to Count Six,
22 Seven, and Eight, mail fraud, wire fraud, and money laundering,
23 forfeiture is also a possible penalty.

24 THE COURT: Yes. I was going to mention the
25 forfeiture. I thought I did with respect to the individual

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1 counts. Understand for those counts for which the forfeiture
2 allegation as been set forth in the information, in addition to
3 any fine, in addition to any restitution, in addition to any
4 mandatory special assessment you could also be ordered to
5 forfeit any of the proceeds from the offense.

6 Do you understand that?

7 THE DEFENDANT: I do.

8 THE COURT: The maximum possible penalties combined
9 would be a maximum term of imprisonment of 125 years.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: The maximum special assessment, when you
13 collectively add up would be \$1,000, as well as the fines and
14 everything else I mentioned.

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you a United States citizen, Mr.
18 DiPascali?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand as a result of your
21 conviction, you could lose certain valuable civil rights,
22 including your right to hold public office, your right to serve
23 on a jury, your right to vote, and your right to possess any
24 kind of firearm; do you understand that?

25 THE DEFENDANT: I do.

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1 THE COURT: Now, are you serving any other sentences
2 to day, state, federal or local at this time?

3 THE DEFENDANT: No, sir.

4 THE COURT: Now, with respect to supervised release,
5 you should be aware that there are terms and conditions
6 associated with supervised release. If you were to violate the
7 terms of your supervised release, you then could be returned to
8 prison for the full period of your supervised release and you
9 would not get any credit for the good time on which you are on
10 supervised release.

11 Do you understand that?

12 THE DEFENDANT: I do.

13 THE COURT: I will give an illustration because it is
14 not always clear. If I sentenced you to a term of imprisonment
15 and then sentenced you to five years of supervised -- three
16 years of supervised release, we will say, three years. What
17 that means is after you have finished your prison sentence, you
18 will be released and you would be supervised by the Probation
19 Department. There will be conditions associated with your
20 supervision including, among other things, that you not commit
21 any further crimes, you not possess a firearm, you not use or
22 possess any kinds of drugs, among other things.

23 Well, if for 35 months you were perfect, you did
24 everything you were asked to do and then in the 36th month, the
25 last month of supervised release you committed another crime,

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1 or you possessed a firearm illegally, well, then I could
2 violate your supervised release and I could return you to
3 prison for three full years, the full term of supervised
4 release even though for 35 out of 36 months you were perfect.

5 Do you understand that?

6 THE DEFENDANT: I do.

7 THE COURT: Do you understand that parole has been
8 abolished so you would not be released from prison any earlier
9 as a result of parole?

10 THE DEFENDANT: I do.

11 THE COURT: Parole doesn't exist in the federal
12 system. It exists in certain state systems, including New York
13 State. It used to exist in the federal system and what that
14 meant typically is a judge would impose a sentence usually of
15 an indeterminate nature, five to 10 years, and someone else, a
16 parole board typically, would determine when would be the
17 appropriate time for the defendant to be released depending on
18 whether or not they had been rehabilitated or are ready to
19 resume life in the community. That is not a part of this
20 federal system. So whatever sentence I impose is the sentence
21 you will serve.

22 Do you understand that?

23 THE DEFENDANT: I do.

24 THE COURT: The only exception to that is that you
25 could receive up to 15 percent off for good behavior. That

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1 would be a determination made by Bureau of Prisons and it would
2 be no more than 15 percent of the sentence imposed.

3 Do you understand that?

4 THE DEFENDANT: I do.

5 THE COURT: I want to go over a few other things with
6 sentencing. First of all, in terming what your sentence will
7 be, that is a decision for me to make.

8 Do you understand that?

9 THE DEFENDANT: I do.

10 THE COURT: For the Court and no one else.

11 So whatever your attorneys may have told you, whatever
12 the government may have told you, whatever any one else may
13 have told you, that is not binding on me.

14 Do you understand that?

15 THE DEFENDANT: I do.

16 THE COURT: I will determine what is the appropriate
17 sentence after reviewing the presentence report, after
18 reviewing submissions made by you if you wish, made by the
19 government, made by the victims of the offenses.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Only then will I decide what is the
23 appropriate sentence.

24 Now, I also want to go over with you the current state
25 of the law. Under the law I am required to consider certain

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1 factors before imposing sentence. I will tell you quite
2 candidly even if I weren't required to consider these things, I
3 would consider them. These are the factors that I think any
4 civilized society would take into account in imposing a
5 sentence on another human being.

6 Those things include, among other things, your own
7 personal history and background. It also includes obviously
8 the nature and circumstances of the offenses to which you have
9 offered to plea guilty. It includes the need for me to impose
10 a sentence that reflects the seriousness of the offenses and
11 the need to promote respect for the law.

12 Another objective for sentencing is deterrence, that
13 is both general and specific deterrence. I would be obliged to
14 fashion a sentence that prevents you from committing crimes of
15 this sort or any other sort in the future and that also would
16 have the effect of deterring others who might consider engaging
17 in this kind of criminal conduct to think twice, general
18 deterrence.

19 I would consider your own needs, your own
20 rehabilitative needs, your own medical needs, your own
21 educational needs, those things. For you and for any defendant
22 who comes before me I would consider those things before
23 imposing a sentence.

24 I would also consider the needs of the victims of
25 these crimes to receive restitution. That is obviously an

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1 important factor that would have to be considered in imposing a
2 sentence.

3 I would also consider the United States Sentencing
4 Guidelines. Are you familiar with the Sentencing Guidelines,
5 Mr. DiPascali?

6 THE DEFENDANT: I am.

7 THE COURT: You have discussed those with your
8 attorney?

9 THE DEFENDANT: In detail.

10 THE COURT: I am not going to go over them in great
11 detail. The United States Sentencing Guidelines are a big
12 book. A new edition comes out each year. This year's version
13 is about 600 pages long. I am not going to go into it in any
14 kind of detail. What these guidelines attempt to do is provide
15 objectives and transparent criteria by which an individual and
16 the criminal conduct that an individual engaged in can be
17 evaluated.

18 These guidelines are advisory. They are not binding
19 on me. I am not required to follow them. I am required to
20 consider them and I will consider them. What they essentially
21 do is that for each crime or type of crime, they provide a
22 framework to assess the seriousness of that crime. There are
23 two calculations that are done. First, is a offense level
24 calculation. For financial frauds, for example, the
25 calculation would focus on the amount of loss involved, the

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1 number of victims, the nature of the offense. And for each of
2 those factors, it would be numerical value ascribed. And so in
3 calculating these things, the Court would basically do math and
4 come up with a number, which would be the offense level.

5 In addition there is a separate calculation for
6 criminal history category and so not surprisingly a person
7 engaged in other criminal conduct who has prior convictions and
8 prior sentences would be treated more seriously and would get
9 more criminal history points than someone who has no criminal
10 history. On the basis of those two calculations, offense level
11 on the one hand and criminal history category on the other, the
12 guidelines comes up with a range in terms of months which in
13 the view of the Commission that prepares these guidelines would
14 be appropriate in the ordinary case.

15 So as I said I will consider those calculations, I
16 will make calculations, and I will certainly consider the range
17 that is provided for and proposed by these guidelines. At the
18 end of the day, ultimately I don't have to follow them and I am
19 free to go higher or lower as I see fit.

20 Do you understand that?

21 THE DEFENDANT: I do.

22 THE COURT: Finally, I want to make sure that you
23 understand whatever sentence I impose no matter how unhappy you
24 may be with it, you will not be entitled to withdraw your
25 guilty plea at that point and go forward with the trial.

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1 Do you understand that?

2 THE DEFENDANT: I do.

3 THE COURT: You will be entitled to your opinion that
4 I got it wrong or I was too harsh, but you would not be able to
5 say I would like to turn the clock back to August 11th and go
6 to trial now because that option will have gone.

7 Do you understand that?

8 THE DEFENDANT: I do.

9 THE COURT: I understand there is a plea agreement in
10 this case, is that correct?

11 MR. MUKASEY: That's correct.

12 MR. LITT: Yes.

13 THE COURT: Is the original with you, Mr. Mukasey?

14 MR. MUKASEY: It is, your Honor.

15 THE COURT: You can keep that there for the moment. I
16 received a draft. I have not received an executed or signed
17 copy. Let me make sure it is the same as what you have. Bear
18 with me for a second.

19 (Pause)

20 It is an August 11th letter. It is a seven-paged,
21 single-spaced letter. It is from the government, Ms. Baroni
22 and Mr. Litt, to Mr. Mukasey, your attorney.

23 Do you have a copy of this in front you, or the
24 original in front of you?

25 THE DEFENDANT: I have the original.

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1 THE COURT: Is your signature on the last page?

2 THE DEFENDANT: It is.

3 THE COURT: When did you sign it?

4 THE DEFENDANT: 35 minutes ago.

5 THE COURT: Before you signed it, did you have an
6 opportunity to read this agreement?

7 THE DEFENDANT: In detail.

8 THE COURT: Did you have an opportunity discuss it
9 with Mr. Mukasey in detail?

10 THE DEFENDANT: We have.

11 THE COURT: Do you require any additional time to
12 review this agreement?

13 THE DEFENDANT: No, sir.

14 THE COURT: Mr. Mukasey, is that your signature on the
15 last page as well?

16 MR. MUKASEY: It is, Judge.

17 THE COURT: Before you signed it, did you review this
18 agreement in detail with your client?

19 MR. MUKASEY: Yes, we did.

20 THE COURT: Now, Mr. DiPascali, I am not going to go
21 over this in tremendous detail because as I said it is a
22 seven-paged, single-spaced letter. I want to make sure you
23 understand the nature of this agreement. This agreement is
24 what is known as cooperation agreement.

25 Is that your understanding?

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1 THE DEFENDANT: Yes, it is.

2 THE COURT: By this agreement you have agreed to
3 cooperate with the government and to take on certain
4 obligations that are set forth in this agreement.

5 Is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The government has agreed if you provide
8 substantial assistance, well, they will make a motion to the
9 Court to apprise me of that assistance, which would then allow
10 me for sentence you below the Sentencing Guidelines. So that
11 is essence what the agreement is.

12 Is that your understanding?

13 THE DEFENDANT: Exactly, sir.

14 THE COURT: Is there any other agreement that you have
15 besides this one, besides this August 11th agreement?

16 THE DEFENDANT: No, sir.

17 THE COURT: Is there any other oral agreement or any
18 side agreement that exists beyond the confines of these seven
19 pages?

20 THE DEFENDANT: No, sir.

21 THE COURT: Has anybody attempted to threaten you or
22 induce you or otherwise persuade you to plead guilty to the
23 charges contained in the information or to accept and sign this
24 plea agreement?

25 THE DEFENDANT: No, sir.

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1 THE COURT: You signed it of your own free will and
2 voluntarily?

3 THE DEFENDANT: I have.

4 THE COURT: Now, I want to make sure you understand if
5 the government decides that you provided substantial
6 assistance -- as I say they can make this motion -- I am not
7 required to follow it and I will still ultimately decide what
8 is the proper sentence.

9 Do you understand that?

10 THE DEFENDANT: I do.

11 THE COURT: Now, if the government decides that you
12 did not provide substantial assistance, then that may limit my
13 ability to sentence you below the guidelines. As I said the
14 guidelines are just advisory so it ultimately wouldn't bar me
15 from doing so. There was a time when it would have, but it
16 wouldn't today. Certainly the government has the exclusive
17 right to decide whether or not you provided substantial
18 assistance under this agreement.

19 Do you understand that?

20 THE DEFENDANT: I do.

21 THE COURT: Mr. Mukasey, are you aware of any of valid
22 defense that would apply as a matter of law or any other reason
23 why your client should not be allowed to enter a plea at this
24 time?

25 MR. MUKASEY: No, Judge.

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1 THE COURT: Now, at this point I am going to ask you
2 to stand, Mr. DiPascali. I want you to tell me in your own
3 words what it is that you did that makes you guilty of the
4 offense -- excuse me -- the offenses charged in the
5 information. So since there are 10 counts, this may take a
6 while. I am not sure if you discussed with your lawyer how is
7 the best way to do this, either count by count or groups of
8 counts.

9 Mr. Mukasey, do you have a view?

10 MR. MUKASEY: Judge, we have we have worked together
11 to prepare a statement that I think covers all the counts. I
12 think we can have Mr. DiPascali read it if that is okay with
13 the Court. I think that he will hit all the elements of all
14 the counts. If you would like he can advise the Court of the
15 counts that he is about to discuss if that is helps focus the
16 Court.

17 THE COURT: Whatever you think is most appropriate.
18 There is nothing wrong with reading a statement, Mr. DiPascali,
19 as long as they are really your words. It is not usual a
20 defendant in your position would work with their attorney to
21 prepare a statement that would be their allocution to crimes
22 charged in the information. But it is important that they be
23 your words and that is something you are just reciting or
24 reading.

25 I may ask you some questions or interrupt along the

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1 way. If you have a statement, why don't we start with that and
2 we will see if it is necessary to follow up in certain areas.

3 MR. MUKASEY: May I have one moment?

4 THE COURT: Yes.

5 While you are conferring if you could hand to
6 Ms. Levine the plea agreement, I will mark that as a court
7 exhibit. I will mark that as Court Exhibit 2. I will initial
8 and date it as well.

9 (Pause)

10 THE COURT: Mr. DiPascali, are you ready?

11 THE DEFENDANT: Yes, I am.

12 THE COURT: Let me ask you to read slowly so the court
13 reporter can get it down. We have very good court reporters,
14 probably the best in the world, but there are limits to what
15 fingers can do. I frequently speak too quickly and they are
16 too polite to remind me, but I will remind you.

17 THE DEFENDANT: Thank you, your Honor.

18 I am standing here today to say that from the early
19 1990s until December of 2008 I helped Bernie Madoff, and other
20 people, carry out the fraud that hurt thousands of people. I
21 am guilty and I want to explain a little bit about what I did
22 and how I want everybody everyone to know that I take
23 responsibility for my conduct.

24 Judge, I started working for Bernard Madoff Investment
25 Securities in 1975 right after a graduated from high school. I

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1 was a kid from Queens. I didn't have a college degree. I
2 didn't know anything about Wall Street. I ended up spending
3 the next 30 years working for Bernie Madoff and his firm until
4 December 11th, 2008.

5 Over the first 15 or so years at the Madoff firm, I
6 had a bunch of different jobs. I worked a research analyst,
7 and options trader, and a guy who basically did whatever I was
8 told to do around the office.

9 In 1987 I helped move our firm from the office at 110
10 Wall Street to our new office at 885 Third Avenue. Eventually
11 Bernie Madoff's investment advisory business, which managed
12 client accounts, took space on the 17th floor of 885 Third
13 Avenue and I became sort of a supervisor of that floor.

14 During that first 15 or so years, I watched Bernie
15 Madoff and other people at the firm. I learned how the
16 securities industry worked, or at least how it worked in the
17 Madoff universe. I thought I worked for a prestigious and
18 successful securities firm.

19 By 1990 or so Bernie Madoff was a mentor to me and a
20 lot more. I was loyal to him. I ended up being loyal to a
21 terrible, terrible fault. By the early 1990s Bernie Madoff had
22 stable clients whose accounts he managed as an investment
23 adviser. He attracted a lot of these clients by telling them
24 that the firm would apply a hedged investment strategy to their
25 money. The clients were told that the strategy involved

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1 purchasing what we call basket of blue chip common stocks.
2 Hedging those investments by buying and selling option
3 contracts, getting in and out of the market at opportune times
4 and investing in government securities at other times.

5 By 2008 Bernie Madoff had thousands of clients who
6 believed their funds were being invested this way. For years I
7 was a main point of contact for many of those clients when they
8 had questions about their account.

9 From at least the early 1990s through December of
10 2008, there was one simple fact that Bernie Madoff knew, that I
11 knew, and that other people knew but that we never told the
12 clients nor did we tell the regulators like the SEC. No
13 purchases of sales of securities were actually taking place in
14 their accounts. It was all fake. It was all fictitious. It
15 was wrong and I knew it was wrong at the time, sir.

16 THE COURT: When did you realize that?

17 THE DEFENDANT: In the late '80s or early '90s.

18 I would like to address some of the counts in the
19 information. Regarding Count One, conspiracy; Count Two,
20 securities fraud; and Count Three, investment adviser fraud.

21 From our office in Manhattan at Bernie Madoff's
22 direction, and together with others, I represented to hundreds,
23 if not thousands, of clients that security trades were being
24 placed in their accounts when in fact no trades were taking
25 place at all.

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1 THE COURT: How did you do that? Through documents or
2 through oral communications?

3 THE DEFENDANT: Both.

4 THE COURT: Both.

5 THE DEFENDANT: Most of the time the clients' money
6 just simply went into a bank account in New York that Bernie
7 Madoff controlled. Between the early '90s and December '08 at
8 Bernie Madoff's direction, and together with others, I did
9 follow things: On a regular basis I told clients over the
10 phones and using wires that transactions on national securities
11 exchanges were taking place in their account when I knew that
12 no such transactions were indeed taking place. I also took
13 steps to conceal from clients, from the SEC, and from auditors
14 the fact that no actual security trades were taking place and
15 to perpetuate the illusion that they actually were.

16 On a regular basis I used hindsight to file historical
17 prices on stocks then I used those prices to post purchase of
18 sales to customer accounts as if they had been executed in
19 realtime. On a regular basis I added fictitious trade data to
20 account statements of certain clients to reflect the specific
21 rate of earn return that Bernie Madoff had directed for that
22 client.

23 Regarding Count Six, mail fraud, on a regular basis I
24 caused the U.S. mail to be used to send fraudulent account
25 statements to clients from our office in Manhattan. The

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1 account statements listed security transactions that had
2 supposedly taken place in the client accounts, although I knew
3 that no such transactions had indeed taken place. For example,
4 in December of 2008, I caused fake accounts statements to be
5 mailed from the Madoff firm to a client in Manhattan.

6 Regarding the wire fraud, or Count Seven, on a regular
7 basis I caused money to be wired from bank accounts in that New
8 York to bank accounts in London, and other places abroad. For
9 example, in March of '07 I caused about \$14 million to be sent
10 by wire from a bank account in London to a bank account in New
11 York in furtherance of this fraudulent scheme.

12 THE COURT: How did it further this scheme?

13 THE DEFENDANT: Bernie Madoff was trying to present
14 the scenario, Judge, to regulators and others that he was
15 earning commission income on these fictitious trades in order
16 to substantiate the ruse. He had me wire funds -- excuse me.
17 He had our London office wire funds to New York that
18 represented the theoretical amount of those commissioned
19 incomes, had the regulators come in and added up all the
20 tickets, if you will, to see our customer commissions. And in
21 the example I cited in that particular instance, we would have
22 had we actually done those trades earned \$14 million in
23 commission income. So he had the London office wire to the New
24 York office a figure of about \$14 million.

25 THE COURT: What was your role in connection with

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1 those wire transfers?

2 THE DEFENDANT: I calculated the theoretical
3 commissions and advised the London office where to send the
4 money.

5 On Count Eight, sir, international money laundering,
6 between 2002 and 2008, I caused money to be wired from a Madoff
7 firm bank account in New York to a Madoff account in London,
8 which again was used to continue this fraud. I participated in
9 falsifying documents that were required to be made and kept
10 accurately under the SEC rules and regulations, including
11 ledgers, trade blotters, customer statements, and trade
12 confirmations.

13 On Count Four and five, falsifying broker/dealer books
14 and records and falsifying investment adviser books and
15 records, between 2004 and 2008 the firm was a registered
16 broker/dealer. Between September '06 and December '08 when the
17 firm was also a registered as an investment adviser, it was
18 required to make accurate books and records under the SEC
19 rules. In January of '06, together with others, I used data
20 from the Internet to create fake trade blotters that were made
21 and kept and produced for the SEC.

22 In April of '08, together with others, I caused fake
23 trade blotters, ledgers, and other books and records to be made
24 and kept by the firm.

25 In order to discuss Count Nine, which is perjury, on

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1 January 26, 2006, at Bernie Madoff's direction I lied to the
2 SEC during testimony I gave under oath in Manhattan about the
3 activities of the Madoff firm. My false testimony is set out
4 in Paragraph 61 of the information.

5 I did all of these fraudulent activities, your Honor,
6 in Manhattan.

7 THE COURT: Let me ask you about the perjury count.
8 There is a number of specifications of false statements, eight,
9 in particular with an underlying portions which I gather are
10 the false or allegedly false statements. Is your statement
11 here today that the underlying portions set forth in pages 41
12 through 43 were in fact false statements?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: At the time you uttered these
15 statements -- this is a transcript of your testimony, is that
16 correct?

17 THE DEFENDANT: It is indeed a transcript describing
18 the Madoff trading operation, which I knew at time when I was
19 describing it was entirely fraudulent.

20 THE COURT: So you anticipated my next question. You
21 knew at the time you made these statements that portions of the
22 statements, in particular the underlying portions, were false?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You did this to mislead the SEC?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: For what purpose?

2 THE DEFENDANT: To throw them off their tracks, sir.

3 THE COURT: Did you have a sense they were on the
4 track?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: At that point?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: These statements were made all on one
9 occasion, January 26, 2006?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And where was that?

12 THE DEFENDANT: Down at the SEC offices in the World
13 Trade Center.

14 THE COURT: World Financial Center?

15 THE DEFENDANT: Correct.

16 THE COURT: I interrupted you. I think you were
17 proceeding on to another count.

18 THE DEFENDANT: Judge, thousands of clients,
19 institutions, individuals, funds, charities were all misled
20 about the status of their accounts, what was being done with
21 their money, and what their accounts were worth.

22 In order to discuss Count Ten, which is tax evasion,
23 let me say that in the years 2002, 5, 6 and 7, I evaded federal
24 taxes that I owed by putting some of my income in the name of a
25 corporation I controlled and that I didn't fully and truthfully

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1 report my income on my federal income tax returns.

2 Your Honor, while this was going on, I knew no trades
3 were happening. I knew I was participating in a fraudulent
4 scheme. I knew what was happening was criminal and I did it
5 anyway.

6 I thought for a long time that Bernie Madoff had other
7 assets that he could liquidate if the clients requested the
8 return of their money. That is not an excuse. There is no
9 excuse. I knew everything that I did was wrong and it was
10 criminal and I did it knowingly and willfully. I regret
11 everything that I did. I accept complete responsibility for my
12 conduct. I don't know how I went from an 18-year-old kid
13 happening to have a job to before someone standing before the
14 Court today. I can only say I never wanted to hurt anyone. I
15 apologize to every victim of this catastrophe and to my family
16 and to the government. I am very, very sorry.

17 THE COURT: Thank you, Mr. DiPascali.

18 Let me ask you a couple questions about the tax fraud
19 count.

20 This is the years between 2002 and 2007. It sound
21 like it is 2002, 2005, 2006, and 2007; is that correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And when you made the false statements to
24 the IRS, where were you when you did that? This was in your
25 tax returns you made these false statements?

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1 THE DEFENDANT: In those years, sir, I did not file
2 tax returns.

3 THE COURT: But at the time you either filed false tax
4 returns or didn't file tax returns, you understood that you
5 were liable for additional taxes, that you had hidden income so
6 to speak through this company that you controlled?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did any of the fraud associated with the
9 tax evasion take place in New York?

10 MR. MUKASEY: May I have one moment, your Honor?

11 THE COURT: Certainly.

12 (Pause)

13 MR. MUKASEY: Your Honor, with respect to the venue on
14 Count Ten, I think it is fair to say that the evidence would
15 show that the income that was evaded was earned in New York and
16 the money was transferred into this corporation from an account
17 in New York. To the extent that that establishes venue, we
18 offer that for venue. If not, Judge, we are willing to waive
19 venue as to Count Ten.

20 He is a resident of New Jersey. A lot of his personal
21 accounting actions take place in New Jersey. So it is a
22 movement of the money into this account that he controlled in
23 the Southern District of New York. If it is not enough to
24 establish venue, we will waive venue on Count Ten.

25 THE COURT: Mr. DiPascali, do you understand what

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1 Mr. Mukasey just said?

2 THE DEFENDANT: I do, sir.

3 THE COURT: We didn't talk really about venue when we
4 were going through the elements of the offense. These are the
5 10 elements that Mr. Litt described and these were things that
6 would have to be demonstrated and proven beyond a reasonable
7 doubt if you went to trial.

8 Each of the counts of the information also have a
9 requirement that venue be established. The standard of proof
10 for venue is lesser. It is by a preponderance. It means a
11 little more than halfway basically. So what Mr. Mukasey has
12 said is he thinks there is such basis for venue to be
13 established on the tax evasion case; but if there weren't that
14 you would you be prepared to waive venue, which you can do.

15 Is that your understanding? Is that what you wish to
16 do?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Give me a minute. There are 10 counts
19 here so I want to take a quick look to make sure we covered the
20 elements.

21 While I am doing that, Mr. Litt, to your mind is that
22 a sufficient allocution with respect to each of the 10 Counts
23 of the information?

24 MR. LITT: Yes, your Honor.

25 THE COURT: Mr. Mukasey, do you agree?

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1 MR. MUKASEY: I do, your Honor.

2 Mr. DiPascali, has one or two more sentences.

3 THE COURT: I am sorry. I didn't mean to cut you off,
4 Mr. DiPascali.

5 THE DEFENDANT: I wanted to make it very, very clear I
6 know my apology means almost nothing but I hope my actions
7 going forward with the government will mean something and I
8 promise to dedicate all my energy to try to explain to others
9 how this happened. I hope my help will bring some small
10 measure of comfort to those who have been harmed.

11 THE COURT: Thank you.

12 THE DEFENDANT: Thank you.

13 (Pause)

14 THE COURT: Mr. Litt, let me ask you to summarize the
15 government's evidence if it were to go to trial.

16 Mr. DiPascali, let me ask you to listen carefully to
17 Mr. Litt as he summarizes the evidence and also as he
18 summarizes your role in these offenses. Because after he is
19 done, I am going to ask you if you take issue with or dispute
20 anything he just said. So I want you to pay close attention.

21 MR. LITT: Yes, your Honor. If this case were to have
22 proceeded to trial, the government would have proven through
23 testimony and evidence beyond a reasonable doubt the facts set
24 forth in the information. In summary, the government would
25 have proven that beginning at least as early as the 1980s, a

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1 conspiracy existed between Mr. DiPascali, Mr. Madoff, and
2 others, to commit securities fraud, investment adviser fraud,
3 falsifying books and records of a broker/dealer and of an
4 investment adviser, mail fraud, wire fraud, and money
5 laundering.

6 Mr. Madoff's firm, Bernard L. Madoff Investment
7 Securities, LLC., was a registered broker/dealer throughout the
8 period and was a registered investment adviser between about
9 September 2006 and December 11th of 2008.

10 Mr. DiPascali worked at the firm in New York, New
11 York, where the firm was located beginning in 1975. By the
12 early 1990s, Mr. DiPascali was responsible under the direction
13 of Mr. Madoff for a major part of the firm's investment
14 advisory business. That part of the business purported to
15 invest client funds in the basket of stocks from the S & P 100
16 hedged by options transactions. In fact, the evidence would
17 demonstrate that Mr. DiPascali, Mr. Madoff, and others knew
18 that no stocks or options were being purchased as had been
19 promised to investors.

20 Mr. Madoff, Mr. DiPascali, and other co-conspirators
21 made it appear as though clients' investments with the firm
22 were profitable by sending those clients literally millions of
23 pages of false account statements and trade confirmations
24 through the U.S. mails. Those account statements and trade
25 confirmations reported or purported to report transactions that

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1 had been made up using historical price data and with the
2 benefit of hindsight. None of the reported transactions were
3 real.

4 In later years when revenues from other parties of
5 Mr. Madoff's business declined, Mr. Madoff and Mr. DiPascali
6 wired hundreds of millions of dollars of invested funds to a
7 bank account in London and sent some of that money back to New
8 York, New York to an operating account that funded other
9 parties of Mr. Madoff's business. Among the uses of interstate
10 wires -- I should say Mr. DiPascali used interstate wires in
11 connection with the fraud both in speaking with investors
12 located outside New York as well as to transfer money to and
13 from bank accounts in New York, New York.

14 The government also would have proven that to conceal
15 the fraud and to deceive the SEC under the direction of
16 Mr. Madoff, Mr. DiPascali and other co-conspirators created
17 false books and records, records that were required to be kept
18 and maintained by the firm and were required by SEC regulation
19 to contain true data.

20 THE COURT: Can I ask -- perhaps I should have asked
21 Mr. DiPascali this -- is Mr. DiPascali an advisement adviser or
22 broker/dealer licensed to do these things, or the firm does and
23 he worked with the firm?

24 MR. LITT: He is not. He worked for the firm. And
25 the aiding and abetting charges in the information cover that.

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1 THE COURT: Thank you.

2 MR. LITT: As I was saying for the books and records,
3 SEC rules and regulations require the firm to keep various
4 books and records both in its capacity as a broker/dealer and
5 as an investment adviser and Mr. Madoff, Mr. DiPascali, and
6 others caused false and fraudulent records to be created, some
7 of which were presented to the SEC as well. They did that to
8 conceal the fraud and conceal some of the activities that the
9 firm was engaged in.

10 At Mr. Madoff's direction Mr. DiPascali also committed
11 perjury in sworn testimony from the SEC in New York. There are
12 several instances of that set forth under the indictment.

13 THE COURT: Information.

14 MR. LITT: Sorry.

15 THE COURT: I did it before, too.

16 MR. LITT: In sum that false testimony disguised the
17 nature and scale of the investment advisory business that the
18 firm was engaged in.

19 Finally, the defendant attempted to evade federal
20 income taxes by taking income through a nominee LLC, limited
21 liability corporation, in which he controlled in failing to
22 declare and pay taxes on that income.

23 THE COURT: Do you have a view with respect to venue
24 on that count, Count Ten?

25 MR. LITT: I think the transfer of the money from New

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1 York, New York probably is sufficient; but I think out of an
2 abundance of caution I think a waiver of venue is appropriate
3 and covers venue.

4 THE COURT: Is a waiver of venue contained in the
5 agreement between the parties on Count Ten?

6 MR. LITT: It is not.

7 THE COURT: So that would be something that Mr.
8 DiPascali has agreed to waive venue on Count Ten but it is not
9 contained in the agreement?

10 MR. LITT: Yes.

11 THE COURT: Mr. DiPascali, did you hear what Mr. Litt
12 just said.

13 THE DEFENDANT: I have.

14 THE COURT: Do you disagree or take issue with any of
15 his characterization of the facts or the evidence in this case?

16 THE DEFENDANT: No, sir, I don't.

17 THE COURT: Have a seat.

18 At this time I had put out a couple sign-in sheets
19 before to provide for victims if they wish to be heard on the
20 issue of whether or not the plea should be accepted and the
21 plea agreement should be accepted, and if they wish to speak
22 later on the issue of bail and remand. I had one victim sign
23 the sheet to be heard as to whether or not the plea and plea
24 agreement should be accepted. That is Miriam seed man.

25 Is Ms. Seed man here?

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1 Ms. Seed man, would you still like to be heard on this
2 issue.

3 MS. SIEGMAN: I would.

4 THE COURT: Come up and use the lecturn if you don't
5 mind. While I am here, if there is any other victim who wishes
6 to be heard on this issue, and this issue only, who did not get
7 a chance to sign, perhaps you can raise your hand now and I can
8 send the sheet your way.

9 Is there anyone?

10 Let the record reflect that there is no other person
11 here in the courtroom has signified that they wish to speak as
12 a victim with respect to the issue of whether or not the Court
13 should accept the plea and the plea agreement.

14 Ms. Siegman, identify yourself for the record, speak
15 slowly, spell your name too, and then I am happy to hear you.

16 MS. SIEGMAN: Thank you, Judge Sullivan.

17 Can you hear me?

18 THE COURT: I can.

19 MS. SIEGMAN: My name is Miriam Siegman. M-i-r-i-a-m,
20 last name, S-i-e-g-m-a-n.

21 THE COURT: I probably mispronounced your name. I
22 apologize.

23 MS. SIEGMAN: That's fine.

24 I am a 65-year-old Madoff victim now penniless and
25 facing homelessness. I stand before you, Judge Sullivan, to

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1 ask that you consider rejecting this deal.

2 Criminal defendants in the Madoff case central to this
3 murderous fraud want to cut deals by swapping information,
4 naming names in exchange for lighter sentences. That, of
5 course, is their right. To some victims, not all, but to some
6 this behind-closed-doors bargaining seems to depend heavily on
7 the quality and connectedness of the defendants' lawyers and a
8 quest for expediency.

9 I ask, and others as well: Should these factors trump
10 the victims and the public's need for the truth, the full truth
11 that could come of a trial or the chance for victims to hear in
12 open court evidence, witnesses' questioned, and cross-examined,
13 or the chance to have brought before the mighty power of the
14 Bench even the most exalted, the most highly placed, including
15 government officials, and elected officials?

16 Has it been decided somewhere that a trial is too
17 great a luxury, too much of an expense for the public quest for
18 truth, too time consuming and bothersome or politically
19 unpleasant?

20 Why, Judge Sullivan, am I asking you to consider my
21 request to reject a deal? The crimes allegedly committed by
22 Mr. DiPascali and already admitted to by Mr. Madoff, Mr.
23 DiPascali's boss of 30 years, are enormous in scope. These
24 crimes have affected thousands of men, women, and children,
25 whole generations of families have been decimated, children,

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1 parents, dependents who are ill. None of these victims knows
2 how or why this has happened to them. The defendants won't say
3 a word until today, even then very little, and the prosecutors
4 have said very little to victims.

5 The alleged crimes were vast and systematic, executed
6 with great attention to detail. The result total: Total
7 destruction of normal daily life now and likely forever for
8 thousands of us, certainly for me. Dazed, we are told that we
9 have no need to know how the crimes against us were carried
10 out. Today, a few tasty tidbits were thrown out into the court
11 and I could see every snap to attention with a genuine interest
12 in hearing those details and the need to know them.

13 Then there is the astonishing duration of the crime.
14 Mr. DiPascali was an employee of Madoff for 30 -- well over 30
15 years or around 30 years. The criminal enterprise went and on.
16 He, of course, had ample opportunity to do the right thing.
17 Victims have no idea how this could have been possible, this
18 long duration. Though, there are hints of horrendous
19 dereliction of duty within and outside of government and in the
20 street. One sentence about lying to the SEC doesn't tell the
21 story.

22 There is also the corrupting ripple effect of Mr.
23 DiPascali's alleged activities, activities which in the view of
24 many victims encouraged and enabled criminal activity on the
25 part of others, but we have learned nothing about how or why

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1 and likely we will learn nothing about how or why.

2 And Finally, and perhaps the most troubling of all for
3 me, the possible purchase of influence with the goal of
4 protecting Madoff from investigation and legislation. Victims,
5 and as importantly the American public, the little guy with a
6 401K or pension desperately need light to shine on this
7 process. Victims want more than confirmation. They need
8 information and knowledge. We want the kind of justice that
9 allows the truth to be spoken out loud in a courtroom and we
10 want to know that prosecutors will not conveniently pass over
11 the too highly placed.

12 The crimes committed against me and others are
13 life-shattering and they are forever. I want no others to
14 suffer in this way. Judge Sullivan, you have the power to show
15 the American people that justice works for victims and society
16 as a whole as well as for defendants. Take the process out
17 from behind closed doors and reject this plea deal.

18 In closing, if in the end you cannot, will you or
19 someone help me and others victims understand why and how a
20 plea deal will help them and the American public and allow men
21 and women who run our public institutions to learn from this
22 tragedy.

23 Thank you.

24 THE COURT: Thank you, Mr. Siegman. I appreciate the
25 time and attention you obviously put into preparing those

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1 remarks.

2 Is there any other victim that wishes to be heard?

3 Let me ask Mr. Litt or Mr. Mukasey if they wish to
4 respond to anything that Ms. Siegman just said?

5 MR. LITT: Not at this time, your Honor, no.

6 THE COURT: Mr. Mukasey.

7 MR. MUKASEY: Simply that I think the allocution was
8 sufficient for acceptance by the Court, Judge.

9 THE COURT: Ms. Siegman, I am certainly sensitive to
10 the points you've made, but I think there is a difference
11 between a criminal trial and a truth commission, which each may
12 have their benefits to be sure. But I think a criminal trail
13 is less ambitious than a truth commission.

14 Mr. Mukasey I think is correct in saying that the
15 allocution that Mr. DiPascali gave is sufficient under the law
16 and so the issue for me is there something manifestly unjust
17 about the plea agreement or the plea that has been offered
18 here. I don't believe that the request for the truth ends
19 today. Certainly sentencing will not take place for several
20 months. But before imposing sentence, I would expect to have
21 more information than what I've heard today and what you've
22 heard today. So I expect there will be more information and
23 the Court will sentence on the basis of additional information.
24 I assume that to be the case.

25 So in light of those remarks I will, I believe, accept

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1 the plea. I have a few other things I would like to take up
2 with Mr. DiPascali. I am certainly sensitive to your concerns,
3 which I think are probably the concerns of many other people as
4 well. Thank you for your time.

5 Let's me ask you now to rise again, Mr. DiPascali.

6 How do you now plead to Counts One through Ten of the
7 information, guilty or not guilty?

8 THE DEFENDANT: Guilty, your Honor.

9 THE COURT: Did you do the things you are charged with
10 doing in the information?

11 THE DEFENDANT: Indeed I did.

12 THE COURT: Are you pleading guilty because you are
13 guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you pleading guilty voluntarily and of
16 your own free will?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. DiPascali, because you acknowledge
19 that you are guilty as charged in Counts One through Ten of the
20 information, because you know your rights and are waiving those
21 rights, because your plea is entered knowingly and voluntarily
22 and is supported by an independent basis in fact for each of
23 the elements of the offenses charged in the information, I
24 accept your guilty plea and I adjudge you guilty on Counts One
25 through Ten of the information.

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1 You may have a seat.

2 Mr. Litt.

3 MR. LITT: I would ask if the Court could inquire
4 about whether the defendant Mr. DiPascali admits to the
5 forfeiture allegations.

6 THE COURT: Fair enough.

7 Mr. DiPascali, let me also ask you about the
8 forfeiture allegations. There are two forfeiture allegations
9 in the information.

10 You indicated you have read them both, is that
11 correct?

12 THE DEFENDANT: That's correct.

13 THE COURT: Do you admit the facts that are contained
14 in each of the allegations?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Is that sufficient, Mr. Litt?

17 MR. LITT: Yes, it is.

18 THE COURT: Thank you.

19 Let's talk about sentencing now. The parties
20 requested the sentencing be put over for a number of months in
21 light of Mr. DiPascali's cooperation and had requested that I
22 set a control date in May of 2010.

23 Is that still the position of the parties?

24 MR. LITT: It is of the government, your Honor.

25 THE COURT: Mr. Mukasey.

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1 MR. MUKASEY: It is the position of the defense,
2 Judge.

3 THE COURT: Tell me what exactly it is that you have
4 in mind? So by that date I would get another submission or
5 letter from the parties, or by that date we would have
6 presumably a sentencing unless I adjourned it?

7 MR. LITT: Well, I think you would get a letter from
8 the parties, your Honor.

9 THE COURT: On that date or a date before that date?

10 MR. LITT: On that date.

11 THE COURT: On that date. You expect that the
12 cooperation will be going for at least that long?

13 MR. LITT: Yes, your Honor.

14 THE COURT: Or approximately that long?

15 MR. LITT: I would say at least.

16 THE COURT: Mr. Mukasey, that is your position as
17 well?

18 MR. MUKASEY: Yes, Judge.

19 THE COURT: May 15th. I will expect a letter from the
20 government apprising the Court as to whether or not it is
21 prepared to go forward with sentencing, and if not proposing
22 another control date. Obviously Mr. Mukasey should be CC'd on
23 any correspondence.

24 Let's talk about bail pending sentencing. Title 18,
25 Section 3143(a) provides that a defendant shall be detained

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1 following a plea or conviction, unless the judicial officer
2 finds by clear and convincing evidence that the person is not
3 likely to flee. This is for the period between a jury's
4 verdict or in the case of today a guilty plea and the
5 sentencing.

6 So I had also had sign-in sheet to hear from any
7 victims who wish to be heard on this sheet. No one has signed
8 that sheet.

9 Does anyone wish to be heard with respect to bail or
10 remand?

11 The parties have submitted a letter, which I
12 referenced earlier. Bear with me while I am looking for it. I
13 remember it well. It provided for a bond of \$400,000 -- excuse
14 me, \$2.5 million to be secured by three financially responsible
15 persons, to be secured with property of \$400,000 which would in
16 essence be the equity value in the home of Mr. DiPascali's
17 sister, surrender of all travel documents with no new
18 applications permitted, and travel restricted to the Southern
19 District of New York, Eastern District of New York, and here it
20 says the District of Pennsylvania but Pennsylvania has more
21 than one district, as well as regular pretrial supervision.

22 Is that the position of the parties?

23 MR. LITT: We meant to say the Eastern District of
24 Pennsylvania and the District of New Jersey, which is where the
25 defendant lives.

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1 MR. MUKASEY: That's right.

2 THE COURT: I see. Anything else that the parties
3 wish to say on this?

4 MR. LITT: No, your Honor.

5 MR. MUKASEY: Yes, your Honor.

6 THE COURT: Mr. Mukasey.

7 MR. MUKASEY: By agreement with Mr. Litt, subject to
8 approval of the Court, we would ask for one week from today
9 until August 18th to satisfy those bail conditions if they are
10 acceptable to your Honor.

11 THE COURT: I am not sure they are. I should state
12 that up front. Following a jury's verdict or following a
13 guilty plea there is a presumption that the defendant will be
14 detained, remanded pending sentencing. That is for a variety
15 of reasons. That is the Bail Reform Act of 1984. I think
16 everyone at the front two tables understands that.

17 So I want to explore that. It seems to me that this
18 defendant has ample incentive to flee. I understand he is
19 cooperating with the government, but the defendant is 52 years
20 old. He is facing a maximum term of imprisonment of 125 years.
21 Although the plea agreement has no guidelines calculation, I
22 certainly have done an admittedly quick and dirty guidelines
23 calculation. But based on just the fraud counts, it seems to
24 me that the guidelines calculation comes out at a fairly
25 astronomical place based on the amount of the loss involved,

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1 based on the abuse of trust that was involved in the course of
2 the schemes to which Mr. DiPascali admitted.

3 So it seems to me under the guidelines, even with the
4 acceptance the guidelines would call for a range of mandatory
5 life. Now, because the maximum sentence is not life but 125
6 years, under the guidelines before considering cooperation,
7 before considering the Section 3553(a) factors, the guidelines
8 would be recommending a life term. So that is certainly
9 serious, serious consequences facing Mr. DiPascali.

10 Now, the bail package proposed here by normal
11 standards would seem pretty considerable. There is 2.5 million
12 dollar bond that would have three financially responsible
13 persons and property that is valued -- at least the equity
14 value is \$400,000. So by most standards that would be a pretty
15 large package. But that amount is completely dwarfed by the
16 amount of restitution and forfeiture in this case. \$170
17 billion is what the plea agreement provides for Mr. DiPascali
18 to forfeit. So it would seem to me that a 2.5 million dollar
19 bond thrown on top of that mountain doesn't count for much.

20 Now, the next argument would be that the financially
21 responsible persons, the co-signers and Mr. DiPascali's sister
22 would have some moral suasion over him, that he would be
23 disinclined to flee or do anything that might put them at risk,
24 and only that might be persuasive. But in this case there are
25 thousands of victims who many of them lost more than \$2.5

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1 million. So the fact that three more victims might be thrown
2 on top of a long list of victims doesn't strike me as a
3 terribly compelling basis to believe that Mr. DiPascali would
4 be deterred from engaging in conduct that would constitute a
5 violation of the terms of his bail or flight.

6 Now, the penalties for bail jumping are by most human
7 standards considerable. It is five years' imprisonment,
8 maximum, with a two-level enhancement for obstruction of
9 justice on top of the guidelines calculation in this case. But
10 here it would be again virtually meaningless. It would expand
11 the maximum penalty from 125 years to 130 years. It would
12 expand the guidelines calculation from what I think looks like
13 a level 46 to a level 48. And for those of you unfamiliar with
14 the guidelines level 43 is life. So you can't do much more
15 than that.

16 So in light of this, the package strikes me as fairly
17 symbolic and not terribly onerous in light of the other facts
18 in this case. So it seems to me that it is really we are on an
19 honor system. I am being asked to believe that Mr. DiPascali
20 is not going to run away because he has turned his life around
21 and that I should credit his statements here today that he is
22 sorry for what he has done and he is committed to making amends
23 to the best of his ability, which I can understand the
24 sentiment. But the fact of the matter is the defendant's
25 conduct which is admitted today doesn't give me great

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1 confidence on that store.

2 Mr. DiPascali has admitted to a 20-year period of
3 fraud in which he committed perjury to the SEC under oath. He
4 maintained and manufactured false books and records that were
5 designed to mislead regulators and auditors. He issued by his
6 own account and the government's account literally thousands or
7 even millions of statements to investors that were designed to
8 mislead them and lull them into maintaining investments they
9 had made or increasing the investments that they had made. The
10 money laundering that is set forth in one of the accounts
11 describes a fairly massive-scale scheme that continued as
12 recently as December of 2008.

13 So I think all of that suggests to me that Mr.
14 DiPascali is not a good bet. I think the argument that I
15 anticipate is that, Well, Mr. DiPascali understands that if he
16 violates the terms of his bail then his cooperation agreement
17 will be ripped up and any hope he would have for a sentence
18 below the guidelines would be greatly diminished. I understand
19 that as well. But I don't think it would be irrational for a
20 defendant faced with the kind of sentence that Mr. DiPascali is
21 facing to decide that maybe cooperation is not going to do it.

22 So all of this basically leads me to the statute, back
23 to the statute which is that I need to be persuaded as the
24 judicial officer that there is clearing and convincing evidence
25 that he is not going to flee and at this point I am not really

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1 there.

2 So let me hear from counsel if they want to be heard
3 on this. Mr. Mukasey.

4 MR. MUKASEY: Thirty seconds, Judge, to confer?

5 THE COURT: Certainly.

6 (Pause)

7 MR. MUKASEY: Judge, if I could be heard on the issue.

8 THE COURT: Certainly.

9 MR. MUKASEY: Mr. DiPascali, your Honor, has known
10 that he has been under investigation that could put him in jail
11 for the rest of his life since December 11th, 2008. At that
12 time he was served with a grand jury subpoena. He has known
13 that this day was coming for probably eight months.

14 THE COURT: Can I interrupt you?

15 Because it seems to me that based on what has been
16 described to me is that Mr. DiPascali must have known that this
17 house of cards was going to come crashing down for years but it
18 didn't prevent him from doing what he did up until December of
19 2008.

20 MR. MUKASEY: As Mr. DiPascali mentioned, Judge, I
21 think that he always thought that there would be a safe landing
22 for many investors and it wasn't until really the end that he
23 learned the full truth of this.

24 I would like to address my comments really to his ties
25 to the community and why I think notwithstanding your guideline

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1 analysis, which is pretty darn accurate, and notwithstanding
2 the really cataclysmic nature of the fraud here, I think Mr.
3 DiPascali is a clear and convincing bet to return to court.

4 He has known he has been under investigation for the
5 better part of nine months. He has been speaking with the U.S.
6 Attorney's Office. He has been following the guidance by the
7 FBI. I am not shy to say that I believe he has established a
8 relationship with the agents of trust. He is where he is
9 supposed to be when they ask him to be there. He has been at
10 every proffer, at every meeting, and every location that he is
11 supposed to be at. He understands that he has but one way to
12 ever see the light of day and that is to satisfy the government
13 that he is trustworthy person.

14 I think the government is signing him up to the
15 cooperation agreement says something about their trust in him.
16 He understands that he has got miles to go in terms of
17 providing substantial assistance. He is here today and he has
18 known he was going to be here today to try to reach that goal.
19 He understands that he is working his way down from probably a
20 life sentence. I anticipate Mr. DiPascali, and I think the
21 government would back me up on this, to be a cooperator in a
22 white-collared case in a historic nature, somebody who can pull
23 the curtain back on a fraud and answer a lot of questions that
24 Ms. Siegman wants to be answered and the whole world wants to
25 be answered.

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1 We would not have gone through what was really a
2 grueling process to convince the government that he was a
3 person worthy of its trust if we didn't want to see this
4 through to the end. Mr. DiPascali does want to see it through
5 to the end and that is why he came here and admitted in open
6 court a fraud of 30 years or the better part of 20 or 30 years.

7 Let me talk a little bit, Judge, about Mr. DiPascali's
8 background. He has in Bridgewater, New Jersey, four children.
9 He comes from an extremely close family. In fact, this is the
10 first time I have ever seen him discuss the fraud without
11 breaking down and crying. He is an emotional person. He is
12 not a person that would ever do anything to harm his family. I
13 think that really in the back of his mind he wasn't convinced
14 that investors would be hurt here. Of course they could have
15 been. I am not sure he was convinced that they would have been
16 had Mr. Madoff actually had assets to back this up.

17 Let me tell you a little bit about each of Mr.
18 DiPascali's kids and the relationship he has with them as well
19 has his siblings. He has a daughter today who is starting
20 Brooklyn Law School. Yesterday he went with her to move her
21 in. He is incredibly close with her.

22 He has three sons -- Frank, Jr., Greg, and Mike. The
23 two young ones live at home. Mr. DiPascali is their world and
24 he is their world. He supports his mother who is 77 years old
25 and also lives in Bridgewater with one of his sisters. Then he

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1 has the other sister who is willing to post her house to show
2 her confidence in Mr. DiPascali.

3 I think that if the amount of the bond were raised and
4 perhaps if we could somehow find additional security that that
5 could be thrown on to the pile as well. There is not a bail
6 package in the universe that is not without some risk, but I
7 think this is a bail package that can be fashioned into a bail
8 package that gives the Court comfort, like the government has
9 comfort in Mr. DiPascali.

10 It is worth pointing out that since January Mr.
11 DiPascali has been operating under, to use your term, the honor
12 system with the government. They have never frozen his assets.
13 They never seized his bank accounts. He voluntarily turned
14 over to the U.S. Marshal some of his property. He is prepared
15 to turn over his property. He has been operating since January
16 on really a letter agreement with the government regarding his
17 spending knowing that he would be ultimately subject to a
18 forfeiture order. He has not violated the government's trust
19 once.

20 Every month we report to the government the amount of
21 money he is spending. They are keeping him on a tight leash
22 and he is abiding by that. He has almost no assets that are
23 not forfeitable. So as soon as the government moves to freeze
24 the bank accounts and seize the bank accounts, he is not going
25 to have disposable income. He doesn't have an ability to flee.

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1 He doesn't have anywhere to go frankly. We turned over his
2 passport. My office has kept the passport for months.

3 To the extent it is worth knowing, he has put hundreds
4 of hours into preparing to proffer with the government,
5 learning about what it means to be a government witness,
6 learning what it means to accept responsibility and hopefully
7 get a 5K1 letter because he wants it not because he wants to
8 take off. He takes care of his mother. The Pretrial Services
9 officer asked this morning, Do you speak to your mother and
10 your sisters on a weekly basis? And he said, No, much more
11 than that. He speaks to them not on a daily basis but
12 sometimes on a multiple-times-in-a-day basis.

13 It sounds maybe odd stacked up against this fraud, but
14 he is a family person. He doesn't travel. He doesn't go on
15 lavish vacations. He is a homebody. He wants to cause no more
16 pain to his kids. He sat in our office a couple nights ago
17 explaining to his family the possibilities and the
18 consequences. He has been straight up with them, he has been
19 straight up with us, and he has been straight up with the
20 government.

21 You can take this bet, Judge, Mr. DiPascali is here to
22 do the right thing. He wants the 5K letter. It would be inane
23 for him to flee and leave his family with nothing as it is.
24 They are going to have to endure very, very rough times. I
25 don't think he thinks about it in terms of, Well, I am facing

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1 life in prison, what is another two years if I get a bail
2 jumping charge. He thinks of it in the opposite way, which is
3 I am facing life in prison and I better show up every darn day
4 if I am to avoid anything but that.

5 That is why we entered into the cooperation agreement.
6 That is why we hope Mr. DiPascali can satisfy the Miriam
7 Siegmans of the world and the government and this Court. I
8 don't want to put anybody on the spot. I think the FBI agents
9 would speak to diligence and his compliance and his ability to
10 be trusted to continue to work with them. I think they would
11 establish a very good relationship with him, professional and
12 arm's length but very trusting. You can imagine the hill that
13 the government faced in offering him a cooperation agreement.
14 They I think came at this perhaps at the beginning with the
15 same scepticism that your Honor does and he won them over. If
16 your Honor releases him on an appropriate bail package, he will
17 win your Honor over with trust and with compliance.

18 May I have one moment, Judge?

19 THE COURT: Certainly.

20 (Pause)

21 MR. MUKASEY: Thank you for hearing me, Judge.

22 THE COURT: Mr. Litt, anything you want to add?

23 MR. LITT: I would ask a couple of points that I think
24 your Honor anticipated in the arguments. Mr. Mukasey hit on
25 some of them.

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1 Mr. DiPascali, we do believe has known since very
2 early on -- December 11th, 12th -- that he was a key player in
3 this and he was under investigation and has not fled. He has
4 always cooperated with the government to date and appeared when
5 called upon to do so. He showed up today knowing what the
6 consequences of his actions today would be and certainly
7 deserves credit for that.

8 He does appear to be close to his family and he does
9 have significant ties to the community. The plea agreement
10 that he has entered into gives him every incentive to appear
11 and to try to fulfill the terms of that agreement because to do
12 otherwise would likely confine him to the rest of his life in
13 jail.

14 THE COURT: If he flees and you were able to get him
15 back.

16 MR. LITT: Yes. That's right, your Honor.

17 With respect to the bail package and amount, the
18 reason why there is less securities than there is in some other
19 cases there might have been is related to the forfeiture issue
20 and the fact that most of Mr. DiPascali's assets are subject to
21 forfeiture. And over the coming weeks we expect to be
22 presenting preliminary orders or forfeiture to your Honor which
23 may be submitted any time prior to sentencing to start the
24 process of accomplishing that. We have already to date
25 confiscated some of Mr. DiPascali's assets.

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1 Finally, the government believes that the assistance,
2 if we did not believe that he could provide substantial
3 assistance to the government, we wouldn't have entered into
4 this agreement. We do believe that he can provide substantial
5 assistance and we believe that his ability to do so would be
6 hampered were he to be detained.

7 THE COURT: Why is that?

8 MR. LITT: This is a very documented intensive
9 investigation, among other things. There are literally
10 millions of pages of documents and data and computer equipment
11 and the like that it will be very beneficial were he to be able
12 to have access to provide the substantial assistance that we
13 expect he will be able to do.

14 I think some of the concerns that your Honor has can
15 be addressed in part through electronic monitoring and home
16 detention if your Honor thinks that would add such an
17 additional layer of surety about flight. There are flaws with
18 that as your Honor well knows. There is no substitute in terms
19 of assuring somebody's presence in court other than
20 incarceration, but the government certainly believes that given
21 his connections to the community, again his record with the
22 government to date, the fact that he has not fled in the last
23 eight months, the fact that he showed up today and admitted his
24 guilt, exposed himself to 125 years of incarceration, that he
25 has three family members who would be tremendously harmed were

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1 he to flee if they were approved as cosigners on the package,
2 that those things even without home detention and electronic
3 monitoring in the government's view provide clear and
4 convincing evidence in this case, and every case must be viewed
5 on its own facts, to reasonably assure clear and convincing
6 evidence that Mr. DiPascali would appear when required.
7 Certainly those factors when necessary combined with home
8 detention and electronic monitoring would do that.

9 THE COURT: Mr. Litt, I am looking at a submission you
10 made to me in another case, which you reminded me that the Bail
11 Reform Act of 1984 creates no general expectation of post
12 verdict liberty. To the contrary, it establishes as a
13 presumption in favor of detention. You then went on to remind
14 me that "the interest in detaining defendants who have been
15 found guilty beyond a reasonable doubt of such crimes also
16 includes the need to encourage general respect for the law by
17 signaling that a guilty person will not be able to avoid or
18 delay imposition and service of the sentence prescribed by
19 law."

20 So, look, let me say this: I have great respect for
21 the lawyers in this room. I know them. I think they are good
22 at what they do and I have great respect for them. Clearly
23 they have taken the positions they take because they believe
24 them and I don't disregard that lightly. On the other hand, I
25 think everybody recognizes that each of us has an independent

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1 role to play in this process.

2 Mr. Litt and Mr. Mukasey have focused on what Mr.
3 DiPascali has done since December of 2008. I keep focusing on
4 what he did for 20 or 30 years before that. I keep thinking of
5 how many people put their trust in Mr. DiPascali and have lived
6 to regret it deeply and I am frankly reluctant to put my trust
7 in Mr. DiPascali. I don't see why he would anymore respect the
8 oath he would take on a bail package than he would respect the
9 oath he took in front of the SEC, another arm of the
10 government. So I think we may have disagreement on this one.

11 I am not persuaded. Maybe I haven't heard enough
12 about how remand would affect his ability to cooperate with the
13 government. I think there are lots of individuals who are in
14 custody who can still cooperate very effectively and work with
15 law enforcement agents very effectively. On this record, in
16 the length of time that this conspiracy went on, again the
17 amount and nature of the misrepresentations to clients, to
18 government entities, to auditors, I just cannot find by clear
19 and convincing evidence that Mr. DiPascali does not pose a risk
20 of flight. I just can't do it.

21 MR. MUKASEY: Judge, if I could add some facts to the
22 record that might help persuade you that he is a trustworthy
23 defendant. In terms of your concern about how he would be
24 hampered from cooperating were he detained, not only he is
25 going to cooperate with the U.S. Attorney's Office and with the

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1 FBI, I can tell you from having been in these proffers, it is
2 an extremely onerous process involving computers and documents
3 and account statements and it requires the sort of 8-hour,
4 10-hour, 12-hour sessions that you just cannot have when you
5 are remanded.

6 He is also going to be cooperating with the SEC, with
7 the IRS, with any agency that wishes to speak with him, and we
8 hope and we believe there will be a number of agencies both
9 inside New York and outside New York that wish to speak with
10 him. We've discussed among ourselves the Massachusetts
11 Attorney General has been very, very active in this case.

12 Obviously he is a U.S. Attorney's Office cooperator,
13 but I would hope that when the Madoff cases are going to spring
14 up all over the country, Mr. DiPascali will be at least a very
15 valuable witness to debrief to understand the operations and he
16 is not a testifying witness. There are civil lawsuits that he
17 may be able to help people out. I think he is going to be
18 working chiefly with the FBI and SEC here in New York, but he
19 can and is ready, willing and able to work with these other
20 agencies.

21 The SEC of course have their limitations on where they
22 can do and when they can go and when Mr. DiPascali can go if he
23 were detained. I think it would seriously hinder his ability
24 to work with the SEC. Part of what the world wants to know
25 here is how did the SEC fail to catch this for lack of a better

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1 phrase and just to use the terms of discussion of the day. I
2 don't know the case that your Honor read back Mr. Litt's
3 language to him but I would ask the Court consider whether that
4 was a case of cooperation.

5 THE COURT: It was not.

6 MR. MUKASEY: And you make a good point obviously
7 about --

8 THE COURT: You have to say that, Mr. Mukasey.

9 MR. MUKASEY: I am not saying I agree with everything.
10 You make a good point about how do trust a guy who basically
11 has been a fraudster for 25 years. Here is the answer: He
12 lived in a universe for 25 years that he doesn't live in
13 anymore. On December 11th he exited that universe. Once he
14 got out of that universe -- by the way that universe was
15 twisted and it was perverted, and it was almost impossible for
16 somebody who wasn't living in that universe to understand. It
17 was an alternative reality. It was not the kind of conspiracy
18 where a bunch of people are down in the dungeon plotting how to
19 rip off innocent old ladies. It wasn't like that.

20 Mr. DiPascali started with Mr. Madoff when he was 18
21 or 19 years old. He didn't know the way things run at Goldman
22 Sachs. He didn't know the way things run at Morgan Stanley.
23 So sat and watched and he learned and listened and at some
24 point after several years I think a light went off, I think he
25 said to himself, This is kind of a bizarre universe but this is

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1 my universe. This is what Bernie tells me to do and this is
2 what I am doing. By the way no one is going to get hurt at the
3 end because Bernie Madoff has been telling me he has assets
4 abroad and in real estate and in commodities that are going to
5 make sure that all the clients' money will be able to be
6 returned.

7 So he wasn't out there sort of ripping and robbing and
8 stealing as you might think of it. He is guilty? 1,000
9 percent. No question about it. There is no way we could have
10 a trial in this matter. He is absolutely guilty. He was
11 living in a universe creating fake trade tickets and creating
12 fake trade blotters. It is the way you did things. It was
13 okay because Bernie was going to take care of it. Don't worry,
14 Bernie will take care of it. That is how he went to sleep at
15 night. That was the universe he was living in for 25 years, 20
16 years.

17 On December 11th he came to my office shaking, crying
18 out of that universe. He stepped out of that universe and
19 stepped into the real kind of world, the world that Ms. Siegman
20 lives in, I live in, you live in. The world where you cannot
21 create a fake trade ticket and say, Don't worry it is okay
22 because no one is going to get hurt here. He realizes now, he
23 is out of that universe. He is in a universe with laws and
24 rules and regulations and oaths and promises and trusts.

25 I am happy to tell you that we had to knock hard on

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1 the door of the U.S. Attorney's Office to get Mr. DiPascali in
2 there because they originally have the same -- I don't want to
3 speak for them. I would imagine prosecutors in the real world
4 have the same degree of scepticism. The guy was a fraudster
5 for 25 years. How could I trust him? How can I put him on the
6 witness stand? Well, you know what? He earned their trust.
7 He now I think has their trust. Because he stepped out of the
8 universe, the one that you are focusing on, the one that said
9 you have wanton disregard for these victims and you have a
10 20-year history of fraud.

11 He is in a new world where he talks to the FBI agents
12 almost every day. They were at his house yesterday. He goes
13 to the U.S. Attorney's Office at his job. It is going be his
14 full-time job. Never has never missed an appearance. He comes
15 early. He stays late. He goes outside to smoke and gets a
16 class of water. Otherwise he is in there looking at records,
17 explaining history.

18 So you are right there was a world that he is going
19 get punished for. He doesn't live in that world anymore. Now
20 he is in this world. Now he is in the world where he has got
21 to live up to what he says and he has to tell the truth or he
22 is going to go right back to that world where the only other
23 inhabitant is Bernie Madoff spending 150 years in prison.

24 THE COURT: I understand the arguments and the
25 sincerity of what you are saying and what Mr. Litt is saying

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1 that you have each reached a conclusion that Mr. DiPascali
2 would do that. Perhaps you know him better than I. I don't
3 think I can overlook the conduct that he admitted to today,
4 which I think coupled with the seriousness of the penalties
5 that he is looking at I think provides ample incentive to flee
6 if cooperation doesn't look like it is going to pan out the way
7 he thought, or as he gets closer to the day of sentencing that
8 the harsh realities of a sentence for this conduct starts
9 staring him in the face. I think in light of all facts and all
10 the conduct in this case and in light that Mr. DiPascali has
11 made false statements to the SEC and to others and in light of
12 the fact for decades he made false statements to people that
13 entrusted him with their life savings -- I am not going to
14 trust him with his life savings. I am just hoping he shows up
15 to court. People entrusted him with the life savings. I am
16 unpersuaded respectfully.

17 MR. MUKASEY: Perhaps if we can add some heft to the
18 bail package, something such as home detention.

19 THE COURT: Well, look, I don't rule out the
20 possibility of the parties to make another motion. Based on
21 what is before me today and based on the proposal that has been
22 made jointly by the parties for bail, I am going to deny that
23 request. I am going to remand Mr. DiPascali. It not designed
24 to be punitive. Time for sentencing is later. It is designed
25 really I think to meet the objectives of the statute in light

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1 of the facts as I understand them.

2 Mr. DiPascali, it may not be what you wanted or
3 expected today but --

4 MR. MUKASEY: May I have one moment to discuss one
5 matter with the government?

6 THE COURT: Certainly.

7 (Pause)

8 MR. LITT: Your Honor, if I could at the risk of
9 trotting over ground that we've covered, first with respect to
10 the brief that your Honor mentioned that, as your Honor knows,
11 was in a case following three and a half years of intense
12 litigation and a nine-week trial, not a cooperator.

13 THE COURT: A man whose fraud, total fraud was tiny in
14 comparison to this defendant's, right.

15 MR. LITT: Yes. Absolutely, your Honor.

16 THE COURT: I don't want anyone to be in the dark
17 here. I am referring to Mr. Litt's submission in the case of
18 *United States v. Alberto Villar*, 05 CR 621.

19 MR. LITT: That's right. I guess what I am having
20 difficulty articulating is it is essential I think is that we
21 believe that Mr. DiPascali's cooperation, what he wants to do,
22 what he says he wants to do will be hampered if we --

23 THE COURT: You have to take him out in order to bring
24 him to the FBI. Look, we are all experienced with cooperators.
25 We all know there are many cooperators who are in custody who

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1 are able to cooperate and meet with law enforcement officials
2 and engage in cooperation. He is not doing anything activity.
3 He is not wearing a wire and going out. I am not sure I am
4 persuaded that he needs to be out to be able to effectively
5 cooperate.

6 MR. LITT: The documents involved in this case fill a
7 half a floor of a New York office building and about 6,000
8 boxes in a warehouse and a computer server that was dedicated
9 in large part to the investment advisory activities, a computer
10 that Mr. DiPascali has a certain amount of specialized
11 knowledge about, a server that has proprietary software, that
12 is ancient by modern standards in terms of technology and the
13 operating system and the like. The records and the unraveling
14 of what happened in this case over decades requires looking
15 through exactly what I just described, a half of a floor of an
16 office building.

17 In going through this process, and I will just speak
18 in hypotheticals, to present a document to a witness that
19 triggers a recollection of something else. It is one thing to
20 be able to walk across the room or pull a file and present that
21 file in realtime and through that process get to the bottom of
22 what happened and a very small piece of what happened in this
23 case then it would be to do that process through the cumbersome
24 circumstance of Mr. DiPascali's being incarcerated.

25 I think it will just be a lot more efficient, the

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1 government will be able to get Mr. DiPascali's cooperation much
2 more fully, completely, efficiently, and quicker if he is out.
3 I would just urge the Court --

4 THE COURT: Let's me interrupt you, though. That is
5 not really the consideration of 3143. It doesn't say or if the
6 government thinks it would be more convenient to have a person
7 out. So clearly the government has reached a conclusion. And
8 I don't mean this disrespectfully. Clearly you reached a
9 determination that bail is appropriate. I understand that. I
10 am not persuaded by clear and convincing evidence that Mr.
11 DiPascali is going to be here at the time of sentencing given
12 the monumental sentence he is facing and given the amount of
13 cooperation that is going to be needed to put a dent into that
14 sentence.

15 So, look, I don't think there is much more that you
16 folks can say today that is going to persuade me. If you want
17 to make another submission, I will consider it. But on the
18 basis of the facts as I have laid them out, I am not prepared
19 to agree to the bail package that you have all proposed.

20 MR. MUKASEY: Understood that the current bail package
21 on the table needs to be withdrawn and obviously I am told
22 needs some more energy and some more heft. Judge, we were
23 obviously surprised by your Honor's take on this and what I
24 would propose is to allow us to brief this issue and or -- I
25 guess the law is pretty clear. I am not sure how much briefing

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1 there is going to be, but Mr. DiPascali's family is completely
2 unprepared for this. He is completely unprepared for this. He
3 is the financial provider to his family. I frankly didn't
4 recognize --

5 THE COURT: Is he working, though?

6 MR. MUKASEY: No. But I think he is certainly taking
7 care of his family, the four kids and the girl in law school
8 and the boys that are home for the summer. I think that we can
9 probably work out a package if your Honor were to give us 48
10 hours, 72 hours that was strict, that satisfied your Honor of
11 his ties to the community.

12 I agree that cooperation is not one of the 3142, 43
13 prongs. However, I think it bears some thinking about really
14 how he will be able to cooperater or not cooperate if he is
15 remanded, and probably satisfy your Honor with a package that
16 includes home detention, strict Pretrial Services reporting,
17 perhaps less travel, and a lot more for those he loves to lose.

18 THE COURT: I am reacting to what I have in front of
19 me now. The statute is pretty clear that unless I make the
20 finding that I am not prepared to make, Mr. DiPascali is
21 remanded. So I am going to order his remand without prejudice
22 to renewing a motion whenever you see fit with whatever
23 submissions you think appropriate.

24 Mr. DiPascali, we have not set a sentencing date for
25 you. That is because it has been represented to me that your

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1 cooperation will continue for some time. We have a control
2 date in May. Then perhaps we will have more information as to
3 when we will go forward with sentencing. I want to make sure
4 you understand about sentencing, however. As I said before,
5 the Probation Department will prepare a report, a presentence
6 report, that will be quite extensive. They will interview a
7 number of people, including the government to get more
8 information about the offenses that are in the information, and
9 also interview you, among others. So I would ask that you be
10 cooperative with the Probation Department as they prepare that
11 report.

12 Mr. Mukasey, I assume you wish to be present for any
13 interview?

14 MR. MUKASEY: Yes, Judge.

15 THE COURT: I will direct that no interview is to take
16 place unless Mr. Mukasey is present. So if they show up to
17 interview you and Mr. Mukasey is not there, you remind them
18 that I told you not to go forward. If Mr. Mukasey directs you
19 not for answer certain questions, listen to him, but don't make
20 any false statements to the Probation Department. If you were
21 to do that, it could be a separate offense or an enhancement
22 for obstruction of justice. So I think that would serve no
23 one's interest. Be as cooperative as you can be.

24 Mr. Mukasey.

25 MR. MUKASEY: I am going to back to the bail issue. I

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1 think that it might persuade your Honor what Mr. DiPascali is
2 looking forward to in terms of his cooperation and the ties
3 that he has to his family and the community and the cooperation
4 that he has already given to the government is perhaps if I
5 were allowed to ask the FBI Agent Keith Kelley some questions
6 that --

7 THE COURT: Asking here in open court, you mean?

8 MR. MUKASEY: Yeah. I don't want to do anything that
9 will put anybody on the spot, but I think there is a
10 relationship of trust here that can be considered a tie to the
11 community, in addition with the FBI and the government, which I
12 think Special Agent Kelley would shed some light on, in
13 addition to the very, very close ties Mr. DiPascali has with
14 his family.

15 THE COURT: I am not sure what you are asking me. Are
16 you asking me to put Mr. Kelley on the stand and let you
17 examine him?

18 (Pause)

19 THE COURT: Counsel.

20 Mr. Mukasey.

21 MR. MUKASEY: I am going to withdraw that application.

22 THE COURT: If you folks want to renew the
23 application, you can do so. I think I've explained what my
24 concerns are and what the burden is.

25 Is there anything else we need to cover today,

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1 Mr. Litt?

2 MR. LITT: No, your Honor.

3 THE COURT: Mr. Mukasey?

4 MR. MUKASEY: If I can have just one moment?

5 (Pause)

6 MR. MUKASEY: Nothing further, Judge.

7 THE COURT: Thank you all. I will hear from you May
8 15th if not before then. I appreciate all your time. Thank
9 you to the court reporter, the marshals, and all the victims
10 who came as well.

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Exhibit 5

Transcript - Friehling Plea Hearing held 11-3-2009.TXT

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9C3AAFRI P Plea
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----x

UNITED STATES OF AMERICA,

v.

09 CR 700 (AKH)

DAVID FRIEHLING,

Defendant.

-----x

New York, N. Y.
November 3, 2009
10:30 a. m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
LISA BARONI
MARC LITT
Assistant United States Attorneys

ANDREW M. LANKLER
Attorney for Defendant Friehling

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(Case called)
MS. BARONI: Good morning, your Honor.
Lisa Baroni, for the government.
With me at counsel table is a Marc Litt from the U. S.
Attorney's Office, Special Agent Denice Lamond from the
Internal Revenue Service, Special Agent Patrick Duffy from the
FBI and a Pretrial Services officer just arrived, Margaret
Smusz.

THE COURT: Good morning, all.

MR. LANKLER: Good morning, your Honor.

I am Andrew Lankler. I represent David Friehling.

THE COURT: Good to see, Mr. Lankler.

Good morning, Mr. Friehling.

Transcript - Friehling Plea Hearing held 11-3-2009.TXT

14 I understand, Mr. Friehling, that you want to change
 15 your plea of not guilty to the indictment to a plea of guilty
 16 to a several count information; is that correct?
 17 THE DEFENDANT: Yes.
 18 THE COURT: We have to go through several steps.
 19 First, Ms. Jones will arraign you and you will plead to the
 20 information. Then we'll put you under oath and then I have to
 21 ask you a number of questions under oath so you have to tell me
 22 the truth, the whole truth and nothing but the truth. If you
 23 fail to do that you expose yourself to additional penalties.
 24 I have to make sure that what you are doing is
 25 voluntary. If you know what you are doing and no one's

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1 promised you anything, no one's threatened you in any way, what
 2 you are doing is because you want to do it and this is after
 3 you received your advice from Mr. Lankler and you are satisfied
 4 that you tell me you are satisfied with your services. Then
 5 give through the constitutional rights that you have in every
 6 matter a defendant has for a speedy and public trial. I need
 7 to make sure even though I'm sure that Mr. Lankler's covered
 8 that thoroughly that you understand your rights that you are
 9 giving up. And lastly you will tell me what you did to make
 10 you guilty because I have to find that there is an independent
 11 basis in fact to sustain a plea and I have no interests in
 12 having a man who is innocent plead guilty to a crime.
 13 So we go through all of that and you have to tell me
 14 the truth, the whole truth and nothing but the truth. Do you
 15 understand?
 16 THE DEFENDANT: Yes, I do.
 17 THE COURT: Do you wish me to proceed in this fashion?
 18 THE DEFENDANT: Yes, your Honor.
 19 THE COURT: First we'll arraign you to the
 20 information.
 21 COURTROOM DEPUTY: Please rise. You are David
 22 Friehling.
 23 THE DEFENDANT: Yes, I am.
 24 COURTROOM DEPUTY: Have you signed this waiver ever
 25 indictment?

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1 THE DEFENDANT: Yes, I have.
 2 COURTROOM DEPUTY: Before you signed it did you
 3 discuss it with your attorney?
 4 THE DEFENDANT: Yes, I did.
 5 COURTROOM DEPUTY: Did he explain it to you?
 6 THE DEFENDANT: Yes, he did.
 7 COURTROOM DEPUTY: Do you understand you are under no
 8 obligation to waive indictment?
 9 THE DEFENDANT: Yes, I do.
 10 COURTROOM DEPUTY: Do you understand that if you do
 11 not waive indictment if the government wants to prosecute you
 12 they will have to present this case to a grand jury which may
 13 or may not indict you?
 14 THE DEFENDANT: Yes, I do.
 15 COURTROOM DEPUTY: Do you realize that by signing this
 16 waiver of indictment you have given up your right to have this
 17 case presented to a grand jury?
 18 THE DEFENDANT: Yes.

Transcript - Friehling Plea Hearing held 11-3-2009.TXT

19 COURTROOM DEPUTY: Do you understand what a grand jury
 20 is?
 21 THE DEFENDANT: Yes.
 22 COURTROOM DEPUTY: Have you seen a copy of the
 23 information?
 24 THE DEFENDANT: Yes.
 25 COURTROOM DEPUTY: Would you like me to read it to
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you?

1 THE DEFENDANT: No.
 2 COURTROOM DEPUTY: How do you plead?
 3 THE DEFENDANT: Guilty.
 4 THE COURT: All right. Before I can accept that plea
 5 we have to go through a number of different factors. We'll put
 6 that at rest for a few minutes and we'll examine you.
 7 Now Ms. Jones is going to put you under oath.
 8 (Defendant David Friehling sworn)
 9 COURTROOM DEPUTY: Please, state your full name for the
 10 record.
 11 THE DEFENDANT: David Gary Friehling.
 12 THE COURT: How old are you, Mr. Friehling?
 13 THE DEFENDANT: 49.
 14 THE COURT: Where were you born?
 15 THE DEFENDANT: Miami Beach Florida.
 16 THE COURT: Where did you receive your education? How
 17 far did you go, through college?
 18 THE DEFENDANT: Through graduate school.
 19 THE COURT: What college did you go to?
 20 THE DEFENDANT: Cornell University.
 21 THE COURT: And which part of Cornell?
 22 THE DEFENDANT: School of Industrial and Labor
 23 Relations.
 24 THE COURT: When did you receive your degree?
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1 THE DEFENDANT: May of 1981.
 2 THE COURT: Was it a degree of Bachelor of Arts or a
 3 Bachelor of Science?
 4 THE DEFENDANT: Bachelor of Science in Industrial and
 5 Labor Relations.
 6 THE COURT: Then you say you went on to graduate
 7 school?
 8 THE DEFENDANT: Yes.
 9 THE COURT: Where did, do you work?
 10 THE DEFENDANT: Baruch College of New York City.
 11 THE COURT: Received a Masters in Business
 12 Administration?
 13 THE DEFENDANT: I never received my degree. I went
 14 for my MBA in accounting.
 15 THE COURT: How many years did you go?
 16 THE DEFENDANT: Approximately two and a half.
 17 THE COURT: Then did you take the test for a CPA?
 18 THE DEFENDANT: Yes, I took --
 19 THE COURT: Pass the test?
 20 THE DEFENDANT: Yes, I did.
 21 THE COURT: When did you receive the certificate?
 22 THE DEFENDANT: July of 1987.
 23 THE COURT: That was a certificate to practice as a

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CPA?

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THE DEFENDANT: Yes.
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THE COURT: In New York state?
THE DEFENDANT: Yes.
THE COURT: Tell me about a little bit about your
personal life. Are you married?
THE DEFENDANT: Yes, I am.
THE COURT: How long?
THE DEFENDANT: 27 years this past August 29.
THE COURT: Any children?
THE DEFENDANT: Yes, three.
THE COURT: How many?
THE DEFENDANT: Three.
THE COURT: How old are they?
THE DEFENDANT: 24, 20 and 17.
THE COURT: What do they do?
THE DEFENDANT: My older son is a actor in California.
THE COURT: He is a what?
THE DEFENDANT: An actor.
THE COURT: Did he go to college?
THE DEFENDANT: Yes, he did. North University.
THE COURT: School of Theater Arts?
THE DEFENDANT: Yes.
THE COURT: And the 20 year old?
THE DEFENDANT: He is a junior at Duke University.
THE COURT: What is he studying?
THE DEFENDANT: Premed.
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THE COURT: And the 17 year old?
THE DEFENDANT: She is a senior in high school.
THE COURT: Where does she go to high school?
THE DEFENDANT: Clarkstown North High School in New
City, New York.
THE COURT: Does your wife work?
THE DEFENDANT: Yes, she does.
THE COURT: What does she do?
THE DEFENDANT: Account manager for the New York Blood
Service.
THE COURT: I missed the company.
THE DEFENDANT: New York Blood Service.
THE COURT: What is that?
THE DEFENDANT: New York Blood Service.
THE COURT: Coming in to today, Mr. Friehling, have
you had any medicine or alcohol or narcotics that could blur
your thinking?
THE DEFENDANT: No.
THE COURT: Are you clear minded?
THE DEFENDANT: Yes.
THE COURT: Have you discussed the case thoroughly
with Mr. Lankler?
THE DEFENDANT: Yes, I have.
THE COURT: And his staff?
THE DEFENDANT: Yes.
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1 THE COURT: Have you told them everything that you
2 know about your case?
3 THE DEFENDANT: Yes.
4 THE COURT: Have you held any information away from
5 him?
6 THE DEFENDANT: No.
7 THE COURT: Are you satisfied about the advise he is
8 gi vi ng?
9 THE DEFENDANT: Yes.
10 THE COURT: Are you offering to plead guilty because
11 you think that's the best think thing for you in this
12 circumstances?
13 THE DEFENDANT: Yes.
14 THE COURT: Your own deci si on, your vol untary act?
15 THE DEFENDANT: Yes.
16 COURTROOM DEPUTY: Has anyone threatened you in any
17 way to cause to make this deci si on?
18 THE DEFENDANT: No.
19 COURTROOM DEPUTY: Has anyone promised anything to
20 make this deci si on?
21 THE DEFENDANT: No.
22 COURTROOM DEPUTY: You are doing it because you think
23 that's what you want to do?
24 THE DEFENDANT: Yes.
25 COURTROOM DEPUTY: Let me discuss your consti tutional
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1 rights. Do you understand that you have a right to a speedy
2 and public trial?
3 THE DEFENDANT: Yes.
4 COURTROOM DEPUTY: That you are entitled to have a
5 presumption of innocence?
6 THE DEFENDANT: Yes.
7 COURTROOM DEPUTY: As the case with every citizen of
8 the United States?
9 THE DEFENDANT: Yes.
10 COURTROOM DEPUTY: That means that you can be found
11 guilty of any crime unless the crime is charged and proved
12 beyond a reasonable doubt to the satisfaction of a unanimous
13 jury?
14 THE DEFENDANT: Yes.
15 COURTROOM DEPUTY: That your entitled to an attorney
16 to guide you and represent you in every step of these criminal
17 proceedings?
18 THE DEFENDANT: Yes.
19 COURTROOM DEPUTY: If you cannot afford a lawyer the
20 government will provide a lawyer free of charge; you are aware
21 of that?
22 THE DEFENDANT: Yes.
23 COURTROOM DEPUTY: And alone or through the lawyer you
24 can confront every witness against you and cross examine that
25 witness and require any witness having favorable information to
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1 come to the trial and testify whether that witness wishes to do
2 so or not?
3 THE DEFENDANT: Yes.
4 COURTROOM DEPUTY: Do you understand also that you
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6 would have the right to testify if you wished to testify but if
7 you didn't wish to you wouldn't have to and no inference could
8 be drawn against you?
9 THE DEFENDANT: Yes.
10 COURTROOM DEPUTY: But by pleading guilty you waive
11 these rights and you give me the authority to sentence you the
12 same way I could if the jury brought in a verdict of guilty
13 against you?
14 THE DEFENDANT: Yes.
15 COURTROOM DEPUTY: You are pleading guilty to the
16 knowledge of all of those rights that you are waiving?
17 THE DEFENDANT: Yes, I am.
18 COURTROOM DEPUTY: Now, Ms. Baroni, I have a letter
19 agreement that is before me of six pages.
20 MS. BARONI: Yes, your Honor. I have the executed
21 for, you Honor.
22 THE COURT: May I see the executed copy. We'll mark
23 all these pages with the executed copy as Court Exhibit 1.
24 (Pause)
25 THE COURT: I am looking at the 6th page of the
original; is that your signature on this, Mr. Friehling?
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1 THE DEFENDANT: Yes, it is.
2 COURTROOM DEPUTY: Mr. Lankler, is that yours?
3 MR. LANKLER: Yes, it is, your Honor.
4 COURTROOM DEPUTY: Both signed November 2.
5 MR. LANKLER: We signed them last night, judge. Last
6 night was the 2nd.
7 THE COURT: Today is the 3rd. Ms. Baroni, I am
8 returning this to you, please, and I'll work with the copy.
9 Ms. Baroni, will you summarize the several counts of
10 the information to which Mr. Friehling will be pleading.
11 MS. BARONI: Yes, your Honor.
12 Count One of the superseding information charges the
13 defendant with securities fraud.
14 Count Two of the superseding information charges him
15 with investment advisor fraud.
16 Counts Three through Six charge making false filings
17 with the Securities and Exchange Commission.
18 Counts Seven, Eight and Nine charge the defendant with
19 obstructing or impeding the administration of the Internal
20 Revenue laws.
21 THE COURT: Would you tell Mr. Friehling and me what
22 it is that the government has to prove if the case went to
23 trial on each of those counts.
24 MS. BARONI: The elements of the offenses, your Honor?
25 THE COURT: Yes.
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1 MS. BARONI: Sure. With respect to Count One,
2 securities fraud, in order to prove this crime the government
3 would have to establish the following elements beyond a
4 reasonable doubt:
5 First, that in connection with the purchase or sale of
6 a security the defendant did any one or more of the following:
7 Employed a device scheme or artifice to defraud or
8 made an untrue statement of material fact or omitted to state a
9 material fact which made what was said under the circumstances

10 Transcript - Friehling Plea Hearing held 11-3-2009.TXT
 11 misleading, or engaged in an act, practice or course of
 12 business that operated or would operate as a fraud or deceit
 13 upon the purchaser or a seller.
 14 Second, that the defendant acted knowingly, willfully
 15 or with the intent to defraud.
 16 And third, that the defendant knowingly used or caused
 17 to be used any means or instruments of transportation or
 18 communication in interstate commerce or the use of the mails in
 19 furtherance of the fraudulent conduct.
 20 And the government can also prove this through aiding
 21 and abetting liability, your Honor.
 22 With respect to Count Two --
 23 THE COURT: In other words, the government can prove
 24 Mr. Friehling's guilt either as a principal or as a person who
 25 aided and abetted a principal.
 MS. BARONI: That right, judge.
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1 With respect to Count Two, investment advisor fraud,
 2 in order to prove this crime the government must show beyond a
 3 reasonable doubt the following four essential elements. First,
 4 that the defendant -- this also could be proven through aiding
 5 and abetting liability -- that there was an investment advisor,
 6 that either the defendant was investment advisor ar aided and
 7 abetted an investment advisor.
 8 Second, that the defendant either employed a device,
 9 scheme or artifice to defraud clients or perspective clients,
 10 that the defendant engaged in a transaction, practice or course
 11 of business which operated as a fraud and deceit upon those
 12 clients and perspective clients or that the defendant engaged
 13 in an act, practice or course of business that was fraudulent,
 14 deceptive and manipulative.
 15 Third, that the defendant devised or participated in
 16 such alleged device, scheme or artifice to defraud or engaged
 17 in such alleged transaction, practice or course of business
 18 knowingly, willfully and with the intent to defraud.
 19 Forth that the defendant employed such alleged device,
 20 scheme or artifice to defraud or engaged in such alleged
 21 transaction, practice or course of business by use of the mails
 22 or other instrumentality of interstate commerce.
 23 With respect to Counts Three through Six, making false
 24 filings with the Securities and Exchange Commission, the
 25 government to prove this offense would have to prove beyond a
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1 reasonable doubt the following four elements:
 2 That the defendant was required to file an
 3 application, report or document with the SEC under the
 4 Securities Exchange Act of 1934 and the rules and regulations
 5 there under.
 6 Second, that the application report or document filed
 7 with the SEC contained false or misleading statements.
 8 Third, that the false or misleading statements were
 9 material.
 10 Fourth that the defendant acted knowingly and
 11 willfully.
 12 THE COURT: Again, this can be proved either as a
 13 principal or by aiding and abetting?
 14 MS. BARONI: Yes, your Honor.
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15 THE COURT: And finally with respect to Count Seven
16 through Nine which charges the defendant with obstructing or
17 impeding the administration of the Internal Revenue laws, to
18 prove this offense the government would have to show beyond a
19 reasonable doubt first, that the defendant acted or endeavored
20 corruptly, acted with corrupt intent.

21 And second, that the defendant acted to obstruct or
22 impede the administration of the Internal Revenue laws.

23 THE COURT: Now, with regard to aiding and abetting --
24 don't sit down yet, Ms. Baroni -- with regard to aiding and
25 abet what is it that the government has to prove in each

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1 instance? I can help you. I think there has to have been
2 substantial help given by the defendant with knowledge that he
3 was giving the help to assist another in committing a
4 particular crime and investing enough interest in that as to
5 make it his own.

6 MS. BARONI: Right, your Honor. Under the statute we
7 would have to prove beyond a reasonable doubt that he aided,
8 abetted, counseled, commanded, induced or procured the
9 commission of a crime.

10 THE COURT: It's not just helping. It's helping with
11 the intent that he is helping another commit a particular crime
12 and in such a way is not being indifferent to it but making his
13 own in interest in his part to assist.

14 MS. BARONI: That's right.

15 THE COURT: That in each of the Counts One, Two, Three
16 through Six, Seven through Nine charges Mr. Friehling as a
17 principal; is that right?

18 MS. BARONI: That's right, judge.

19 THE COURT: Okay. And if you prove aiding and
20 abetting -- you are still not finished Ms. Baroni. You'll sit
21 tonight. And if you prove aiding and abetting it's the same
22 for purposes of sentencing as if you were to prove the
23 principal itself.

24 MS. BARONI: That's right, your Honor. The statutory
25 maximums are the same.

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1 THE COURT: Now, let's discuss the statutory maximum
2 with regard to each of these counts.

3 MS. BARONI: Yes, judge. With respect to Count One,
4 the securities fraud count, the maximum penalties are 20 years
5 imprisonment, three years supervised release, a fine of the
6 greatest of five million dollars or twice the gross gain or
7 loss from the offense, a mandatory \$100 special assessment and
8 restitution. With respect to --

9 THE COURT: And with regard to supervised release in
10 that count and others, there are conditions that come with it.
11 A violation of the condition leads to a hearing and if
12 appropriate the judge can sentence among other things the
13 defendant to jail even though he has finished his jail term.

14 MS. BARONI: That's right, your Honor.

15 THE COURT: All right.

16 MS. BARONI: With respect to Count Two, investment
17 advisor fraud, the maximum penalties are five years
18 imprisonment, three years supervised release, a fine of the
19 greatest of \$10,000 or twice the gross gain or loss from the

20 Transcript - Friehling Plea Hearing held 11-3-2009.TXT
 21 offense, a mandatory \$100 special assessment and restitution.
 22 With respect to Counts Three through Six, making a
 23 false filings with the Securities and Exchange Commission, each
 24 count carries a maximum penalty of 20 years imprisonment, three
 25 years supervised release, a fine of the greatest of \$5,000,000
 or twice the gross gain or loss from the offense, a mandatory
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1 \$100 special assessment on each count and restitution.
 2 Finally, with respect to Counts Seven, Eight and Nine,
 3 the obstructing or impeding the administration of the Internal
 4 Revenue Laws, each count, the maximum penalties for each count
 5 are three years imprisonment, one year supervised release, a
 6 fine of the greatest of \$250,000 or twice the gross gain or
 7 loss, a mandatory \$100 special assessment on each count and
 8 restitution.

9 And also with respect to Count One, your Honor, that
 10 the securities fraud count also requires a forfeiture which is
 11 alleged.

12 THE COURT: Is the forfeiture only relevant to the
 13 securities fraud count?

14 MS. BARONI: Yes, your Honor.

15 THE COURT: You haven't mentioned forfeiture before.
 16 Does the government have funds that have been forfeited or the
 17 claims to be forfeited?

18 MS. BARONI: Yes, your Honor. We would ask that your
 19 Honor allocute the defendant on the forfeiture count just so
 20 that he admits it. And the government anticipates providing to
 21 the Court in short order after today's appearance preliminary
 22 order of forfeiture and a stipulation and order of
 23 interlocutory sale of the defendant's properties.

24 THE COURT: And what are those properties?

25 MS. BARONI: Two pieces of real estate, your Honor.

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1 THE COURT: Do you have the value estimates?

2 MS. BARONI: No, the government doesn't have the value
 3 at this time, your Honor.

4 THE COURT: All right. With regard to this punishment
 5 that you've read out the Court has discretion in many instances
 6 and under various guidelines to sentence on a concurrent basis
 7 or consecutive basis, meaning, that the sentences under each
 8 count can be given at the same time to be served or they can be
 9 added.

10 MS. BARONI: That's right. And the statutory maximum
 11 total of incarceration that could be imposed on the defendant
 12 if they all were consecutive would be 114 years imprisonment
 13 but your Honor has the discretion as you said.

14 THE COURT: Under various considerations and
 15 guidelines.

16 Ms. Baroni. Thank you very much. You can be seated.

17 Mr. Friehling, there's a number of points I wanted to
 18 make you are aware of. I've not studied these and I don't know
 19 to what extent I would find considerations for sentencing in
 20 other ways but I can sentence up to the statutory maximum. If
 21 you become disappointed in what I do when I sentence or in any
 22 other respect, once I accept your plea of guilty you are bound
 23 by it. You will not be able to withdraw it just because you
 24 are disappointed in what I do. Do you understand?

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THE DEFENDANT: Yes.
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1 THE COURT: I don't know what I'm going to do at
2 sentence and that will be an exercise in itself. So if I don't
3 know what it is I am going to do, no one can tell you what I am
4 going to do. And any estimates of what I can do is false
5 because I have not thought about it at all. Are you aware that
6 I have this ability and power to sentence you under the law as
7 I think appropriate at the time of sentencing.

8 THE DEFENDANT: Yes, I do.
9 THE COURT: To the extent you are disappointed in what
10 I do will not be a basis for withdrawing from your guilty plea
11 once I accept it. Are you aware of that?

12 THE DEFENDANT: Yes.
13 THE COURT: All right. Is there another agreement,
14 Ms. Baroni, that I should be considering today as well?

15 MS. BARONI: Your Honor, the only agreement is the
16 agreement that we handed up to your Honor dated November 3rd
17 the plea agreement.

18 THE COURT: That's the one that was signed?

19 MS. BARONI: Yes.

20 THE COURT: All right. Have you discussed it with
21 Mr. Lankler, this plea agreement?

22 THE DEFENDANT: Yes, I have.

23 THE COURT: Have you gone over it very thoroughly?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: Do you understand that you have an
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1 obligation expressed on page three of this letter truthfully
2 and completely to disclose all information with respect to your
3 activities and the activities of others that you know are aware
4 of concerning all matters about which the U.S. Attorney's
5 Office and a live investigating officer's inquire of you and
6 that this information can be used for any purpose; you are
7 aware of that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You promise to cooperate fully with the
10 Office of the US Attorneys, the Federal Bureau of
11 Investigation, the Internal Revenue Service and any other law
12 enforcement agency designated by the U.S. Attorney's Office of
13 the Southern District of New York?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: You promise to attend all meetings at
16 which the U.S. Attorney's Office requests your presence?

17 THE DEFENDANT: Yes.

18 THE COURT: To provide to the office upon request any
19 document, record or other tangible evidence relating to matters
20 about which the U.S. Attorney's Office or any other designated
21 law enforcement agency require of you?

22 THE DEFENDANT: Yes.

23 THE COURT: You testified truthful before a grand jury
24 and at any trial and any other court proceeding with respect to
25 any matters about which the U.S. Attorney's Office may request

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1 further testimony?

2 THE DEFENDANT: Yes.

3 THE COURT: And to bring to the office of the U.S.
4 Attorney all crimes that you have committed and all
5 administrative civil or criminal proceedings investigations or
6 prosecutions, prosecutions in which you have been a subject, a
7 target, a party or a witness?

8 THE DEFENDANT: Yes.

9 THE COURT: You promised that you will commit no
10 further crimes what ever, right?

11 THE DEFENDANT: Yes.

12 THE COURT: And that you will provide notice to the
13 U.S. Attorney's Office prior to discussing the conduct covered
14 by the information in each of its nine counts with anyone other
15 than the U.S. Attorney's Office, law enforcement agencies
16 designated by the U.S. Attorney's Office and your own attorney?

17 THE DEFENDANT: Yes.

18 THE COURT: The next paragraph at the bottom of page
19 three going onto page four provides that if you fully complied
20 with all of the obligations on your part to be performed under
21 this agreement you will not be further prosecuted criminally by
22 the Office of the U.S. Attorney of the Southern District of New
23 York and with respect to the particular tax offenses in the
24 information the Tax Division Department of Justice and
25 Department of Justice for crimes that are specified in this

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1 letter?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand the agreement does not
4 bind any federal, state or local prosecuting authority other
5 than the U.S. Attorney's Office for the Southern District of
6 New York and to the extent mentioned, the tax division and the
7 Department of Justice?

8 THE DEFENDANT: Yes.

9 THE COURT: In the middle of page four you expressed
10 the understanding which we've just discussed that the sentence
11 that will eventually be imposed is within the sole discretion
12 of the judge of the court, either myself or some other judge;
13 you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: And the U.S. Attorney's Office does not
16 make any promise and can't any make any promise or
17 representation as to what sentence the Court will give.

18 THE DEFENDANT: Yes.

19 THE COURT: And that it will not recommend a specific
20 sentence to the Court.

21 THE DEFENDANT: Yes.

22 THE COURT: But it will inform the Court of your
23 cooperation.

24 THE DEFENDANT: Yes.

25 THE COURT: And if all goes well and according to

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1 understanding write a letter to me under Section 5K1.1 of the

2 sentencing guidelines.

3 THE DEFENDANT: Yes.

4 THE COURT: Is it your understanding that under such a
5 letter you will want some special consideration from me or

6 Transcript - Friehling Plea Hearing held 11-3-2009.TXT
 7 another judge with regard to your sentence?
 8 THE DEFENDANT: Yes.
 9 THE COURT: You are aware, however, that you could be
 10 disappointed. The government may feel that you are not
 11 cooperating sufficiently and refuse to write the letter?
 12 THE DEFENDANT: Yes.
 13 THE COURT: Do you understand that?
 14 THE DEFENDANT: Yes.
 15 THE COURT: The letter will be written only if you
 16 comply in the government's opinion with all the conditions
 17 expressed in this document.
 18 THE DEFENDANT: Yes.
 19 THE COURT: Even if the government doesn't write its
 20 letter you've committed yourself to a plea of guilty. You
 21 cannot withdraw. You understand that?
 22 THE DEFENDANT: Yes.
 23 THE COURT: On page 5 the letter provides a commitment
 24 on your part not to commit any further crimes, not to testify
 25 falsely, incompletely and or any misleading information and not
 to give information to the government that is false, incomplete
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 1 or misleading. You are aware of that?
 2 THE DEFENDANT: Yes, I am.
 3 THE COURT: And that if you violate you will not be
 4 able to get a 5K1 letter.
 5 THE DEFENDANT: Yes, sir.
 6 THE COURT: As I said before, when it comes to
 7 sentence I will be looking at the sentencing guidelines. I
 8 will be looking at considerations of a more general nature
 9 having to do with what is just punishment. And to the extent
 10 of your cooperation I will be looking at the extent of your
 11 cooperation and devising a just sentence for you; you
 12 understand that?
 13 THE DEFENDANT: Yes, I do.
 14 THE COURT: And since I've not studied any of this, I
 15 don't know what I am going to do, how I will sentence you. As
 16 I said before, even if you are disappointed in what I do you
 17 will not be able to withdraw from your guilty plea.
 18 THE DEFENDANT: Yes.
 19 THE COURT: Ms. Baroni, tell us how -- you are back on
 20 your feet -- how you are going to prove all of these nine
 21 different offenses and the forfeiture.
 22 MS. BARONI: Yes, your Honor.
 23 If this case had gone to trial the government would
 24 prove through testimony and documentary evidence beyond a
 25 reasonable doubt all of the factors.
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 1 THE COURT: All of the facts set forth in the
 2 superseding information.
 3 MS. BARONI: Specifically, the government would prove
 4 with respect to the first six counts that beginning as early,
 5 at least as early as 1991 from 2008, that Mr. Friehling was a
 6 license certified public accountant, that he was a sole
 7 practitioner at Friehling and Horowitz, CPAs.
 8 THE COURT: For that period of time?
 9 MS. BARONI: Yes, your Honor.
 10 THE COURT: 17 years, practiced alone?

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MS. BARONI: Yes, your Honor.
THE COURT: No staff?
THE DEFENDANT: No.
MS. BARONI: No staff. His father-in-law had started
the firm but he took it over when his father-in-law retired.
THE COURT: When did his father-in-law retired?
THE DEFENDANT: Formally retired in 1998.
THE COURT: So the first seven years you worked with
him?
THE DEFENDANT: Yes.
THE COURT: Then alone?
THE DEFENDANT: Yes.
MS. BARONI: The government would further prove that
Friehling and Horowitz was an accounting firm that was retained
by Bernard L. Madoff Investment Securities to audit its
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financial statements that were filed with the SEC.
THE COURT: When was he engaged? When was the firm
engaged by Mr. Madoff?
MS. BARONI: From at least 1991 to the present,
actually, even earlier when Mr. Horowitz was at the firm.
THE COURT: Throughout that 17 year period?
MS. BARONI: Yes, your Honor.
THE COURT: With yearly engagement letters,
Ms. Baroni?
MS. BARONI: Yes, your Honor. I don't know about
engagement letters but they were retained every year and paid a
monthly retainer every month throughout those years. These
financial statements were filed with the Securities and
Exchange Commission and were also available to clients, your
Honor. And during that time Mr. Friehling, the government
would prove beyond a reasonable doubt, that Mr. Friehling did
not conduct a meaningful audit of Bernard L. Madoff Investment
Securities, that his audits were not performed in accordance
with the required standards which are GAAP and GAAS.
THE COURT: GAAS is a shortening term for the
Generally Accepted Auditing Standard and GAAP is a shortening
for Generally Accepted Accounting Principals.
MS. BARONI: That's right, your Honor.
And that Mr. Friehling merely took the information
given to him by Bernard Madoff and others and did not take
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steps to conduct any independent verification of that
information.
THE COURT: In other words, just put his own imperator
as an accountant on financial information given him by
Mr. Madoff.
MS. BARONI: That's right, your Honor.
THE COURT: And expressed an opinion which recited
that he had conducted an audit according to go Generally
Accepted Auditing Standards and in conformity with Generally
Accepted Accounting Principles.
MS. BARONI: Yes.
THE COURT: And that in the opinion of the accounting
firm of the statement presented fairly the conditions of the
company is that each year end and that the income that was said
to be earned was a true indication of the operating profits of

16 Transcript - Friehling Plea Hearing held 11-3-2009.TXT
 17 that company.
 18 MS. BARONI: That's right, the income and reliability
 19 but it was done on a fiscal year. Also, that the financial
 20 statements certified that he was independent but the government
 21 would prove beyond a reasonable doubt that Mr. Friehling was
 22 not an independent auditor and that he and his family had
 23 investment advisory accounts at Bernard L. Madoff Investment
 24 Securities and those accounts were held in the name of his wife
 25 and others.
 THE COURT: Is there a disclosure of that in the
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 1 accounting statement?
 2 MS. BARONI: No, your Honor.
 3 The government would also prove beyond a reasonable
 4 doubt that Mr. Friehling knew at the time that he certified the
 5 financial statements, that they were materially false and that
 6 at the time that they were, that he caused them to be filed
 7 with Securities and Exchange Commission that he knew that they
 8 were materially false
 9 THE COURT: So he actually knew that the statements
 10 were false?
 11 MS. BARONI: Yes, your Honor.
 12 THE COURT: But nevertheless gave an opinion that
 13 stated that they were fair and accurate.
 14 MS. BARONI: Right. He knew that he did not perform
 15 any independent auditing function.
 16 The government would also prove that these criminal
 17 acts were conducted in Manhattan as well as in Rockland County.
 18 THE COURT: Both within the Southern District of New
 19 York.
 20 MS. BARONI: That's right, your Honor.
 21 THE COURT: So venue is satisfied.
 22 MS. BARONI: Yes. With respect to Counts Seven
 23 through Nine --
 24 THE COURT: So these proofs would show that he aided
 25 and abetted a device, scheme or artifice to defraud, that
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 1 untrue statements of material facts were being made, that the
 2 business itself was operating as a fraud or a deceit upon
 3 purchasers and sellers, and that all this was done willfully,
 4 knowingly and with the intent to defraud and that the mails and
 5 instruments of transportation and communication and interstate
 6 commerce were used.
 7 MS. BARONI: Yes, your Honor. The financial
 8 statements were filed with the SEC by mail by US mail many of
 9 the years.
 10 THE COURT: Now, we're up to the investment advisor
 11 fraud.
 12 MS. BARONI: Your Honor, that factual proffer covers
 13 the securities fraud, the investment advisor fraud and the
 14 making false filings with the SEC is all the same.
 15 THE COURT: Who was the investment advisor?
 16 MS. BARONI: Mr. Bernard L. Madoff Investment
 17 Securities.
 18 So the government would prove beyond a reasonable
 19 doubt that the defendant knew that Bernard L. Madoff Investment
 20 Securities was a broker/dealer and also was an investment

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adviser.

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THE COURT: And were the certified statements used by Mr. Madoff in a fraudulent way in connection with his functioning as an investment advisor?

MS. BARONI: In connection with both sides of the SOUTHERN DISTRICT REPORTERS, P. C. (212) 805-0300

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business, yes, your Honor. They were available to all clients.

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THE COURT: That takes you us through Three through Six because these financial statements were filed with the SEC and defendant was aware they were being filed with the SEC.

MS. BARONI: That's right.

THE COURT: He was aware as well that they were being used to induce continuing activities and purchase sales by the customers of Mr. Madoff's business; is that right?

MS. BARONI: Well, yes, your Honor, he knew they were going to be filed with the SEC and he knew that they were available to certain clients upon request.

THE COURT: And that they were actually --

MS. BARONI: Right.

THE COURT: Now Seven through Nine, this is obstructing or impeding the administration of the Internal Revenues laws.

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MS. BARONI: Yes, your Honor. If this case had gone trial the government would prove beyond a reasonable doubt that from 1991 through 2008, Mr. Friehling obstructed the administration of the Internal Revenue laws by assisting in the preparation of numerous false tax returns including individual income tax returns which are forms 1040 as well as --

THE COURT: His own?

MS. BARONI: No, your Honor.

THE COURT: Madoff's? Whose tax return? SOUTHERN DISTRICT REPORTERS, P. C. (212) 805-0300

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MS. BARONI: Numerous individuals, your Honor.

THE COURT: Connected with anything in particular?

MS. BARONI: No, your Honor. As I said, individual tax returns as well as tax returns for estates and trusts and that --

THE COURT: In general or in connection with any kind of kind of specific activity? This also focused on the Madoff activity or things that you are going to prove that Mr. Friehling did in his own in a general way conducting his business.

MS. BARONI: They were Mr. Madoff's individual tax returns as well as others' individual tax return and trust returns.

THE COURT: Connected with Mr. Madoff in some fashion?

MS. BARONI: Just others, your Honor. At this time the government will proffer that much.

THE COURT: Okay.

MS. BARONI: The government would also prove that these tax returns were filed with the IRS and that Mr. Friehling acted with corrupt intent when he assisted in the preparation and the filing of them.

THE COURT: In other words, knowing that they were being filed to fool and deceive the IRS.

MS. BARONI: Right.

THE COURT: And to pay a lower tax than that which we

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1 fairly do.

2 MS. BARONI: Right, your Honor.

3 THE COURT: And thereby placing the burden on
4 everybody else.

5 MS. BARONI: And that, that's right that he acted with
6 corrupt intent and that he knew the returns were false at the
7 time that they were filed.

8 Also, the government would prove venue with respect to
9 this that the criminal acts relating to these counts occurred
10 in Manhattan and Rockland County in the Southern District of
11 New York.

12 THE COURT: Thank you, Ms. Baroni. And do you approve
13 this set of fact the acts how? How would you prove it?

14 MS. BARONI: The tax counts we would prove through
15 testimony and documentary evidence.

16 THE COURT: Mr. Lankler, have you reviewed the proofs
17 that Ms. Baroni recites?

18 MR. LANKLER: I have indeed, your Honor.

19 THE COURT: Are you satisfied that Ms. Baroni could
20 prove a prima facie case with respect to each of those nine
21 counts?

22 MR. LANKLER: I am, your Honor.

23 THE COURT: Do you know of any defenses that could
24 trump these proofs?

25 MR. LANKLER: Not beyond a reasonable doubt, your
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1 Honor.

2 THE COURT: Mr. Friehling, are you offering to plead
3 guilty because you believe that you are, in fact, guilty of
4 each of these nine counts?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: I am going to ask you to tell me what you
7 did to make you guilty. And I suspect that Mr. Lankler's
8 helped you prepare a statement.

9 THE DEFENDANT: I have written a statement with the
10 assistance of my attorney.

11 THE COURT: You may read the statement but I will be
12 asking you questions throughout. Proceed loudly.

13 THE DEFENDANT: My name is David Friehling. I appear
14 before your Honor today to take responsibility for my conduct
15 in connection with my role as the auditor of BLMIS and a tax
16 preparer for Bernard Madoff and others.

17 THE COURT: BLMIS is short for?

18 THE DEFENDANT: Bernard L. Madoff Investment
19 Securities.

20 It is my understanding that I must now detail the
21 specifics of the conduct and I will do so in connection with
22 this statement. However, before I begin my formal allocution I
23 wish to make your Honor aware of several important facts.

24 First and foremost, it is critical for your Honor to
25 be aware that at no time was I ever aware that Bernard Madoff

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1 was engaged in a Ponzi scheme. In fact, I placed all of my

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 3 savings and the savings of my wife and children with BLMIS. I
 4 also established a bona fide pension fund with BLMIS into which
 5 I placed all of my retirement contributions.
 6 I was a member of the accounting firm of Friehling and
 7 Horowitz from 1989 to 2008. Friehling and Horowitz was the
 8 auditor of Bernard L. Madoff Investment Securities. Prior to
 9 my joining the firm my father-in-law Jerome Horowitz acted as
 10 the auditor for Bernard L. Madoff Investment Securities. I
 11 assumed the responsibility as auditor of BLMIS in or around
 12 1991 when my father-in-law retired.
 13 THE COURT: So it's 1991 that he retired?
 14 THE DEFENDANT: He didn't fully retire until 1998. He
 15 flew up and helped me and assisted me in the conduct of the
 16 audit.
 17 THE COURT: Did he do the field work for the audit?
 18 THE DEFENDANT: Yes. Well, the two of us together
 19 would.
 20 THE COURT: Go ahead.
 21 THE DEFENDANT: With the exception of my family
 22 members and some of the Madoff investors that I performed tax
 23 work for, I never had contact with Madoff investors and never
 24 acted as a feeder for BLMIS, solicited any investors for BLMIS
 25 or received any compensation from BLMIS other than the audit and
 tax preparation services I performed.

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1 In what is surely the biggest mistake of my life I
 2 placed my trust in Bernard Madoff. While I am amongst
 3 thousands people who now make the same claim, I wish for your
 4 Honor to understand how I came to make not only this mistake
 5 but also how I came to suspend my judgment in committing crimes
 6 with which I am charged.
 7 I was introduced to Bernard Madoff by my
 8 father-in-law. My father-in-law was asked to perform work for
 9 BLMIS in 1963 by his then boss Saul Alpern who is Ruth Madoff's
 10 father. I have known my father-in-law since the summer of 1972
 11 when his daughter, my future wife and I, first met. We began
 12 to date when we were 14, attended the same college and married
 13 when we were 22. When I was a senior in college I decide to I
 14 pursue a career in accounting and received my CPA license in
 15 1987.
 16 I am prepared to accept responsibility for my conduct
 17 and do whatever I must to mitigate the impact it has had. From
 18 the first day that the federal prosecutors and investigators
 19 were ready to ask me questions I have made myself available
 20 and have endeavored to answer every question put to me
 21 truthfully and fully to the best of my ability. I am here
 22 today first to take responsibility for my mistakes and second
 23 to apologize to the Madoff victims for the role that I now know
 24 that I played in Bernard Madoff' massive and devastating fraud.

I am truly sorry for the suffering of all the victims.

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1 I would also like to apologize once more to my father who lost
 2 his retirement savings which is in our family investment
 3 account, to my children who lost their entire savings which we
 4 had worked so long and so hard to amass for their education and
 5 futures, and most especially to my wife who has lost everything
 6 that we have worked for over 27 years of marriage, not the

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 8 least of which is our good name.
 9 Thank you, your Honor for the opportunity to address
 10 the Court and to make a public apology to the Madoff victims.
 11 I would now like to specifically address the details of my
 12 conduct.
 13 With respect to the first six counts the information
 14 charging me with securities fraud, aiding and abetting,
 15 investment adviser fraud and making false filings with the
 16 Securities and Exchange Commission, I committed these crimes in
 17 my capacity as an independent auditor of BLMIS and did so
 18 within the Southern District of New York, specifically, in
 19 Manhattan and Rockland County.
 20 Through my accounting firm Friehling and Horowitz I
 21 served as the auditor of BLMIS, a broker/dealer and investment
 22 adviser, as the individual who certified that BLMIS financial
 23 statements, I was obligated to maintain independence from BLMIS
 24 and to audit the books and records of BLMIS consistent with
 25 generally accepted auditing standards and generally accepted
 accounting principals. I was not independent of BLMIS inasmuch
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 1 as my entire savings and retirement account and the savings of
 2 my wife and children were invested in BLMIS. My investments at
 3 BLMIS exceeded \$500,000.
 4 With respect to conduct to conducting GAAS and GAAP
 5 compliant audits, instead of following these standards and the
 6 standards set out by the AICPA of which I was a member, I did
 7 not conduct independent verification of BLMIS assets, review
 8 material sources of BLMIS revenue, rigorously examine the BLMIS
 9 bank accounts for which the BLMIS client funds flowed or
 10 verified the purchase and custody of securities by BLMIS.
 11 Instead I relied on the financial information provided by
 12 Bernard Madoff and other employees of BLMIS which I took at
 13 face value and used the information to prepare the BLMIS
 14 financial statements.
 15 I certified that those statements were accurate and
 16 that GAAS and GAAP standards and did so knowing that they would
 17 be filed with the SEC and disseminated with investors.
 18 THE COURT: Stop for a moment. Go ahead. Finish
 19 that.
 20 THE DEFENDANT: Indeed I was aware that the financial
 21 statements I certified were then sent to the SEC by the United
 22 States Postal Service and filed with the SEC on December 14,
 23 2004, December 30, 2005, December 22, 2006 and December 20,
 24 2007.
 25 THE COURT: The question I wanted to put to you is
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 1 whether you knew at the time you prepared the financial
 2 statements that you were providing no independent verification
 3 of that which GAAS required you to independently verify?
 4 THE DEFENDANT: Yes.
 5 THE COURT: You were aware of that?
 6 THE DEFENDANT: Yes.
 7 THE COURT: You were aware that as a CPA you could not
 8 just put on an opinion, you had to do an independent
 9 verification of assets and liability?
 10 THE DEFENDANT: Yes.
 11 THE COURT: Right?

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THE DEFENDANT: Yes.
THE COURT: And that meant looking at all the accounts that were given to you and making sure that the assets were there?
THE DEFENDANT: Yes.
THE COURT: Did these statements report customers' accounts? They may not. I am just asking a question.
MR. LANKLER: Your Honor, it's a little difficult to answer that question.
THE COURT: There was a line due from customers, was there not?
MR. LANKLER: From broker/dealers, your Honor.
THE COURT: From broker/dealers on accounts of customers? I want to know what you knew at the time regarding SOUTHERN DISTRICT REPORTERS, P. C.
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what were owed to customers and what were to be received from customers.

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(Pause)
MR. LANKLER: Your Honor, I think it would be helpful if rather than answer that question exactly the way you've put it because it deals sort of with the securities side of BLMIS that Mr. Friehling was not directly involved in in the same way that he was with respect to the general financial statements.
THE COURT: I don't know what to ask specifically. I don't have these reports in front of me and I can't remember on my own and from the basis of my own experience exactly what these reports reported.
So let me just give you the general question, Mr. Friehling. You knew that under the generally accepted auditing standards that had to inform your work there was an obligation on the part of your firm and on your part to make sure that all that was reported on these statements were fair and accurate, right?
THE DEFENDANT: Yes.
THE COURT: You had a number of tests that were ordinarily to be performed regarding that proposition?
THE DEFENDANT: Yes.
THE COURT: You could not express an opinion as to the fairness and accuracy of the financial condition of the company and of its operating profits without going through all of these SOUTHERN DISTRICT REPORTERS, P. C.
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independent verifications?
THE DEFENDANT: Yes.
THE COURT: Didn't you put your signature on there just as if you had done all of these verifications?
THE DEFENDANT: Yes.
THE COURT: By saying that you were signing statements that conformed with GAAS you were representing to anyone who would read these that you had done all of the independent verifications that a CPA is required to do?
THE DEFENDANT: Yes.
THE COURT: So you knew that when you put on your opinion it was a false opinion?
THE DEFENDANT: Yes.
THE COURT: And you knew that people would rely on that opinion?
THE DEFENDANT: Yes.

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17 THE COURT: And you knew that these statements would
 18 be filed with the SEC with your false opinion on it?
 19 THE DEFENDANT: Yes.
 20 THE COURT: Ms. Baroni, you want me to pursue anything
 21 else?
 22 MR. LANKLER: Your Honor, we haven't concluded the
 23 allocution.
 24 MS. BARONI: I think that's sufficient, your Honor.
 25 THE COURT: Go on, Mr. Friehling.
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1 THE DEFENDANT: With respect to Count Seven to Nine
 2 charging me with obstructing or impeding the administration of
 3 the Internal Revenue Laws, in addition to acting as the auditor
 4 for BLMIS I also prepared tax filings for Bernard Madoff and
 5 others. In that capacity I prepared personal tax returns that
 6 contained information I knew that was not accurate and assisted
 7 in the filing of those returns with the Internal Revenue
 8 Service. Thank you, your Honor.
 9 THE COURT: Ms. Baroni, anything more you want me to
 10 pursue? I do need to ask questions on forfeiture.
 11 MS. BARONI: I think that's sufficient. Just venue on
 12 the Count Seven through Nine.
 13 THE COURT: Where were you working? Your office was
 14 in Rockl and County, was it not?
 15 THE DEFENDANT: Yes, it was.
 16 THE COURT: And Rockland County is where you issued
 17 some of these false statements, right?
 18 THE DEFENDANT: Yes.
 19 THE COURT: And also the obstruction of the IRS was
 20 from Rockl and County?
 21 THE DEFENDANT: Yes.
 22 MR. LANKLER: Your Honor, it was also in Manhattan as
 23 well if your Honor wishes to inquire.
 24 THE COURT: And also in Manhattan as well?
 25 THE DEFENDANT: Yes.
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1 THE COURT: Ms. Baroni, what shall I ask about
 2 forfeiture?
 3 MS. BARONI: Just simply whether the defendant admits
 4 to the forfeiture allegation in the superseding information.
 5 THE COURT: Set out on page 13.
 6 MS. BARONI: That's right, 13 and 14, your Honor.
 7 THE COURT: Paragraph 27 alleges that as a result of
 8 committing the offenses constituting specified, unlawful
 9 activity -- I'll skip the statutory reference -- alleged in
 10 Count One of the information. You shall forfeit to the United
 11 States all property real and personal that constitutes or is
 12 derived from proceeds traceable to the commission of the
 13 offenses; do you so agree?
 14 THE DEFENDANT: Yes.
 15 THE COURT: And if any of the above described
 16 forfeitable property is a result of any act or omission from
 17 you, can't be located or has been transferred or sold through a
 18 deposit with someone else or place beyond the jurisdiction of
 19 the court or been substantially diminished in value or
 20 commingled with other property which cannot be subdivided
 21 without difficulty, this property also can be forfeited or a
 Page 20

Transcript - Friehling Plea Hearing held 11-3-2009.TXT
reasonable equivalent of such property.

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THE DEFENDANT: Yes.
THE COURT: Anything else, Ms. Baroni?
MS. BARONI: No, your Honor.
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THE COURT: Before I make my findings, anything else I should inquire about?
MS. BARONI: No, your Honor. I think that's sufficient.
MR. LANKLER: No, your Honor.
THE COURT: Ms. Friehling, I find you guilty of each of these nine counts. I find that your plea of guilty is -- Let's not rush out, please. Sit down. Sit down. Sit down till this is finished then you can all leave. No one is to leave until this is finished.
I find you guilty of each of these nine counts. I find that your plea is voluntarily made, is made understanding the consequence of such a plea and that there an independent basis of fact to sustain your plea of guilty to each of these nine counts.
Accordingly, I instruct the clerk to enter a plea of guilty in place of your previously plea of not guilty.
Do we have a control date for sentencing, Ms. Baroni?
COURTROOM DEPUTY: February 26, 2010 at 11 a.m.
MS. BARONI: That's fine with the government, your Honor.
THE COURT: I instruct that Mr. Lankler or a member of his staff be given an opportunity to be present for any interview with Mr. Friehling to be conducted by the probation department. And I instruct Ms. Baroni to obtain a copy of this
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9C3AAFRI P Plea

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transcript and furnish it to the probation department for any such interview to assist in the interview.
With regard to the forfeiture clause, Ms. Baroni, what is next step?
MS. BARONI: Your Honor, the government will deliver to your Honor's chambers this afternoon the preliminary order of forfeiture and the stipulation and order for the interlocutory sale of the defendant's properties.
THE COURT: Can that be done before 1:30?
MS. BARONI: Sure.
THE COURT: Anything else I need to deal with before I finished up these proceedings? There one thing more, right?
MS. BARONI: Yes, your Honor. The parties would jointly request that the bail conditions be continued and actually the parties have a joint proposed package for your Honor that increases the current bail conditions.
THE COURT: Please recite them.
MS. BARONI: It would be \$2.5 million personal recognizance bond cosigned by eight financially responsible people. The bond would be secured by approximately \$1 million to \$1.2 million of equity in five different properties, the properties owned by the cosigners.
THE COURT: This is all stated in your letter of November 2, is it not?
MS. BARONI: The defendant's letter.
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Transcript - Friehling Plea Hearing held 11-3-2009.TXT
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1 MR. LANKLER: My letter, judge.
 2 THE COURT: Have you read that letter?
 3 MS. BARONI: Yes, your Honor.
 4 THE COURT: Mr. Lankler, may it be filed?
 5 MR. LANKLER: Yes, your Honor. In addition I have my
 6 client's wife's travel documents which we're prepared to turn
 7 them over to Pretrial Services.
 8 THE COURT: Fine. And, Ms. Smusz, you have reviewed
 9 this as well?
 10 MS. SMUSZ: No, your Honor, but I have spoken to
 11 defense counsel on several occasions and they have recited to
 12 me what they intend to do with modifying the defendant's bail.
 13 THE COURT: So, it's a \$2,500,000 personal
 14 recognizance bond to be signed by the defendant and eight
 15 financially responsible persons.
 16 MS. BARONI: That's correct.
 17 THE COURT: Have you very reviewed who these are?
 18 MS. BARONI: Yes, your Honor. The government through
 19 the FBI ' interviewed all of them and we find them to be
 20 financially responsible.
 21 THE COURT: And there are eight properties?
 22 MS. BARONI: There are five properties.
 23 THE COURT: And the aggregate estimated net equity in
 24 those five properties are between a million dollars and a
 25 million two hundred thousand dollars?

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1 MS. BARONI: That's correct, judge.
 2 THE COURT: Are any of them homes?
 3 MS. BARONI: Yes.
 4 THE COURT: Residents in which people reside?
 5 MS. BARONI: That's right.
 6 THE COURT: So people are pledging their peoples to
 7 assure that there is no danger to the security of the people,
 8 the places or the government and that there is responsibility
 9 to attend all court dates and on the part of Mr. Friehling?
 10 MS. BARONI: Yes.
 11 THE COURT: Travel is restricted to the Southern
 12 District of New York, the Eastern District of New York and
 13 District of New Jersey.
 14 MS. BARONI: That's right. And the defendant has
 15 surrendered his passport and his wife will now surrender her
 16 passport to Pretrial Services.
 17 THE COURT: And will make no new applications.
 18 MS. BARONI: That's right.
 19 THE COURT: There will be regular Pretrial Services
 20 supervision; what does that mean?
 21 MS. SMUSZ: Your Honor, as the defendant is reporting
 22 now he appears in person once monthly and telephones weekly.
 23 THE COURT: Is he required to keep a land line phone.
 24 MS. SMUSZ: No. That is not a requirement of that
 25 supervision.

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1 THE COURT: I'd like to impose it to make it easier
 2 for you to call.

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MS. SMUSZ: That will be fine, your Honor.
THE COURT: Do you have a land line phone?
THE DEFENDANT: Yes, I do. You will maintain it throughout so that when you are called on a land line phone that's where you will answer as required by the probation office.
Anything else, Ms. Muse?
MS. SMUSZ: No, your Honor.
THE COURT: Ms. Baroni?
MS. BARONI: No, your Honor.
THE COURT: You consent to the continuation of these bail conditions?
MS. BARONI: The government does, your Honor.
THE COURT: And urges me to accept them?
MS. BARONI: Yes, your Honor.
MR. LANKLER: I urge you to accept it as well, your Honor.
THE COURT: Before I make my findings I'd like to ask if there is anyone in the audience who wishes to address me? This is your chance, folks. If you want to write letters, the fact that you are here enables me to consider anything.
All right, there is no one that wants to add anything. I order the continuation of bail with the enhanced SOUTHERN DISTRICT REPORTERS, P. C. (212) 805-0300

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terms that have been expressed in court and found by me.
Anything further?
MS. BARONI: That is all from the government, your Honor. Thank you.
MR. LANKLER: No, your Honor. Thank you very much.
THE COURT: Ms. Muse?
MS. SMUSZ: No, your Honor.
THE COURT: The proceedings are then recessed. Anyone wishing to leave can now leave.
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Exhibit 6

In The Matter Of:
UNITED STATES OF AMERICA, v.
ERIC S. LIPKIN,

June 6, 2011

SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK, NY 10007
212 805-0330

Original File 166DLIPP.txt

Min-U-Script® with Word Index

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 PLEA
 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK
 -----x
 UNITED STATES OF AMERICA, New York, N.Y.
 v. S3 10 Cr. 228 (LTS)
 ERIC S. LIPKIN,
 Defendant.
 -----x
 June 6, 2011
 11:11 a.m.
 Before:
 HON. LAURA TAYLOR SWAIN,
 District Judge
 APPEARANCES
 PREET BHARARA
 United States Attorney for the
 Southern District of New York
 BY: JULIAN MOORE
 LISA A. BARONI
 MATTHEW SCHWARTZ
 Assistant United States Attorneys
 JAMES K. FILAN
 Attorney for Defendant
 - also present -
 SA Paul Takla, FBI
 SA Greg Hagarty, FBI
 Natasha Ramesar, Pretrial Services Officer

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 PLEA
 THE COURT: I will now explain certain rights that you
 have under the Constitution of the United States.
 You have the right to remain silent. You need not
 make any statement. Even if you have already made statements
 to the authorities, you need not make any additional
 statements. Any statements that you do make can be used
 against you.
 Do you understand these rights?
 THE DEFENDANT: Yes, I do.
 THE COURT: You have the right to be released either
 conditionally or unconditionally pending trial unless I find
 that there are no conditions that would reasonably assure your
 presence at future court hearings and the safety of the
 community. If the government were to ask me to detain you
 pending trial, you are entitled to a prompt hearing on whether
 such conditions exist.
 Do you understand this right?
 THE DEFENDANT: Yes, I do.
 THE COURT: Are you a citizen of the United States?
 THE DEFENDANT: Yes, I am.
 THE COURT: You have the right to be represented by an
 attorney today and at all future proceedings in this case, and
 if you are unable to afford an attorney, I will appoint an
 attorney to represent you. Do you understand these rights?
 THE DEFENDANT: Yes, I do.

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 PLEA
 THE CLERK: I call the case, United States of America
 versus Eric Lipkin.
 MR. MOORE: Good morning, your Honor. Julian Moore
 for the government. With me are my colleagues Lisa Baroni and
 Matthew Schwartz, of the U.S. Attorney's office, along with
 Special Agents Greg Hagarty and Paul Takla, of the FBI, and
 Natasha Ramesar of the United States Pretrial Services.
 THE COURT: Good morning, Mr. Moore, Ms. Baroni and
 Mr. Schwartz, Agent Hagarty, Agent Takla, and Officer Ramesar.
 MR. FILAN: Good morning, your Honor. James K. Filan,
 counsel on behalf of Mr. Lipkin, who is seated at the table
 next to me.
 THE COURT: Good morning, Mr. Filan. Good morning,
 Mr. Lipkin.
 And, again, good morning all of you who have attended
 today.
 Is this Mr. Lipkin's first appearance?
 MR. FILAN: Yes, it is, your Honor.
 THE COURT: All right. Well, then, let's deal with
 the advice of rights matters first.
 Mr. Lipkin, would you please stand.
 Please state your full name.
 THE DEFENDANT: Eric Lipkin.
 THE COURT: How old are you, sir?
 THE DEFENDANT: 37.

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 PLEA
 THE COURT: Do you wish to have and are you able to
 obtain and afford counsel on your own?
 THE DEFENDANT: Yes, I am.
 THE COURT: Have you retained Mr. Filan to represent
 you?
 THE DEFENDANT: I have.
 THE COURT: And it is your desire to proceed in these
 matters with Mr. Filan as your retained counsel?
 THE DEFENDANT: Yes.
 THE COURT: And I am informed that -- Mr. Filan
 informed that Mr. Lipkin has an application to waive indictment
 and enter a guilty plea to the six-count Superseding
 Information that is labeled S3 10 Criminal 228.
 Is that correct?
 MR. FILAN: That is correct, your Honor.
 THE COURT: And this plea is pursuant to the agreement
 that has been marked as Government Exhibit 1, and is at defense
 table now?
 MR. FILAN: That is correct, your Honor.
 THE COURT: And you and Mr. Lipkin have also reviewed
 and signed the advice of rights form that has been marked as
 Court Exhibit 1.
 MR. FILAN: We have, your Honor.
 THE COURT: Thank you. I have a question for
 Mr. Moore at this point.

June 6, 2011

<p>166dlipp PLEA</p> <p style="text-align: right;">Page 5</p> <p>1 Mr. Moore, would you please make a statement for the 2 record as to the government's victim notification activities in 3 connection with this matter. I note that the courtroom is full 4 and that I signed an order requiring certain information be 5 posted on the website, but perhaps you can bring us up to date. 6 MR. MOORE: Yes, your Honor. 7 Last week we issued a letter to your attention 8 requesting that we make public that this proceeding will be 9 occurring today, namely, that Mr. Lipkin will be pleading to a 10 superseding S3 Information to the counts, which we will go 11 through today. We also requested that we be able to post this 12 announcement on the U.S. Attorney's Madoff website. 13 Your Honor kindly ordered -- so ordered that letter on 14 Thursday, and those conditions did happen as of that date. 15 THE COURT: Thank you. 16 Now, I had received a call indicating that there was 17 one victim who wished to be heard today. This morning we 18 received a further message that that person is unable to attend 19 court today. 20 Is the government aware of any victims who are here 21 present today who wish to be heard? 22 MR. MOORE: We are not, your Honor. However, we are 23 aware that your deputy, Ms. Ng, did make a sign-up sheet 24 available, but we do not believe anyone signed that sheet. 25 THE COURT: It's my understanding that no one has</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 7</p> <p>1 answer any of my questions falsely, your false or untrue 2 answers may later be used against you in another prosecution 3 for perjury or making a false statement? 4 THE DEFENDANT: I do. 5 THE COURT: You can be seated for the next portion of 6 the proceeding. 7 You indicated that your age is 37, is that correct? 8 THE DEFENDANT: Yes. 9 THE COURT: How far did you go in school? 10 THE DEFENDANT: I graduated from Ramapo College. 11 THE COURT: In what field of study? 12 THE DEFENDANT: Economics. I also have an associates 13 degree in finance. 14 THE COURT: Are you able to speak, read and understand 15 the English language well? 16 THE DEFENDANT: Yes. 17 THE COURT: And you are a citizen of the United 18 States? 19 THE DEFENDANT: I am. 20 THE COURT: Are you now or have you recently been 21 under the care of a doctor or a psychiatrist? 22 THE DEFENDANT: No. 23 THE COURT: Have you ever been treated or hospitalized 24 for any mental illness or for any type of addiction, including 25 drug or alcohol addiction?</p>
<p>166dlipp PLEA</p> <p style="text-align: right;">Page 6</p> <p>1 signed on the sheet. 2 Is there anyone here who does wish to be heard? 3 (Pause) 4 All right. We will proceed, then. 5 Mr. Lipkin, before I accept your Waiver of Indictment 6 and your guilty plea, there are a number of questions that I 7 must ask you while you are under oath to assure that it is a 8 valid waiver and plea. At times I may cover a point more than 9 once, and I may cover matters that were also addressed in the 10 advice of rights form that you have seen. But if I do so, that 11 is because it is very important that you understand what is 12 happening here today. 13 If you don't understand something that I ask you, 14 please say so and I will reword the question or you may speak 15 with your attorney. Do you understand that? 16 THE DEFENDANT: I do. 17 THE COURT: Ms. Ng, would you please administer the 18 oath. 19 THE CLERK: Please raise your right hand. 20 (The defendant was sworn) 21 THE COURT: Would you please state your full name for 22 the record. 23 THE DEFENDANT: Eric Scott Lipkin. 24 THE COURT: Mr. Lipkin, do you understand that you 25 have solemnly promised to tell the truth, and that if you</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 8</p> <p>1 THE DEFENDANT: No. 2 THE COURT: Have you ever been addicted to any drugs 3 or alcohol? 4 THE DEFENDANT: No. 5 THE COURT: In the past 24 hours, have you taken any 6 drugs, medicine, or pills, or have you drunk any alcohol? 7 THE DEFENDANT: No. 8 THE COURT: Is your mind clear today? 9 THE DEFENDANT: It is. 10 THE COURT: Are you feeling well physically today? 11 THE DEFENDANT: Yes. 12 THE COURT: Are you represented by a lawyer here 13 today? 14 THE DEFENDANT: I am. 15 THE COURT: What is your attorney's name? 16 THE DEFENDANT: James Filan. 17 THE COURT: Mr. Filan, Mr. Moore, does either of you 18 have any doubt as to Mr. Lipkin's competence to waive 19 indictment and enter a plea at this time? 20 MR. MOORE: No, your Honor. 21 MR. FILAN: I have no knowledge. He should be able 22 to, yes, your Honor. 23 THE COURT: Thank you. You have no knowledge of any 24 reason for me -- 25 MR. FILAN: I have no reason to believe that he is</p>

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PLEA

1 unable to enter a plea. I'm sorry.
2 THE COURT: Thank you.
3 Mr. Lipkin, your attorney has informed me that you
4 wish to waive indictment and enter a plea of guilty to an
5 information. Do you wish to waive indictment and enter a
6 guilty plea?
7 THE DEFENDANT: Yes.
8 THE COURT: Have you fully discussed your case with
9 your attorney, including the charges to which you intend to
10 plead guilty and any possible defenses you may have to those
11 charges?
12 THE DEFENDANT: I have.
13 THE COURT: Have you and your attorney also discussed
14 the consequences of entering a guilty plea?
15 THE DEFENDANT: Yes, we have.
16 THE COURT: Are you satisfied with your attorney and
17 his representation of you?
18 THE DEFENDANT: I am.
19 THE COURT: On the basis of Mr. Lipkin's responses to
20 my questions and my observations of his demeanor, I find that
21 he is fully competent to enter an informed plea at this time
22 and to waive indictment.
23 Before I accept your plea, sir, I am going to ask you
24 many so more questions. These questions are intended to
25 satisfy the Court that you wish to plead guilty because you are

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PLEA

1 THE DEFENDANT: I do.
2 THE COURT: If there were a trial, and at all stages
3 leading up to it, you would have the right to be represented by
4 an attorney, and if you could not afford one, an attorney would
5 be provided to you free of cost. Do you understand that?
6 THE DEFENDANT: I do.
7 THE COURT: If there were a trial, you would have the
8 right to see and hear all of the witnesses against you and your
9 attorney could cross-examine them. You would also have the
10 right to have your attorney object to the government's evidence
11 and offer evidence on your behalf, if you so desired. In
12 addition, you would have the right to have witnesses required
13 to come to court to testify in your defense, and you would have
14 the right to testify yourself but you would not be required to
15 testify.
16 Do you understand all of that?
17 THE DEFENDANT: I do.
18 THE COURT: Do you understand that if there were a
19 trial and you decided not to testify, no adverse inference
20 could be drawn against you based on your decision not to
21 testify?
22 THE DEFENDANT: Yes.
23 THE COURT: Do you understand that if you were
24 convicted at a trial, you would have the right to appeal that
25 verdict?

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PLEA

1 in fact guilty and that you fully understand your rights and
2 the consequences of your plea. I am now going to describe to
3 you certain rights that you have under the Constitution and
4 laws of the United States. You will be giving up these rights
5 if you enter a guilty plea. Please listen carefully. If you
6 do not understand something that I'm saying or describing, stop
7 me and I or your attorney will explain it more fully.
8 Under the Constitution and laws of the United States,
9 you have the right to a speedy and public trial by a jury on
10 the charges against you that are set out in the Information.
11 Do you understand that.
12 THE DEFENDANT: I do.
13 THE COURT: Do you understand that you have the right
14 to plead not guilty and to continue to plead not guilty?
15 THE DEFENDANT: I do.
16 THE COURT: If there were a trial, you would be
17 presumed innocent and the government would be required to prove
18 you guilty by competent evidence and beyond a reasonable doubt.
19 You would not have to prove that you were innocent at a trial.
20 Do you understand that?
21 THE DEFENDANT: I do.
22 THE COURT: If there were a trial, a jury composed of
23 12 people selected from this district would have to agree
24 unanimously in order to find you guilty. Do you understand
25 that?

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PLEA

1 THE DEFENDANT: Yes.
2 THE COURT: Do you understand each and every one of
3 these rights that I've asked you about?
4 THE DEFENDANT: I do.
5 THE COURT: Do you have any questions about any of
6 these rights?
7 THE DEFENDANT: No, I do not.
8 THE COURT: Do you understand that by entering a
9 guilty plea today you will be giving up each and every one of
10 these rights?
11 THE DEFENDANT: I do.
12 THE COURT: Do you also understand that you will be
13 giving up any possible claim that your constitutional rights
14 may have been violated?
15 THE DEFENDANT: I do.
16 THE COURT: And do you understand that you will have
17 no trial if you plead guilty?
18 THE DEFENDANT: Yes.
19 THE COURT: Do you understand that by entering a
20 guilty plea, you will also have to give up your right not to
21 incriminate yourself because I will ask you questions about
22 what you did in order to satisfy myself that you are guilty as
23 charged and you will have to admit and acknowledge your guilt?
24 THE DEFENDANT: Yes.
25 THE COURT: Do you understand that you can change your

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<p>166dlipp PLEA</p> <p style="text-align: right;">Page 13</p> <p>1 mind right now and refuse to enter a plea of guilty? You do 2 not have to enter this plea if you do not want to for any 3 reason. Do you understand this fully? 4 THE DEFENDANT: Yes. 5 THE COURT: Do you still wish to plead guilty? 6 THE DEFENDANT: I do. 7 THE COURT: The document that contains the charges to 8 which you've indicated you wish to plead guilty is called an 9 information. It has been issued by the United States Attorney. 10 You have a constitutional right to be charged by an indictment 11 rather than an information. An indictment would be a charge 12 issued from the grand jury. Do you understand that? 13 THE DEFENDANT: I do. 14 THE COURT: Mr. Filan, would you please show 15 Mr. Lipkin the Waiver of Indictment form. 16 (Pause) 17 Mr. Lipkin, have you signed this Waiver of Indictment? 18 THE DEFENDANT: I have. 19 THE COURT: Did you read it before you signed it? 20 THE DEFENDANT: I did. 21 THE COURT: You did discuss it with your attorney 22 before you signed it? 23 THE DEFENDANT: Yes. 24 THE COURT: Did you understand it before you signed 25 it?</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 15</p> <p>1 THE COURT: Have you discussed it with your attorney? 2 THE DEFENDANT: Yes, we have. 3 THE COURT: Do you understand the charges against you 4 that are detailed in the Information? 5 THE DEFENDANT: I do. 6 THE COURT: If you would like, I can read the 7 Information out loud now here in court to you. Do you want me 8 to read it out loud to you? 9 THE DEFENDANT: No. 10 THE COURT: I find that Mr. Lipkin's Waiver of 11 Indictment is knowing and voluntary. I accept it and I so 12 order it. 13 Mr. Lipkin, do you understand that Count One of the 14 Superseding Information charges you with violating Section 371 15 of Title 18 of the United States Code by participating in a 16 conspiracy to, one, violate 15 United States Code, Sections 17 78q(a) and 78ff and Title 17 of the Code of Federal 18 Regulations, Section 240.17a-3 by falsifying books and records 19 of a broker-dealer, as well as conspiring to violate Title 15 20 of the United States Code, Sections 80b-4 and 80b-17 and 17 21 C.F.R., Section 275.204-2 by falsifying books and records of an 22 investment advisor, and also conspiring to violate Title 18 of 23 the United States Code, Sections 1027 and 2 by falsifying 24 statements to facilitate the theft concerning ERISA, that being 25 the Employee Retirement Income Security Act?</p>
<p>166dlipp PLEA</p> <p style="text-align: right;">Page 14</p> <p>1 THE DEFENDANT: Yes, I did. 2 THE COURT: Do you understand that if you do not waive 3 indictment, if the government wished to prosecute you on these 4 particular charges that are in the Information, the government 5 would have to present the case to the grand jury, which might 6 or might not indict you on those charges? 7 THE DEFENDANT: Yes. 8 THE COURT: Do you understand that you are under no 9 obligation to waive indictment? 10 THE DEFENDANT: Yes. 11 THE COURT: Do you understand that by waiving 12 indictment, you are giving up your right to have the case 13 presented to the grand jury? 14 THE DEFENDANT: Yes. 15 THE COURT: Do you understand what a grand jury is? 16 THE DEFENDANT: I do. 17 THE COURT: Did anyone make any threats or promises to 18 get you to waive indictment? 19 THE DEFENDANT: No, they did not. 20 THE COURT: Have you seen a copy of the Third 21 Superseding Information that has the word "Information" at the 22 top and the number S3 10 Cr. 228 on it? 23 THE DEFENDANT: I did. 24 THE COURT: Have you read it? 25 THE DEFENDANT: Yes.</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 16</p> <p>1 THE DEFENDANT: Yes. 2 THE COURT: Do you understand that Count Two of the 3 Superseding Information charges you with violating Title 18 of 4 the United States Code, Section 371 by participating in a 5 conspiracy to violate Title 18, Section 1344, by defrauding a 6 financial institution, the deposits of which were then insured 7 by the Federal Deposit Insurance Corporation? 8 THE DEFENDANT: Yes. 9 THE COURT: Do you understand that Count Three of the 10 Superseding Information charges you with falsifying books and 11 records of a broker-dealer, in violation of 15 United States 12 Code, Sections 78q(a) and 78ff; 17 of the Code of Federal 13 Regulations, Section 240.17a-3; and Title 18 of the United 14 States Code, Section 2? 15 THE DEFENDANT: Yes. 16 THE COURT: Do you understand that Count Four of the 17 Superseding Information charges you with falsifying books and 18 records of an investment advisor, in violation of Title 15 of 19 the United States Code, Sections 80b-4 and 80b-17; 17 Code of 20 Federal Regulations, Section 275.204-2; and Title 18 of the 21 United States Code, Section 2? 22 THE DEFENDANT: Yes. 23 THE COURT: Do you understand that Count Five of the 24 Superseding Information charges you with making false 25 statements to facilitate a theft concerning ERISA, in violation</p>

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PLEA

1 of 18 United States Code, Sections 1027 and 2?
 2 THE DEFENDANT: Yes.
 3 THE COURT: And do you understand that Count Six of
 4 the Superseding Information charges you with committing bank
 5 fraud with respect to a federally insured bank, in violation of
 6 Title 18 of the United States Code, Sections 1344 and 2?
 7 THE DEFENDANT: Yes.
 8 THE COURT: Do you understand that the government
 9 would have to prove each and every part or element of each of
 10 these charges beyond a reasonable doubt at trial if you did not
 11 plead guilty?
 12 THE DEFENDANT: I do.
 13 THE COURT: Mr. Moore, would you please explain for
 14 the record the elements that the government would have to prove
 15 if you were to go to trial on these charges?
 16 MR. MOORE: Certainly, your Honor.
 17 With regard to Counts One and Two, the conspiracy
 18 counts, in order to prove the crime of conspiracy, the
 19 government must establish each of the following elements beyond
 20 a reasonable doubt:
 21 First, that the conspiracy charged in the Information
 22 existed, in other words, that there was in fact an agreement or
 23 understanding to violate the laws of the United States;
 24 Second, your Honor, that the defendant knowingly,
 25 willingly and voluntarily became a member of the conspiracy

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PLEA

1 charged;
 2 And, third, that any one of the conspirators, not
 3 necessarily the defendant, knowingly committed at least one
 4 overt act in the Southern District of New York in furtherance
 5 of the conspiracy during the life of that conspiracy.
 6 With regard to Count Three, your Honor, falsifying
 7 broker-dealer books and records, in order to prove this crime,
 8 the government must prove beyond a reasonable doubt the
 9 following elements:
 10 First, that at the time of the alleged offense,
 11 Bernard L. Madoff Investment Securities, otherwise known as
 12 "BLMIS," was a registered broker;
 13 Second, that BLMIS failed to make and keep certain
 14 accurate records, as required under the SEC's rules and
 15 regulations;
 16 Third, that the defendant aided and abetted BLMIS'
 17 failure to make and keep accurate records; and
 18 Fourth, that the defendant acted knowingly and
 19 willfully.
 20 With regard to Count Four, your Honor, falsifying
 21 books and records of an investment advisor, the government must
 22 prove beyond a reasonable doubt:
 23 First, that at the time of the alleged offense BLMIS
 24 was an investment advisor; second, that BLMIS failed to make
 25 and keep certain accurate records as required under the SEC's

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1 rules and regulations; third, that the defendant aided and
 2 abetted BLMIS' failure to make and keep accurate records;
 3 fourth, that the defendant acted knowingly and willfully; and,
 4 fifth, the offense involved the use of the mails and means and
 5 instrumentalities of interstate commerce.
 6 With regard to Count Five, falsifying statements to
 7 facilitate a theft concerning ERISA, in order to prove this
 8 crime the government must demonstrate beyond a reasonable doubt
 9 that, first, that at the time of the alleged offense, the
 10 defendant made a false statement; second, that the defendant
 11 knew the statement to be false; and, third, that the defendant
 12 made a false statement in a document required by ERISA.
 13 Finally, your Honor, with regard to Count Six, bank
 14 fraud, in order to prove this crime beyond a reasonable doubt,
 15 the government must demonstrate, first, that at the time of the
 16 alleged offense the defendant executed or attempted execute a
 17 scheme or artifice to defraud a bank, or that the defendant
 18 execute or attempted to execute a scheme or artifice to obtain
 19 money owned by or under the custody or control of that bank by
 20 means of false or fraudulent pretense, representations or
 21 promises; second, your Honor, the defendant engaged in a scheme
 22 or artifice knowingly and willfully and with the specific
 23 intent to defraud the bank; and, third, that the bank involved
 24 was a federally chartered or insured financial institution.
 25 THE COURT: Thank you.

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1 Mr. Lipkin, do you understand the matters that the
 2 government would have to prove if you did not plead guilty?
 3 THE DEFENDANT: Yes, I do.
 4 THE COURT: Do you understand that the maximum
 5 possible penalty for the crime with which you are charged in
 6 Count One is five years of imprisonment, plus a fine of the
 7 greatest of \$250,000, twice the gain resulting from the offense
 8 or twice the loss to other people resulting from the offense,
 9 plus a \$100 special assessment, plus full restitution to all
 10 persons injured as a result of your criminal conduct, plus
 11 three years of supervised release after your term of
 12 imprisonment?
 13 THE DEFENDANT: I do.
 14 THE COURT: Do you understand that the maximum
 15 possible penalty for the crime with which you are charged in
 16 Count Two is five years of imprisonment, plus a fine of the
 17 greatest of \$250,000, twice the gain resulting from the offense
 18 or twice the loss to other people resulting from the offense,
 19 plus a \$100 special assessment, plus full restitution to all
 20 persons injured as a result of your criminal conduct, plus
 21 three years of supervised release after your term of
 22 imprisonment?
 23 THE DEFENDANT: I do.
 24 THE COURT: Do you understand that the maximum
 25 possible penalty for the crime with which you are charged in

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<p>166dlipp PLEA</p> <p style="text-align: right;">Page 21</p> <p>1 Count Three is 20 years of imprisonment, plus a fine of the 2 greatest of \$5 million, twice the gain resulting from the 3 offense or twice the loss to other people resulting from the 4 offense, plus a \$100 special assessment, plus full restitution 5 to all persons injured as a result of your criminal conduct, 6 plus three years of supervised release after your term of 7 imprisonment? 8 THE DEFENDANT: I do. 9 THE COURT: Do you understand that the maximum 10 possible penalty for the crime with which you are charged in 11 Count Four is five years of imprisonment, plus a fine of the 12 greatest of \$250,000, twice the gain resulting from the offense 13 or twice the loss to other people resulting from the offense, 14 plus a \$100 special assessment, plus full restitution to all 15 persons injured as a result of your criminal conduct, plus 16 three years of supervised release after your term of 17 imprisonment? 18 THE DEFENDANT: I do. 19 THE COURT: Do you understand that the maximum 20 possible penalty for the crime with which you are charged in 21 Count Five is five years of imprisonment, plus a fine of the 22 greatest of \$250,000, twice the gain resulting from the offense 23 or twice the loss to other people resulting from the offense, 24 plus a \$100 special assessment, plus full restitution to all 25 persons injured as a result of your criminal conduct, plus</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 23</p> <p>1 "Supervised release" means that you will be subject to 2 monitoring when you are released from prison. Terms and 3 conditions will be imposed. If you violate any of the set 4 terms and conditions, you can be reimprisoned without a jury 5 trial. 6 If you were on supervised release and do not comply 7 with any of the set terms or conditions, you can be returned to 8 prison for the remainder of the term of supervised release, you 9 will be given no credit for the time that you served in prison 10 as a result of your sentence and no credit for any time spent 11 on post-release supervision. So, for example, if you received 12 a prison term and then a three-year term of supervised release 13 and after you left prison you lived up to the terms of 14 supervised release for two years but then you violated some 15 term of the supervised release, you could be returned to prison 16 for three full years. 17 Do you understand that? 18 THE DEFENDANT: I do. 19 THE COURT: Do you also understand that if I accept 20 your guilty plea and adjudge you guilty, that adjudication may 21 deprive you of valuable civil rights, such as the right to 22 vote, the right to hold public office, the right to serve on a 23 jury, and the right to possess any kind of firearm? 24 THE DEFENDANT: I do. 25 THE COURT: Do you understand that there are</p>
<p>166dlipp PLEA</p> <p style="text-align: right;">Page 22</p> <p>1 three years of supervised release after your term of 2 imprisonment? 3 THE DEFENDANT: I do. 4 THE COURT: Do you understand that the maximum 5 possible penalty for the crime with which you are charged in 6 Count Six is 30 years of imprisonment, plus a fine of the 7 greatest of \$1 million, twice the gain resulting from the 8 offense or twice the loss to other people resulting from the 9 offense, plus a \$100 special assessment, plus full restitution 10 to all persons injured as a result of your criminal conduct, 11 plus five years of supervised release after your term of 12 imprisonment? 13 THE DEFENDANT: I do. 14 THE COURT: Do you understand that the maximum 15 possible combined penalty for the six crimes with which you are 16 charged is 70 years of imprisonment plus a fine of \$7 million 17 or, if greater, the sums of the relevant gains and losses and 18 statutory amounts relating to your offenses, plus full 19 restitution to all persons injured by your criminal conduct, 20 plus a \$600 mandatory special assessment, plus supervised 21 release for five years after your term of imprisonment? 22 THE DEFENDANT: I do. 23 THE COURT: I will now give you some information to 24 verify your understanding of the supervised release aspect of 25 the potential penalty.</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 24</p> <p>1 Sentencing Guidelines that the Court must consider in 2 determining your sentence? 3 THE DEFENDANT: I do. 4 THE COURT: Has your attorney discussed the Sentencing 5 Guidelines with you? 6 THE DEFENDANT: He has. 7 THE COURT: Do you understand that in determining your 8 sentence, the Court has an obligation to calculate the 9 applicable Sentencing Guidelines' range and to consider that 10 range, possible departures under the Sentencing Guidelines, and 11 other sentencing factors under Title 18 of the United States 12 Code, Section 3553(a)? 13 THE DEFENDANT: I do. 14 THE COURT: Do you understand that if your attorney or 15 anyone else has attempted to estimate or predict what your 16 sentence will be, their estimate or prediction could be wrong? 17 THE DEFENDANT: Yes. 18 THE COURT: Do you also fully understand that even if 19 your sentence is different from what your attorney or anyone 20 else told you it might be, or if it is different from what you 21 expect, you will still be bound to your guilty plea and you 22 will not be allowed to withdraw your plea of guilty? 23 THE DEFENDANT: Yes. 24 THE COURT: Do you understand that the sentence to be 25 imposed will be determined solely by the Court and that I can</p>

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1 only determine the sentence after the Probation Department
2 prepares a presentence report?
3 THE DEFENDANT: I do.
4 THE COURT: Do you understand that the Court has
5 discretion, while taking into account the specific provisions
6 and policy statements in the guidelines, to sentence you to any
7 number of years imprisonment between zero and the combined
8 statutory maximums of 70 years?
9 THE DEFENDANT: I do.
10 THE COURT: Are you now serving any state or federal
11 sentence, or are you being prosecuted for any other crime?
12 THE DEFENDANT: I'm not.
13 THE COURT: Do you understand that the Superseding
14 Information also includes a forfeiture allegation in which the
15 government asserts that you are required to forfeit to the
16 United States any and all property constituting and derived
17 from any proceeds that you obtained as a result of the crimes
18 charged in Counts One, Two, Three and Six, including up to
19 approximately \$143.2 billion as to Counts One and Three and
20 approximately \$700,000, including your interest in certain real
21 property, as to each of Counts Two and Six?
22 MR. FILAN: Your Honor, Mr. Lipkin understands that he
23 has to admit to the forfeiture allegation regarding the bank
24 fraud crimes in Two and Six, but he is not admitting today to
25 Count One and Three.

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1 THE COURT: Yes. In this section of the allocution, I
2 am confirming his understanding that there is a forfeiture
3 allegation. We will get to the admission issues later.
4 MR. FILAN: Absolutely, your Honor. I just wanted --
5 he showed some confusion there, and I wanted to make sure he
6 understood that.
7 THE COURT: Mr. Filan, would you please show
8 Mr. Lipkin the agreement, Government Exhibit 1.
9 (Pause)
10 MR. FILAN: Yes, your Honor.
11 THE COURT: Mr. Lipkin, have you signed this
12 agreement?
13 THE DEFENDANT: I have, your Honor.
14 THE COURT: Did you read it before you signed it?
15 THE DEFENDANT: Yes.
16 THE COURT: Did you fully discuss it with your
17 attorney before you signed it?
18 THE DEFENDANT: Yes, we did.
19 THE COURT: Did you fully understand it before you
20 signed it?
21 THE DEFENDANT: Yes.
22 THE COURT: Does the agreement accurately reflect your
23 complete and total understanding of the entire agreement
24 between the government, your attorney and you?
25 THE DEFENDANT: Yes.

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1 THE COURT: Is everything that you understand about
2 your plea, cooperation and sentence covered in this agreement?
3 THE DEFENDANT: Yes.
4 THE COURT: Has anything been left out?
5 THE DEFENDANT: I don't believe so.
6 THE COURT: Has anyone made any promises to you other
7 than what is set out in that agreement or threatened you or
8 forced you to plead guilty or to enter into this agreement?
9 THE DEFENDANT: No.
10 THE COURT: Do you understand that even if the
11 government does not oppose or take a position on what your
12 attorney will ask as a sentence, I am free to impose whatever
13 sentence I believe is appropriate under the circumstances and
14 the applicable law and you will have no right to withdraw your
15 plea?
16 THE DEFENDANT: Yes.
17 THE COURT: Do you understand that this agreement
18 provides that prior to the date of sentencing, you must file
19 accurate amended tax returns for the years 2006, 2007, 2008 and
20 2009, and pay or enter into an agreement to pay past taxes due
21 and owing by you to the Internal Revenue Service, including any
22 applicable penalties?
23 THE DEFENDANT: Yes.
24 THE COURT: Do you understand that the agreement
25 provides that you must cooperate fully with the office of the

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1 United States Attorney, the Federal Bureau of Investigation,
2 and any other law enforcement agency designated by the United
3 States Attorney?
4 THE DEFENDANT: I do.
5 THE COURT: Do you understand that the agreement does
6 not bind any federal, state or local prosecuting authority
7 other than the United States Attorney?
8 THE DEFENDANT: I do.
9 THE COURT: Do you understand that the agreement
10 provides that if the United States Attorney determines that you
11 have provided substantial assistance in an investigation or
12 prosecution, and if you have fully complied with the
13 understandings specified in the agreement, that the United
14 States Attorney will file a motion pursuant to Section 5K1.1 of
15 the Sentencing Guidelines requesting that the Court sentence
16 you in light of the factors set forth in subdivision (a)(1)
17 through (5) of that Section of the guidelines?
18 THE DEFENDANT: Yes, I do.
19 THE COURT: Do you understand that the factors that
20 the Court may consider under Section 5K1.1 include the
21 significance and usefulness of your assistance, taking into
22 account the government's evaluation of your assistance; the
23 truthfulness, completeness and reliability of any information
24 or testimony you provided; the nature and extent of your
25 assistance; any injuries suffered or any danger or risk of

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<p>166dlipp PLEA</p> <p style="text-align: right;">Page 29</p> <p>1 injury to you on your family as a result of your assistance; 2 and the timeliness of your assistance? 3 THE DEFENDANT: Yes, I do. 4 THE COURT: Do you understand that even if the United 5 States Attorney files such a motion, the sentence to be imposed 6 on you remains within the sole discretion of the Court? 7 THE DEFENDANT: Yes. 8 THE COURT: Do you understand that you will not be 9 entitled to withdraw your plea if the Court denies the motion? 10 THE DEFENDANT: I do. 11 THE COURT: Do you understand that if United States 12 Attorney determines that you have not provide substantial 13 assistance in an investigation or prosecution or that you have 14 violated any provision of the agreement, the United States 15 Attorney is not obligated to file a motion under Section 5K1.1? 16 THE DEFENDANT: I do. 17 THE COURT: Do you understand that you will not be 18 entitled to withdraw your guilty plea even if the United States 19 Attorney has not filed a motion? 20 THE DEFENDANT: I do. 21 THE COURT: Do you understand that your agreement 22 provides that if you commit any further crimes or if it is 23 determined that you gave false, incomplete or misleading 24 testimony or information, or that you otherwise violated any 25 provision of the agreement, you will be subject to prosecution</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 31</p> <p>1 against you in the total amount of \$1.4 million in United 2 States currency, and that you will forfeit all of your interest 3 in certain real property in Ridgewood, New Jersey and in 4 certain accounts held in the names of or for the benefit of 5 you, your wife and minor children at Fidelity Investments? 6 THE DEFENDANT: Yes. 7 THE COURT: Mr. Filan, is that a correct statement? 8 MR. FILAN: Absolutely, your Honor. Thank you. 9 THE COURT: Mr. Lipkin, do you still wish to plead 10 guilty pursuant to this agreement? 11 THE DEFENDANT: I do. 12 THE COURT: Mr. Filan, do you know of any valid reason 13 why Mr. Lipkin would prevail at trial? 14 MR. FILAN: I do not, your Honor. 15 THE COURT: Do you know any reason why he should not 16 be permitted to plead guilty? 17 MR. FILAN: I do not. 18 THE COURT: Mr. Lipkin, would you please stand at this 19 time and tell me what you did that makes you guilty of each of 20 the crimes charged in the third Superseding Information. 21 THE DEFENDANT: Your Honor, I would like to first 22 apologize to my family, my friends, and all the victims in this 23 case. I'm very sorry for my conduct. 24 I now want to address my actions as they relate to the 25 charges against me.</p>
<p>166dlipp PLEA</p> <p style="text-align: right;">Page 30</p> <p>1 for any federal violations of which the United States Attorney 2 has knowledge, including perjury and obstruction of justice? 3 THE DEFENDANT: I do. 4 THE COURT: Do you understand that your agreement 5 provides that if you commit any further crimes, or if it is 6 determined that you gave false, incomplete or misleading 7 testimony or information, or that you otherwise violated any 8 provision of this cooperation agreement, all statements made by 9 you to the United States Attorney or other designated law 10 enforcement agents and any testimony given by you before a 11 grand jury or other tribunal may be admissible in evidence in 12 any criminal proceedings against you? 13 THE DEFENDANT: I do. 14 THE COURT: Do you understand that your agreement also 15 provides that you may not assert a claim that such statements 16 should be suppressed from evidence and that you are waiving 17 your right to claim that such statements should be suppressed? 18 THE DEFENDANT: I do. 19 THE COURT: Do you understand that on page 3, this 20 agreement also includes your agreement to forfeit to the United 21 States any and all property constituting and derived from any 22 proceeds that you obtained as a result of the crimes charged in 23 Counts One, Two, Three and Six in an amount to be determined by 24 the Court as to Counts One and Three, and as to Counts Two and 25 Six, that you are agreeing to the entry of a money judgment</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 32</p> <p>1 With regard to the conspiracy charged in Count One and 2 also charged in Counts Three, Four and Five, I worked with 3 Bernard L. Madoff Investment Securities' employees to deceive 4 others. I created fake DTC reports in New York City. 5 I created these documents knowingly and willingly. I 6 knew that these documents were fake because they were created 7 by me and not by the DTC. I created them to match documents 8 given to me by other BLMIS employees. My understanding was 9 that the fake DTC reports that were prepared were being given 10 to the auditors to mislead them. 11 Also as part of the conspiracy charged in Count One 12 and the charges in Count Three, Four and Five, it was my job to 13 prepare the BLMIS payroll documents and records. As part of my 14 job from at least 1996 in New York City, I created fake, false 15 payroll records and also submitted to the Department of Labor 16 inaccurate form 5500s. These forms falsely showed that a 17 number of people were employees of BLMIS when in fact I knew 18 they were not working for BLMIS. 19 For instance, sometime in 2008, Daniel Bonventre 20 instructed me to include one of his sons as an employee when I 21 knew he wasn't working there, and I agreed to do it; and I 22 created BLMIS payroll records to reflect that he worked there. 23 Further, beginning in 2007, in New York City, I 24 knowingly certified on the Form 5500 that there were people who 25 worked at BLMIS when in fact they did not. I also understood</p>

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1 that the Form 5500 contained a certification that all
2 information on the form was accurate, and I signed it knowing
3 it was not accurate and then I submitted it to the Department
4 of Labor using Federal Express.
5 Counts Two and Six.
6 Regarding Count Two, conspiracy to commit bank fraud,
7 and Count Six, bank fraud, I was attempting to get a
8 construction loan. In order to ensure I received the loan, I
9 went to Frank DiPiscali to create a new BLMIS account in my
10 name that falsely said my account value was greater than it
11 was. I knew I could ask Frank DiPiscali to do this for me
12 because I knew it had been done previously for other BLMIS
13 employees.
14 That account statement was created in New York at
15 BLMIS in November of 2008. Once I got the fake statement, I
16 sent it from New York City to a bank in Florida. I knew that
17 the account did not have the money in it that the statement
18 said it did and that it was wrong to mislead the lender to get
19 the loan.
20 THE COURT: Would you remain standing. I have a few
21 more questions for you.
22 You indicated that the fake DTC reports that you were
23 making were going to be given to the auditors in order to
24 deceive auditors. What did you understand the auditors were
25 going to do with that information?

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1 THE DEFENDANT: It was to confirm positions at several
2 investment advisory accounts that we were reporting at.
3 THE COURT: And to what persons or entities were the
4 reports going to be made?
5 THE DEFENDANT: The SEC.
6 THE COURT: And you use the term "DTC," what does that
7 mean?
8 THE DEFENDANT: Depository Trust Company.
9 THE COURT: You used the term "5500" reports. What
10 are those?
11 THE DEFENDANT: Those are reports that certify monies
12 that are in a 401(k) plan.
13 THE COURT: And is the 401(k) plan a type of plan
14 that's governed by the Employee Retirement Income Security Act?
15 THE DEFENDANT: It is.
16 THE COURT: And to what agency, if any, of the
17 government are the 5500s submitted?
18 THE DEFENDANT: The federal government, the IRS -- the
19 Department of Labor. I'm sorry.
20 THE COURT: I notice that you were looking at some
21 notes as you were speaking. Do those notes accurately reflect
22 truthful information and actions that you yourself took?
23 THE DEFENDANT: Yes, they do.
24 THE COURT: When you did these things that you have
25 described, did know that what you were doing was wrong and

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1 illegal?
2 THE DEFENDANT: Yes.
3 THE COURT: Mr. Moore, does the government wish any
4 further factual matters to be addressed in the plea allocution?
5 MR. MOORE: No. Thank you, your Honor.
6 THE COURT: Mr. Moore, would you please summarize the
7 government's evidence against Mr. Lipkin.
8 And, Mr. Lipkin, you can be seated, please.
9 MR. MOORE: Certainly, your Honor.
10 Had this case proceeded to trial, the government would
11 have proven, through testimony and evidence, beyond a
12 reasonable doubt the facts set forth in the Superseding
13 Information. Specifically, the government would have proven
14 with respect to Counts One, Three, Four and Five of the
15 Information a conspiracy to falsify books and records of a
16 broker-dealer and investment advisor and conspiracy to falsify
17 statements to facilitate a theft concerning ERISA, along with
18 the corresponding substantive charges: That Mr. Lipkin was
19 employed by BLMIS from in or about the mid-1980s through at
20 least on or about December 11, 2008, when BLMIS collapsed. In
21 or about 1996, Mr. Lipkin began working with his
22 co-conspirators in falsifying the books and records at BLMIS.
23 For instance, Mr. Lipkin, working with other
24 co-conspirators, created fraudulent account statements
25 detailing the account values of several investment advisory, or

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1 "IA", accounts at BLMIS. In furtherance of this fraud, your
2 Honor, Mr. Lipkin prepared letters and statements setting out
3 fake holdings purportedly held in multiple BLMIS IA accounts.
4 Further, in connection with reviews by the SEC and a
5 European accounting firm, Mr. Lipkin and other co-conspirators
6 created false and fraudulent BLMIS books and records as well as
7 false documents purportedly obtained from third parties in the
8 ordinary course of business at BLMIS. For example, Mr. Lipkin
9 and others created fake reports purportedly obtained by the
10 Depository Trust Company, or "DTC." These fake DTC reports
11 purported to show the securities holdings of BLMIS IA clients,
12 which in fact did not exist. Mr. Lipkin knew the purpose of
13 these fake DTC reports was to mislead the auditors.
14 During his tenure at BLMIS, and at the direction of
15 other co-conspirators, Mr. Lipkin also created false BLMIS
16 books and records reflecting individuals who did not actually
17 work at BLMIS. Mr. Lipkin was responsible for processing the
18 payroll and administering the 401(k) plans at BLMIS, and in
19 this capacity, your Honor, Mr. Lipkin was responsible for
20 preparing and maintaining internal BLMIS payroll records. He
21 was aware that there were individuals on BLMIS's payroll who
22 did not work for the firm but who nevertheless received
23 salaries and benefits. Mr. Lipkin created false internal BLMIS
24 payroll records reflecting that these individuals worked at
25 BLMIS. Furthermore, he included a number of fake employees in

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<p>166dlipp PLEA</p> <p style="text-align: right;">Page 37</p> <p>1 the total number of employees that he reported to the 2 Department of Labor.</p> <p>3 With respect to Counts Two and Six, conspiracy to 4 commit bank fraud and bank fraud, your Honor, the government 5 would prove that in or about 2008, Mr. Lipkin prepared and 6 submitted a loan application to a lending institution insured 7 by the Federal Deposit Insurance Corporation, or "FDIC," which 8 purported to represent accurately his personal and financial 9 information. However, he fraudulently improved his 10 creditworthiness by falsifying his personal and financial 11 information in a manner that was material to the lending 12 institution in making its lending decision. Specifically, 13 Mr. Lipkin, working with others, prepared and submitted false 14 and misleading information concerning his assets.</p> <p>15 THE COURT: Mr. Moore, before you sit down, or I will 16 ask you to stand back up, would you just map for me a little 17 more precisely the nature of the violation of the 18 ERISA-specific charge, which we've referred to as facilitating 19 false statements to facilitate a theft concerning ERISA, the 20 elements had been recited, and the allocution here deals with 21 the falsification of plan financial reports by including people 22 who were not employees.</p> <p>23 Is there also a specific theft element? Is there a 24 necessity to show intent that plan assets were actually to be 25 given to someone who wasn't entitled to them? I just don't</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 39</p> <p>1 concerning ERISA.</p> <p>2 THE COURT: Mr. Lipkin, is Mr. Moore's summary of the 3 nature and significance in terms of entitlement to benefits 4 under an ERISA government plan accurate with respect to your 5 own activities in falsifying the 401(k) plan records? 6 THE DEFENDANT: It is, your Honor.</p> <p>7 THE COURT: Mr. Lipkin, would you please stand again. 8 Mr. Lipkin, how do you now plead to the charge against 9 you in Count One of the third Superseding Information, not 10 guilty or guilty? 11 THE DEFENDANT: Guilty.</p> <p>12 THE COURT: How do you now plead to the charge against 13 you in Count Two of the third Superseding Information, not 14 guilty or guilty? 15 THE DEFENDANT: Guilty.</p> <p>16 THE COURT: How do you now plead to the charge against 17 you in Count Three of the third Superseding Information, not 18 guilty or guilty? 19 THE DEFENDANT: Guilty.</p> <p>20 THE COURT: How do you now plead to the charge against 21 you in Count Four of the third Superseding Information, not 22 guilty or guilty? 23 THE DEFENDANT: Guilty.</p> <p>24 THE COURT: How do you now plead to the charge against 25 you in Count Five of the third Superseding Information, not</p>
<p>166dlipp PLEA</p> <p style="text-align: right;">Page 38</p> <p>1 understand the nexus between the theft concept and the false 2 statements to my satisfaction.</p> <p>3 MR. MOORE: Sure. Your Honor, I don't believe that is 4 an essential element of the crime, but we have alleged that and 5 I believe defendant has admitted to that nevertheless.</p> <p>6 It is our understanding -- and we would prove this 7 beyond a reasonable doubt should this case go to trial -- that 8 Mr. Lipkin submitted the Form 5500, which is a reporting form 9 that goes to the Department of Labor, which essentially lists 10 the number of employees at the employer's institution. In this 11 case, Mr. Lipkin inflated that number, therefore misreporting 12 the number of employees who were working at BLMIS, when he in 13 fact knew that there were fewer employees working at that 14 institution. As a result of doing so, he also put them on the 15 internal payroll records at BLMIS, thus giving those employees 16 who in fact never worked at BLMIS 401(k) plans and other 17 salaries and benefits.</p> <p>18 Can you hold on one second, your Honor? 19 (Pause)</p> <p>20 Right. Entitling them to benefits provided under the 21 Social Security Administration as well as under a 401(k) plan, 22 your Honor. As a result of that, your Honor, the Form 5500 23 that goes to the Department of Labor does concern ERISA, and, 24 therefore, we believe Mr. Lipkin has met all the three elements 25 for Count Five, falsifying statements to facilitate a theft</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 40</p> <p>1 guilty or guilty? 2 THE DEFENDANT: Guilty.</p> <p>3 THE COURT: And how do you now plead to the charge 4 against you in Count Six of the third Superseding Information, 5 not guilty or guilty? 6 THE DEFENDANT: Guilty.</p> <p>7 THE COURT: Are you pleading guilty to each of these 8 charges because you are in fact guilty of the conduct charged 9 in each count? 10 THE DEFENDANT: I am.</p> <p>11 THE COURT: Are you pleading guilty voluntarily and of 12 your own free will? 13 THE DEFENDANT: I am.</p> <p>14 THE COURT: Mr. Filan, would you please show 15 Mr. Lipkin Court Exhibit 1, the advice of rights form. 16 Mr. Lipkin, have you signed this form? 17 THE DEFENDANT: I have.</p> <p>18 THE COURT: Did you read it before you signed it? 19 THE DEFENDANT: I did.</p> <p>20 THE COURT: Did you discuss it with your attorney 21 before you signed it? 22 THE DEFENDANT: We did.</p> <p>23 THE COURT: Did you understand it before you signed 24 it? 25 THE DEFENDANT: I did.</p>

<p>166dlipp PLEA</p> <p style="text-align: right;">Page 41</p> <p>1 THE COURT: Mr. Filan, did you also review and sign 2 Court Exhibit 1? 3 THE DEFENDANT: I did, your Honor. 4 THE COURT: Mr. Filan, are there any other questions 5 that you believe I should ask Mr. Lipkin in connection with 6 this plea? 7 MR. FILAN: No, your Honor. 8 THE COURT: Mr. Moore, are there any other questions 9 that you believe I should ask Mr. Lipkin in connection with 10 this plea? 11 MR. MOORE: No. Thank you, your Honor. 12 THE COURT: And are there any victims who wish to 13 speak in connection with this matter? 14 (Pause) 15 I note that no one has raised their hand. 16 Mr. Lipkin, you have acknowledged that you are guilty 17 as charged in the Information. I find that you know your 18 rights and that you are waiving them voluntarily. 19 Because your plea is entered knowingly and voluntarily 20 and is supported by an independent basis in fact containing 21 each of the essential elements of each of the offenses, I 22 accept your guilty plea, and I adjudge you guilty of the 23 offenses charged in Counts One, Two, Three, Four, Five and Six 24 of the third Superseding Information in this case, which is 25 numbered 10 Criminal 228.</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 43</p> <p>1 MR. MOORE: We will, your Honor. 2 THE COURT: Thank you. 3 When it is time for sentencing, counsel, I just wish 4 to ask and to remind you to be prompt in getting any objections 5 or additional information to Probation after the draft report 6 is disclosed, and any 5K1.1 letter or letter indicating an 7 intention to make a motion pursuant to 5K1.1 must be prepared 8 and submitted to the Court and the Probation Department before 9 the probation report is completed so that I can have the 10 benefit of the Probation Department's thinking in that regard 11 as well. 12 Sentencing submissions are governed by my sentencing 13 submission procedures, which are available on the court's 14 website and also here in hard copy in the courtroom. 15 Mr. Lipkin, the Probation Office will be preparing a 16 presentence report at some point to assist me in sentencing 17 you. You will be interviewed by the Probation Office. It is 18 important that the information that you give to the probation 19 officer be truthful and accurate. The report is important in 20 my decision as to what your sentence will be. You and your 21 attorney have a right and will have an opportunity to examine 22 the report, to challenge or comment on it, and to speak on your 23 behalf before sentencing. 24 Failing to be truthful with the Probation Office and 25 the Court may have an adverse effect on your sentence and may</p>
<p>166dlipp PLEA</p> <p style="text-align: right;">Page 42</p> <p>1 You can be seated now. Thank you. 2 THE DEFENDANT: Thank you. 3 THE COURT: Mr. Filan, do you wish to be present for 4 any interview of Mr. Lipkin in connection with the preparation 5 of the presentence report? 6 MR. FILAN: I do, your Honor. 7 THE COURT: I will make that direction. 8 MR. FILAN: Thank you. 9 THE COURT: Mr. Moore, what is the parties' request 10 with respect to the setting of a sentencing date or a control 11 date? 12 MR. MOORE: Your Honor, at this time, we request that 13 we have six months for a sentencing control date. 14 THE COURT: And that a presentence report not be 15 ordered at this point? 16 MR. MOORE: That is correct, your Honor. 17 THE COURT: Ms. Ng, may we have a control date six 18 months out? 19 THE CLERK: Thursday, December 15, 2011, at 11 a.m. 20 THE COURT: The sentencing control date is set for 21 December 15, 2011, at 11 in the morning. 22 In advance of that date, Mr. Moore, will the 23 government inform the Court as to whether it is appropriate to 24 commence the preparation of the presentence report or to 25 further extend the control date?</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 44</p> <p>1 subject you to prosecution. 2 Do you understand that? 3 THE DEFENDANT: I do. 4 THE COURT: Thank you. 5 Now, give me just one moment here. 6 (Pause) 7 Section 3143 of Title 18 provides that the Court is to 8 order a person who has been found guilty of an offense and who 9 is awaiting sentencing as a general matter to be detained 10 unless the judicial officer finds by clear and convincing 11 evidence that the person is not likely to flee or pose a danger 12 to the safety of any other person or the community if released. 13 Do the parties have a proposal with respect to 14 detention or release, and would the government set forth its 15 position as to the 3143 factors? 16 MR. MOORE: Yes, your Honor. In light of Mr. Lipkin's 17 cooperation and his full disclosure of his financial assets, 18 his dealings at BLMIS, we are confident that he will be 19 following the rules as set in our proposed bail package that we 20 would like to present to the Court; namely, that his bail be 21 secured by a \$2.5 million personal recognizance bond, secured 22 by \$800,000 in cash or property. 23 THE COURT: And that would be property other than the 24 residential property that has been mentioned in connection with 25 the --</p>

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<p>166dlipp PLEA</p> <p style="text-align: right;">Page 45</p> <p>1 MR. MOORE: Absolutely, your Honor. 2 We also request that he be subject to strict pretrial 3 supervision; that his travel be restricted to the Southern and 4 Eastern Districts of New York, the District of New Jersey, 5 where he resides, and the District of Connecticut, where his 6 attorney practice. 7 Your Honor, we also request that he surrender all of 8 his travel documents and make new no travel applications. 9 Your Honor, we would request that these conditions be 10 met no later than this Friday. 11 THE COURT: And have you had sufficient dealings up to 12 now with Mr. Lipkin to have a view as to his reliability in 13 keeping appointments, his ability to be trusted at his word in 14 such relevant matters? 15 MR. MOORE: We have, your Honor, as well as the 16 agency, the FBI, has been working with him. 17 In addition, your Honor, to ensure our confidence in 18 Mr. Lipkin, we have already interviewed a number of cosigners 19 that have volunteered to serve as suriters for his bond. 20 Specifically, we've interviewed seven cosigners that he has 21 proposed, and at this time we are prepared to approve all of 22 them. 23 THE COURT: And is there anything that you wish to say 24 to me with respect to community or family ties and the 25 significance of those matters in terms of risk of flight?</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 47</p> <p>1 truthful disclosure about his own financial assets and the 2 whereabouts of those assets. 3 THE COURT: Given the termination of operations of 4 BLMIS, does the government have a view as to potential danger 5 to the community? Is that an issue here? 6 MR. MOORE: We do not believe it is an issue in this 7 case, your Honor. No. 8 THE COURT: And I understand that Mr. Lipkin is 9 recently unemployed. What is the government's position as to 10 the significance of that status with respect to risk of flight? 11 MR. MOORE: Your Honor, Mr. Lipkin, from our 12 understanding, will be assisting his wife with the children. 13 His wife is a full-time employee and is fully employed. And we 14 believe, in light of those conditions, your Honor, he is not a 15 risk of flight, particularly if, as we have requested, the 16 conditions are assigned for strict pretrial supervision and the 17 security that he is willing to post, including the \$800,000 of 18 cash which is coming from close family members of the 19 defendant. As well, your Honor, a number of the cosigners we 20 do believe have a significant moral suasion over the defendant 21 in light of their close relationship to him. 22 THE COURT: Thank you. 23 Officer Ramesar, I've reviewed your report, for which 24 I thank you. 25 MS. RAMESAR: You are welcome.</p>
<p>166dlipp PLEA</p> <p style="text-align: right;">Page 46</p> <p>1 MR. MOORE: Yes, your Honor, which was a factor in our 2 determination. Mr. Lipkin is a long-time resident of the New 3 York/New Jersey area. He resides in New Jersey with his wife 4 and children along with several other family members, your 5 Honor. And as a result we are satisfied that he is not a risk 6 of flight, that he does not pose a danger to the community, so 7 long as the conditions that we had proposed are also assigned 8 with his release. 9 THE COURT: Are you confident of your assessment in 10 terms of the potential availability of assets to facilitate 11 flight? 12 MR. MOORE: Your Honor, as a part of this process, and 13 one of the reasons why we have expressed some confidence in 14 Mr. Lipkin, is that he has fully disclosed his assets to us. 15 He has filled out financial affidavits with our office fully 16 disclosing the whereabouts of all of his funds. And I believe, 17 as Mr. Filan will attest, he has also agreed to allow us to 18 immediately start forfeiting those proceeds. 19 THE COURT: And you and your colleagues or 20 investigators have traced monies that to your knowledge went 21 from BLMIS to Mr. Lipkin and have mapped his disclosures 22 against known assets? 23 MR. MOORE: That's correct, your Honor, which also 24 proves some confidence in Mr. Lipkin, that our own independent 25 evaluation matched up with what proved to be Mr. Lipkin's</p>	<p>166dlipp PLEA</p> <p style="text-align: right;">Page 48</p> <p>1 THE COURT: Is there anything in particular or in 2 addition to or different from what Mr. Moore has argued that 3 you wish to bring to my attention at this point? 4 MS. RAMESAR: No, your Honor. 5 THE COURT: Thank you. 6 Mr. Filan, did you wish to be heard? 7 MR. FILAN: Just to say, your Honor, that we have 8 Mr. Lipkin's passport, which we will surrender today to 9 Pretrial Services, as the government requests. And we also 10 have two cosigners here with us today, who will execute the 11 appearance bond today before they leave the courthouse to begin 12 that process. 13 And we urge the Court to release Mr. Lipkin for the 14 reasons that Mr. Moore covered. I have really nothing further 15 to add to that. 16 THE COURT: Thank you. 17 MR. FILAN: Thank you, your Honor. 18 THE COURT: Mr. Moore, the summary of the proposed 19 conditions that you've provided deals with the surrender of 20 Mr. Lipkin's travel documents. Is there a reason why there is 21 no provision for the surrender of the travel documents of 22 immediate family members? 23 MR. MOORE: Your Honor, we have no objection to the 24 wife keeping her passport. In fact, it is our understanding 25 that she will be taking herself and her children to a</p>

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1 destination this summer.
 2 However, if the Court feels that she should surrender
 3 her travel passports, we would have no objection to that
 4 condition being added.
 5 THE COURT: It seems to me prudent to do that, given
 6 the magnitude of the exposure.
 7 So I will direct that the travel documents of the wife
 8 and children also be surrendered without prejudice to specific
 9 application, on notice, for return in connection with specific
 10 travel approved by the Pretrial Services Department to which
 11 there is no other objection. If there is an objection, I will
 12 hear it.
 13 MR. MOORE: Thank you, your Honor.
 14 THE COURT: Mr. Filan.
 15 MR. FILAN: That is fine, your Honor. Thank you.
 16 THE COURT: Thank you.
 17 Having carefully considered all that I have heard here
 18 today, including the admissions of criminal activity, the
 19 result of the investigation of Pretrial Services, the
 20 government's extensive account of its activities and evaluation
 21 with respect to risk of flight and potential for danger to the
 22 community presented by Mr. Lipkin, I find that there is clear
 23 and convincing evidence that with the imposition of the
 24 proposed conditions Mr. Lipkin is not likely to flee or pose a
 25 danger to the safety of any other person or the community.

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1 Accordingly, I will grant him release on the
 2 conditions that have been proposed, with the modification that
 3 we just discussed concerning the surrender of family travel
 4 documents.
 5 I am now going to prepare a bail disposition sheet
 6 enumerating these conditions, and then I will distribute that
 7 in draft to the parties so that we can be sure that I've gotten
 8 everything correct. So bear with me as I type this up, please.
 9 (Pause)
 10 What I've written is this: "\$2.5 million PRB secured
 11 by \$800,000 cash and property, and 7 FRPs. Travel restricted
 12 to DNJ, D Conn, E.D.N.Y. and S.D.N.Y. All travel documents of
 13 Defendant, wife and children to be surrendered, with no new
 14 applications (without prejudice to application for return of
 15 documents of wife and children for particular preauthorized
 16 travel). Strict pretrial supervision. All conditions must be
 17 met by 4:00 p.m. on June 10, 2011."
 18 Does that cover everything accurately?
 19 MR. MOORE: That is our understanding. Thank you,
 20 your Honor.
 21 MR. FILAN: Yes, your Honor. Thank you.
 22 THE COURT: I will fix one typo and then I will sign.
 23 How many copies are needed?
 24 THE CLERK: Six.
 25 THE COURT: OK.

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1 (Pause)
 2 THE COURT: Now, Mr. Moore and Ms. Baroni, can you
 3 shepherd things through the Magistrate Clerk's office here, or
 4 whatever section of the Clerk's Office --
 5 MR. MOORE: We will, your Honor. Thank you.
 6 THE COURT: And, also, Mr. Filan and Mr. Lipkin will
 7 need to go over to the Probation Department as well to get
 8 paper work set up and get any specifics as to what needs to be
 9 done there today that will be carried out.
 10 MR. FILAN: Thank you, your Honor.
 11 THE COURT: Thank you. Is there anything further that
 12 we need to take up together this afternoon?
 13 MR. MOORE: Can you give us one moment, your Honor?
 14 THE COURT: Yes.
 15 MR. MOORE: Nothing further on the government's part.
 16 Thank you, your Honor.
 17 MR. FILAN: Nothing from the defendant, your Honor.
 18 THE COURT: All right. Thank you. We are adjourned.
 19 THE DEFENDANT: Thank you, your Honor.
 20 THE CLERK: All rise.
 21
 22 - - -
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Exhibit 7

1BLMKUGP1 Plea

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

3 UNITED STATES OF AMERICA,

4 v. 10 Cr. 228 (LTS)

5 DAVID KUGEL,

6 Defendant.

7 -----x

8 New York, N.Y.
9 November 21, 2011
10 12:45 p.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN,
12 District Judge

13 APPEARANCES

14 PREET BHARARA
15 United States Attorney for the
16 Southern District of New York
17 JULIAN MOORE
18 LISA A. BARONI
19 MATTHEW SCHWARTZ
20 Assistant United States Attorneys

21 MARTIN ADELMAN
22 DANIEL ZELENKO
23 MICHAEL BLUMENTHAL
24 Attorneys for Defendant

25 ALSO PRESENT: GREG HAGARTY, FBI
PAUL TAKLA, FBI
JEFFREY STEIMEL, Pretrial Services

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1 (Case called)

2 MR. MOORE: Good afternoon, your Honor, Julian Moore
3 for the government. With me at counsel table are my colleagues
4 of the USA, Lisa Baroni and Matthew Schwartz. Also present are
5 Special Agents Greg Hagarty and Paul Takla of the FBI. Jeff
6 Steimel of U.S. Pretrial Services is also with us.

7 THE COURT: Good afternoon, Mr. Moore, Ms. Baroni,
8 Mr. Schwartz, Agent Hagarty, Agent Takla, Officer Steimiel.

9 MR. ADELMAN: Good afternoon, your Honor, Martin
10 Adelman for Mr. Kugel. The other gentlemen will introduce
11 themselves.

12 THE COURT: Good afternoon, Mr. Adelman, and good
13 afternoon, Mr. Kugel.

14 MR. ZELENKO: Good afternoon, your Honor. Daniel
15 Zelenko and Michael Blumenthal, also appearing on behalf of
16 Mr. Kugel.

17 THE COURT: Good afternoon Mr. Zelenko and good
18 afternoon, Mr. Blumenthal, and good afternoon, everyone in
19 attendance.

20 I would just like to say, I understand there was a
21 little bit of a miscommunication with respect to the door
22 signage. I was conducting a trial in here this morning. As
23 you can see, it is a fairly small courtroom. The sign should
24 have said: Kugel on at 12:30, trial in progress, not abandon
25 hope ye who entered here. Forgive us. It was just a matter of

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1 not wanting to have a lot of unnecessarily disruptive activity
2 going on while the trial was going on. But I also assumed that
3 anyone who would have come in while the trial was going on
4 would not have been disruptive. Again, my apologies. There
5 was no meaning to offend. And I hope that none was taken.

6 It is my understanding that Mr. Kugel has an
7 application to waive indictment and enter a guilty plea to a
8 six-count superseding information which is labeled S4 10 Cr.
9 228.

10 Now, Mr. Adelman, would you be the principal one I
11 should speak to, or should it be Mr. Zelenko?

12 MR. ADELMAN: That's fine, yes, your Honor.

13 THE COURT: Mr. Adelman, is that correct?

14 MR. ADELMAN: Yes, ma'am, it is.

15 THE COURT: And the plea is pursuant to the agreement
16 that has been marked as Government Exhibit 1 and has been
17 executed and is at defense table. Is that correct?

18 MR. ADELMAN: Yes, it is, ma'am.

19 THE COURT: And an advice of rights form has also been
20 reviewed and executed and marked as Court Exhibit 1. Is that
21 correct?

22 MR. ADELMAN: Yes.

23 THE COURT: Now, I have a question for the government.

24 Mr. Moore, are you the principal one today?

25 MR. MOORE: Yes, today, your Honor.

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1 THE COURT: Would you make a statement regarding
2 victim notification in connection with this proceeding?

3 MR. MOORE: Yes, your Honor. As the Court is aware,
4 last week we reached out via a letter to the Court requesting
5 that today's proceeding be publicized. Your Honor so kindly
6 issued that order. And as of that date, which I believe was
7 Wednesday, December 16, we published on the U.S. Attorney's
8 Madoff website that today's proceeding would be conducted and
9 that Mr. Kugel, the defendant present in court today, would be
10 pleading pursuant to the S4 superseding indictment to the
11 counts that we will go through today.

12 THE COURT: Mr. Kugel, before I accept your waiver of
13 indictment and your guilty plea, there are a number of
14 questions that I must ask you while you are under oath to
15 assure that it is a valid waiver and plea. At times I may
16 cover a point more than once and I may cover matters that were
17 also addressed in the advice of rights form that you have seen.
18 But if I do so, that will be because it is very important that
19 you understand what is happening here today.

20 In that connection, if you don't understand something
21 that I ask you, please say so and I will reword the question or
22 you may speak with your attorney.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Ms. Ng, would you please administer the

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1 oath or affirmation.

2 (Defendant sworn)

3 THE COURT: Would you please state your full name for
4 the record.

5 THE DEFENDANT: David Louis Kugel.

6 THE COURT: Mr. Kugel, do you understand that you have
7 solemnly promised to tell the truth and that if you answer any
8 of my questions falsely, your false or untrue answers may later
9 be used against you in another prosecution for perjury or
10 making a false statement?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: You can be seated for the next portion of
13 the proceeding.

14 THE DEFENDANT: Thank you.

15 THE COURT: How old are you, sir?

16 THE DEFENDANT: 66.

17 THE COURT: And how far did you go in school?

18 THE DEFENDANT: I have a graduate -- undergraduate
19 degree.

20 THE COURT: In this particular field?

21 THE DEFENDANT: BBA in accounting, business
22 administration.

23 THE COURT: Since you finished your formal schooling,
24 what types of work have you done?

25 THE DEFENDANT: Brokerage firms, security work.

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1 THE COURT: Are you able to read, speak, and
2 understand English well?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you a citizen of the United States?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Are you now or have you recently been
7 under the care of a doctor or psychiatrist?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Are you under care for any condition that
10 affects your ability to think clearly?

11 THE DEFENDANT: I don't know, your Honor.

12 THE COURT: You don't know?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: Are you taking any medication that affects
15 your ability to think clearly?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Are you under treatment for any condition
18 or taking any medication that affects your judgment in terms of
19 making important decisions for yourself?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: In the past 24 hours have you taken any
22 drugs, medicine or pills or have you drunk any alcohol?

23 THE DEFENDANT: I have taken medicine, prescribed
24 medicine. No alcohol.

25 THE COURT: And have you taken the prescription

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1 medicine on the schedule prescribed and in the amount
2 prescribed?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Is your mind clear today?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Are you feeling well physically today?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Are you represented by counsel here today?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And who are your lawyers?

11 THE DEFENDANT: Martin Adelman, Dan Zelenko, and

12 Michael Blumenthal.

13 THE COURT: Messrs. Adelman, Zelenko and Blumenthal
14 and Mr. Moore, does any of you have any doubt as to Mr. Kugel's
15 competence to waive indictment and plead guilty at this time?

16 MR. MOORE: No, your Honor. And the government is
17 aware of Mr. Kugel's prescribed medication that he takes, as
18 indicated on page 3 of the pretrial services report.

19 THE COURT: Defense counsel.

20 MR. ADELMAN: The same answer, your Honor.

21 MR. ZELENKO: Same, your Honor.

22 MR. BLUMENTHAL: Same also, your Honor.

23 THE COURT: Mr. Kugel, your attorneys have informed me
24 that you wish to waive indictment and enter a guilty plea to an
25 information.

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1 Do you wish to waive indictment and plead guilty?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Have you fully discussed your case with
4 your attorneys, including the charges to which you intend to
5 plead guilty and any possible defenses to those charges?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Have you and your attorneys also discussed
8 the consequences of entering a guilty plea?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Are you satisfied with your attorneys and
11 their representation of you?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: On the basis of Mr. Kugel's responses to
14 my questions and my observations of his demeanor, I find that
15 he is fully competent to waive indictment and enter an informed
16 plea at this time.

17 Before I accept your plea, sir, I am going to ask you
18 some more questions. These questions are intended to satisfy
19 the Court that you wish to plead guilty because you are in fact
20 guilty and that you fully understand your rights and the
21 consequences of your plea.

22 Now, I will describe to you certain rights that you
23 have under the Constitution and laws of the United States. You
24 will be giving up these rights if you enter a guilty plea.
25 Please listen carefully. If you do not understand something

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1 that I'm saying or describing, stop me and I or your attorney
2 will explain it more fully.

3 Under the Constitution and laws of the United States,
4 you have the right to a speedy and public trial by a jury on
5 the charges against you that are in the information.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that you have the right
9 to plead not guilty and to continue to plead not guilty?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: If there were a trial, you would be
12 presumed innocent and the government would be required to prove
13 you guilty by competent evidence and beyond a reasonable doubt.
14 You would not have to prove that you were innocent at trial.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: If there were a trial, a jury composed of
18 12 people selected from this district would have to agree
19 unanimously in order to find you guilty.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: If there were a trial and at all stages
23 leading up to it, you would have the right to be represented by
24 an attorney. And if you could not afford one, an attorney
25 would be provided to you free of cost.

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1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: If there were a trial, you would have the
4 right to see and hear all of the witnesses against you and your
5 attorney could cross-examine them. You would have the right to
6 have your attorney object to the government's evidence and
7 offer evidence on your behalf, if you so desired. You would
8 also have the right to have witnesses required to come to court
9 to testify in your defense, and you would have the right to
10 testify yourself, but you would not be required to testify.

11 Do you understand all that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that if there were a
14 trial and you decided not to testify, no adverse inference
15 could be drawn against you based on your decision not to
16 testify?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that if you were
19 convicted at a trial, you would have the right to appeal that
20 verdict?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand each and every one of
23 these rights that I have questioned you about?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you have any questions about any of

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1 these rights?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Do you understand that by pleading guilty
4 today you will be giving up each and every one of these rights,
5 that you will be waiving these rights?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you also understand that you will be
8 waiving any possible claim that your constitutional rights may
9 have been violated and that you will have no trial?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: One moment.

12 Ms. Baroni, do you need water?

13 MS. BARONI: That would be great, your Honor.

14 THE COURT: Ms. Ng.

15 MS. BARONI: Thank you, your Honor.

16 THE COURT: Mr. Kugel, do you understand that by
17 entering a plea of guilty you will also have to give up your
18 right not to incriminate yourself because I will ask you
19 questions about what you did in order to satisfy myself that
20 you are guilty as charged and you will have to admit and
21 acknowledge your guilt?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that you can change your
24 mind right now and refuse to enter a guilty plea. You do not
25 have to enter this plea if you do not want to, for any reason.

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1 Do you understand this fully?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And do you still wish to plead guilty?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: The document that contains the charges to
6 which you've indicated you wish to plead guilty is called an
7 information. It has been issued by the United States Attorney.
8 You have a constitutional right to be charged by an indictment
9 rather than an information. An indictment would be a charge
10 issued from a grand jury.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Mr. Adelman, would you please show
14 Mr. Kugel the waiver of indictment form.

15 MR. ADELMAN: I have done so, your Honor.

16 THE COURT: Thank you.

17 Mr. Kugel, have you signed this waiver of indictment
18 form?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Did you read it before you signed it?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Did you discuss it with your attorney
23 before you signed it?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Did you fully understand it before you

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1 signed it?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that if you do not waive
4 indictment, if the government wanted to prosecute you on these
5 particular charges that are in the information, the government
6 would have to present the charges to a grand jury, which might
7 or might not indict you on them?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that you are under no
10 obligation to waive indictment?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that by waiving
13 indictment you are giving up your right to have the case
14 presented to a grand jury?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand what a grand jury is?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Did anyone promise you anything or
19 threaten you to get you to waive indictment?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Have you seen a copy of the fourth
22 superseding information? That's the charging instrument that
23 says S4 10 Cr. 228 at the top.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Have you read it?

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1 THE DEFENDANT: Yes.

2 THE COURT: Have you discussed it with your attorney?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand the charges against you
5 that are detailed in the information?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: If you want me to, I'll read the
8 information out loud now here in court. Do you want me to read
9 it to you out loud?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: I find that Mr. Kugel's waiver of
12 indictment is knowing and voluntary. I accept it and I so
13 order it.

14 Mr. Kugel, do you understand that Count One of the
15 superseding information charges you with participating in a
16 conspiracy in violation of Title 18 of the United States Code,
17 Section 371 to commit securities fraud in violation of Title
18 15, Sections 78jb and 77ff, and 17, Code of Federal
19 Regulations, Section 250 10B-5. Also to falsify books and
20 records of a broker dealer in violation of Title 15, Sections
21 78qa and 78ff, and 17, Code of Federal Regulations, Section
22 240.17A-3, and also to falsify books and records of an
23 investment advisor, in violation of Title 15, United States
24 Code, Sections 80b-4 and 80b-17, and 17, Code of Federal
25 Regulations, Section 275.204-2?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that Count Two of the
3 superseding information charges you with conspiracy in
4 violation of Title 18, Section 371 to commit bank fraud in
5 violation of Title 18, Section 1344?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that Count Three of the
8 superseding information charges you with securities fraud in
9 violation of Title 15 Sections 78jb and 77ff, as well as 17,
10 CFR, Section 240.10B-5, and Title 18, U.S. Code, Section 2?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that Count Four of the
13 superseding information charges you with falsifying books and
14 records of a broker dealer in violation of Title 15, Sections
15 78qa and 78ff, 17, Code of Federal Regulations, Section
16 240.17A-3, and Title 18, Section 2?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that Count Five of the
19 superseding information charges you with falsifying books and
20 records of an investment advisor in violation of Title 15, U.S.
21 Code, Sections 80b-4 and 80b-17, 17, CFR, Section 275.204-2 and
22 Title 18, U.S. Code, Section 2?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that Count Six of the
25 superseding information charges you with committing bank fraud

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1 in violation of Title 18, United States Code, Sections 1344 and
2 Title 18, United States Code, Section 2?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that the government
5 would have to prove each and every part or element of each of
6 these charges beyond a reasonable doubt at trial if you did not
7 plead guilty?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Mr. Moore, would you please explain the
10 matters that the government would have to prove if we were to
11 go to trial on the charges in the fourth superseding
12 information?

13 MR. MOORE: Yes, your Honor.

14 With regard to Counts One and Two, the conspiracy
15 counts, in order to prove the crime of conspiracy, the
16 government must establish each of the following elements beyond
17 a reasonable doubt: First, that the conspiracy charged in the
18 information existed, in other words, that there was in fact an
19 agreement or understanding to violate the laws of the United
20 States; second, that the defendant knowingly, willingly and
21 voluntarily became a member of the conspiracy charged; and,
22 third, your Honor, that any one of the conspirators, not
23 necessarily the defendant, knowingly committed at least one
24 overt act in the Southern District of New York in furtherance
25 of the conspiracy during the life of the conspiracy.

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1 With regard to Count Three, your Honor, the securities
2 fraud count, to establish a violation of Section 10B as charged
3 in Count Three of the information, the government must prove
4 each of the following elements:

5 First, that in connection with the purchase or sale of
6 securities, the defendant did any one or more of the following:
7 One, employed a device, scheme, or artifice to defraud; or,
8 two, made an untrue statement of a material fact or omitted to
9 state a material fact which made what was said under the
10 circumstances misleading; or, three, engaged in an act,
11 practice, or course of business that operated or would operate
12 as a fraud or deceit upon a purchaser or seller.

13 Second, your Honor, that the defendant you are
14 considering acted knowingly, willfully, and with the intent to
15 defraud.

16 And, third, that the defendant used or caused to be
17 used any means or instruments of transportation or
18 communication in interstate commerce or the use of the mails in
19 furtherance of the fraudulent conduct.

20 With regard to Count Four, falsifying books and
21 records of a broker dealer: First, the government must prove
22 beyond a reasonable doubt that at the time of the alleged
23 offense, Bernard L. Madoff Investment Securities, which I'll
24 refer to during the rest of these proceedings as BLMIS, was a
25 registered broker dealer; second, that BLMIS failed to make and

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1 keep certain accurate records as required under the SEC's rules
2 and regulations; third, that the defendant aided and abetted
3 BLMIS' failure to make and keep accurate records; and, fourth,
4 that the defendant acted knowingly and willfully.

5 With regard to Count Five, falsifying books and
6 records of an investment advisor, in order to prove this crime
7 beyond a reasonable doubt the government must: First, prove
8 that at the time of the alleged offense, BLMIS was in fact an
9 investment advisor; second, that BLMIS failed to make and keep
10 certain accurate records as required under the SEC's rules and
11 regulations; third, that the defendant aided and abetted BLMIS'
12 failure to make and keep accurate records; fourth, that the
13 defendant acted knowingly and willfully; and, fifth, the
14 offense involved the use of the mails and means of
15 instrumentalities of interstate commerce.

16 Finally, with regard, your Honor, with regard to Count
17 Six, the bank fraud count, the government must prove beyond a
18 reasonable doubt that: First, that at the time of the alleged
19 offense, the defendant executed or attempted to execute a
20 scheme or artifice to defraud a bank or that the defendant
21 executed or attempted to execute a scheme or artifice to obtain
22 money owned by or under the control or custody of that bank by
23 means of false or fraudulent pretenses, representations, or
24 promises; second, that the defendant engaged in the scheme or
25 artifice knowingly and willfully and with the specific intent

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1 to defraud the bank; and, third, and finally, your Honor, that
2 the bank involved was a federally-insured chartered
3 institution.

4 THE COURT: Thank you, Mr. Moore.

5 Mr. Kugel, do you understand the matters that the
6 government would have to prove if you did not plead guilty?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that the maximum
9 possible penalty for the crime charged in Count One of the
10 superseding information is five years of imprisonment, plus a
11 fine of the greatest of \$250,000, twice the gain resulting from
12 the offense or twice the loss to other people resulting from
13 the offense, plus a \$100 special assessment, plus full
14 restitution to all persons injured as a result of your criminal
15 conduct, plus three years of supervised release after your term
16 of imprisonment?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that the maximum
19 possible penalty for the crime charged in Count Two is five
20 years of imprisonment, plus a fine of the greatest of \$250,000,
21 twice the gain resulting from the offense, or twice the loss to
22 other people resulting from the offense, plus a \$100 special
23 assessment, plus full restitution to all persons injured as a
24 result of your criminal conduct, plus three years of supervised
25 release after your term of imprisonment?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that the maximum
3 possible penalty for the crime charged in Count Three is 20
4 years of imprisonment, plus a fine of the greatest of \$5
5 million, twice the gain resulting from the offense, or twice
6 the loss to other people resulting from the offense, plus a
7 \$100 special assessment, plus full restitution to all persons
8 injured as a result of your criminal conduct, plus three years
9 of supervised release after your term of imprisonment?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that the maximum
12 possible penalty for the crime charged in Count Four is 20
13 years of imprisonment, plus a fine of the greatest of \$5
14 million, twice the gain resulting from the offense, or twice
15 the loss to other people resulting from the offense, plus a
16 \$100 special assessment, plus full restitution to all persons
17 injured as a result of your criminal conduct, plus three years
18 of supervised release after your term of imprisonment?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that the maximum
21 possible penalty for the crime charged in Count Five is five
22 years of imprisonment, plus a fine of the greatest of \$250,000,
23 twice the gain resulting from the offense or twice the loss to
24 other people resulting from the offense, plus a \$100 special
25 assessment, plus full restitution to all persons injured as a

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1 result of your criminal conduct, plus three years of supervised
2 release after your terms of imprisonment?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that the maximum
5 possible penalty for the crime charged in Count Six is 30 years
6 of imprisonment, plus a fine of the greatest of \$1 million,
7 twice the gain resulting from the offense, or twice the loss to
8 other people resulting from the offense, plus a \$100 special
9 assessment, plus full restitution to all persons injured as a
10 result of your criminal conduct, plus five years of supervised
11 release after your term of imprisonment?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And do you understand that the maximum
14 possible combined penalty for the six crimes to which you
15 propose to plead guilty is 85 years of imprisonment, plus a
16 fine of \$11,750,000 or, if greater, the sums of the relevant
17 gains, losses, and statutory amounts relating to your offenses,
18 plus full restitution to all persons injured by your criminal
19 conduct, plus a \$600 mandatory special assessment, plus
20 supervised release for five years after your term of
21 imprisonment?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: I will now give you some information and
24 verify your understanding of the supervised release aspect of
25 the potential penalty. Supervised release means that you will

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1 be subject to monitoring when you are released from prison.
2 Terms and conditions will be imposed. If you violate any of
3 the set terms and conditions, you can be reimprisoned without a
4 jury trial. If you are on supervised release and you do not
5 comply with any of the set terms or conditions, you can be
6 returned to prison for the remainder of the term of supervised
7 release. You will be given no credit for the time that you
8 served in prison as a result of your sentence and no credit for
9 any time spent on postrelease supervision. For example, if you
10 received a prison term and then a three-year term of supervised
11 release and after you left prison you lived up to the terms of
12 supervised release for two years, but then you violated some
13 term of the supervised release, you could be returned to prison
14 for three whole years.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you also understand that if I accept
18 your guilty plea and adjudge you guilty, that adjudication may
19 deprive you of valuable civil rights, such as the right to
20 vote, the right to hold public office, the right to serve on a
21 jury, and the right to possess any kind of firearm if you
22 currently have or otherwise contain such rights?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that there are
25 sentencing guidelines that the Court must consider in

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1 determining your sentence?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Has your attorney discussed the sentencing
4 guidelines with you?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that in determining your
7 sentence the Court has an obligation to calculate the
8 applicable sentencing guideline range and must consider that
9 range, possible departures under the sentencing guidelines, and
10 other sentencing factors under the statute we referred to as
11 Section 3553(a)?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that if your attorney or
14 anyone else has attempted to estimate or predict what your
15 sentence will be, their estimate or prediction could be wrong?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you also fully understand that even if
18 your sentence is different from what your attorney or anyone
19 else told you it might be, or if it is different from what you
20 expect, you will still be bound to your guilty plea and you
21 will not be allowed to withdraw your guilty plea?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that the sentence to be
24 imposed will be determined solely by the Court and that I can
25 only determine the sentence to be imposed after the probation

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1 department prepares a presentence report?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that the Court has
4 discretion while taking into account the specific provisions
5 and policy statements in the guidelines to sentence you to any
6 number of years of imprisonment between zero and the combined
7 statutory maximums of 85 years?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Are you now serving any state or federal
10 sentence or are you being prosecuted for any other crime?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Do you understand that the superseding
13 information also includes a forfeiture allegation in which the
14 government asserts that you are required to forfeit to the
15 United States any and all property constituting or derived from
16 any proceeds that you obtained as a result of the crimes
17 charged in Counts One, Two, Three, Four, and Six, as well as
18 any and all property traceable to such property, including but
19 not limited to a sum of money representing the amount of
20 proceeds obtained as a result of said offenses, totaling
21 approximately \$3,585,000 as to each of Counts Two and Six, and
22 \$170 billion as to Counts one, Three, and Four?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Mr. Adelman, would you please show
25 Mr. Kugel the agreement which has been marked as Government

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1 Exhibit 1.

2 MR. ADELMAN: I have done so, your Honor.

3 THE COURT: Thank you.

4 Mr. Kugel, have you signed this agreement?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Did you read it before you signed it?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Did you discuss it with your attorney
9 before you signed it?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Did you fully understand the agreement
12 before you signed it?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Does the agreement reflect accurately your
15 complete and total understanding of the entire agreement
16 between the government, your attorney, and you?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Is everything that you understand about
19 your plea, cooperation, and sentence covered in this agreement?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Has anything been left out?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Has anyone made any promises to you other
24 than what's written in that agreement or threatened you or
25 forced you to plead guilty or to enter into the cooperation

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1 agreement?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Do you understand that even if the
4 government does not oppose or take a position on what your
5 attorney will ask as a sentence, I am free to impose whatever
6 sentence I believe is appropriate under the circumstances and
7 the applicable law, and you will have no right to withdraw your
8 plea?

9 THE DEFENDANT: Yes, your Honor.

10 (Continued on next page)

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1 THE COURT: Do you understand that the agreement
2 provides that you must cooperate fully with the office of the
3 United States Attorney, the Federal Bureau of Investigation,
4 and any other law enforcement agency designated by the United
5 States Attorney?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that the agreement does
8 not bind any federal, state, or local prosecuting authority
9 other than the United States Attorney?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that the agreement
12 provides that if the United States Attorney determines that you
13 have provided substantial assistance in the investigation or
14 prosecution and if you have fully complied with the
15 understandings specified in the agreement, the United States
16 Attorney will file a motion, pursuant to Section 5K1.1 of the
17 Sentencing Guidelines, requesting that the Court sentence in
18 light of the factors set forth in Section 5K5.1(a)?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that the factors that
21 the Court may consider in this connection include the
22 significance and usefulness of your assistance, taking into
23 account the government's evaluation of your assistance, the
24 truthfulness, completeness and reliability of any information
25 or testimony you provided, the nature and extent of your

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1 assistance, any injuries suffered or any danger or risk of
2 injury to you or to your family as a result of your assistance,
3 and the timeliness of your assistance? Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that even if the United
6 States Attorney files such a motion, the sentence to be imposed
7 on you remains within the sole discretion of the Court?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that you will not be
10 entitled to withdraw your guilty plea even if the Court denies
11 the government's motion?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that if the United
14 States Attorney determines that you have not provided
15 substantial assistance in an investigation or prosecution, or
16 that you have violated any provision of the agreement, the
17 United States Attorney is not obliged to file a motion under
18 Section 5K1.1 of the Sentencing Guidelines?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that you will not be
21 entitled to withdraw your guilty plea even if the United States
22 Attorney does not file the motion?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that your agreement
25 provides that if you commit any further crimes, or if it is

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1 determined that you gave false, incomplete, or misleading
2 testimony or information, or otherwise violated any provision
3 of the agreement, you will be subject to prosecution for any
4 federal violations of which the United States Attorney has
5 knowledge, including perjury and obstruction of justice?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that your agreement
8 provides that if you commit any further crimes, or if it is
9 determined that you gave false, incomplete or misleading
10 testimony or information, or otherwise violated any provision
11 of the cooperation agreement, all statements made by you to the
12 United States Attorney or other designated law enforcement
13 agents and any testimony given by you before a grand jury or
14 other tribunal may be admissible in evidence in any criminal
15 proceedings against you?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that your agreement also
18 provides that you may not assert a claim that such statements
19 should be suppressed from evidence and that you have waived
20 your right to claim that such statements should be suppressed?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand that page 3 of the plea
23 agreement includes your agreement to forfeit to the United
24 States any and all property constituting and derived from any
25 proceeds that you obtained as a result of the unlawful

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1 activities charged in Counts One, Three and Four of the
2 Superseding Information, including, but not limited to, a sum
3 equal to \$170 billion, and also to forfeit any and all property
4 constituting and derived from any proceeds that you obtained as
5 a result of the unlawful activities charged in Counts Two and
6 Six of the Information, including, but not limited to, a sum of
7 money equal to \$3,585,000 as to each count, as well as your
8 right, title and interest in the specific property identified
9 in the agreement?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that you are
12 specifically agreeing that the amount to be forfeited includes,
13 but is not limited to, a sum of money equal to \$170,007,175,000
14 in United States currency as well as the specific property and
15 that a judgment will be entered against you for at least that
16 amount?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that you are not
19 obligated to admit the forfeiture allegation?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that you are not obliged
22 to agree to the forfeiture amount with the government?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And do you understand that it is up to the
25 Court to make a final determination as to forfeiture?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that any amount that you
3 do forfeit will not be credited toward any fines, restitution,
4 cost of imprisonment, or other additional penalty that the
5 court may impose on you?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you still wish to plead guilty pursuant
8 to this agreement?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Mr. Adelman, do you know of any valid
11 reason why Mr. Kugel would prevail at trial?

12 MR. ADELMAN: I do not, your Honor.

13 THE COURT: Do you know of any reason why he should
14 not be permitted to plead guilty?

15 MR. ADELMAN: I do not.

16 THE COURT: Mr. Kugel, would you please stand now and
17 tell me what you did that makes you guilty of the six crimes
18 charged in the Fourth Superseding Information?

19 THE DEFENDANT: Yes, your Honor.

20 Your Honor, I stand before you ready to plead guilty
21 to the six counts in the Information filed against me, and to
22 accept responsibility for what I have done. I am deeply sorry
23 for my actions and the harm suffered by the victims. I want
24 the Court and everyone to know that I will do all I can to
25 cooperate with the government.

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1 As to Counts One, Three, Four and Five, I provided
2 historical trade information to other BLMIS employees, which
3 was used to create false, profitable trades in the Investment
4 Advisory clients' accounts at BLMIS. Specifically, beginning
5 the early '70s, until the collapse of BLMIS in December 2008, I
6 helped create fake, backdated trades. I provided historical
7 trade information -- sorry --first to Annette Bongiorno, and
8 later to Joanne Crupi, and others which enabled them to create
9 fake trades that, when included on the account statements and
10 trade confirmations of Investment Advisory clients, gave the
11 appearance of profitable trading when in fact no trading had
12 actually occurred. I helped Bongiorno, Crupi and others create
13 these fake, backdated trades based on historical stock prices
14 and were executed only on paper.

15 Many of these false trades were based on trades that
16 previously had been used in the Proprietary Trading operations
17 at BLMIS. I was aware that the trades would be reported to
18 BLMIS customers on their monthly statements and trade
19 confirmations, and that the information was false.

20 I did this at the Madoff offices in Manhattan and
21 known that many of the account statements and trade
22 confirmations were mailed to clients from the offices in
23 Manhattan.

24 I therefore plead guilty to the crimes alleged against
25 me in Count One, Three, Four and Five. I did conspire with

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1 other BLMIS employees to commit these crimes and, in fact, they
2 were committed, in violation of the law.

3 Finally, as to Count Two and Six, I acknowledge that
4 from at least from 2002 through 2007, on several occasions, I
5 caused false financial information to be submitted to various
6 financial institutions on my behalf and on behalf of other
7 potential borrowers. The false financial information was
8 submitted in connection for applications for mortgage loans.

9 I asked Joann Crupi to prepare documents that did not
10 accurately reflect my assets and the assets of others at BLMIS
11 and she did so. Those documents overstated the total value of
12 my own and the other potential borrowers' holdings in accounts
13 at BLMIS. These fake documents were submitted to financial
14 institutions on my behalf and on behalf of other potential
15 borrowers.

16 The false documents were prepared at BLMIS offices in
17 Manhattan and submitted to federally-insured lenders by U.S.
18 mail or wire transmissions.

19 THE COURT: Thank you. I have a couple of questions
20 for you.

21 You used the term "conspired" in relation to Counts
22 One, Three, Four and Five. What do you mean by that?

23 THE DEFENDANT: When I conspired, I worked together
24 with them to create the false trades that appeared on the
25 Investment Advisory clients' statements and confirmations,

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1 pursuant to agreement and understanding.

2 THE COURT: You had an agreement and understanding
3 with the other individuals you mentioned in order to create the
4 false trades?

5 THE DEFENDANT: That applied to historical
6 information, yes.

7 THE COURT: And you said that the customer information
8 regarding the false trades was mailed in the regular Postal
9 system, is that correct?

10 THE DEFENDANT: To the best of my knowledge, yes.

11 THE COURT: And the financial institutions to which
12 the false mortgage information, application information, was
13 given were banks; is that your understanding?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Is it your understanding that they were
16 federally-insured banks?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And when you were dealing with the false
19 trading history information and the false financial
20 information, did you know that that information was false?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And did you know that what you were doing
23 was wrong and unlawful?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Does the government have any further

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1 requests for factual matters to be addressed in Mr. Kugel's
2 plea allocution?

3 MR. MOORE: No. Thank you, your Honor.

4 THE COURT: Mr. Adelman -- actually, before we do
5 that, Mr. Moore, would you please summarize the government's
6 evidence against Mr. Kugel?

7 MR. MOORE: Certainly, your Honor.

8 Had this case proceeded to trial --

9 THE COURT: You will have to get up again in a minute
10 but it is your choice.

11 MR. MOORE: My apologies, your Honor.

12 Had this case proceeded to trial, the government would
13 have proven through testimony and evidence beyond a reasonable
14 doubt the facts set forth in the Superseding Information.

15 Specifically, the government would have proven, with
16 respect to Counts One, Three, Four and Five of the Information,
17 that Mr. Kugel was employed at the Bernard L. Madoff Investment
18 Securities LLC, or "BLMIS," from in or about 1970 through at
19 least on or about December 11, 2008. BLMIS was both an
20 investment advisor and a market maker, your Honor.

21 Beginning in or about the 1970s, Kugel was a trader in
22 BLMIS's Proprietary Trading and Market Making operations. In
23 or about the late 1990s, your Honor, Mr. Kugel assumed a
24 managerial position on the trading floor and later took on the
25 role of Trading Floor Compliance Analyst. Beginning in or

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1 about the early 1970s until the collapse of BLMIS in 2008,
2 Mr. Kugel helped create fake, backdated trades for Mr. Madoff's
3 Investment Advisory, or the "IA," business with his
4 codefendants, Annette Bongiorno, Joann Crupi, as well as other
5 individuals, your Honor. These fake, backdated trades -- many
6 of which mimicked actual trades executed in connection with the
7 Proprietary Trading operation -- were used to deceive the
8 clients of the IA business and to give the appearance that
9 actual trading occurred when, as Mr. Kugel and others well
10 knew, no trading occurred at all in the IA account.

11 Beginning in or about the early 1970s, Bongiorno
12 requested from Kugel backdated arbitrage trades to be used in
13 Investment Advisory clients' accounts. On a regular basis,
14 when the IA business had received money that was to be
15 invested, Bongiorno told Kugel the amount of funds that she had
16 available to purportedly invest on behalf of IA clients, which
17 was typically in the millions of dollars. In response,
18 Mr. Kugel provided Bongiorno historical information from which
19 she created the fake trades. Specifically, Mr. Kugel, using
20 historical stock prices from the Wall Street Journal and other
21 sources, he provided Bongiorno with the name of the stocks, the
22 buy and sell dates of potential trades, as well as the
23 historical price ranges of those stocks of the respective dates
24 that she could use to make a profit. Often, this information
25 mimicked trades previously executed in connection with limited

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1 Proprietary Trading operation.

2 Mr. Kugel also gave Ms. Bongiorno the total volume of
3 shares traded in particular stocks on certain dates so she
4 would not exceed a particular stock's daily trading volume when
5 creating the fake trades. Using the information provide to her
6 by Kugel, Bongiorno then selected the particular stocks and
7 historical purchase prices from the price ranges given to her
8 by Mr. Kugel. Bongiorno selected different stocks and purchase
9 prices to be used for each IA client in order to meet the rate
10 of return predetermined by Madoff for that client. In doing
11 so, Ms. Bongiorno calculated the number of shares that would
12 have to be used in each IA client's account, based on both the
13 amount of money the client had available to invest and the
14 predetermined rate of return for each client as determined by
15 Madoff.

16 Beginning in or about the early 1990s, Mr. Kugel
17 similarly provided Ms. Crupi with historical price information
18 to enable Crupi to create false, backdated arbitrage trades for
19 IA clients. Using the information provide by Kugel, Crupi then
20 selected the particular stock and historical purchase prices to
21 be used for each IA client in order to meet the rate of return
22 predetermined by Madoff for that client. In doing so, Crupi
23 calculated the number of shares that would have to be used in
24 each IA client's account based on both the amount of money the
25 client had to invest and the rate of return predetermined by

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1 Madoff.

2 In or about the mid-1990s, your Honor, Crupi took over
3 the role of Kugel in selecting the historical information
4 needed for the fake arbitrage deals. In doing so, Crupi
5 selected the name of the stocks, the buy and sell date of a
6 potential trade, as well as the historical price range for that
7 date that she could use to make a profit. Crupi then created
8 fake, backdated arbitrage trades that were executed on paper
9 only in the IA clients' accounts.

10 With respect to Counts Two and Six, your Honor, the
11 government would have proven that, separate and apart from the
12 fake trades that Kugel, Bongiorno, Crupi, and others created at
13 BLMIS, Kugel, with the assistance of Ms. Crupi and others, also
14 defrauded numerous financial institutions in order to obtain
15 loans using artificially-inflated financial information. On
16 multiple occasions, Mr. Kugel and Crupi submitted false and
17 misleading information concerning Kugel's assets and the assets
18 of others to financial institutions in order to obtain loans
19 for the purchase and construction of homes for Kugel and
20 others. With the assistance of Crupi and others, Kugel and
21 others obtained multiple million-dollar loans based on the
22 submission of this fraudulent information.

23 THE COURT: Thank you.

24 Mr. Kugel, how do you now plead to the charge against
25 you in Count One of the Fourth Superseding Information, not

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1 guilty or guilty?

2 THE DEFENDANT: Guilty, your Honor.

3 THE COURT: How do you now plead to the charge against
4 you in Count Two, not guilty or guilty?

5 THE DEFENDANT: Guilty, your Honor.

6 THE COURT: How do you now plead to the charge against
7 you in Count Three, not guilty or guilty?

8 THE DEFENDANT: Guilty, your Honor.

9 THE COURT: How do you now plead to the charge against
10 you in Count Four, not guilty or guilty?

11 THE DEFENDANT: Guilty, your Honor.

12 THE COURT: How do you now plead to the charge against
13 you in Count Five, not guilty or guilty?

14 THE DEFENDANT: Guilty, your Honor.

15 THE COURT: And how do you now plead to the charge
16 against you in Count Six, not guilty or guilty?

17 THE DEFENDANT: Guilty, your Honor.

18 THE COURT: Are you pleading guilty to each of these
19 charges because you are in fact guilty of each of these
20 charges?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Are you pleading guilty voluntarily and of
23 your own free will?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Mr. Adelman, would you please show

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1 Mr. Kugel Court Exhibit 1, the advice of rights form.

2 MR. ADELMAN: I have done so, your Honor.

3 THE COURT: Thank you.

4 Mr. Kugel, have you signed this form?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Did you read it before you signed it?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Did you understand it before you signed
9 it?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Did you discuss it with your attorney
12 before you signed it?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Mr. Adelman, did you also review and sign
15 Court Exhibit 1?

16 MR. ADELMAN: Yes, your Honor.

17 THE COURT: Mr. Adelman, are there any other questions
18 that you believe I should ask Mr. Kugel in connection with his
19 plea?

20 MR. ADELMAN: No, ma'am.

21 THE COURT: Mr. Moore, are there any other questions
22 that you believe I should ask Mr. Kugel in connection with his
23 plea?

24 MR. MOORE: No. Thank you, your Honor.

25 THE COURT: Mr. Kugel, you have acknowledged that you

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1 are guilty as charged in the Information. I find that you know
2 your rights and that you are waiving them voluntarily.

3 Because your plea is entered knowingly and voluntarily
4 and is supported by an independent basis in fact, containing
5 each of the essential elements of each of the offenses, I
6 accept your guilty plea and I adjudge you guilty of the
7 offenses charged in Counts One, Two, Three, Four, Five and Six
8 of the Fourth Superseding Information, to which you have pled
9 guilty.

10 You can be seated now. Thank you.

11 Mr. Adelman, do you wish to be present for any
12 interview of Mr. Kugel in connection with the preparation of
13 the presentence report?

14 MR. ADELMAN: Yes, ma'am.

15 THE COURT: I will make that direction.

16 MR. ADELMAN: Thank you.

17 THE COURT: Do the parties have a particular request
18 with respect to the setting of a sentencing date?

19 MR. MOORE: Your Honor, the government requests a
20 sentencing control date for six months from now and that a
21 presentence report not be ordered at this time.

22 THE COURT: Ms. Ng, may I have a date, please?

23 THE CLERK: Friday, May 4th, 2012, at 11 a.m.

24 THE COURT: May 4th at 11 a.m.?

25 THE CLERK: Yes.

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1 THE COURT: The sentencing control date is set for
2 May 4th at 11 a.m.

3 Will the government inform the Court and the defense
4 at such time that it believes that it is appropriate to prepare
5 a presentence report?

6 MR. MOORE: We will, your Honor.

7 THE COURT: Thank you.

8 Counsel, when it does come time for sentencing, please
9 be certain to give any comments or objections promptly to the
10 Probation Office, and to make your sentencing submissions in a
11 manner consistent with my sentencing submission procedures,
12 which are posted on the court's website and they are also
13 available here in hard copy.

14 Mr. Kugel, at some point the Probation Office will be
15 preparing a presentence report to assist me in sentencing you.
16 You will be interviewed by the Probation Office. It is
17 important that the information that you give to the probation
18 officer be truthful and accurate. The report is important in
19 what my decision is as to what your sentence will be.

20 You and your attorney have the right and will have an
21 opportunity to examine the report, to challenge or comment on
22 it, and to speak on your behalf before sentencing. Failing to
23 be truthful with the Probation Office and the Court may have an
24 adverse effect on your sentence and may subject you to
25 prosecution.

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1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Now, I understand that there is a --
4 actually, we need to deal with bail conditions, and we also
5 need to deal with the documents that I have been given relating
6 to forfeiture.

7 Is it the parties' request that I sign today the
8 Preliminary Order of Forfeiture and also the Stipulation and
9 Order relating to forfeiture issues?

10 MR. MOORE: Yes, your Honor. Thank you.

11 THE COURT: Any objection from the defense?

12 MR. BLUMENTHAL: No, your Honor.

13 THE COURT: And am I to sign the full and redacted
14 copy?

15 MR. SCHWARTZ: Yes, your Honor. Of course, we ask
16 that only the redacted versions be docketed.

17 THE COURT: Yes. And that the full version be filed
18 under seal?

19 MR. SCHWARTZ: Please, yes. The redactions are in
20 accordance with the court's local rules.

21 THE COURT: So relating to the privacy rules.

22 MR. SCHWARTZ: Correct. It is financial accountant
23 information and the names of minors.

24 THE COURT: Thank you.

25 (Pause)

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1 Ms. Ng will take care of the entry of those orders.

2 I have reviewed the Pretrial Services' report. Do the
3 parties have a joint application and recommendation with
4 respect to bail pending sentencing?

5 MR. MOORE: Yes, your Honor.

6 In light of Mr. Kugel's cooperation, his full
7 disclosure of his financial assets and his dealings that limits
8 to the government, we are satisfied that he will follow the
9 rules set forth by Pretrial Services in accordance with the
10 proposed bail package we are prepared to present to the Court
11 at this time.

12 Namely, we respectfully submit to you, your Honor,
13 that the defendant's bail be set at a \$3 million personal
14 recognizance bond to be secured by six financially-responsible
15 persons and \$900,000 in cash or property. This property will,
16 of course, have to be clean assets, wholly unaffiliated with
17 BLMIS.

18 We further request that the defendant be subject to
19 strict pretrial supervision, and that his travel be restricted
20 to the Southern District of New York, the Eastern District of
21 New York and the District of New Jersey.

22 We further request that he surrender all of his travel
23 documents and make no new travel applications. We ask that
24 this restriction also apply to his wife. In light of the
25 holiday this week, your Honor, we request that the defendant

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1 have until Thursday, December 1st, to meet these conditions.

2 To date, the government has already met with a number
3 of the defendant's proposed suriters and has been satisfied
4 with their financial and personal qualifications. These
5 persons include close family members and friends of the
6 defendant who have known him for decades and present strong
7 moral suasion over the defendant to follow the conditions of
8 his release.

9 The defendant has been working with our office and the
10 FBI for quite some time now, your Honor. During this time he
11 has been both been reliable, timely in making his appointments,
12 and flexible with his schedule when the government requested
13 meetings with him.

14 The defendant is a long-time resident on Long Island,
15 and his family resides in that district, in the Southern
16 District of New York and the District of New Jersey. Moreover,
17 your Honor, the defendant currently helps assist his elderly
18 mother with her care, and that includes bringing her to visit
19 his brother, who resides in the District of New Jersey.
20 Currently, this is his primary job responsibility.

21 As part of the cooperation process, your Honor, the
22 defendant has filled out financial affidavits and worked with
23 our Asset Forfeiture Unit at the U.S. Attorney's Office,
24 detailing the amounts and whereabouts of all of his assets. He
25 has worked closely with Mr. Schwartz in that regard, and has

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1 fully accepted the fact that he must forfeit the vast majority
2 of his assets.

3 As your Honor is aware, and I believe as the Court has
4 issued today or will be issuing shortly, our Asset Forfeiture
5 unit has presented forfeiture papers for your review in which
6 the defendant has agreed to a forfeiture amount of over \$170
7 billion. And as part of that forfeiture, your Honor, the
8 defendant has agreed to give up his home, luxury vehicle,
9 monies maintained in several financial institutions, and other
10 specific assets detailed in the papers before your Honor.

11 The government does not believe the defendant is a
12 danger to the community.

13 For all of these reasons, your Honor, the government
14 believes that the proposed bail package is reasonable and
15 appropriate in this case for this individual defendant.

16 THE COURT: And the government believes, I take it,
17 based on its thorough review of the financial situation and its
18 dealings with Mr. Kugel over a lengthy period of time, that the
19 evidence is clear and convincing that the package that has been
20 proposed, including the delayed satisfaction of all of the
21 particulars of the package, is sufficient to address the
22 societal interests in proper appearance for proceedings in this
23 case and protection of the public?

24 MR. MOORE: We do, your Honor.

25 THE COURT: Thank you.

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1 Did Pretrial Services wish to be heard further on
2 this?

3 MR. STEIMEL: No, your Honor. We stand by our report.

4 THE COURT: Thank you.

5 And the defense has no objection to the set of
6 conditions?

7 MR. ADELMAN: No, ma'am. I was just going to endorse
8 them by pointing out that Mr. Kugel, aside from these financial
9 considerations, is closely tied to his family, all of whom are
10 here in New York. His brother and sister are going to be
11 suriters. The brother is a dentist in New Jersey.

12 He is in contact with his aged mother on a frequent
13 basis. His goal is to help her when she needs help. His
14 daughter and son are here. His grandchildren are here. He has
15 no connections anywhere else in the world. I have the
16 passports of Mr. and Mrs. Kugel with me to surrender to the
17 court. And I endorse the proposal that has been made.

18 Your Honor doesn't have to hear this now, and I
19 apologize. At some point in time I will be requesting travel
20 permission for Mr. Kugel to go to Florida. He has a piece of
21 real estate, a house there, that he is obliged to sell to raise
22 funds for the forfeiture. He is going to be the one selling
23 it, not the government, and he has his personal property there.
24 So I will be in communication with your Honor to ask for such a
25 trip, and I expect you will remember what I just told you today

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1 in ruling on the application.

2 THE COURT: I have listened carefully to what you just
3 told me. I would simply ask that you speak -- before you make
4 the communication to my chambers, that you verify that there is
5 no objection to it from the government, from the Probation
6 Department, and that you write a letter reciting those
7 communications and the positions of those two aspects of the
8 institution.

9 MR. ADELMAN: Yes, your Honor.

10 THE COURT: All right, then.

11 I am going to prepare a bail disposition sheet. I'm
12 sorry.

13 MR. STEIMEL: Your Honor, I'm sorry --

14 THE COURT: It is Pretrial Services, not Probation?

15 MR. STEIMEL: Yes, your Honor.

16 Just one clarification. I know that defense counsel
17 indicated that the wife's passport was also going to be ordered
18 seized or surrendered to Pretrial Services. I was not clear
19 actually -- I'm not sure if I heard you say whether the wife's
20 passport was also supposed to be surrendered. Did you order
21 that?

22 THE COURT: I am going to. It was in the list of
23 conditions that -- I'm sorry, am I interrupting you?

24 MR. MOORE: No. I'm just saying you hadn't issued
25 your decision yet.

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1 THE COURT: It was part of the package as described by
2 Mr. Moore.

3 And so what I was about to say was that I find, based
4 on the review of the Pretrial Services' report and all of the
5 representations that have been made to the Court, that the
6 package as proposed is appropriate and sufficient to address
7 the statutory concerns of appearance and protection of the
8 community. Accordingly, I will approve release pending
9 sentencing on the basis of these conditions.

10 Now I am going to prepare a bail disposition sheet on
11 which I will summarize the conditions. I will read out to make
12 sure that everyone agrees that I have reflected the appropriate
13 conditions. So if you will bear with me, I will do that.

14 MR. ADELMAN: Your Honor, may I have a moment to
15 consult with my brother and sister here?

16 THE COURT: Yes, you may.

17 MR. ADELMAN: Thank you.

18 (Pause)

19 THE COURT: This is what I have written.

20 \$3 million PRB with six FRPs; 900,000 security in cash
21 and property (not derived from BLMIS or any activity that is
22 the subject of the charges); strict supervision; travel
23 restricted to S.D.N.Y., EDNY, DNJ; surrender passports of
24 defendant and spouse, and no new applications. All conditions
25 must be met by December 1, 2011.

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1 Does that cover it?

2 MR. MOORE: Yes, your Honor.

3 MR. ADELMAN: Yes, your Honor. The only -- I don't
4 anticipate him not being compliant by December 1, but if there
5 is one piece that is missing or it will come in the next day, I
6 will come back to your Honor and advise.

7 THE COURT: Yes. If you need to, you can make an
8 application for an extension of the deadline, but this is the
9 deadline that I am putting in today.

10 MR. ADELMAN: Yes.

11 THE COURT: All right. Let me print the copies.

12 (Pause)

13 THE COURT: Mr. Kugel.

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Did you hear the conditions that I had set
16 for your bail?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that you must comply
19 strictly with all of those conditions, and that the violation
20 of any of those conditions may result in the issuance of a
21 warrant for your arrest, the revocation of your release, or
22 other sanctions?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: The Pretrial Services Department will be
25 going over the details of all of the conditions with you.

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1 Counsel, is there anything further that we need to
2 address together this afternoon?

3 MR. MOORE: Nothing from the government, your Honor.

4 MR. ADELMAN: Nor from the defense.

5 THE COURT: All right. Thank you. We are all
6 adjourned.

7 MR. MOORE: Thank you, your Honor.

8 MS. BARONI: Thank you, your Honor.

9 THE CLERK: All rise.

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Exhibit 8

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PLEA

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA, New York, N.Y.

4 v. S5 Cr. 0228 (LTS)

5 ENRICA COTELLESSA-PITZ,

6 Defendant.

7 -----x

8 December 19, 2011
9 2:55 p.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 BY: LISA A. BARONI
17 JULIAN J. MOORE
17 MATHEW SCHWARTZ

18 Assistant United States Attorneys

18 TIMOTHY J. TREANOR

19 DAVID M. RODY

20 Attorneys for Defendant

21 - also present -

22 SA Jared Thompson, FBI

22 SA Paul Takla, FBI

23 P.O. Jeffrey Steimel

24
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1 THE COURT: Good afternoon. Would everyone other than
2 the lawyers please be seated.

3 THE CLERK: This case is United States of America
4 versus Enrica Cotellessa-Pitz.

5 MS. BARONI: Good afternoon, your Honor. Lisa Baroni
6 for the government. With me is Julian Moore and Matthew
7 Schwartz from the U.S. Attorney's office and Special Agents
8 Jared Thompson and Paul Takla from the FBI.

9 THE COURT: Good afternoon, Ms. Baroni, Mr. Moore, Mr.
10 Schwartz, Agents Thompson and Takla.

11 MR. MOORE: Good afternoon, your Honor.

12 MR. TREANOR: Tim Treanor and David Rody for Enrica
13 Cotellessa-Pitz. Good afternoon, your Honor.

14 THE COURT: Good afternoon, Mr. Treanor, Mr. Rody, and
15 good afternoon, Ms. Cotellessa-Pitz.

16 This is Ms. Cotellessa-Pitz's first appearance, is
17 that correct?

18 MR. TREANOR: Yes, your Honor.

19 THE DEFENDANT: Yes.

20 MR. TREANOR: Yes, your Honor.

21 THE COURT: So let's address the advice of rights
22 first.

23 And good afternoon everyone. Thank you all for coming
24 to court.

25 Would you please stand, Ms. Cotellessa-Pitz.

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1 Please state your full name.

2 THE DEFENDANT: Enrica Cotellessa-Pitz.

3 THE COURT: And how old are you, ma'am?

4 THE DEFENDANT: 53.

5 THE COURT: I will now explain certain rights that you
6 have under the Constitution of the United States.

7 You have the right to remain silent. You need not
8 make any statement. Even if you have already made statement to
9 the authorities, you need not make any additional statements.
10 Any statements that you do make can be used against you.

11 Do you understand these rights?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: You have the right to be released either
14 conditionally or unconditionally pending trial unless I find
15 that there are no conditions that would reasonably assure your
16 presence at future court hearings and the safety of the
17 community. If the government were to ask me to detain you
18 pending trial, you are entitled to a prompt hearing on whether
19 such conditions exist.

20 Do you understand this right?

21 THE DEFENDANT: Yes.

22 THE COURT: You have the right to be represented by an
23 attorney today and at all future proceedings in this case, and
24 if you are unable to afford an attorney, I will appoint an
25 attorney to represent you.

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1 Do you understand these rights?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you wish to have and are you able to
4 obtain and afford counsel on your own?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Have you retained Messrs. Treanor and Rody
7 to represent you?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Are you a citizen of the United States?

10 THE DEFENDANT: Yes.

11 THE COURT: The document that contains the charges
12 against you is called an information. It has been issued by
13 the United States Attorney. You have a constitutional right to
14 be charged by an indictment rather than by an information. An
15 indictment would be a charge issued from a grand jury.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Mr. Treanor, do you have the Waiver of
19 Indictment form there, and would you show it to
20 Ms. Cotellessa-Pitz?

21 MR. TREANOR: Yes, your Honor.

22 THE COURT: Thank you.

23 Ms. Cotellessa-Pitz, have you signed this waiver of
24 indictment?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Did you read it before you signed it?

2 THE DEFENDANT: Yes.

3 THE COURT: Did you understand it before you signed

4 it?

5 THE DEFENDANT: Yes.

6 THE COURT: And did you discuss it with your attorneys
7 before you signed it?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that if you did not
10 waive indictment, if the government wanted to prosecute you on
11 the charges that are in the Information, it would have to
12 present those charges to a grand jury, which might or might not
13 indict you on them?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that you are under no
16 obligation to waive indictment?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that by waiving
19 indictment you are giving up your right to have these charges
20 presented to a grand jury?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand what a grand jury is?

23 THE DEFENDANT: Yes.

24 THE COURT: Did anyone give you anything or make any
25 threat or promises to get you to waive indictment?

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THE DEFENDANT: No.

THE COURT: Have you seen a copy of the Fifth Superseding Information that has number S5 10 Criminal 228 at the top?

THE DEFENDANT: Yes.

THE COURT: Have you read it?

THE DEFENDANT: Yes.

THE COURT: Have you discussed it with your attorneys?

THE DEFENDANT: Yes.

THE COURT: Do you understand the charges against you that are detailed in the Information?

THE DEFENDANT: Yes.

THE COURT: If you want me to, I can read the Information out loud for you here in court.

Do you want me to read it to you?

THE DEFENDANT: No, your Honor.

THE COURT: Are you taking any medication or suffering from any condition that affects your ability to think clearly?

THE DEFENDANT: No.

THE COURT: Is your mind clear today?

THE DEFENDANT: Yes.

THE COURT: Are you feeling well physically today?

THE DEFENDANT: Yes.

THE COURT: Do you feel comfortable making important decisions for yourself today?

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1 THE DEFENDANT: Yes.

2 THE COURT: In the past 24 hours, have you taken any
3 drugs, medicine or pills or drunk any alcohol?

4 THE DEFENDANT: Just my prescription medications.

5 THE COURT: And did you take those medications on
6 schedule?

7 THE DEFENDANT: Yes.

8 THE COURT: Does any of those medications affect your
9 ability to think clearly?

10 THE DEFENDANT: No.

11 THE COURT: I find that Ms. Cotellessa-Pitz's Waiver
12 of Indictment is knowing and voluntary, and I accept it and I
13 so order it.

14 How do you intend to plead to the charges against you
15 that are in that Information, not guilty or guilty?

16 THE DEFENDANT: Guilty.

17 THE COURT: Now, Ms. Cotellessa-Pitz, you can have a
18 seat for a moment. I have a couple of questions for counsel.

19 Mr. Treanor, this plea is pursuant to the agreement
20 that has been marked as Government Exhibit 1, is that correct?

21 MR. TREANOR: That is correct, your Honor.

22 THE COURT: And it is a letter addressed to you and
23 Mr. Rody dated today -- the printed date, I'm sorry, not today,
24 December 15th, last Thursday, at the top, is that correct?

25 MR. TREANOR: That is correct.

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1 THE COURT: And the advice of rights form has also
2 been executed and marked as Court Exhibit 1, is that correct?

3 MR. TREATOR: Yes, your Honor.

4 THE COURT: Thank you. Ms. Baroni or Mr. Moore, would
5 you make a statement regarding victim notification in
6 connection with this proceeding?

7 MS. BARONI: Yes, your Honor.

8 Last Thursday, on December 15th, we sent a letter to
9 your Honor outlining the proposed charges against
10 Ms. Cotellessa-Pitz, and advising your Honor that she would
11 plead guilty pursuant to a cooperation agreement with the
12 government. On that date we posted that letter on the
13 government's website on a page dedicated to Madoff-related
14 cases for victim notification.

15 THE COURT: Thank you.

16 Ms. Cotellessa-Pitz, before I accept your guilty plea,
17 there are a number of questions that I must ask you while you
18 are under oath to assure that it is a valid plea. At times I
19 may cover a point more than once, and I may cover matters that
20 were also addressed in the advice of rights form that you have
21 seen, but if I do that will be because it is very important
22 that you understand what is happening here today.

23 If you don't understand something that I ask you,
24 please say so and I will reword the question or you may speak
25 with your attorneys.

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1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Please stand now to take the oath.

4 Ms. Ng, would you administer the oath, please.

5 THE CLERK: Please raise your right hand.

6 (The defendant was sworn)

7 THE COURT: Would you please state your full name for
8 the record.

9 THE DEFENDANT: Enrica Cotellessa-Pitz.

10 THE COURT: Do you understand that you have solemnly
11 promised to tell the truth, and that if you answer any of my
12 questions falsely, your false or untrue answers may later be
13 used against you in another prosecution for perjury or making a
14 false statement?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: You can be seated for the next portion of
17 the proceeding.

18 Was the information that you gave me about your age
19 and your mental condition a little while ago completely true?

20 THE DEFENDANT: Yes.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: An undergraduate degree from college.

23 THE COURT: In what field.

24 THE DEFENDANT: Economics.

25 THE COURT: And what types of work have you done since
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1 finishing your final education?

2 THE DEFENDANT: I worked in the financial industry.

3 THE COURT: Are you able to speak, read and understand
4 the English language well?

5 THE DEFENDANT: Yes.

6 THE COURT: Counsel, does any of you have any doubt as
7 to Ms. Cotellessa-Pitz's competence to enter a guilty plea at
8 this time?

9 MR. TREATOR: No, your Honor.

10 MS. BARONI: No, your Honor.

11 THE COURT: Ms. Cotellessa-Pitz, your attorneys have
12 informed me that you -- and you actually have informed me
13 yourself that you wish to enter a guilty plea to the
14 Information. Do you wish to enter a plea of guilty?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Have you fully discussed your case with
17 your attorneys, including the charges to which you intend to
18 plead guilty and any defenses that you may have to those
19 charges?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Have you and your attorneys also discussed
22 the consequences of entering a guilty plea?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you satisfied with your attorneys and
25 their representation of you?

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1 THE DEFENDANT: Yes.

2 THE COURT: On the basis of Ms. Cotellessa-Pitz's
3 responses to my questions and my observations of her demeanor,
4 I find that she is fully competent to enter an informed plea at
5 this time.

6 Before I accept your plea, ma'am, I am going to ask
7 you some more questions. These questions are intended to
8 satisfy the Court that you wish to plead guilty because you are
9 in fact guilty and that you fully understand your rights and
10 the consequences of your plea.

11 Now I will describe certain right that you have under
12 the Constitution and laws of the United States. You will be
13 giving up these rights if you enter a guilty plea. Please
14 listen carefully. If you do not understand something that I am
15 saying or describing, stop me and I or your attorney will
16 explain it more fully.

17 Under the Constitution and laws of the United States,
18 you have the right to a speedy and public trial by a jury on
19 the charges against you that are in the Information. Do you
20 understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that you have the right
23 to plead not guilty and to continue to plead not guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: If there were a trial, you would be
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1 presumed innocent and the government would be required to prove
2 you guilty by competent evidence and beyond a reasonable doubt.
3 You would not have to prove that you were innocent at a trial.
4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: If there were a trial, a jury composed of
7 twelve people selected from this district would have to agree
8 unanimously in order to find you guilty. Do you understand
9 that?

10 THE DEFENDANT: Yes.

11 THE COURT: If there were a trial, and at all stages
12 leading up to it, you would have the right to be represented by
13 an attorney, and if you could not afford one, an attorney would
14 be provided to you free of cost. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: If there were a trial, you would have the
17 right to see and hear all of the witnesses against you and your
18 attorney could cross-examine them. You would also have the
19 right to have your attorney object to the government's evidence
20 and offer evidence on your behalf, if you so desired. In
21 addition, you would have the right to have witnesses required
22 to come to court to testify in your defense. And you would
23 have the right to testify yourself but you would not be
24 required to testify.

25 Do you understand all of that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that if there were a
3 trial and you decided not to testify, no adverse inference
4 could be drawn against you based on your decision not to
5 testify?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that if you were
8 convicted at a trial, you would have the right to appeal that
9 verdict?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand each and every one of
12 the rights that I've asked you about?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Do you have any questions about any of
15 these rights?

16 THE DEFENDANT: No.

17 THE COURT: Do you understand that by entering a
18 guilty plea today, you will be giving up each and every one of
19 these rights?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you also understand that you will be
22 giving up any possible claim that your constitutional rights
23 may have been violated?

24 THE DEFENDANT: Yes.

25 THE COURT: And do you understand that if you plead
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1 guilty you will have no trial?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that by pleading guilty
4 you will also have to give up your right not to incriminate
5 yourself, because I will ask you questions about what you did
6 in order to satisfy myself that you are guilty as charged and
7 you will have to admit and acknowledge your guilt?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that you can change your
10 mind right now and refuse to enter a plea of guilty? You do
11 not have to enter this plea if you do not want to for any
12 reason. Do you understand this fully?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you still wish to plead guilty?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Do you understand that Count One of the
17 Superseding Information charges you participating in a
18 conspiracy to, one, obstruct or impede the lawful government
19 functions of the Internal Revenue Service in the ascertainment,
20 assessment, computation and collection of income taxes; two,
21 falsified books and records of a broker-dealer; three,
22 falsified books and records of an investment advisor; and,
23 four, make false filings with the United States Securities and
24 Exchange Commission, all in violation of Title 18 of the United
25 States Code, Section 371?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that Count Two of the
3 Superseding Information charges you with falsifying books and
4 records of a broker-dealer, in violation of Title 15 of the
5 United States Code, Section 78qa and 78ff; Title 17 of the Code
6 of Federal Regulations, Section 240.17a-3, and Title 18 of the
7 United States Code, Section 2?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that Count Three of the
10 Superseding Information charges you with falsifying books and
11 records of an investment advisor, in violation of Title 15 of
12 the United States Code, Sections 80b-4 and 80b-17; Title 17 of
13 the Code of Federal Regulations, Section 275.204-2, and Title
14 18 of the United States Code, Section 2?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that Count Four of the
17 Superseding Information charges you making false filings with
18 the Securities and Exchange Commission, in violation of Title
19 15 of the United States Code, Sections 78q and 78ff; Title 17
20 of the Code of Federal Regulations, Sections 240.17a-5,
21 240.17a-13, and 210.2-01; as well as Title 18 of the United
22 States Code Section 2?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that the government
25 would have to prove each and every part, or element, of each of

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1 these charges beyond a reasonable doubt at a trial if you did
2 not plead guilty?

3 THE DEFENDANT: Yes.

4 THE COURT: Ms. Baroni or Mr. Moore, would you please
5 state for the record the elements that the government would
6 have to prove if we were to go to trial on these charges?

7 MS. BARONI: Yes, your Honor.

8 With respect to Count One, the conspiracy count, the
9 government would have to prove the following elements beyond a
10 reasonable doubt: First, that the conspiracy charged in the
11 Information existed, in other words, that there was in fact an
12 agreement or understanding to either violate the laws of the
13 United States or to defraud the United States; second, that the
14 defendant knowingly, willingly and voluntarily became a member
15 of the conspiracy; third, that any one of the conspirators, not
16 necessarily the defendant, knowingly committed at least one
17 overt act in the Southern District of New York in furtherance
18 of the conspiracy and during the life of the conspiracy.

19 With respect to Count Two, falsifying books and
20 records of a broker-dealer, in order to prove this crime the
21 government would have to prove beyond a reasonable doubt the
22 following elements: First, that at the time of the alleged
23 offense Bernard L. Madoff Investment Securities was a
24 registered broker-dealer; second, that BLMIS failed to make and
25 keep certain accurate records as required under the SEC's rules

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1 and regulations; third, that the defendant aided and abetted
2 BLMIS's failure to make and keep accurate records; and, fourth,
3 that the defendant acted knowingly and willfully.

4 With respect to Count Three, falsifying books and
5 records of an investment advisor, the government would have to
6 prove, first, that at the time of the alleged offense BLMIS was
7 an investment advisor; second, that BLMIS failed to make and
8 keep certain accurate records as required under the SEC's rules
9 and regulations; third, that the defendant aided and abetted
10 BLMIS's failure to make and keep accurate records; fourth, that
11 the defendant acted knowingly and willfully; and, fifth, that
12 the offense involved the use of mails and the means and
13 instrumentalities of interstate commerce.

14 And, finally, with respect to Count Four, making false
15 filings with the SEC, the government would have to prove,
16 first, that the defendant was required to file an application,
17 report or document with the SEC under the Securities Exchange
18 Act of 1934 and the rules and regulations thereunder; second --

19 THE COURT: The defendant personally or BLMIS?

20 MS. BARONI: The defendant or the BLMIS, actually,
21 your Honor.

22 That the application or report or document filed with
23 the SEC contained false or misleading statements; third, that
24 the false or misleading statements were material; and, fourth,
25 that the defendant acted knowingly and willfully.

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1 THE COURT: Thank you.

2 Ms. Cotellessa-Pitz, do you understand the matters
3 that the government would have to prove if you did not plead
4 guilty?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Do you understand that the maximum
7 possible penalty for the crime with which you are charged in
8 Count One is five years of imprisonment, plus a fine of the
9 greatest of \$250,000, twice the gain resulting from the offense
10 or twice the loss to other people resulting from the offense,
11 plus a \$100 special assessment, plus full restitution to all
12 persons injured as a result of your criminal conduct, plus
13 three years of supervised release after your term of
14 imprisonment?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that the maximum
17 possible penalty for the crime with which you are charged in
18 Count Two is 20 years of imprisonment, plus a fine of the
19 greatest of \$5 million, twice the gain resulting from the
20 offense or twice the loss to other people resulting from the
21 offense, plus a \$100 special assessment, plus full restitution
22 to all persons injured as a result of your criminal conduct,
23 plus three years of supervised release after your term of
24 imprisonment?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand that the maximum
2 possible penalty for the crime with which you are charged in
3 Count Three is five years of imprisonment, plus a fine of the
4 greatest of \$250,000, twice the gain resulting from the offense
5 or twice the loss to other people resulting from the offense,
6 plus a \$100 special assessment, plus full restitution to all
7 persons injured as a result of your criminal conduct, plus
8 three years of supervised release after your term of
9 imprisonment?

10 THE DEFENDANT: Yes.

11 THE COURT: And do you understand that the maximum
12 possible penalty for the crime with which you are charged in
13 Count Four is 20 years of imprisonment, plus a fine of the
14 greatest of \$5 million, twice the gain resulting from the
15 offense or twice the loss to other people resulting from the
16 offense, plus a \$100 special assessment, plus full restitution
17 to all persons injured as a result of your criminal conduct,
18 plus three years of supervised release after your term of
19 imprisonment?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that the maximum
22 possible combined penalty for the four crimes with which you
23 are charged is 50 years of imprisonment, plus a fine of the
24 greatest of -- plus a fine of \$10,500,000 or, if greater, the
25 sums of the relevant gains, losses and statutory amounts

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1 relating to your offenses, plus full restitution to all persons
2 injured by your criminal conduct, plus \$400 total mandatory
3 special assessment, plus supervised release for three years
4 after your term of imprisonment?

5 THE DEFENDANT: Yes.

6 THE COURT: I will now give you some information and
7 verify your understanding of the supervised release aspect of
8 the potential penalty.

9 Supervised release means that you will be subject to
10 monitoring when you are released from prison. Terms and
11 conditions will be imposed. If you violate any of the set
12 terms and conditions you can be reimprisoned without a jury
13 trial.

14 If you are on supervised release and you do not comply
15 with any of the set terms or conditions, you can be returned to
16 prison for the remainder of the term of supervised release, you
17 will be given no credit for the time that you served in prison
18 as a result of your sentence, and no credit for any time spent
19 on post-release supervision.

20 So, for example, if you received a prison term and
21 then a three-year term of supervised release and after you left
22 prison you lived up to the terms of supervised release for two
23 years but then you violated some term of the supervised
24 release, you could be returned to prison for three full years.

25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you also understand that if I accept
3 your guilty plea and adjudge you guilty, that adjudication may
4 deprive you of valuable civil rights such as the right to vote,
5 the right to hold public office, the right to serve on a jury,
6 and the right to possess any kind of firearm?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that there are
9 Sentencing Guidelines that the Court must consider in
10 determining your sentence?

11 THE DEFENDANT: Yes.

12 THE COURT: Has your attorney discussed the Sentencing
13 Guidelines with you?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that in determining your
16 sentence, the Court must calculate the applicable Sentencing
17 Guidelines' range and consider that range, possible departures
18 under the Sentencing Guidelines, and other sentencing factors
19 under Title 18 of the United States Code, Section 3553(a)?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that if your attorney or
22 anyone else has attempted to estimate or predict what your
23 sentence will be, their estimate or prediction could be wrong?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you also fully understand that even if
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1 your sentence is different from what your attorney or anyone
2 else told you it might be, or if it is different from what you
3 expect, you will still be bound to your guilty plea and you
4 will not be allowed to withdraw your guilty plea?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that the sentence to be
7 imposed will be determined solely by the Court, and that I can
8 only determine the sentence to be imposed after the Probation
9 Department prepares a presentence report?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that the Court has
12 discretion, while taking into account the specific provisions
13 and policy statements in the guidelines, to sentence you to any
14 number of years of imprisonment between zero and the combined
15 statutory maximums of 50 years?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you now serving any state or federal
18 sentence, or are you being prosecuted for any other crime?

19 THE DEFENDANT: No.

20 THE COURT: Do you understand that the Superseding
21 Information also includes a forfeiture allegation in which the
22 government asserts that you are required to forfeit to the
23 United States all property, real and personal, that constitutes
24 or is derived from proceeds traceable to the commission of the
25 offenses charged in Counts One and Two of the Information

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1 including, but not limited to, a sum of money equal to
2 \$97.3 billion, representing the amount of proceeds obtained as
3 a result of those offenses?

4 THE DEFENDANT: Yes.

5 THE COURT: Mr. Treanor, would you please show
6 Ms. Cotellessa-Pitz Government Exhibit 1, the agreement.

7 Ms. Cotellessa-Pitz, have you signed this agreement?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Did you read it before you signed it?

10 THE DEFENDANT: Yes.

11 THE COURT: Did you discuss it with your attorneys
12 before you signed it?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you fully understand the agreement
15 before you signed it?

16 THE DEFENDANT: Yes.

17 THE COURT: Does the agreement reflect accurately your
18 complete and total understanding of the entire agreement
19 between the government, your attorney and you?

20 THE DEFENDANT: Yes.

21 THE COURT: Is everything that you understand about
22 your plea, cooperation and sentence covered in this agreement?

23 THE DEFENDANT: Yes.

24 THE COURT: Has anything been left out?

25 THE DEFENDANT: No.

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1 THE COURT: Has anyone made any promises to you other
2 than what's set forth in that agreement, or given you anything
3 or threatened you or forced you to plead guilty or to enter
4 into the cooperation agreement?

5 THE DEFENDANT: No.

6 THE COURT: Do you understand that even if the
7 government does not oppose or take a position on what your
8 attorney will ask as a sentence, I am free to impose whatever
9 sentence I believe is appropriate under the circumstances and
10 the applicable law and you will have no right to withdraw your
11 plea?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that the agreement
14 provides that you must cooperate fully with the Office of the
15 United States Attorney, the Federal Bureau of Investigation,
16 the United States Department of Labor, the Internal Revenue
17 Service, and any other law enforcement agency designated by the
18 United States Attorney?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that the agreement does
21 not bind any federal, state or local prosecuting authority
22 other than the United States Attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that the agreement
25 provides that if the United States Attorney determines that you

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1 have provided substantial assistance in an investigation or
2 prosecution, and if you have fully complied with the
3 understandings specified in the agreement, the United States
4 Attorney will file a motion pursuant to Section 5K1.1 of the
5 Sentencing Guidelines requesting that the court sentence you in
6 light of the factors set forth in that section?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that the factors that
9 the Court may consider under Section 5K1.1 include the
10 significance and usefulness of your assistance, the
11 truthfulness, completeness and reliability of any information
12 or testimony you provide, the nature and extent of your
13 assistance, any injuries suffered or any danger or risk of
14 injury to you or your family as a result of your assistance,
15 and the timeliness of your assistance?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that even if the United
18 States Attorney files such a motion, the sentence to be imposed
19 on you remains within the sole discretion of the Court?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that you will not be
22 entitled to withdraw your plea even if the Court denies the
23 motion?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that if the United
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1 States Attorney determines that you have not provided
2 substantial assistance, or that you violated any provision of
3 the agreement, the United States Attorney is not obligated to
4 file a motion under Section 5K1.1?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that you will not be
7 entitled to withdraw your guilty plea even if the United States
8 Attorney does not file a motion?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that the agreement
11 provides that if you commit any further crimes or if it is
12 determined that you gave false, incomplete or misleading
13 testimony or information, or that you otherwise violated any
14 provision of the agreement, you will be subject to prosecution
15 for any federal violations of which the United States Attorney
16 has knowledge, including perjury and obstruction of justice?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you also understand that your agreement
19 provides that if you commit any further crimes, or if it is
20 determined that you gave false, incomplete or misleading
21 testimony or information, or otherwise violated any provision
22 of the agreement, all statements made by you to the United
23 States Attorney or other designated law enforcement agents and
24 any testimony you have given before a grand jury or other
25 tribunal may be admissible in evidence in any criminal

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1 proceedings against you?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that your agreement also
4 provides that you may not assert a claim that such statements
5 should be suppressed from evidence and that you have waived
6 your right to claim that such statements should be suppressed
7 from evidence?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that on page 2, your
10 agreement, which is Government Exhibit 1, provides that you are
11 admitting the forfeiture allegation in the Information and that
12 you are agreeing to forfeit to the United States all property,
13 real and personal, that constitutes or is derived from proceeds
14 traceable to the commission of those offenses, including, but
15 not limited to, a sum of money equal to \$97.3 billion,
16 representing the amount of proceeds obtained as a result of the
17 offenses charged in Counts One and Two of the Information?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that you are not
20 obligated to admit the forfeiture obligation?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that on page 5 -- just
23 one moment.

24 (Pause)

25 Sorry for the delay.

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1 Ms. Baroni, is there a factual basis or other reason
2 for my specifically querying the immigration-related agreement
3 that is on page 5?
4 MS. BARONI: No, your Honor.
5 THE COURT: Ms. Cotellessa-Pitz, do you understand
6 that any amount that you do forfeit will not be credited toward
7 any fines, restitution, costs of imprisonment, or any other
8 additional penalty that the Court may impose on you?
9 THE DEFENDANT: Yes.
10 THE COURT: Do you still wish to plead guilty pursuant
11 to this plea agreement?
12 THE DEFENDANT: Yes, your Honor.
13 THE COURT: Messrs. Treanor and Rody, does either of
14 you know of any valid reason why Ms. Cotellessa-Pitz would
15 prevail at trial?
16 MR. TREANOR: No, your Honor.
17 MR. RODY: No, your Honor.
18 THE COURT: Does either of you know of any reason why
19 she should not be permitted to plead guilty?
20 MR. TREANOR: No, your Honor.
21 MR. RODY: No, your Honor.
22 THE COURT: Ms. Cotellessa-Pitz, would you please
23 stand now and tell me what you did that makes you guilty of the
24 crimes to which you are pleading guilty.
25 Your counsel may stand with you, if that will make you
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1 more comfortable.

2 THE DEFENDANT: I have a statement here.

3 I am here to plead guilty to the counts in the
4 Information filed against me and to accept responsibility for
5 what I have done.

6 From approximately 1999 through December 2008, while
7 working for Bernard Madoff, I made accounting entries in the
8 books and records of his business that I knew were false and
9 inaccurate, and I filed document with regulatory authorities
10 and others that I knew repeated these falsehoods and
11 inaccuracies. I now know that these acts helped Bernard Madoff
12 and others perpetuate a fraud that harmed thousands of people,
13 and I am terribly sorry that I contributed to the harm done to
14 so many.

15 I would like to explain my role further.

16 I began working at Bernard L. Madoff Investment
17 Securities, LLC, which I will refer to as "BLMIS," in 1978 as a
18 part-time employee while I was still in college. For the next
19 30 years, I continued to work at BLMIS primarily performing
20 functions in the operations department associated with BLMIS's
21 Proprietary Trading and Market Making businesses.

22 During the entire time I worked at BLMIS, I reported
23 to Daniel Bonventre, who was the director of operations at the
24 firm.

25 In late 1998, I was promoted to comptroller of BLMIS.

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1 In that capacity, I assisted Bonventre in maintaining the books
2 and records of BLMIS, which included the General Ledger and
3 stock records. I also regularly prepared the Financial and
4 Operational Combined Uniform Single Reports, also know as
5 "FOCUS Reports," that were filed with the Securities and
6 Exchange Commission. In addition, I occasionally assisted
7 Annette Bongiorno, Joann Crupi and others in maintaining books
8 and records relating to Investment Advisory accounts and
9 signing redemption checks issued to investors.

10 During the period when I was comptroller of BLMIS, I
11 agreed with and worked together with other BLMIS employees to
12 violate the laws of the United States, and I took a number of
13 actions over the years at BLMIS's offices in Manhattan that
14 constituted violations of U.S. laws. I did so knowingly and
15 willfully, and knew that what I was doing was wrong and
16 unlawful.

17 My conduct included a number of acts that I would like
18 to describe.

19 From about 1999 through December 2008, I worked with
20 others to make false entries in the books and records of BLMIS
21 and to cause the filing of false documents with the SEC. As a
22 registered broker-dealer and as an investment advisor, BLMIS
23 was required to make and keep accurate books and records under
24 the SEC's rules. At the direction of Madoff, Bonventre and
25 others, I caused inaccurate ledgers and other books and records

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1 to be created and kept by BLMIS, including inaccurate general
2 ledgers and stock records. I then transferred the same
3 inaccurate record entries into FOCUS Reports and annual
4 financial statements that I knew would be sent to the SEC.

5 The false documents were prepared at the BLMIS offices
6 in Manhattan, and some of these documents were submitted
7 through the U.S. Mail.

8 While undertaking these actions, I knew that what I
9 was doing was wrong.

10 The following are a few examples of the types of false
11 records I created and maintained.

12 From about 1999 through December 2008, I made false
13 and inaccurate entries in the books and records of BLMIS
14 relating to transfers of funds from BLMIS's Investment Advisory
15 business. At various times, I believed these transfers to be
16 the interest or commissions from securities trading in the
17 personal accounts of Bernard Madoff or the accounts of
18 customers of the Investment Advisory business. Nevertheless,
19 at the direction of Madoff, Bonventre and others, I booked
20 these transfers improperly to the accounts of BLMIS's
21 Proprietary Trading and Market Making businesses, and recorded
22 these false entries in BLMIS's Trading Ledgers, General
23 Ledgers, and other supporting books and records of BLMIS's
24 Proprietary Trading and Market Making businesses.

25 In addition, at the direction of Bonventre and others,
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1 I booked the transfers of funds at times into specific
2 securities or trading positions and accounts that were part of
3 the firm's Proprietary Trading and Market Making businesses. I
4 knew that the transfers bore no relation to these securities or
5 positions, and that the funds did not result from trading in
6 these securities through the firm's Proprietary Trading and
7 Market Making businesses and, therefore, that my entries were
8 false. I understood that my entries falsely inflated the
9 revenue, increased the profits, and hid the losses of the
10 Proprietary Trading and Market Making businesses and at the
11 same time did not accurately report the financial condition of
12 BLMIS as a whole.

13 In addition, in 2005, the SEC conducted an audit of
14 BLMIS's businesses. At Madoff's direction and in response to
15 this audit, I, together with others, created false books and
16 records to be shown to the auditors.

17 For example, the SEC requested a list and description
18 of all BLMIS trading accounts as well as a report reflecting
19 the monthly profit and loss for each of the trading accounts
20 for a three-month period in 2005. In response, I, together
21 with Bonventre, O'Hara and others, created several false
22 trading account reports that were given to the SEC. In those
23 reports, among other things, we intentionally omitted an
24 account affiliated with the Investment Advisory business.

25 I knew that my actions in creating these false reports

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1 and omitting this account were wrong and would have the effect
2 of misleading the SEC and concealing the account from the SEC.

3 Separately, I assisted Madoff and other BLMIS
4 employees in defrauding the United States by preventing the
5 Internal Revenue Service from collecting the proper amount of
6 income taxes from Madoff. I did this in 2007, when the IRS
7 audited Madoff's 2004 and 2005 federal tax returns, as well as
8 on other occasions.

9 In 2007, at the direction of Madoff and his
10 accountant, David Friehling, I, together with Bonventre, O'Hara
11 and others, created a false backdated General Ledger and
12 Trading Ledger and created false reports derived from the
13 Trading Ledger in order to support Madoff's false tax returns.
14 In addition, I, together with Bonventre and others, fabricated
15 backdated positions in certain stocks in a backdated trading
16 ledger. I knew that the backdated stock positions were not
17 real and that the false General Ledger and Trading Ledger were
18 being created in order to deceive IRS tax auditors in
19 connection with Madoff's tax returns.

20 The altered backdated documents that I helped to
21 create were shown to an IRS auditor.

22 I believe that the actions I have described above make
23 me guilty of the crimes charged in Counts One, Two, Three and
24 Four of the Information, and I plead guilty to those charges
25 because I am responsible for committing those crimes.

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1 Although I now know that the crimes I committed helped
2 to cover up and perpetuate Bernard Madoff's fraudulent Ponzi
3 scheme, at the time I committed these crimes I did not know
4 that Madoff and others were stealing investors' money instead
5 of actually investing the money through securities trading.
6 Nonetheless, the consequences of my actions are clear to me
7 now, and for that I am, again, terribly sorry.

8 I would like to apologize to the victims of the fraud,
9 and I would like the Court and the public to know that I am
10 cooperating fully with the government in this matter.

11 Thank you, your Honor.

12 THE COURT: Thank you.

13 Now, I notice that you were reading from notes as you
14 made that factual recitation. Do those notes reflect
15 accurately and truthfully your own actions and knowledge as of
16 the time of the relevant events?

17 THE DEFENDANT: Yes, they do.

18 THE COURT: And to confirm, you knew at the time that
19 you made these false records and false submissions that you
20 have described that the information in them was false?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And you nonetheless made them and
23 submitted them willfully?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Ms. Baroni, does the government wish
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1 anything further as a factual matter to be addressed in the
2 plea allocution?

3 MS. BARONI: No, your Honor.

4 THE COURT: Thank you.

5 Ms. Baroni, would you please summarize the
6 government's evidence against Ms. Cotellessa-Pitz.

7 MS. BARONI: Yes, your Honor.

8 If this case had proceeded to trial, the government
9 would have proven, through witness testimony, documents and
10 other evidence, beyond a reasonable doubt all the facts set
11 forth in the Superseding Information.

12 Specifically, the government would have proven that
13 Ms. Cotellessa-Pitz was employed at BLMIS from 1978 until at
14 least December 2008; that beginning in 1998 she became a
15 comptroller.

16 The evidence would show that Ms. Cotellessa-Pitz,
17 along with Daniel Bonventre, Annette Bongiorno, Joann Crupi,
18 Jerome O'Hara, George Perez, Eric Lipkin, David Kugel and Frank
19 DiPascali, and other co-conspirators, engaged in a scheme to
20 create many false and misleading entries in the books and
21 records of BLMIS that lasted for decades.

22 Ms. Cotellessa-Pitz, the evidence would show, worked
23 under the supervision of Mr. Bonventre, and that she engaged in
24 an accounting fraud that covered up Mr. Madoff's Ponzi scheme.

25 The evidence would prove that they took proceeds --

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1 she, Mr. Bonventre and others took proceeds from the Ponzi
2 scheme, which was a fraud run through the Investment Advisory
3 business, and made it appear that the money belonged in other
4 parts of Madoff's businesses. This allowed Madoff to avoid
5 scrutiny by hiding the fact that the money came from the
6 fraudulent IA business, and it also allowed Madoff to prop up
7 BLMIS's market making and prop trading businesses that were
8 losing money and that served as a front for the Ponzi scheme.

9 The government would also prove, if this case had gone
10 to trial, that Ms. Cotellessa-Pitz, Mr. Bonventre and others
11 made similar false and misleading statements in reports that
12 were required to be filed with the SEC.

13 In addition, the government would prove that
14 Ms. Cotellessa-Pitz, along with Daniel Bonventre, Jerome
15 O'Hara, George Perez, Joann Crupi, Eric Lipkin, Frank DiPascali
16 and other co-conspirators, created false and fraudulent
17 documents for the purpose of deceiving the Securities and
18 Exchange Commission. For example, the government would prove
19 that in connection with an audit of BLMIS conducted by the SEC
20 in 2005, Ms. Cotellessa-Pitz, Bonventre, O'Hara and others
21 created numerous false and altered documents that were given to
22 the SEC relating to BLMIS's trading accounts, bank accounts,
23 and relating to its profitability and loss.

24 Further, and separately, the government would also
25 prove that Ms. Cotellessa-Pitz, Daniel Bonventre, Jerome O'Hara

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1 and Madoff's accountant David Friehling, along with other
2 co-conspirators, created false and fraudulent documents in
3 connection with tax audits of Bernard L. Madoff. For example,
4 in 2004, when New York State Department of Taxation and Finance
5 conducted an audit of Madoff, Ms. Cotellessa-Pitz, Bonventre,
6 O'Hara, Friehling and others covered up the fact that
7 Mr. Madoff had underreported BLMIS's profits by tens of
8 millions of dollars in each of those years and in that cover-up
9 Ms. Cotellessa-Pitz, Bonventre, O'Hara and others created fake
10 general ledgers and stock records and other documents to
11 deceive the tax auditors.

12 The government would further prove that
13 Ms. Cotellessa-Pitz and her co-conspirators did the same in
14 connection with a 2007 audit conducted by the Internal Revenue
15 Service.

16 THE COURT: Thank you.

17 Ms. Cotellessa-Pitz, would you please stand again.

18 How do you now plead to the charge against you in
19 Count One of the Fifth Superseding Information, not guilty or
20 guilty?

21 THE DEFENDANT: Guilty.

22 THE COURT: How do you now plead to the charge against
23 you in Count Two of the Fifth Superseding Information, not
24 guilty or guilty?

25 THE DEFENDANT: Guilty.

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1 THE COURT: How do you now plead to the charge against
2 you in Count Three of the Fifth Superseding Information, not
3 guilty or guilty?

4 THE DEFENDANT: Guilty.

5 THE COURT: And how do you now plead to the charge
6 against you in Count Four of the Fifth Superseding Information,
7 not guilty or guilty?

8 THE DEFENDANT: Guilty.

9 THE COURT: Are you pleading guilty to each of these
10 charges because you are in fact guilty of the illegal conduct
11 charged?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Are you pleading guilty voluntarily and of
14 your own free will?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Mr. Treanor, would you please show
17 Ms. Cotellessa-Pitz Court Exhibit 1, the advice of rights form.

18 Ms. Cotellessa-Pitz, have you signed this form?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Did you read it before you signed it?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you discuss it with your attorney
23 before you signed it?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Did you fully understand it before you
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1 signed it?

2 THE DEFENDANT: Yes.

3 THE COURT: Mr. Treanor, did you also review and sign
4 Court Exhibit 1?

5 MR. TREANOR: Yes, I did, your Honor.

6 THE COURT: Mr. Treanor, are there any other questions
7 that you believe I should ask Ms. Cotellessa-Pitz in connection
8 with this plea?

9 MR. TREANOR: No, your Honor.

10 THE COURT: Ms. Baroni, are there any other questions
11 that you believe I should ask Ms. Cotellessa-Pitz in connection
12 with this plea?

13 MS. BARONI: No, your Honor.

14 THE COURT: Ms. Cotellessa-Pitz, you have acknowledged
15 that you are guilty as charged in the Information. I find that
16 you know your rights and that you are waiving them voluntarily.

17 Because your plea is entered knowingly and voluntarily
18 and is supported by an independent basis in fact containing
19 each of the essential elements of each of the offenses, I
20 accept your guilty plea, and I adjudge you guilty of the
21 offenses charged in Counts One, Two, Three and Four of the
22 Fifth Superseding Information.

23 Mr. Treanor, do you wish to be present for any
24 interview of Ms. Cotellessa-Pitz in connection with the
25 preparation of the presentence report?

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1 MR. TREANOR: Yes, your Honor.

2 THE COURT: I will make that direction.

3 Counsel, what is the desire of the parties with
4 respect to setting a sentencing date?

5 MS. BARONI: Your Honor, the government would ask that
6 your Honor set a sentencing control date for approximately six
7 months into the future and that we would not ask that a
8 presentence report be prepared at this time.

9 THE COURT: And you will inform the Court whether that
10 date would need to be extended further or, alternatively, when
11 it is an appropriate time to have the presentence report
12 prepared?

13 MS. BARONI: We will.

14 THE COURT: Thank you.

15 Ms. Ng, may I have a control date six months out?

16 THE CLERK: Friday, June 22, 2012, at 11 a.m.

17 THE COURT: The sentencing control date is set for
18 June 22, 2012, at 11 in the morning.

19 Counsel, when it is time for preparation for
20 sentencing, please make sure that you make and file your
21 submissions in accordance with the sentencing submission policy
22 that I have posted on the court's website.

23 Ms. Cotellessa-Pitz, at some point in the future the
24 Probation Office will be preparing a presentence report to
25 assist me in sentencing you. You will be interviewed by the

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1 Probation Office. It is important that the information that
2 you give to the probation officer be truthful and accurate.
3 The report is important in my decision as to what your sentence
4 will be. You and your attorneys have a right and will have an
5 opportunity to examine the report, to challenge or comment on
6 it, and to speak on your behalf before sentencing.

7 Failing to be truthful with the Probation Office and
8 the Court may have an adverse effect on your sentence and may
9 subject you to prosecution.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Thank you.

13 Is there an application with respect to bail pending
14 sentencing?

15 MS. BARONI: Yes, your Honor. The parties have a
16 proposal for your Honor's consideration with respect to a bail
17 package.

18 It would be a \$2.5 million personal recognizance bond
19 to be secured by eight financially-responsible people and to be
20 also secured by at least \$800,000 in cash or property. None of
21 the cash or property could come from proceeds of the fraud or
22 from any forfeitable funds.

23 Further, the proposal would subject the defendant to
24 strict pretrial supervision. Her travel would be restricted to
25 the Southern and Eastern District of New York. She would

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1 surrender all travel documents and would not make any new
2 travel applications.

3 Further, Judge, the government has interviewed eight
4 of the defendant's proposed suriters already, and we are
5 satisfied with respect to their qualifications. We think that
6 they are financially responsible. They are very close family
7 members and friends of the defendant, and we believe that they
8 would have moral suasion over her.

9 Further, your Honor, the defendant has been working
10 with the U.S. Attorney's Office and the FBI as well as the IRS
11 for quite a long time now. She has met every appointment. She
12 has been completely reliable, and the government believes that
13 she has an overwhelming incentive to continue to cooperate and
14 will not flee.

15 Further, as part of the cooperation process, she has
16 filled out financial affidavits and submitted them to our
17 office detailing all of her assets, the amounts and the
18 location of those assets. She has also entered into a
19 voluntary restraint agreement with the government relating to
20 her assets.

21 And in light, your Honor, of her cooperation, which,
22 as I said, has been ongoing for a long time, her full
23 disclosure of her conduct while she was an employee at BLMIS,
24 as well as full disclosure of her financial situation and all
25 of her assets, the government believes that she will be

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1 compliant with the proposed bail package and with any rules set
2 forth by Pretrial Services.

3 THE COURT: Does the government believe, on the basis
4 of its factual investigation, that the evidence is clear and
5 convincing that Ms. Cotellessa-Pitz will not pose a risk of
6 flight or danger to the community?

7 MS. BARONI: Yes, your Honor.

8 THE COURT: And has the government investigated the
9 proposed sources of the security?

10 MS. BARONI: Yes, we have.

11 THE COURT: And is the government satisfied that the
12 sources are indeed unrelated to the particular forfeitable
13 funds?

14 MS. BARONI: Yes, your Honor. They are not related to
15 BLMIS in any way.

16 THE COURT: And what would be the government's
17 proposal as to the deadline for satisfaction of these
18 conditions?

19 MS. BARONI: Given the upcoming holidays, your Honor,
20 we would be amenable to ten days to post the property and for
21 the cosigners to sign the bond.

22 THE COURT: And so today being the 19th, that would be
23 the 29th of December?

24 MR. TREATOR: Your Honor, if we could ask for
25 January 3rd, just to get us past the holidays. It is a

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1 difficult time to get people focused on this. The courthouses
2 aren't open all of the days between now and then. And so we
3 have a number of cosigners ready to go, and we expect that that
4 will be a pretty quick process getting the signatures. It is
5 the property that may take a little bit longer. So we would
6 ask for that additional time.

7 MS. BARONI: We have no objection to that, your Honor.

8 THE COURT: I will allow until January 3rd for
9 satisfaction of the conditions.

10 And having reviewed the Pretrial Services' report and
11 considered carefully the government's proffers regarding the
12 proposed terms and its investigations in relation to those
13 proposed terms, I find that they are sufficient and compliant
14 with the relevant legal standards regarding bail pending
15 sentencing, and I will grant release on those conditions, with
16 the requirement that they be fully satisfied by why don't I
17 call it 4 in the afternoon on January 3rd.

18 And I am going to now prepare a bail disposition sheet
19 and I will show it to everyone to -- I'll show it to counsel to
20 confirm that I have all of the conditions written properly.

21 (Pause)

22 Ms. Ng, would you hand a copy to each table and one to
23 the court reporter, please.

24 The draft that I have handed out summarizes the bail
25 conditions as follows: \$2.5 million PRB with 8 FRPs and

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1 \$800,000 cash or property security (such security must be
2 unrelated to fraud proceeds and unrelated to forfeitable
3 funds); strict pretrial supervision; travel restricted to
4 S.D.N.Y./E.D.N.Y.; surrender travel documents and no new
5 applications. All conditions must be satisfied by 4 p.m. on
6 January 3, 2012.

7 Does that accurately cover the agreed conditions?

8 MS. BARONI: Yes, it does, your Honor.

9 If your Honor could add that she could be released
10 today on a certain subset of cosigner signatures, either on her
11 own signature or on a couple of other signatures, depending on
12 how many people are here to sign?

13 THE COURT: How many do we have to sign?

14 MR. TREANOR: We have two here. I believe we have a
15 third that will be here. We may have as many as five today.
16 Of course, we have Ms. Pitz also.

17 THE COURT: I will permit release today on the
18 signature of Ms. Pitz and three financially-responsible
19 persons.

20 MR. TREANOR: Thank you, your Honor.

21 THE COURT: I will add that.

22 So I've added a sentence at the end that says:
23 "Defendant may be released today on own signature and those of
24 three FRPs."

25 So I will save and print those.

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1 How many copies to we need, Ms. Ng?

2 THE CLERK: Five.

3 (Pause)

4 THE COURT: Ms. Cotellessa-Pitz, did you hear the bail
5 conditions as I have outlined them?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand them?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that you are legally
10 obligated to comply with these conditions, and that the
11 consequences of noncompliance can be severe?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Do you understand that if you fail to
14 comply with the conditions, you are subject to remand and
15 potentially subject to further penalty?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that if you do not
18 return to my courtroom on the time and date that is ultimately
19 set for sentencing, that you will be guilty of a crime
20 separate, apart from -- separate and apart from the crimes to
21 which you have just pled guilty?

22 THE DEFENDANT: Yes.

23 THE COURT: And do you understand that under such
24 circumstances, you will be subject to penalties separate, apart
25 from, and over and above any that may be imposed in connection

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1 with the crimes to which you have pled guilty?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Then I will fully expect you to comply
4 with these conditions and to appear as scheduled for
5 sentencing.

6 I will now sign the bail disposition sheet.
7 (Pause)

8 Is there a consent forfeiture order at this time, or
9 is that something the parties contemplate to prepare later?

10 MS. BARONI: We will prepare it later, your Honor,
11 prior to sentencing.

12 THE COURT: All right. I will enter my usual order
13 regarding the preparation of a preliminary order of forfeiture.

14 Is there anything else that we need to take up
15 together this afternoon?

16 MS. BARONI: Not from the government. Thank you, your
17 Honor.

18 MR. TREANOR: No, your Honor.

19 THE COURT: Thank you.

20 Ms. Baroni, Mr. Moore, you will shepherd the process
21 through the Magistrate Clerk's office in relation to the
22 signing of the necessary documents?

23 MS. BARONI: Yes, Judge.

24 THE COURT: Thank you.

25 MR. MOORE: Thank you very much.

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1 THE COURT: I wish you all a safe and healthy
2 holidays. Thank you all for being here today.
3 We are adjourned.
4 MR. MOORE: Thank you, your Honor. You, too.
5 THE CLERK: All rise.

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