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for the Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and Bernard L. Madoff*

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

In re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

MAXAM ABSOLUTE RETURN FUND, L.P.;  
MAXAM ABSOLUTE RETURN FUND, LTD.;  
MAXAM CAPITAL MANAGEMENT, LLC;  
MAXAM CAPITAL GP LLC; SANDRA L.  
MANZKE REVOCABLE TRUST; SANDRA L.  
MANZKE, as trustee and individually; SUZANNE  
HAMMOND; WALKER MANZKE; and APRIL  
BUKOFER MANZKE,

Defendants.

SIPA LIQUIDATION

No. 08-01789 (BRL)

Adv. Pro. No. 10-05342 (BRL)

## **UNREDACTED COMPLAINT**

Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”),<sup>1</sup> and the substantively consolidated estate of Bernard L. Madoff individually (“Madoff”), by and through his undersigned counsel, for his Complaint, states as follows:

### **NATURE OF THE CASE**

1. Defendant Sandra L. Manzke was a well-known, sophisticated professional in investment management. Manzke, whose career dated back to 1985 when the hedge fund industry was in its infancy, was considered a pioneer in hedge fund investing and was highly respected by her peers. She was recognized as a “Legend in the Hedge Fund Industry” by 100 Women in Hedge Funds in November 2002.

2. Manzke also was a self-proclaimed industry “watchdog,” policing managers whom she viewed as causing the general degradation of ethics in the industry. Shortly before the Madoff confession, she asserted in a letter quoted in a November 21, 2008, New York Post article that she was “appalled and disgusted by the activities of a number of hedge fund managers.” She called for heightened protection of investors in the industry against managers whose main concern was their own personal gain. Yet, at the same time, Manzke’s very own actions (or rather inaction) assisted, enabled and helped to sustain for almost 15 years, the single largest investor fraud in history.

3. Manzke’s involvement in Madoff’s scheme began during the time she was Chief Executive Officer (“CEO”) of Tremont Capital Management, Inc. (the predecessor to Tremont

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<sup>1</sup> For convenience, future reference to SIPA will not include “15 U.S.C.”

Group Holdings, Inc.). Tremont Capital Management had two management arms: Tremont Partners, Inc. for domestic funds and Tremont (Bermuda) Limited for funds for foreigners (collectively, “Tremont”). Tremont, of Rye, New York, was founded by Manzke in 1984 and was one of the first major consulting and investment advisory firms to focus on hedge fund managers. Three years after being introduced to Madoff in 1991, by a colleague who had a personal account with BLMIS, Tremont, under Manzke’s direction, began funneling investor money into BLMIS through a feeder fund that ultimately became one of the largest and longest running funds assisting Madoff in his fraud.

4. Despite marketing itself as an experienced organization that had an intensive due diligence and selection process for its managers, Tremont failed to properly, independently and reasonably perform any quantitative, operational, structural, or risk-management due diligence of Madoff’s purported investment strategy. Instead, it relied on Madoff’s reputation and his history of steady returns, which ultimately meant huge profits for Tremont, and consciously turned a blind eye to numerous red flags regarding Madoff’s business operations at BLMIS. As a result, Tremont investors suffered a loss of over \$2 billion, most of which was invested before Manzke left Tremont in mid 2005. While alleged to some extent below, more detailed allegations of Tremont’s egregious conduct and Manzke’s involvement with Madoff while at Tremont is addressed in a separate complaint against Tremont, Manzke, her co-CEO Robert Schulman, and others, entitled *Picard v. Tremont Group Holdings Inc., et al.*

5. When Manzke left Tremont in 2005, she formed her own investment management company, Maxam Capital Management, LLC (“Maxam Capital”), which managed a domestic fund she created, the Defendant Maxam Absolute Return Fund, L.P. (“Maxam Fund”), and a foreign fund for foreign investors, Defendant Maxam Absolute Return Fund, Ltd. (“Maxam

Limited,” together with Maxam Fund, are referred to collectively as the “Fund Defendants”). Maxam Capital was authorized through an Investment Management Agreement, dated July 1, 2006 (“Management Agreement”) by the General Partner of the Fund Defendants, Defendant Maxam Capital GP, LLC (“Maxam GP”), to manage the affairs of the funds.

6. Maxam Capital also executed an Investment Advisory Agreement (“Advisory Agreement”) and an Investment Policy Statement (“Policy Statement”), dated June 29, 2007 and July 1, 2007, respectively, setting forth its duties and obligations as adviser to the Fund Defendants. Under the Advisory Agreement, Maxam Capital agreed to provide investment advisory and supervisory services with respect to the planning, evaluating and monitoring of its clients’ assets, consistent with the investment objectives of its clients. It further stated that it would “recommend, in good faith and a best efforts basis,” managers that it believed would comply with the investment guidelines, which were attached to the Advisory Agreement.

7. Maxam further represented in its Advisory Agreement that it would:

(a) perform its duties hereunder with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims, and

(b) discharge its duties hereunder with respect to the Segregated Account solely in the interest of, and for the exclusive purpose of providing benefits for the Client . . . and as such, has a fiduciary responsibility to the Client and to the Plan’s assets attributable to the Segregated Account.

8. In its Compliance and Policy Manual, Maxam Capital further acknowledged its fiduciary duty to determine the suitability of investments for its investors. Like Tremont, however, Maxam failed to fulfill its obligations. When Manzke left Tremont, she took several of her colleagues with her, including Defendant Suzanne Hammond, who held several titles at

Tremont and became Managing Partner and partial owner of Maxam Capital. At Maxam Capital, Hammond, who signed the Management Agreement, Advisory Agreement and Policy Statement, became responsible for risk management of Maxam Fund.

9. Manzke also hired her son, Walker Manzke (“Walker”) and daughter-in-law, April Bukofser Manzke (“April”) as an Analyst and Chief Compliance Officer of Maxam Capital, respectively—even though April had no previous compliance experience. April had previously worked for J. Fold Inc., a men’s accessory manufacturing company, and started her own fashion line called AprilMarni. Although Maxam Capital boasted about the experience of its employees, April had very little compliance experience when hired.

10. Initially, Manzke was not certain if Maxam Fund would be able to obtain an account with BLMIS, but because of her persistence and the relationship she had built with Madoff at Tremont, Madoff permitted Manzke to set up a BLMIS account through the Maxam Fund.

**“NOTHING CHANGED” WHEN MANZKE LEFT TREMONT FOR MAXAM**

11. Despite having knowledge of a number of red flags that existed when they worked at Tremont—such as Madoff’s implausibly consistent rates of return, lack of transparency, his impossible options volume or his unknown auditors located in a strip mall in Rockland County, New York, to name a few—neither Manzke nor Hammond conducted or directed Maxam Capital to conduct any additional due diligence beyond that conducted at Tremont. And that prior “diligence,” charitably labeled, primarily consisted of spot-checking BLMIS stock and options confirmations and futile meetings with Madoff, who provided little to no insight into his operations. When asked about Maxam Capital’s due diligence into Madoff, Manzke testified at her July 7, 2009 Rule 2004 deposition before the Trustee’s counsel that

“basically, it was a continuation of the investment that we had at Tremont and over those years there was never any problem and we—it was the same system, nothing changed. It was the same people, it was the same account managed the same way it was at Tremont. Our performance numbers matched.” (See July 7, 2009 deposition of Sandra L. Manzke (“Transcript”), a true and accurate copy of which is attached hereto as Exhibit (“Exh.”) C, at 240:17-24.)

12. This diligence fell far short of the due diligence outlined in the Alternative Investment Management Association Questionnaire for Due Diligence, dated December 30, 2005 (“AIMA Questionnaire”), prepared by Maxam Capital, which states that:

- Considerable emphasis is placed on reviewing the history and background of the firm and its principals. . . We are sensitive to potential conflicts of interest and investigate any legal problems. We determine whether the organizational structure ensures the effective operation of the firm’s investment.
- We also analyze the diversification characteristics of a manager’s typical portfolio. In this regard, we consider the number of holdings, the types of holdings, the relative size of the largest holdings as a percent of total market value, industry concentration relative to the market and the distribution of holdings by market capitalization. These factors are examined at different points in time in order to gauge the dynamics of a managers [sic] portfolio.
- In reviewing the decision-making process, we determine that lines of authority are well defined, that responsible parties are clearly identified, that implementation is carried out efficiently and that accountability is maintained.
- We review the number and type of personnel employed by the manager, both at a professional and support level. Experience of the staff and

length of service is [sic] important to us. Personal interviews are held with the key professionals to gain a sense of their knowledge and integrity.

13. Maxam Capital did not follow its own due diligence procedures because as long as Manzke was able to continue making the same consistent and lucrative returns that she had at Tremont, she refused to ask the questions necessitated by her experience and her position. Defendants Manzke and Hammond were on inquiry notice of Madoff's scheme while at Tremont, where they worked for over a decade. They carried their knowledge of Madoff's suspicious activities with them, imputing that knowledge to Maxam Capital.

14. Like Tremont, Defendants Maxam Capital, Maxam GP, Hammond, Manzke, Walker, and April (collectively the "Maxam Defendants" or "Subsequent Transferee Defendants")<sup>2</sup>, all buried their heads as they profited richly from Madoff's fraud and focused on their own personal gain, doing the very thing that Manzke had so vehemently criticized less than a month before the collapse of Madoff's Ponzi scheme. The Maxam Defendants, who, upon information and belief, collected in excess of \$5.8 million in fees from the Fund Defendants, contributed to the perpetuation of the fraud, which left many of their clients almost penniless.

15. By the time Madoff's Ponzi scheme collapsed, Maxam Capital, in less than three years, had invested over \$300 million of investor money into BLMIS. Since January 2007, Maxam Fund withdrew \$97.8 million dollars from BLMIS in account withdrawals, \$25 million of which was withdrawn within 90 days prior to Madoff's arrest and transferred to Maxam Limited to distribute to its investors. A portion of those 90-day withdrawals was later transferred to several of Maxam Limited's investors in the Netherlands, Ireland, the United Kingdom, and other countries. Every dollar the Maxam Defendants purportedly earned and every dollar they

kept to unjustly enrich themselves, their funds or other investors, was other investors' stolen money. Every asset the Maxam Defendants own that originated from the purported management and administrative fees, is "Customer Property" as defined in section 78III(4) of SIPA. This includes Manzke's \$1.8 million home, in Pound Ridge, New York, that she fraudulently transferred to Walker and April via several transactions, the last of which took place two business days after the scheme was exposed, in an effort to stifle creditors' collections efforts.

16. The Maxam Defendants and the Fund Defendants (collectively "Defendants"), knew or should have known that they were profiting from fraud. Notwithstanding over a decade of investment management experience at Tremont, and purported financial expertise, Defendants never questioned Madoff's returns showing consistent positive returns, even when the stock market suffered serious downturns due to the Russian market crisis in 1998, the 9/11 terrorist attacks, the burst of the Tech Bubble from 2001-2003, and the 2007-2008 collapse in the financial and housing markets. This is despite the Maxam Defendants' understanding that the Madoff strategy was supposedly tied, or correlated, to the overall direction of the equity markets. The Maxam Defendants' personal and business relationship with Madoff put them in a unique position to obtain information concerning BLMIS's operations. Despite the fact that the Maxam Defendants' wealth and fees were dependent upon Maxam Fund's BLMIS account, the Maxam Defendants failed to conduct an adequate investigation, or made no investigation at all, choosing instead to remain willfully ignorant. The Maxam Defendants should have conducted the appropriate due diligence and put their investors' interests before their own. They did not.

17. Through this action, the Trustee seeks the return of all Customer Property belonging to the BLMIS estate, in the form of withdrawals, fees, compensation, assets,

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<sup>2</sup> Maxam Limited is also a subsequent transferee of Customer Property; the Trustee's claims against Maxam Limited

preferential payments, fraudulent transfers, fraudulent conveyances, fictitious profits and subsequent transfers. The Trustee also seeks disgorgement of all funds and properties by which Defendants were unjustly enriched. The purpose of this proceeding is to recover the almost \$100 million in avoidable transfers received by the Defendants named in this action, either directly from BLMIS or as a subsequent transferee. It also seeks from Manzke over \$5.8 million in fees received by the Maxam Defendants, the Pound Ridge house which Manzke fraudulently transferred to Walker and April, and Manzke's \$500,000 withdrawal from the Maxam Fund to her IRA in 2008.

### **JURISDICTION AND VENUE**

18. Based upon the Trustee's ongoing investigation, it appears that there were more than 8,000 customer accounts at BLMIS over the life of the scheme. In early December 2008, BLMIS generated account statements for its approximately 4,900 active customer accounts. These statements, in the aggregate, reflected that BLMIS customers had approximately \$65 billion in capital held by BLMIS in their accounts. In reality, BLMIS had customer assets on hand worth a fraction of that amount. Customer accounts had not accrued any real profits because no investments were ever made for them. When the Ponzi scheme came to light on December 11, 2008, investors had lost approximately \$20 billion in principal.

19. The Trustee brings this adversary proceeding pursuant to his authority under sections 78fff(b) and 78fff-2(c)(3) of SIPA, and sections 105(a), 502(d), 510, 544, 547, 548(a), 550(a) and 551 of 11 U.S.C. § 101 (the "Bankruptcy Code"), the New York Fraudulent Conveyance Act (N.Y. Debt & Cred. § 270 (McKinney 2001)), New York Civil Practice Law and Rules (McKinney 2001), and other applicable law, for preferences, fraudulent conveyances,

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in this capacity are discussed in Counts Two and Nine below.

fraudulent transfers, imputation of a constructive trust, disallowance of customer claims filed by some of the Defendants and equitable subordination. The Trustee seeks, among other things, to set aside all avoidable transfers, collect damages caused by the Defendants, preserve the stolen customer property for the benefit of BLMIS customers, and recover all stolen property from the Defendants, in whatever form it may now or in the future exist.

20. This is an adversary proceeding brought in the Court in which the main underlying SIPA proceeding, No. 08-01789 (BRL) (the “SIPA Proceeding”) is pending. The Securities Investor Protection Corporation (“SIPC”) originally brought the SIPA Proceeding in the United States District Court for the Southern District of New York as *Securities Exchange Commission vs. Bernard L. Madoff Investment Securities LLC et al.*, No. 08 CV 10791 (the “District Court Proceeding”) and has been referred to this Court. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and SIPA §§ 78eee(b)(2)(A) and (b)(4).

21. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (F), (H) and (O).

22. Venue in this district is proper under 28 U.S.C. § 1409.

23. This Court has personal jurisdiction over all of the Defendants captioned herein pursuant to N.Y. C.P.L.R. § 302 and Bankruptcy Rule 7004. All Defendants have maintained minimum contacts with New York in connection with the claims alleged herein.

## TRUSTEE'S POWERS AND STANDING

24. On December 11, 2008 (the "Filing Date"),<sup>3</sup> Madoff was arrested by federal agents for violation of the criminal securities laws, including, *inter alia*, securities fraud, investment adviser fraud, and mail and wire fraud. Contemporaneously with Madoff's arrest on December 11, 2008, the Securities and Exchange Commission ("SEC") filed a complaint in the District Court against Madoff, which remains pending. The SEC complaint alleges that Madoff and BLMIS engaged in fraud through the investment adviser activities of BLMIS.

25. On December 12, 2008, The Honorable Louis L. Stanton of the District Court entered an order appointing Lee S. Richards, Esq. as receiver for the assets of BLMIS.

26. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with an application of the Securities Investor Protection Corporation ("SIPC"). Thereafter, pursuant to section 78eee(a)(4)(B) of SIPA, SIPC filed an application in the District Court alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA.

27. Also on December 15, 2008, Judge Stanton granted the SIPC application and entered an order pursuant to SIPA (the "Protective Decree"), which, in pertinent part:

- a. appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA;

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<sup>3</sup> Section 78lll(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." 15 U.S.C. § 78lll(7)(B). Thus, even though the application for a protective decree was filed on December 15, 2008, the Filing Date in this action is December 11, 2008.

b. appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and

c. removed the case to this Court pursuant to section 78eee(b)(4) of SIPA.

By this Protective Decree, the Receiver was removed as Receiver for BLMIS.

28. By orders, dated December 23, 2008 and February 4, 2009, respectively, the Bankruptcy Court approved the Trustee's bond and found that the Trustee was a disinterested person. Accordingly, the Trustee is duly qualified to serve and act on behalf of the estate of BLMIS.

29. At a Plea Hearing on March 12, 2009, in the case captioned *United States v. Madoff*, Case No. 09-CR-213(DC), Madoff pled guilty to an eleven-count criminal information filed against him by the United States Attorneys' Office for the Southern District of New York. At the Plea Hearing, Madoff admitted that he "operated a Ponzi scheme through the investment advisory side of [BLMIS]." See Plea Allocution of Bernard L. Madoff at 23, *United States v. Madoff*, No. 09-CR-213 (DC) (S.D.N.Y. March 12, 2009) (Docket No. 50). Additionally, Madoff asserted "[a]s I engaged in my fraud, I knew what I was doing [was] wrong, indeed criminal." Madoff was sentenced on June 29, 2009 to 150 years in prison.

30. On August 11, 2009, a former BLMIS employee, Frank DiPascali, pled guilty to participating and conspiring to perpetuate the Ponzi scheme. At a plea hearing on August 11, 2009 in the case entitled *United States v. DiPascali*, Case No. 09-CR-764 (RJS), DiPascali pled guilty to a ten-count criminal information. Among other things, DiPascali admitted that the fictitious scheme had begun at BLMIS since at least the 1980s. See Plea Allocution of Frank DiPascali at 46, *United States v. DiPascali*, No. 09-CR-764 (RJS) (S.D.N.Y. August 11, 2009) (Docket No. 11).

31. By virtue of his appointment under SIPA, the Trustee has the responsibility of recovering and paying out Customer Property to BLMIS's customers, assessing claims, and liquidating any other assets of the firm for the benefit of the estate and its creditors. The Trustee is in the process of marshalling BLMIS assets, and the liquidation of BLMIS assets is well underway. However, such assets will not be sufficient to fully reimburse the BLMIS customers for the billions of dollars that they invested through BLMIS. Consequently, the Trustee must use his broad authority under SIPA and the Bankruptcy Code to pursue recovery from BLMIS accountholders who received preferences, non-existent principal, and/or payouts of fictitious profits to the detriment of other defrauded customers whose money was consumed by the Ponzi scheme, and from any entities or individuals to which BLMIS accountholders or other transferees subsequently transferred those funds. Absent this and other recovery actions, the Trustee will be unable to satisfy the claims described in subparagraphs (A) through (D) of SIPA § 78fff-2(c)(1).

32. To this end, the Trustee is bringing this action against the Defendants to recover \$97.8 million in avoidable transfers received by them or on their behalf between January 2, 2007 and December 30, 2008. A large portion of these avoidable transfers consisted of withdrawals taken from BLMIS by the Maxam Fund. Many of these withdrawals were for redemptions by its investors or investors of Maxam Limited and were subsequently transferred to other named Defendants. In addition, over \$5.8 million of those withdrawals were then transferred to the Maxam Defendants in the form of management, administrative, and other fees, bonuses, compensation, profits, dividends and partnership distributions.

33. Pursuant to section 78fff-1(a) of SIPA, the Trustee has the general powers of a bankruptcy trustee in a case under the Bankruptcy Code in addition to the powers granted by

SIPA pursuant to section 78fff(b) of SIPA. Chapters 1, 3, 5 and Subchapters I and II of Chapter 7 of the Bankruptcy Code are applicable to this case to the extent consistent with SIPA.

34. Pursuant to sections 78fff(b) and 78lll(7)(B) of SIPA, the Filing Date is deemed to be the date of the filing of the petition within the meanings of section 548 of the Bankruptcy Code and the date of the commencement of the case within the meaning of section 544 of the Bankruptcy Code.

35. In addition to the powers of a bankruptcy trustee, the Trustee has broader powers granted by SIPA.

36. The Trustee is a real party in interest and has standing to bring these claims pursuant to section 78fff-1 of SIPA and the Bankruptcy Code, including 11 U.S.C. § 101 *et seq.* and sections 323(b) and 704(a)(1), because, among other reasons:

a. The Defendants received “Customer Property” as defined by section 78lll(4) of SIPA;

b. BLMIS incurred losses as a result of the claims set forth herein;

c. BLMIS customers were injured as a result of the conduct detailed herein;

d. SIPC cannot, by statute, advance funds to the Trustee to fully reimburse all customers for their losses;

e. The Trustee will not be able to satisfy all claims;

f. The Trustee, as bailee of Customer Property, can sue on behalf of the customers-bailors;

g. The Trustee is the assignee of claims paid, and to be paid, to customers of BLMIS who have filed claims in the liquidation proceeding (such claim-filing customers, collectively, “Accountholders”). As of the date hereof, the Trustee has received multiple

express unconditional assignments of the applicable Accountholders' causes of action, which actions could have been asserted against Defendants. As assignee, the Trustee stands in the shoes of persons who have suffered injury in fact, and a distinct and palpable loss for which the Trustee is entitled to reimbursement in the form of monetary damages. The Trustee brings this action on behalf of, among others, those defrauded customers of BLMIS who invested more money in BLMIS than they withdrew; and

h. SIPC is the subrogee of claims paid, and to be paid, to customers of BLMIS who have filed claims in the liquidation proceeding. SIPC has expressly conferred upon the Trustee enforcement of its rights of subrogation with respect to payments it has made and is making to customers of BLMIS from SIPC funds.

### **THE DEFENDANTS**

#### **A. The Fund Defendants**

37. Defendant Maxam Fund is a Delaware limited partnership organized in May 2006. Upon information and belief, at all relevant times, Maxam Fund's principal place of business was located at 16 Thorndal Circle, Darien, Connecticut 06820. Maxam Fund opened a direct account with BLMIS in July 2006 with the account number 1M0232. Upon information and belief, Maxam Capital invested all of the money that Maxam Fund received from its investors into the BLMIS account.

38. Defendant Maxam Limited is a Cayman Islands limited liability company. Upon information and belief, at all relevant times, Maxam Limited's principal place of business was at Walkers SPV Limited, Walker House, Mary Street, P.O. Box 908, George Town, Grand Cayman KY 1-9002, Cayman Islands. Upon information and belief, all monies invested in Maxam Limited were subsequently invested in the BLMIS Maxam Fund account.

39. Within the two years prior to the Filing Date, Maxam Fund withdrew approximately \$97.8 million in redemptions from BLMIS. Included among those redemptions are two \$5 million transfers and one \$15 million transfer within the 90-day period prior to the Filing Date. Upon information and belief, all of the transfers made within the 90-day period prior to the Filing Date were subsequently transferred to Maxam Limited and in turn, to Maxam Limited's investors or their custodians.

**B. The Maxam Defendants and Manzke Trust**

40. Defendant Maxam Capital is a Delaware limited liability company. Upon information and belief, at all relevant times, its principal place of business was 16 Thorndal Circle, Darien, Connecticut 06820. Maxam Capital was an investment management firm formed in April 2005 and was the investment manager of the Fund Defendants. Maxam Capital became registered with the SEC as an investment adviser in 2005 under the Investment Advisers Act of 1940. Upon information and belief, Maxam Capital had between six to ten employees and provided investment advisory services to between 11 to 25 clients. Its assets under management prior to the discovery of the fraud totaled over \$1 billion. Upon information and belief, Maxam Capital collected in excess of \$5.8 million in management and administrative fees from the Fund Defendants in connection with their direct and indirect investments through BLMIS.

41. Defendant Maxam GP is a Delaware limited liability company and the General Partner of Maxam Fund. Upon information and belief, at all relevant times, Maxam GP's principal place of business was 16 Thorndal Circle, Darien, Connecticut 06820. As the General Partner, Maxam GP exercised ultimate authority over Maxam Fund and was responsible for its day-to-day operations and management. Maxam GP had the right to delegate all or any portion of its responsibilities to Maxam Fund and, pursuant to the Management Agreement delegated its

investment management responsibilities to Maxam Capital. The responsibilities under the agreement included: (1) making all decisions related to the investment of assets of the partnership; (2) managing all aspects of the investment of the partnership's assets including, without limitation, selecting Broker Dealers to which to allocate the partnership's assets, evaluating the broker dealers' performance and making all decisions with respect to allocating the partnership's assets; and (3) taking all such other actions which the Investment Manager considers necessary and advisable to carry out its investment management duties hereunder.

42. Defendant Sandra L. Manzke, a/k/a Sandra L. Manzke Platt, is an individual who, upon information and belief, currently resides in Royal Palm Beach, Florida. She is formerly of Pound Ridge, New York. Manzke founded Tremont Capital in the mid-1980s and served as CEO and later co-CEO until she left in 2005 and founded Maxam Capital. Manzke also served as the Chairman and CEO of Maxam Capital, a principal of Maxam GP, and an investor in Maxam Fund. Manzke is responsible for Maxam Fund's relationship with Madoff, which steadily grew over time. According to Maxam Capital's Form ADV, filed with the SEC on January 26, 2009, Manzke owns between 25% and 50% of Maxam Capital. Upon information and belief, she controlled both the operations and management of Maxam Capital. From 2007 through the present, Maxam Capital paid Manzke \$360,000 plus 30% profits in salary and other forms of compensation.

43. After Manzke founded Tremont Capital in 1984, she served as Chairman and Co-CEO of Tremont, an investment services company that managed various funds that invested through BLMIS. In 2001, Tremont was sold to Oppenheimer Acquisition Corp. ("Oppenheimer"), a second-tier subsidiary of Massachusetts Mutual Life Insurance Company. Manzke personally received over \$16 million from that acquisition. At that point, Manzke

executed a five-year contract with Oppenheimer Funds, an affiliate of Oppenheimer, which wanted to maintain the Madoff relationship. She was paid an annual base salary of \$500,000, plus an annual discretionary bonus of up to 150% of her base salary. When she left Tremont in 2005, approximately one year before her contract expired, she received a severance package which paid her \$3.5 million over the following two years. The funds Manzke collected from her severance are being sought in the separate *Picard v. Tremont* complaint.

44. Upon information and belief, Manzke, or her trust, owns or owned properties or assets during the last three years, including: (1) homes located in Pound Ridge, New York, Royal Palm Beach, Florida and Wardsboro, Vermont; (2) 8 acres of undeveloped land in Wardsboro, Vermont; (3) 62 acres of undeveloped land in Jamaica, Vermont; (4) a 2003 Mercedes-Benz SL500 Roadster; and (5) a 1996 19-foot Larson Boats fiberglass pleasure vessel. Manzke is or was also the lessee of a 2007 Mercedes-Benz S550 Sedan.

45. Defendant Suzanne Hammond is an individual residing in Wilton, Connecticut. Hammond served as the Managing Director at Maxam Fund where, upon information and belief, she was responsible for risk management and investor relations. According to Maxam Capital's Form ADV filed with the SEC on January 26, 2009, Hammond owns between 5% and 10% of Maxam Capital. From 1989 until she joined Maxam in 2005, Hammond was a director and Senior Vice President of Tremont Partners, Inc., Secretary and Treasurer of Tremont Capital Management, Inc., and a director of the offshore subsidiary Tremont (Bermuda) Limited. While involved with the Tremont entities, Hammond was responsible for the oversight of their domestic and offshore proprietary products, and supervising certain investment clients. Upon information and belief, Hammond personally received approximately \$1.2 million from the 2001 acquisition of Tremont by Oppenheimer.

46. Upon information and belief, Defendant Sandra L. Manzke Revocable Trust (“Manzke Trust”) is a revocable trust created on June 20, 2007, for which defendant Manzke is the sole trustee. Upon information and belief, several properties, formerly owned by Manzke and her former husband, Peter Platt, are being held in the Manzke Trust.

47. Upon information and belief, Defendant Walker is the son of Manzke and resides in the Pound Ridge, New York house. Upon information and belief, Walker is a former Analyst for Maxam Capital whose position was terminated after the fraud was exposed. After Madoff’s arrest, Walker continued to profit from the fraudulent scheme by selling golf balls with Madoff’s face on them. He promoted his website, sleazeballs.net, on Fox Business in March 2009. Upon information and belief, as a result of a fraudulent conveyance by Manzke, as of December 16, 2006, Walker and his wife, April, held a one-half ownership interest in the Pound Ridge property. Manzke possessed the other one-half ownership interest at that time.

48. On January 9, 2008, while on inquiry or actual notice of the Madoff fraud, Manzke transferred her one-half ownership interest in the Pound Ridge property to the Manzke Trust. On December 15, 2008, two business days after criminal charges had been filed against Madoff, Manzke, through the Manzke Trust, fraudulently transferred its one-half ownership interest to Walker and April, leaving them with full ownership of the property, worth approximately \$1.8 million. The deed was recorded on December 30, 2008.

49. Upon information and belief, Defendant April resides in the Pound Ridge, New York house. April was the Chief Compliance Officer for Maxam Capital, a position she held from January 2008 until approximately June 2009. She had a broad range of responsibilities including accounting, marketing and administration. Together with Walker, she currently has a

full ownership interest in the Pound Ridge property as a result of fraudulent conveyances by Defendants Manzke and Manzke Trust, as alleged herein.

### **THE PONZI SCHEME**

50. BLMIS was founded in 1959 by Madoff and, for most of its existence, operated from its principal place of business at 885 Third Avenue, New York, New York. Madoff, as founder, chairman, chief executive officer, and sole owner, operated BLMIS together with several of his friends and family members. BLMIS was registered with the SEC as a securities broker-dealer under Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), SIPA § 78o(b). By virtue of that registration, BLMIS is a member of SIPC. BLMIS had three business units: the Investment Advisory (“IA”) Business, market-making, and proprietary trading.

51. Outwardly, Madoff ascribed the consistent success of the IA Business to his so-called “split-strike conversion strategy.” Pursuant to that strategy, Madoff purported to invest BLMIS customers’ funds in a basket of common stocks within the S&P 100 Index—a collection of the 100 largest publicly traded companies. Madoff claimed that his basket of stocks would mimic the movement of the S&P 100 Index. He also asserted that he would carefully time purchases and sales to maximize value, and correspondingly, BLMIS customers’ funds would, intermittently, be out of the equity markets. While out of the market, those funds were purportedly invested in United States Treasury bills or in mutual funds holding Treasury bills. The second part of the split-strike conversion strategy was the hedge of Madoff’s stock purchases with S&P 100 Index option contracts. Those option contracts functioned as a “collar,” limiting both the potential gains and the potential losses. Madoff purported to use proceeds from the sale of S&P 100 Index call options to finance the cost of purchasing S&P 100 Index put options.

Madoff also told IA Business customers, including the Defendants, that he would enter and exit the market between six and ten times each year.

52. BLMIS IA Business customers received fabricated monthly or quarterly statements showing that securities were held in, or had been traded through, their accounts. The securities purchases and sales shown in such account statements never occurred and the profits reported were entirely fictitious. At the Plea Hearing, Madoff admitted that he never purchased any of the securities he claimed to have purchased for the IA Business's customer accounts. In fact, there is no record of BLMIS having cleared a single purchase or sale of securities in connection with the split-strike conversion strategy. Madoff's split-strike conversion strategy was entirely fictitious.

53. At times prior to his arrest, Madoff generally assured customers and regulators that he purchased and sold the put and call options over-the-counter ("OTC") rather than through an exchange. Yet, like the underlying securities, the Trustee has yet to uncover any evidence that Madoff ever purchased or sold any of the options described in customer statements. The Options Clearing Corporation, which clears all option contracts based upon the stocks of S&P 100 companies, has no record of the IA Business having bought or sold any exchange-listed options on behalf of any of IA Business customers.

54. For all periods relevant hereto, the IA Business was operated as a Ponzi scheme. The money received from investors was not invested in stocks and options. Rather, BLMIS used its IA Business customers' deposits to pay redemptions by other customers, and to make other transfers, which are, of course, avoidable by the Trustee. Many of these transfers were to enrich Madoff, his associates, and his family.

55. The falsified monthly account statements reported that the accounts of IA Business customers had made substantial gains, but, in reality, because it was a Ponzi scheme, BLMIS did not have the funds to pay investors on account of their new investments. BLMIS was only able to survive for as long as it did by using the stolen principal invested by some customers to pay other customers.

56. The payments to investors constituted an intentional misrepresentation of fact regarding the underlying accounts and were an integral and essential part of the fraud. The payments were necessary to validate the false account statements, and were made to avoid detection of the fraud, to retain existing investors and to lure other investors into the Ponzi scheme.

57. At all times relevant hereto, the liabilities of BLMIS were billions of dollars greater than its assets. BLMIS was insolvent in that: (1) its assets were worth less than the value of its liabilities; (2) it could not meet its obligations as they came due; and (3) at the time of the transfers, BLMIS was left with insufficient capital.

58. Madoff's scheme continued until December 2008, when the requests for withdrawals overwhelmed the flow of new investments and caused the inevitable collapse of the Ponzi scheme.

#### **HISTORY OF RELATIONSHIP BETWEEN MAXAM FUND AND BLMIS**

59. The history between the Maxam Fund and BLMIS is inextricably intertwined with Tremont's history with BLMIS. In 1984, Manzke founded and became CEO of Tremont, which has had several different names throughout the years, but at that time was called Lynch Asset Management Corporation. Upon information and belief, Manzke learned about Madoff in 1991 through Leon Meyers, the former Chairman of Tremont, who had his own personal account

with BLMIS at the time. Tremont's first investment with BLMIS came in the form of a proprietary product called Tremont Advisers, L.P. However, Meyers left Tremont in 1992, taking that fund with him and renaming it Mosaic Fund L.P. Manzke maintained her relationship with Madoff, however, and in 1994 Tremont founded American Masters Broad Market Fund, L.P.

60. Upon information and belief, prior to investing with BLMIS, Tremont reviewed Meyers's account statements to determine his rate of return and reviewed BLMIS trade confirmations to obtain a sense of Madoff's performance and strategy. Upon information and belief, Manzke herself also met with Madoff in 1991 and viewed his business operations. Manzke, however, could not recall any of the specific details of that meeting other than discussing Madoff's market-making side of the business. (Transcript Exh. C at 102:14-104:23.) Other than these basic steps, no one at Tremont performed any meaningful due diligence prior to making an initial investment through BLMIS. (*Id.* at 97:13-101:20.)

61. Around 1992, Tremont—known at the time as Tremont Advisers, Inc.—went public and was traded on the NASDAQ exchange until approximately July 2001, when it was acquired by Oppenheimer. Upon information and belief, Tremont had approximately 65 employees, advised on more than \$8 billion in alternative investments, and managed more than \$1.5 billion of client assets in its proprietary funds at the time of the acquisition.

62. When Manzke left Tremont to found Maxam Capital and asked Madoff for a new BLMIS account, Madoff told her that the IA Business was closed to new investors at that time. (*Id.* at 140:22-142:11.) After being denied an account in June 2005, she spoke to him again in October 2005, and reached out to Madoff a third time before he agreed to allow Manzke to open a BLMIS account. (*Id.* at 142:14-143:16.)

63. Once Maxam Fund secured an account with BLMIS, Manzke catered to all of Madoff's requests: not to have his name mentioned in Maxam Fund's private placement memoranda ("PPM"), to have BLMIS listed as a broker-dealer because it was not a registered investment adviser, and not to go "market[] like crazy" so Madoff would not have people "coming back to [him] and saying you gave an account to that girl, when [he was] turning down [new] business." (*Id.* at 145:20-147:4.) Manzke even showed Madoff the Maxam Fund's offering documentation, including the PPM, before it was distributed to potential investors, and allowed him to make changes and comments. (*Id.* at 147:7- 148:11.)

64. Manzke did not ask Madoff why he would forego compensation by not charging a performance or an asset-based fee, unlike many other hedge fund managers; Manzke also did not ask Madoff why he self-custodied. Nor could Manzke testify under oath with any specificity to what she, as CEO of Maxam Capital or Tremont or what anyone else at Tremont, for that matter, did to verify the checks and balances that BLMIS purportedly had in place to monitor its capital allocations. (*Id.* at 242:12-243:2.) Despite Manzke's years of experience in the industry and her own characterization as a "watchdog," she failed to heed the numerous warning signs that were apparent to numerous others in the industry. Through Manzke's greed for easy fees despite obligations to conduct due diligence or implement an investment strategy – because Madoff was supposedly doing this – the Maxam Defendants fell short of their fiduciary duties to the Fund Defendants and their investors.

65. No one at Maxam Capital conducted any quantitative or operational analysis or seriously considered any of the deficiencies of BLMIS. This lack of due diligence was all the more surprising, given that Maxam Capital, like Tremont, touted their years of experience in the industry on their website and their special ability to select "superior" and "talented fund

managers.” On the website, Maxam Capital held itself out as a leader in the identification of fund managers worldwide.

66. Indeed, Hammond, while at Maxam Capital, criticized Tremont, her former employer, for not understanding Madoff’s strategy or how to determine Tremont’s dividends. In a December 2006 email to Manzke, Hammond stated that “Tremont has some problems in that the people do not understand the strategy and the people running the fund are not smart. It is scary.” Nevertheless, Hammond did no more due diligence than she had when she was at Tremont, even given her former colleagues’ alleged shortcomings. Instead, the Maxam Defendants kept their heads down, relied completely on the long personal relationships established with Madoff at Tremont, obtained a new BLMIS account and continued to profit from the fraud. By so doing, they assisted in and enabled Madoff’s wrongdoing and breached their fiduciary duties to their investors.

67. Maxam Capital nevertheless accepted monthly management fees from the Fund Defendants, as well as monthly administrative fees. These fees made the continued business with Madoff very attractive and provided the motive for the Maxam Defendants to look the other way and conveniently ignore the clear indicia of Madoff’s fraud, of which Defendants had inquiry notice.

68. Upon information and belief, Maxam Fund and Maxam Limited paid Maxam Capital a monthly management fee based on net asset value of each fund at the annual rate of 1% and a monthly administration fee based on the net asset value of each limited partner’s capital account at the annual rate of 0.20%. Upon information and belief, Maxam Capital collected in excess of \$5.8 million in management and administrative fees in the 30 months from the start of Maxam Fund to the collapse.

69. Driven by incredible, but easy, returns and management fees, the Maxam Defendants continued to turn a blind eye to the clear warning signs and failed to conduct their own due diligence as they represented to their investors that they would. By not doing so, the Maxam Defendants, whose knowledge and bad faith is imputed to all other Defendants, compounded the due diligence errors made by Tremont.

#### **MAXAM DEFENDANTS IGNORED MANY INDICIA OF FRAUDULENT ACTIVITY**

70. The Maxam Defendants marketed themselves as experienced managers of funds of hedge funds. The marketing materials claimed that “six senior professionals” had “in excess of 100 years experience in the investment community” and that its “[s]enior professionals have been investing in hedge funds since 1985 and are recognized as leaders in this field.” Maxam Capital’s marketing materials also state that “MAXAM gives its investors complete transparency upon request” and that “[MAXAM] has established a strong compliance capability as part of its culture.” However, Manzke’s daughter-in-law had no prior compliance experience, yet was appointed chief compliance officer of the company.

71. Further, Maxam Capital received far less than complete transparency from Madoff and in turn gave little to its investors. This is so despite the fact that the Maxam Defendants were well aware that investors and potential investors reasonably relied on their purported monitoring of Madoff and years of experience in the industry. A potential investor’s consultant told David Jennings, Managing Director of Maxam Capital, that “while he was concerned about the inability to question the manager directly, the stature of Madoff and his Firm were mitigating factors, as well as [Maxam’s] trade monitoring.”

72. Moreover, a Maxam executive misled a skeptical potential investor, who ultimately decided not to invest in BLMIS, in an October 2008 email. In that exchange, he stated

“I know from personal discussions with executive level people that [Madoff] is highly respected for his expertise and the businesses he built . . . We have spent considerable time with him and with others in his organization and are comfortable with the infrastructure and the manner in which he manages the Fund . . . We closely monitor his trades, his execution and his adherence to the stated strategy.”

73. These representations, like the Maxam Defendants’ other marketing materials, were not only misleading but were false. In fact, the Maxam Defendants failed to even minimally satisfy the standards they set for themselves. Maxam Capital’s marketing materials state an eight-step investment process which included both a qualitative and a quantitative review of “All Managers” utilizing several outside databases to determine a short list. Yet Manzke’s sole objective was to obtain a BLMIS account and, upon information and belief, no database search was ever conducted in accordance with Maxam Capital’s purported eight-step investment process.

74. The Due Diligence Questionnaire prepared by Maxam Capital asserted that there was “extensive due diligence on our managers. We conduct background checks and read audited financials thoroughly. We verify performance results with these audited financials. We obtain all regulatory documents whether the firm is regulated by the SEC or other regulatory body outside of the US.” All the while, these tasks were not being performed. Instead, the Maxam Defendants lured investors to the Fund Defendants through their empty promises and failed to protect them by acknowledging clear red flags warning that Madoff was illegitimate.

75. Numerous indicia of fraud alleged below concerning BLMIS gave Defendants actual and/or constructive knowledge of BLMIS’s fraud. These indicia of fraud, and Defendants’ willful and deliberate decision to continue investing with BLMIS despite them,

demonstrate a motive and opportunity to commit fraud, and/or conscious misbehavior or recklessness amounting to fraudulent intent. Given the Defendants' actual or constructive knowledge of these indicia of fraud, the Defendants were neither innocent nor good faith investors.

**A. Madoff's Unrealistic Consistency**

76. The Defendants' understanding of Madoff's purported investment strategy was that Madoff was undertaking a "split-strike conversion strategy." This strategy involved the purchase of a basket of stocks in the S&P 100 index, while simultaneously purchasing S&P 100 index put options to protect investors from a decline in the market. Madoff also purportedly sold out-of-the-money S&P 100 index call options in an effort to finance the costs of the purchase of the put options. This strategy claimed to create a "collar" around the equity position, which limited downside risk, but also limited upside gain in order to finance the put option purchase.

77. Employing a strategy involving the purchase and sale of S&P 100 equities, Madoff's returns bore virtually no correlation with the S&P 100. This makes no logical sense. Attached to the Complaint as Exh. D is a graph depicting the value of investments in two Madoff feeder funds (Rye Select, (a Tremont fund) and Fairfield Sentry) as compared to the S&P 100 Index between 1995 and 2007. As the graph shows and as one would expect, the Madoff feeder funds are highly correlated to each other. In contrast, both funds' returns bear little to no relationship to the S&P 100 Index, with a correlation of approximately 0.33, 1.0 being a perfect correlation and 0 being no correlation at all. Given that the stocks purportedly bought were all part of the S&P 100, there should have been a much higher correlation.

78. Madoff's reported profits also were remarkably consistent even during periods of severe downturns in the equities market. While the market was collapsing in 2008 and the S&P

100 plummeted close to 37% for the year, the Maxam Fund was up by 9.3%. The fund clearly outperformed the S&P 100 despite being an equity strategy purportedly correlated, and based upon the S&P 100.

79. A basic and reasonable quantitative analysis used in the hedge fund and/or investment management industry at the time of Madoff's purported returns based on this strategy would have revealed that Madoff's consistency of performance was so improbable as to be simply impossible. Moreover, Maxam Capital claimed to closely monitor managers on a monthly basis which included "gathering monthly returns, performance attribution, and data on any key changes at the fund." If Maxam Capital had been conducting such rigorous due diligence as it maintained, it certainly would have noticed these anomalies.

**B. Impossible Options Volumes**

80. Maxam Defendants were also on inquiry notice that the volume of Madoff's purported options trading was impossible. BLMIS would have had to execute massive numbers of options trades to implement its purported split-strike conversion strategy. In order to implement this strategy, BLMIS purportedly purchased S&P 100 Index options – which are traded on the Chicago Board Options Exchange ("CBOE") under the symbol OEX#– in combination with purchases of select underlying stocks that are components of that index. At times, the traded option volume BLMIS reported to its customers was simply impossible if those options had been exchange-traded because BLMIS reported a traded option volume that exceeded the total market traded option volume for that contract on that day.

81. For example, on November 14, 2008, with a settlement date of November 19, 2008, BLMIS purportedly bought, on Maxam's behalf, a total of 5,782 S&P 100 Index put options (with December expiration and a strike price of 420), when the total volume traded on

the CBOE for all such contracts that day was 132. Similarly, BLMIS purportedly sold, on Maxam's behalf, a total of 5,782 S&P 100 Index call options (with December expiration and a strike price of 430), when the total volume traded on the CBOE for all such contracts that day was 255. It would have been impossible for BLMIS's volume to exceed that of the market for the identical contract on the same day. Additionally, during the course of Maxam Fund's investment with BLMIS, the daily volume of nearly 50% of the options contracts purportedly bought and sold by Madoff exceeded the corresponding volume for those contracts on the CBOE. In each of these instances, the Maxam Defendants knew or should have known that the option trading volumes reported by BLMIS were impossible if exchange-traded.

82. A review of the purported options trading volume against the CBOE volume – which easily could have and should have been performed by the Maxam Defendants – confirms that they did not perform independent and reasonable due diligence, or any follow-up, concerning the Madoff trading activities. Even if it was to be believed that Madoff executed some or all of the reported options trades on the OTC market, it still would be virtually impossible for a single counterparty on an OTC trade to engage in a transaction exceeding the entire volume of the CBOE. Nevertheless, Defendants willfully turned a blind eye to the indicia of BLMIS's fraud and continued to funnel their investors' money to Madoff, profiting themselves all the while.

**C. Improbable Equities Trading Volume**

83. Maxam Fund's equity trading volumes were equally unfathomable. Attached as Exhibit E is a random sampling of instances where the intraday trading volume was insufficient for Madoff to achieve his purported transaction price.

84. As illustrated in Exhibit E, for example, Madoff purported to sell 17,367 shares of JP Morgan Chase on behalf of the Maxam Fund on December 22, 2006, at a price of \$48.73 per share. However, only 6,900 *total* shares of JP Morgan were sold at or above the price of \$48.73 on December 22, 2006. Similarly, although Madoff supposedly purchased 22,816 shares of Verizon on behalf of Maxam Fund at a price of \$42.16 on September 13, 2007, only a total of 5,500 shares of Verizon stock were purchased on September 13, 2007 at or below that price.

85. Maxam Capital, as the pioneer and purported industry leader in due diligence, investment monitoring, and best practices, knew or should have known that such glaring irregularities concerning implausible trading volumes were indicia of fraudulent activity. With the billions the Maxam Defendants understood Madoff to be trading on behalf of customers like themselves, the Maxam Defendants were on notice that they needed to conduct further inquiry. The Maxam Defendants did not conduct any such reasonable inquiry.

**D. Lack of Strategy Footprint**

86. Further, a reasonable quantitative review like the one consistently marketed by Maxam Capital would have also focused on how Madoff could have traded billions of dollars without ever affecting any market. Madoff's strategy involved moving money into the market over the course of one or more days, and then selling all of those securities over a similar time span. It was the Maxam Defendants' understanding that by the time the Maxam Fund began, Madoff had moved between \$20 to \$30 billion into and then out of the equities and options markets over the course of just a few days, a number of different times per year. The Maxam Defendants never independently investigated how these trades could be accomplished without any impact on the price of the securities bought and sold, without any market footprint, and without anyone "on the Street" knowing or even hearing about Madoff's alleged trading activity.

87. The purchase and sale of \$20 to \$30 billion of stocks in a short period of time would have, under normal market conditions, resulted in adverse stock price movements cutting into the alleged profits from the transactions. Upon information and belief, the Maxam Defendants did not conduct independent or reasonable due diligence into whether the prices Madoff obtained for these transactions were in fact at depressed, medium, or high daily prices for the stock transactions in question.

88. Madoff's trades never caused even a ripple in the market. Such displacement was never observed, of course, because the trading did not occur. Based on the lack of any observable market reaction, the Defendants were on inquiry notice that Madoff's trades were not happening.

89. When Madoff purportedly exited the market, he claimed to have placed his customers' assets in Treasuries or mutual funds invested in Treasuries. The movement of billions of dollars in and out of the market also should have materially affected the price of Treasuries. This was another piece of a basic reasonable quantitative review that Defendants chose to ignore. Defendants had a powerful incentive to turn a blind eye to numerous indicia of illegitimate trading activity and fraud. Defendants received substantial administrative fees and a share of the profits that typically would be paid to BLMIS, as discussed below. This compensation arrangement, together with a lack of transparency and other factors set forth herein, should have caused an experienced investment professional to investigate.

**E. Madoff's Uncanny Ability to Buy Low and Sell High**

90. Maxam Fund's account statements also reflected a surprising ability to consistently buy stocks near their daily lows and sell stocks near their daily highs. No

experienced investment professional could have reasonably believed that this was accomplished legitimately.

91. BLMIS's purported trades for the Maxam Fund almost always appeared to occur at precisely the right time of day. An analysis of the Maxam Fund trade data reveals that in approximately 78% of the trades when BLMIS was purportedly purchasing shares for the Maxam Fund, the purported purchase price was below the daily midpoint price. When purportedly selling shares for the Maxam Fund the purported sale price was above the daily midpoint price in 69% of the trades. It would have been statistically impossible for Madoff to achieve such percentages buying and selling stocks for all of his IA Business customers once a day. This is even more apparent when considering that if Madoff were executing the split-strike conversion strategy by engaging in "time slicing" within a given day, as he claimed, such a practice would have resulted in BLMIS's trades being closer to the daily midpoint price. Routine quantitative analysis of these prices would have revealed the statistical implausibility of the purported trade prices.

92. Maxam Capital claimed to be "monitor[ing] the pricing of the securities, the security weightings and . . . the high and low to see if the investment process is in line with the reported policy and investment thesis." BLMIS's uncanny ability to buy low and sell high should have put a reasonable money manager on notice that Madoff perhaps may have been backdating trades, front running, or capitalizing on inside information. All of these explanations involve some type of illegality.

93. In short, Madoff's "success rate" was by itself a huge red flag for Defendants that they chose to ignore in order to continue to enrich themselves through their relationship with Madoff and BLMIS.

**F. Maxam Fund's Options Trading with Mythical Counterparties**

94. There were multiple irregularities with the options trading executed by BLMIS, apart from the volume of impossibilities alleged above. Another glaring flag was Madoff's secrecy regarding the identity of the counterparties on the options transactions. Madoff would not disclose the identities of these counterparties to Manzke or others, and the Maxam Defendants simply accepted Madoff's vague descriptions of the counterparties without seeking further information despite their fiduciary responsibilities to their investors to manage the creditworthiness of the counterparties.

95. The Maxam Fund, as a BLMIS customer, executed an agreement entitled "Terms and Conditions for Option Hedging Transactions." This agreement describes the relationship between BLMIS and the Maxam Fund: "The following instructions establishes the terms and conditions under which Bernard L. Madoff Investment Securities LLC (BLMIS) will effect, *as agent*, the client's transactions" (emphasis added). However, in spite of the fact that BLMIS was choosing the counterparty on behalf of the Maxam Fund principal account, it was the understanding of the Maxam Fund that counterparty risk was borne by the Maxam Funds themselves rather than the broker-dealer BLMIS. Curiously, the Maxam Defendants had no specific understanding of the counterparties to these transactions. Upon information and belief, at no time did the Maxam Defendants seek out or have any discussions with any purported counterparties. Nor did the Maxam Defendants review any documentation concerning these counterparty relationships or transactions. This is despite the fact that the Maxam Fund was the "principal" on the transactions and thereby had the financial exposure on the trades, not BLMIS as the "agent." By this failure, Maxam Defendants allowed their investors to be exposed to billions of dollars of potential losses were the counterparties to fail or break the trades.

96. This is also despite the fact that Maxam Capital stated in its December 2005 AIMA Questionnaire that “[w]hen MAXAM establishes a fund of funds, each sub-advisor’s documents are analyzed to be sure that they clearly explain the manager’s strategy, including approved counterparties, markets, instruments, and specific trading policies for the fund.”

97. Furthermore, as sophisticated investment advisers, the Maxam Defendants were aware that Rule 10b-10 of the Exchange Act requires the disclosure of such information upon written request and particularly requires disclosure —“if the broker or dealer is acting as agent for such customer’— . . . [t]he name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that the information will be furnished upon written request of such customer.”

98. The Maxam Defendants, however, willingly accepted Madoff’s refusal to disclose the names of the counterparties even though, contractually, those counterparties were counterparties to the Maxam Fund and not BLMIS. If Madoff was simply acting as the Maxam Fund’s agent, as noted in the terms and conditions of Madoff’s trading authority, there would be no legitimate reason to withhold such vital information, or for Defendants not to know with whom they were trading.

99. In addition, there were several other abnormalities with Maxam Fund’s options trades that contradicted Madoff’s representations. First, Madoff claimed to Schulman, Manzke’s co-CEO at Tremont — who, upon information and belief, informed Manzke — that the options trades were done in the OTC market and not in the CBOE. In the OTC market, unlike CBOE trades, the counterparty is generally listed and identified on the confirmation. None of BLMIS’s options trade confirmations sent to, received and reviewed by Maxam Capital ever identified the

counterparty, which is contrary to the representation that these options transactions were done OTC.

100. Furthermore, options traded on the CBOE have an identification number known as a CUSIP number. The CUSIP number allows traders to quickly access electronic information regarding a particular option by simply inputting the CUSIP number in commonly used data terminals. By contrast, OTC options are private transactions that are not readily assigned any CUSIP number, especially not option contracts with marked similarities to those options traded on the CBOE. Despite this fundamental difference, the trade confirmations BLMIS sent to the Maxam Defendants for review in fact were in error. They included CUSIP numbers, similar to those identifying options on the CBOE, even though the ostensible trades were represented to be private, OTC transactions.

101. Furthermore, given that the option trades were exchange-traded options instead of OTC transactions, the trades should have settled one business day after the trade date, commonly referred to as “T+1”. In the Maxam Fund’s situation, however, 194 out of a total of 200 options trades were settled outside of T+1. This glaring departure from the standard market convention should have put Maxam Capital on notice that BLMIS’s options trades were fraudulent.

102. Despite these abnormalities, the Maxam Defendants failed to independently question these issues or why they could not be provided with their counterparty information. Furthermore, Maxam Capital suggested in the counterparty risk section of its Due Diligence materials that it was aware of who the counterparties were and had verified information regarding its counterparties when it had not.

**G. Madoff's Secrecy and Lack of Transparency**

103. Madoff's lack of transparency on all aspects of the strategy, his unwillingness to allow genuine due diligence, and his unprecedented levels of secrecy were all well known to Defendants. Instead of independently questioning why Madoff was so secretive, Defendants were willingly complicit in advancing this lack of transparency in direct contrast to their own best practices. Defendants indulged Madoff's "don't ask, don't tell" policies. In an interview with the PBS television program, *Frontline*, which aired in 2009, Manzke admitted that even though she regularly advocated for more openness and transparency in the hedge funds and fund of funds industry, Defendants did not apply those standards when it came to Madoff:

MARTIN SMITH: [voice-over] Manzke says everyone operated by Madoff's secrecy rules.

[on camera] Did Madoff say to you, 'Don't put me in your prospectus?'

SANDRA MANZKE: Yes. He did.

MARTIN SMITH: Do you think that's right? Do you think that's appropriate?

SANDRA MANZKE: I don't know. Every one of my clients knew that this was a Madoff feeder fund, and-

MARTIN SMITH: So why not put it in a prospectus, then?

SANDRA MANZKE: That was one of, always, Bernie's conditions of getting an account.

MARTIN SMITH: But you've publicly called for transparency. That's transparency.

SANDRA MANZKE: Yes. But many funds and investors were very secretive. They didn't mention that they had money with Madoff. It was something you didn't talk about.

(Transcript from *Frontline* program on "The Madoff Affair," ("Frontline Transcript") available online at <http://www.pbs.org/wgbh/pages/frontline/madoff/etc/script.html>).

104. Manzke's broadcast interview confirmed that the Maxam Defendants ignored their own focus on transparency to accommodate Madoff's "conditions" to investing. At the same time, however, Maxam Capital told investors in its Due Diligence Questionnaire that it "[did] not invest in secretive managers or in managers whose strategy we do not understand . . . We are extremely transparent with clients in regard to the in-house qualitative and quantitative information generated by our analysis."

105. Yet, Manzke's public interview is also consistent with other internal documentation demonstrating Defendants' compliance with Madoff's demand for secrecy. In one email from December 2000, when Manzke was still CEO of Tremont, a Tremont employee responded to a number of questions from a current or potential investor in Germany. According to the email, Madoff indicated that Tremont should not use his name "as he was managing money only for family and friends." Upon information and belief, Tremont and Manzke knew that statement was false because they understood then that Madoff was managing billions for dozens of feeder funds worldwide. These foreign feeder funds, with scores of institutional, European and other sophisticated investors, were not "family and friends."

106. When Madoff permitted Manzke to open a new account when she left Tremont and started Maxam Capital, the first thing he asked was that Manzke not include his name in Maxam Fund's PPM. Manzke, without question, obliged.

107. Defendants were on inquiry notice that Madoff was going to extraordinary lengths to remain cloaked in secrecy. Defendants did not legitimately inquire and continued to facilitate Madoff's deceptive practices in exchange for millions in fees annually.

## **H. BLMIS's Odd Organizational and Compensation Structures**

108. In a deviation from well-established structure and remuneration practices in the hedge fund industry, Madoff ran his IA Business as a division of his broker-dealer, BLMIS. Many other managers employing a specific investment strategy utilized a standalone hedge fund structure. This, in and of itself, was unusual.

109. In addition, Madoff and BLMIS charged no management or successful performance fees for his services, like almost all hedge fund managers. Madoff provided BLMIS feeder fund managers such as Maxam Capital — which did little more than market and funnel billions to BLMIS — a large windfall allowing them to collect millions in fees. The compensation structure itself was a red flag that there was fraud and used as an inducement for funds to keep feeding him billions.

110. The only source of revenue claimed to be generated for the services conducted by the IA Business was a four-cent per share “brokerage commission” for each purported equity trade made in the IA Business customer accounts, and a \$1 per option contract executed. In contrast, other hedge fund managers routinely charge fees equal to 1% to 2% of assets under management, along with performance fees equal to 10% to 20% of profits generated for the fund. The compensation arrangement between Madoff and feeder fund managers like Maxam Capital had Madoff leaving a large amount of money on the proverbial table, and allowed BLMIS feeder funds like Maxam Capital to reap extraordinarily and suspiciously high rewards for little investment strategy contribution.

111. This arrangement should have alerted the Maxam Defendants that something was amiss, as the difference in profits is significant. From 2006 to 2008, Madoff as a hedge fund manager could have charged between approximately \$10.2 million and \$20.4 million in total

fees, depending on whether he charged 1% of assets under management plus a 10% performance fee (“1 and 10”), or 2% of assets under management plus a 20% performance fee (“2 and 20”).

112. Either a “1 and 10” or “2 and 20” compensation scheme would have been customary in the hedge fund industry during the relevant time period. In contrast, charging four cents per share commissions on the purported equity trades and \$1 per contract on the fictitious options transactions, Madoff received approximately \$3.4 million in total compensation in the form of commissions. In other words, Madoff left anywhere from \$6.8 million and \$17 million on the table for Maxam Fund alone during a two year period from 2006 to 2008.

113. When expanded to include the entirety of BLMIS’s IA Business customers – which Manzke believed totaled anywhere from \$20 to 30 billion in assets under management, it is readily apparent that Madoff’s compensation scheme forfeited hundreds of millions – if not *billions* – of dollars that Madoff easily could have charged for his management skills. (Transcript, Exh. C), 160:3-14. The Maxam Defendants’ willful acceptance of this atypical and highly suspicious organizational and commission structure was motivated by the Maxam Defendants’ own self interest, which led them to perform no independent meaningful or reasonable due diligence. The “explanations” that Madoff would give for this – that he did not want to do paperwork or “run a hedge fund” – lacked any degree of credibility and required further inquiry. Instead of keeping this money for himself, Madoff allowed his “feeders” to receive these fees, relying on their avarice and greed to induce their assistance and complacency in perpetuating the scheme.

**I. Account Statement Inconsistencies with Madoff’s Purported Strategy**

114. On a number of separate occasions, Maxam Fund’s account statements received from BLMIS purported to show gains on behalf of Maxam Fund resulting from transactions

inconsistent with Madoff's supposed split-strike conversion strategy. Certain of these transactions involved short-term option trading that resulted in substantial gains for Maxam Fund. For example, in 2008, the Maxam Fund account purportedly participated in two of these trades generating approximately \$2.7 million in gains. These transactions represent approximately 11% of the total return earned for that fund in 2008. These gains were purportedly achieved by speculating in the options market, a strategy which contradicts the nature of the split-strike conversion strategy and should have raised a red flag for sophisticated investors such as the Maxam Defendants.

**J. Trading Outside of the Daily Ranges**

115. On at least one occasion, BLMIS executed an equity security transaction on behalf of Maxam Fund at a price value above the daily high or below the daily low. In particular, Maxam Fund's account statements for December 2006 reported a sale of 10,751 shares of Merck (MRK). BLMIS's records and the Maxam Fund's trade confirmations reflect that these stocks were sold with a trade date of December 22, 2006 for \$44.61, and settled on December 28, 2006. The price range for Merck stock in fact traded on December 22, 2006 was between \$42.78 and \$43.42.

116. Had the Maxam Defendants been the pioneers in the hedge fund industry that they claimed to be, such a clear irregularity with respect to trading range should have put them on notice that something was not right with the statements provided to them by BLMIS. Analyzing such an irregularity should have caused sophisticated business people such as those at Maxam Capital to ask more questions. Yet, the Maxam Defendants deliberately chose not to ask those questions or "rock the boat," in order to continue benefiting from their profitable relationship with Madoff.

**K. Lack of Independent Custodian**

117. BLMIS functioned as investment adviser, executing broker and custodian of securities. This arrangement eliminated another frequently utilized risk control in investment management, where the adviser is usually independent from the custodian. This separates the customer assets, which the adviser is trading, from the actual custody and possession of the cash and securities in the customers' accounts which are the responsibility of the custodian. The Maxam Defendants took Madoff at his word that he was holding securities for them. The Maxam Defendants never verified that the securities purportedly purchased for them actually existed.

118. Additionally, Madoff forced all IA Business customers to custody all of their managed assets at BLMIS. It is the forcing of the customers to use BLMIS as both custodian and executing broker that should have raised a red flag. Typically, institutional customers, including hedge funds, maintain separate relationships with a custodian and an executing broker.

**L. BLMIS's Strip Mall Auditors**

119. BLMIS, which reportedly ran the world's largest money management firm, was purportedly audited by Friehling & Horowitz ("F&H"), a three-person operation in Rockland County, New York. In reality, however, Friehling & Horowitz was a one-man shop consisting of David Friehling, a Certified Public Accountant. The other two employees were an assistant and a semi-retired accountant living in Florida. Defendants were on inquiry notice that this small firm did not have the expertise and was otherwise not even minimally equipped, capable, or competent to conduct legitimate domestic and international audits for an entity such as BLMIS. No experienced business person could have reasonably believed it possible for any such firm to have competently audited an entity the size of BLMIS. Indeed, on November 3, 2009, David

Friehling pled guilty to seven counts of securities fraud, investment adviser fraud, obstructing or impeding the administration of Internal Revenue laws, and making false filings with the SEC in connection with the services he performed for Madoff and BLMIS.

120. In addition, F&H had been reporting to the American Institute of Certified Public Accountants (“AICPA”) for fifteen years prior to the collapse of Madoff’s scheme that it did *not* conduct audits. AICPA, which has more than 350,000 individual members, monitors most firms that audit private companies, such as BLMIS. Some 33,000 firms enroll in the AICPA’s peer review program, in which experienced auditors assess each firm’s audit quality each year. F&H was enrolled in the program but had not submitted to a review since 1993. This is because the firm had been informing AICPA—every year, in writing for fifteen years—that it did not perform audits. Meanwhile, F&H claimed to do just that for BLMIS.

121. Maxam Capital was well aware of the situation with BLMIS auditors, as its own documentation shows that questions were raised about F&H by its investors and potential investors. Manzke herself admitted during the *Frontline* interview that these auditors were suspicious:

MARTIN SMITH: And as for due diligence, no one seemed to question the fact that Madoff’s accountant was a one-man operation in this strip mall an hour’s drive north of New York.

[on camera] Did you ask him why he had such a small accounting firm?

SANDRA MANZKE, Founder, Tremont Capital, 1984-’05: Yeah. I mean, that was his- it was his family, you know, business, that it was an accounting firm that his father-in-law had used for years and he continued to use it.

MARTIN SMITH: And it didn’t bother you that it was this small thing.

SANDRA MANZKE: *Of course, it bothered you. I mean, every-you know, those are the kind of things that it would bother you.* But that was one of the conditions of doing business, that you accepted that. And part of that was his, you know, proprietary trading model, the black box that he used, that he wasn't going to disclose what was in it.

Manzke's response is particularly troubling when considered with Maxam Capital's own due diligence materials, which states that Maxam Capital will follow up with a fund's contacts and "will speak directly with the fund administrator, prime broker, and auditor to make sure that the process described at the manager level are [sic] actually carried out by the third party service provider." Upon information and belief, Maxam Capital did not speak with F&H. Maxam Capital further claims that "[i]f we are not comfortable with the business risks from this review, we can eliminate a manager from further consideration." Maxam Capital also contended that it performed reference checks on third party providers and would "thoroughly review and analyze the manager's audited financial statements." *Id.* Even though Manzke was "bothered" by BLMIS's auditors, Maxam Capital ignored this discomfort in order to continue to reap the benefits from Madoff's fraudulent scheme.

**M. Madoff Evaded SEC Filing Requirements**

122. After registering with the SEC as an investment adviser in 2006, BLMIS was required to file a Form 13F at the end of each quarter disclosing the securities it held on behalf of its IA Business customers. From that point forward, at the end of each quarter, Madoff purported to convert the entire portfolio of the IA Business to Treasury bills to avoid this reporting requirement. This artificially forced liquidation of his equity and option positions at the end of calendar quarters was inconsistent with his strategy, and should have caused the Defendants to inquire as to why the liquidations were necessary. There was no legitimate market timing reason designed to maximize returns for Madoff to go to cash at the end of every quarter

or year. The conversion to Treasuries was anticipated to be done only when necessary to avoid a downturn in the market, and not on a quarterly basis to avoid a regulatory reporting requirement.

123. Had the Maxam Defendants properly questioned this incongruous activity, it would have been apparent that Madoff exited the equity and option markets in order to explain why BLMIS never reported the equities on his required Form 13F filings.

**N. Paper Trade Tickets and Old Fashioned Statements**

124. Madoff was known as a technological trading pioneer for his use of technology in electronic trading platforms. According to Manzke, during some visits to BLMIS when she worked at Tremont, Madoff would walk through the trading floor, to “show off his paperless trading floor.” (Transcript, Exh. C at 231:17-22). Yet, BLMIS never sent a single electronic trade confirmation to any IA Business customer, including Maxam. Rather, Madoff’s firm provided only paper confirms which he sent, not by fax, but via standard mail.

125. Instead of providing electronic access to their trade information, the Maxam Fund waited several days for their paper trade confirmations to arrive by mail. The Maxam Defendants were aware of this delay, and while Manzke was CEO of Tremont, a Tremont employee even asked for electronic trade tickets. Of course, that request was ignored by Madoff and neither Tremont nor Manzke ever pressed the issue. Once again, the Defendants ignored these striking incongruities, which, together with all of their and their investors’ concerns about Madoff, were substantial indicia of fraud.

**O. Due Diligence Efforts in 2006 Reveal Operational Red Flags**

126. The Maxam Defendants completed periodic Due Diligence Questionnaires for each of their funds, but such due diligence was simply a façade for giving Madoff a clean bill of health in order to lure in more investors. The Defendants’ own documentation reveals that their

due diligence efforts were outcome determinative in that they saw what they wanted to see. Otherwise, there is simply no excuse for ignoring the glaring deficiencies of Madoff's operations.

127. A Due Diligence Questionnaire for Maxam Fund and Maxam Limited from March 1, 2007, notes that "MAXAM professionals have been evaluating and monitoring [Madoff and his strategy] for over 20 years. Suzanne Hammond and Joseph Soares have managed a similar Fund at their previous employer. The Broker Dealer selected, [Madoff], has an 'edge' and a proven track record. The Broker Dealer has an excellent organizational structure and is passionate about the business." Significantly, the Questionnaire also notes that all trades are executed through the investment adviser and that all positions are custodied with the investment adviser. It also notes the "[s]trong internal controls to monitor The Broker Dealer."

128. However, the "excellent organizational structure" had Madoff's brother as the Chief Compliance Officer, his niece as the Compliance Director, and his two sons in charge of the market making and proprietary trading of the firm. This lack of independence among family members was less than "excellent". Also, several of the compliance and supervisory functions to monitor and trade the activities in the IA Business were designated to Madoff himself. These dual roles were the antithesis of "strong internal controls."

#### **OTHERS IN THE FINANCIAL INDUSTRY HEADED THE RED FLAGS**

129. While the Maxam Defendants consciously disregarded substantial indicia of fraud to continue enriching themselves, others saw BLMIS for what it was. Many banks and industry advisors who made an effort to conduct reasonable due diligence flatly refused to deal with BLMIS and Madoff because they had serious concerns that his IA Business operations were not legitimate.

130. For example, as early as 2002, Cambridge Associates, LLC (“Cambridge”) consistently recommended that clients stay away from Madoff and Madoff-related feeder funds due to lack of transparency, a fear of front-running the market, and a general inability to understand how the strategy could produce cash-like, bond-like consistency of returns, in an equity strategy. In one document, Cambridge stated that “it felt illegal and that Madoff was not transparent,” while also suggesting that “[i]t might be interesting to compile some historic hedge fund fraud/scams for them to mull over.”

131. In 2003, a team from Société Générale’s investment bank performed due diligence on BLMIS and found that the numbers did not add up. Société Générale then forbade its investment bank from doing business with BLMIS. In contrast, the Maxam Defendants, who had more visibility into the reported trading activity on their account statements and through meetings with Madoff, continued to do lucrative business with BLMIS until Madoff was arrested.

132. In mid-2003, Acorn Partners, L.P. (“Acorn”)—a fund of funds and investment adviser for high net worth individuals—conducted due diligence of Madoff and found it likely that BLMIS’s account statements were generated as part of a fraudulent scheme, and “that fraudulent activity was highly likely.” Shortly after Madoff was arrested, in a letter to investors Acorn described the indicia of fraud that led it to conclude years prior that Madoff was a fraud. Many of the reasons given were the red flags alleged above. Indeed, Acorn saw these indicia of fraud as “not merely warning lights, but a smoking gun.” Acorn even conveyed its beliefs about Madoff to the Maxam Defendants. After speaking to an Acorn Representative about investing in Maxam Fund, Jennings stated in an April 2007 email that the representative informed him that Acorn “had in years past been offered a \$100MM separate account with BM, and had done a

very large amount of due diligence [and] [a]s attractive as that could have been to them [Acorn] could not get there for a variety of reasons, and therefore they had no interest at all.” Unfortunately for its investors, the Maxam Defendants did not make that same assessment.

133. Well-known investor Jim Simons, and his investment fund, Renaissance Technologies Corp. (“Renaissance”), also determined that something was not right with Madoff in 2003. Although Renaissance had invested with BLMIS, when they analyzed the options trading, they concluded that the volume purportedly being traded and the lack of known counterparties simply did not add up. For example, they calculated that if Madoff did his options trading in one day, he would have been doing 100% of that day’s options trading. Even assuming Madoff spread the options trading over three days, Madoff still could not have traded the volume of options he said he was trading. According to one Renaissance employee, “[n]one of it seems to add up.”

134. Renaissance also spoke with several market makers in OTC equity options, none of whom claimed to see any significant volume being traded on the days when Madoff claimed to be executing his options strategy. Even more, Renaissance also determined that whichever counterparty would have been willing to trade the basket of options Madoff purportedly was trading, it would have had to do so at unfavorable prices. Put simply, Renaissance figured out that Madoff’s options trading did not make any sense.

135. Beyond the options issues, in November 2003, a Renaissance employee also wondered aloud regarding a number of issues concerning Madoff. Regarding Madoff feeder funds—specifically Fairfield Sentry—the employee noted that “Madoff allows an outside group [Fairfield Greenwich] to make \$100 million per year in fees for doing absolutely nothing.” The employee went on: “The point is that as we don’t know why he does what he does we have no

idea if there are conflicts in his business that could come to some regulator's attention. Throw in that his brother-in-law is his auditor and his son is also high up in the organization . . . and you have the risk of some nasty allegations, the freezing of accounts, etc., etc." The employee proposed that "unless we can figure out a way to get comfortable with the regulatory tail risk in a hurry, we get out." Indeed, Renaissance made a decision in November 2003 to withdraw all of its BLMIS investments.

136. Aksia, LLC ("Aksia"), an independent hedge fund research and advisory firm recommended to its clients in 2007 not to invest through BLMIS, Madoff, or any of his feeder funds because of certain red flags. Simon Fludgate, head of operational due diligence at Aksia, concluded that the stock holdings reported in the quarterly statements BLMIS filed with the SEC appeared too small to support the size of the assets BLMIS claimed to be managing. In September 2007, Aksia prepared an Investment Review of Madoff feeder fund, Fairfield Sentry. In that report, Aksia concluded that the fund's description of how returns were generated was implausible. In fact, Aksia's review of Fairfield Sentry led it to conclude that either (a) Madoff's IA account was used to supply capital to Madoff's wholesale market making business, *or* (b) that "[t]he Feeder Funds are part of a financial game and the approximately 1.1 billion per year of gross excess returns . . . do not really exist."

137. In reaching this conclusion, Aksia found, among other things, that (1) the return stream of Fairfield Sentry did not appear to be possible under the split-strike conversion strategy; (2) Fairfield Sentry's quarterly 13F filings uncovered \$0 equity holdings every quarter except for one, even though Aksia was told that Madoff's strategy sometimes lasts for as long as eight months; (3) the use of the U.S. mail instead of electronic means to provide position and trading execution information was suspicious; (4) based on the amount under management for feeder

funds, “the required trade sizes are huge and inconsistent with the size of the S&P100 options market”; (5) Madoff chose “to earn a small 4 cents a share” when he could have earned hundreds of millions more by managing a hedge fund himself; and (6) Madoff chose “to earn a paltry 4 cents a share” when he could have funded the strategy as a proprietary trading position and earn over one billion dollars.

138. Albourne Partners Limited (“Albourne”), an independent consultant on hedge funds and alternative investments, advised clients for a decade that they should steer clear of Madoff. In a December 15, 2008 commentary released just days after Madoff’s scheme was revealed, Albourne noted that its view on Madoff “never wavered.” To Albourne, although it was not clear Madoff was a fraud, “we concluded that, where a client had a holding, it should redeem.” Albourne noted that it believed Madoff’s returns were “too good to be true” in that Albourne could not “think of a group of funds trading easily marked-to-market assets which appeared to have weathered so many different types of storms with such apparently consistent risk-adjusted returns.” In addition, according to the Albourne report Madoff’s operations were “built around obsessive secrecy” to the extent that one of BLMIS’s former employees had no idea how Madoff made his money.

139. Albourne also noted that over time, “it became clear that there were multiple Madoff feeders and that in total their AUM [assets under management] exceeded the publicly assumed scale of the firm.” According to Albourne, it was extremely unusual for a fund manager to significantly understate its assets under management. The Albourne report also explained that Madoff’s purported strategy involved not only equities trading, but options. “Given the supposed size of the assets under management, it would have been difficult to execute the strategy due to the risk of market impact.”

140. Albourne's post-arrest report is consistent with other Albourne reports prior to the revelation of the fraud. Earlier in 2008, Albourne specifically reviewed the Prime Fund for a particular Albourne client. The April 11, 2008 report lists only two positives of this fund, while listing many more negatives. In addition to the issues alleged above, Albourne mentioned that Albourne had monitored many volatility arbitrage managers, so it would expect Madoff's "simple strategy" to be replicated by others. Of course, it was not.

141. Albourne also found "strange" the fact that BLMIS prided itself in being "at the forefront of computerized trading," yet the Prime Fund's management was content with receiving paper trade confirmations by mail a few days after the purported trade dates. It noted that the investment advisory agreement prohibited the Prime Fund's management from disclosing the identity of the Investment Manager. Further, Albourne questioned why all trades were exited at year-end to facilitate easy auditing. "It cannot be but suboptimal for a manager to put the audit process ahead of the investment strategy, i.e., potentially missing a trading opportunity."

142. Cambridge, Société Générale, Acorn, Renaissance, Aksia, and Albourne all determined that something was simply not right "in Denmark" and either pulled their investments or refused to recommend investments to others through BLMIS. These entities may not have specifically known of Madoff's fraud, but they determined through basic due diligence that Madoff's performance was inconsistent with his purported strategy and the way markets behave generally. These entities had even less information than the Maxam Defendants, which were intimately knowledgeable with Madoff and had access to more information. The difference between these entities and the Maxam Defendants, however, was that these entities did not rely on Madoff so heavily for their profits. Unlike the Maxam Defendants, these entities saw Madoff

through the objective eyes of their due diligence—and the number of unanswered questions caused them to run far away with their money.

**EMERGING INDUSTRY STANDARDS AND THE *BAYOU PONZI***  
**SHOULD HAVE PUT THE MAXAM DEFENDANTS ON ALERT**

143. The Maxam Defendants’ tepid effort to analyze and monitor investments with Madoff was contrary to industry standards at the time. The hedge fund industry, and Manzke in particular, should have determined by 2001, when news articles in industry publications about Madoff came out, that things were not right at BLMIS. By then, they had a half dozen years of BLMIS performance and statistics upon which they could perform the type of quantitative analysis alleged above. However, if not by then, the Maxam Defendants should have been on heightened alert of manager fraud after the collapse of the Bayou Group Fund several years later.

144. In the early 2000s, the Bayou Group Fund (“Bayou”), headed by Samuel Israel, appeared to be one of the highly successful hedge funds riding the rise in the stock market following the Tech Bubble collapse. It was discovered in 2005, however, that Bayou was a \$400 million Ponzi scheme. This fraud attracted much media attention and almost everyone in the hedge fund industry knew about it. The Bayou fraud forewarned the financial industry that a lack of due diligence could result in investing with a fraudulent money manager—no matter how legitimate the manager may seem.

145. Bayou had a number of obvious variables and indicia of fraud in common with BLMIS. Despite purporting to have 9 to 10 figures of assets under management, neither Bayou nor BLMIS was audited by a large, well-known accounting firm; Bayou had an in-house accountant and BLMIS had F&H. Both Bayou and BLMIS provided their customers extraordinarily and consistently positive, but not necessarily spectacular, returns, with little to no

volatility. The reported returns were so consistent, that they were nearly statistically impossible. Finally, neither investment manager charged a performance fee, which is how many hedge fund managers earn their remuneration.

146. The Maxam Defendants and hedge funds in the industry were well aware of Bayou and, even if they were not already suspicious of Madoff, Bayou should have placed them on high alert. The Bayou fraud caused many hedge funds to reconsider the adequacy of their due diligence and set in place heightened or additional mechanisms for not allowing such fraud to happen again. In the Winter of 2006, the Greenwich Roundtable presented its *Best Practices in Hedge Fund Investing: Due Diligence for Global Macro and Managed Futures Strategies*. That publication noted in its Introduction that the Bayou fraud transpired shortly after the organization's initial publication, *Best Practices in Hedge Fund Investment*, and that the Bayou fraud "offers a valuable context in which to evaluate both the substance and purpose of our *Best Practices* series."

147. The initial *Best Practices* publication provided a checklist that identified lines of inquiry for hedge fund managers.

Ironically, one of the lessons of Bayou was not just the need for alertness to the possibility of fraud but how many experienced investors believed their judgment and experience were sufficient to dispense with mundane checklists. By my count, a casual reader of our *Best Practices* document would have had between eight and ten points where they should have been alarmed enough to stop and intensively scrutinize what they were investigating or been comfortable stopping the due diligence process outright. As explained, the document contained a checklist and clear patterns of inquiry on the key subjects. However, it had an important subtext too. Be careful. Be focused and diligent. Exercise particular caution in areas where you are less familiar or uncertain. Do your own homework. Don't be rushed or shortchange your work for any reason. Let your investment conviction be built in calibrated work steps but always trust your gut in the end. These are the

lessons of the Bayou debacle but they were also the “lessons” of the *Best Practices* publication which preceded it.

(The Greenwich Roundtable Presents: *Best Practices in Hedge Fund Investing: Due Diligence for Global Macro and Managed Futures Strategies* (Winter 2006), at 6 (Introduction by Spencer Boggess)).

148. The remainder of the *Best Practices* guide includes chapters on the following topics: (1) Strategy, Investment Process and Market Opportunity; (2) Team and Organization; (3) Fee Structure and Terms; (4) Risk Management; (5) Management Company, Fund Structure and Asset Base; (6) Quantitative Review; (7) Operations and Transparency; (8) Third Parties (including subsections on auditors, prime broker/futures clearing merchant, administrator, and marketing relationships); and (9) Intuition, Judgment and Experience.

149. Had anyone at Maxam Capital utilized the suggestions of the Greenwich Roundtable *Best Practices* guide, BLMIS would have raised too many red flags and left too many questions unanswered to continue investing. The Maxam Defendants cannot credibly contend that they followed any of the suggestions of the Greenwich Roundtable, much less learned the lessons of the Bayou fraud, when it came to its hundreds of millions invested through BLMIS. Thus, not only did the Maxam Defendants fail to adhere to the lessons of the Bayou fraud, but when it came to the hundreds of millions invested through BLMIS, the Maxam Defendants failed to follow standards recommended to other money managers.

#### **VOIDABLE TRANSFERS FROM BLMIS**

150. During the relevant period, Maxam Fund was a direct client of BLMIS and its IA Business. Maxam Fund maintained an account with BLMIS which was designated account 1M0232 (the “Maxam Fund Account” or “Account”). For the Maxam Fund Account, Maxam Capital executed a Customer Agreement, an Option Agreement, and/or a Trading Authorization

Limited to Purchases and Sales of Securities and Options (collectively, the “Account Agreements”) and delivered such papers to its principal place of business at 885 Third Avenue, New York, New York.

151. The Account Agreements were to be performed in New York, New York through securities trading activities that would take place in New York, New York. The Account was held in New York, New York and Maxam Capital consistently wired funds into BLMIS’s account at JPMorgan Chase & Co., Account # xxxxxxxxxxxx1703 (the “BLMIS Bank Account”) in New York, New York through the Bank of America for application to the Account and the conducting of trading activities on behalf of Maxam Fund.

152. Between the time that Maxam Fund opened its Account with BLMIS in or around 2006 and the Filing Date, Maxam Capital directed deposits to BLMIS on behalf of Maxam Fund through multiple checks and wire transfers into the BLMIS Bank Account. Maxam Fund and Maxam Capital maintained several accounts in Connecticut at the Bank of America. Upon information and belief, Maxam Limited maintained an account at the Bank of Bermuda and transferred money to and from the Maxam Fund and Maxam Capital accounts at the Bank of America. Bank of America consistently wired funds to the BLMIS Bank Account in New York, New York for application to the Maxam Fund Account and to conduct trading activities.

153. Prior to the Filing Date, BLMIS transferred at least \$97.8 million to Maxam Fund, in the form of withdrawals from their BLMIS accounts (the “Transfers”), as set forth in Exhs. A and B, under circumstances which should have put the Maxam Defendants on notice that the Transfers were fraudulent. The Maxam Defendants also directed and received withdrawals of funds from the Maxam Fund account and otherwise communicated with and provided direction to BLMIS regarding the Maxam Fund account.

154. Maxam Fund was an initial transferee of the avoidable transfers set forth above as listed on Exh. B.

155. The Transfers are avoidable and recoverable under sections 544, 548, 550(a) and 551 of the Bankruptcy Code, applicable provisions of SIPA, particularly SIPA section 78fff-2(c)(3), and applicable provisions of DCL sections §§ 273 – 279 (McKinney 2001).

156. Of the Transfers, three transfers in the collective amount of at least \$25 million (the “Preference Period Transfers”) were made to or for the benefit of Maxam Fund during the 90 days prior to the Filing Date, and are additionally recoverable under sections 547, 550(a) and 551 of the Bankruptcy Code and applicable provisions of SIPA, particularly section 78fff-2(c)(3). (See Exh. B, Column 9.)

#### **SUBSEQUENT TRANSFERS FROM MAXAM FUND**

157. As discussed above, within 90 days of the Filing Date, BLMIS wired approximately \$25 million from its bank account to Maxam Fund’s Bank of America account. In furtherance of the Trustee’s duties to recover the assets of the BLMIS estate, the Trustee’s counsel served Rule 2004 subpoenas on Bank of America and Maxam Fund to determine the whereabouts of the monies transferred from BLMIS to the Maxam Fund accounts. Based on correspondence from Maxam Fund’s counsel, Maxam Fund subsequently transferred some or all of the \$25 million to Maxam Limited, which was also managed by Maxam Capital, and Maxam Limited in turn transferred those funds to its investors located in Ireland, Luxembourg, Switzerland and other countries.

158. In addition, Maxam Fund and Maxam Limited paid in excess of \$5.8 million to Maxam Capital in the form of management and administrative fees. These fees in turn were then transferred to Manzke, Hammond, Walker and April in the form of distributions, dividends,

salaries, bonuses, and other compensation. All of these transactions involved the transfer of Customer Property.

159. Upon information and belief, on December 16, 2006 Manzke transferred a one-half ownership interest in property located in Pound Ridge, New York, to Walker and April. Manzke held the other one-half ownership interest in the property. On January 9, 2008, Manzke transferred her ownership interest to the Manzke Trust, an entity controlled by Manzke. On December 30, 2008, after charges had been filed against Madoff, the Manzke Trust transferred its one-half ownership of the property to Walker and April, leaving them with full ownership.

160. Upon information and belief, on May 1, 2008, Maxam Fund wired \$500,000 from its account at the Bank of America to Manzke's Individual Retirement Account ("IRA") (Citibank, N.A. Account #XXXXXX6402).

161. Upon information and belief, on September 4, 2008, Maxam Fund wired \$50,000 from its Bank of America account to Hammond. It also wired \$50,000 to Hammond on June 12, 2007 and \$15,000 to Hammond on April 16, 2007 (together with the transfers to the Maxam Defendants, the \$25 million transfer from Maxam Fund to Maxam Limited, the ownership interest in the Pound Ridge property and the \$500,000 transfer from Maxam Fund to Manzke's retirement account, the "Subsequent Transfers").

162. To the extent that any of the recovery counts may be inconsistent with each other, they are to be treated as being pled in the alternative.

163. The Trustee's investigation is ongoing and the Trustee reserves the right to (1) supplement the information regarding the Transfers, Subsequent Transfers, and any additional transfers, and (2) seek recovery of such additional transfers.

## **CUSTOMER CLAIMS**

164. On or about March 2, 2009, Maxam Fund filed a customer claim with the Trustee which the Trustee has designated as Claim # 004554 (the “Customer Claim”).

165. On December 23, 2008, this Court entered an Order on Application for Entry of an Order Approving Form and Manner of Publication and Mailing of Notices, Specifying Procedures for Filing, Determination and Adjudication of Claims, and Providing Other Relief (“Claims Procedures Order”; Docket No. 12). The Claims Procedures Order includes a process for determination and allowance of claims under which the Trustee has been operating. The Trustee intends to resolve the Customer Claim and any related objections to the Trustee’s determination of such claim through a separate hearing as contemplated by the Claims Procedures Order.

## **COUNT ONE** **PREFERENTIAL TRANSFERS (INITIAL TRANSFEREE)** **11 U.S.C. §§ 547(b), 550(a), AND 551**

### **Against Maxam Fund**

166. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

167. At the time of each of the Preference Period Transfers, Maxam Fund was a “creditor” of BLMIS within the meaning of section 101(10) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3).

168. Each of the Preference Period Transfers constitutes a transfer of an interest of BLMIS in property within the meaning of section 101(54) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3).

169. Each of the Preference Period Transfers was to or for the benefit of Maxam Fund.

170. Each of the Preference Period Transfers was made for or on account of an antecedent debt owed by BLMIS to Maxam Fund before such transfer was made.

171. Each of the Preference Period Transfers was made while BLMIS was insolvent.

172. Each of the Preference Period Transfers was made during the 90-day preference period under section 547(b)(4) of the Bankruptcy Code.

173. Each of the Preference Period Transfers enabled Maxam Fund to receive more than it would receive if (i) this case was a case under chapter 7 of the Bankruptcy Code, (ii) the transfers had not been made, and (iii) Maxam Fund received payment of such debt to the extent provided by the provisions of the Bankruptcy Code.

174. Each of the Preference Period Transfers constitutes a preferential transfer avoidable by the Trustee pursuant to section 547(b) of the Bankruptcy Code and recoverable from Maxam Fund as initial transferee or the entity for whose benefit such transfers were made pursuant to section 550(a) of the Bankruptcy Code.

175. As a result of the foregoing, pursuant to sections 547(b), 550(a), and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment against Maxam Fund: (a) avoiding and preserving the Preference Period Transfers, (b) directing that the Preference Period Transfers be set aside and (c) recovering the Preference Period Transfers, or the value thereof from Maxam Fund, for the benefit of the estate of BLMIS.

**COUNT TWO**  
**PREFERENTIAL TRANSFERS (SUBSEQUENT TRANSFEREES)**  
**11 U.S.C. §§ 547(b), 550(a), AND 551**

**Against the Maxam Defendants and Maxam Limited**

176. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

177. Each of the Preference Period Transfers is avoidable under SIPA § 78fff-2(c)(3) and section 547(b) of the Bankruptcy Code. Furthermore, each of the Preference Period Transfers constitutes a transfer of an interest of BLMIS in property within the meaning of section 101(54) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3).

178. On information and belief, Subsequent Transferee Defendants and Maxam Limited were immediate or mediate transferees of some portion of the Preference Period Transfers pursuant to section 550(a) of the Bankruptcy Code (the “Preference Period Subsequent Transfers”).

179. Each of the Preference Period Subsequent Transfers were made directly or indirectly to or for the benefit of Subsequent Transferee Defendants and Maxam Limited.

180. As a result of the foregoing, the Trustee is entitled to a judgment pursuant to sections 547(b), 550(a), and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3) recovering the Preference Period Subsequent Transfers made, or the value thereof, from Subsequent Transferee Defendants and Maxam Limited for the benefit of the estate of BLMIS.

**COUNT THREE**  
**FRAUDULENT TRANSFERS**  
**11 U.S.C. §§ 548(a)(1)(A), 550 AND 551**

**Against Maxam Fund**

181. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

182. Each of the Transfers to Maxam Fund was made on or within two years before the Filing Date.

183. Each of the Transfers to Maxam Fund constituted a transfer of an interest of BLMIS in property within the meaning of sections 101(54) and 548(a) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3).

184. Each of the Transfers was made by BLMIS with the actual intent to hinder, delay, and defraud some or all of BLMIS's then existing or future creditors. BLMIS made the Transfers to or for the benefit of Maxam Fund in furtherance of a fraudulent investment scheme.

185. Each of the Transfers constitute fraudulent transfers avoidable by the Trustee pursuant to section 548(a)(1)(A) of the Bankruptcy Code and recoverable from Maxam Fund pursuant to section 550(a) of the Bankruptcy Code and SIPA § 78fff-(2)(c)(3).

186. As a result of the foregoing, pursuant to sections 548(a)(1)(A), 550(a), and 551 of the Bankruptcy Code, the Trustee is entitled to a judgment against Maxam Fund: (a) avoiding and preserving the Transfers, (b) directing that the Transfers be set aside, and (c) recovering the Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS.

**COUNT FOUR**  
**FRAUDULENT TRANSFERS**  
**11 U.S.C. §§ 548(a)(1)(B), 550 AND 551**

**Against Maxam Fund**

187. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

188. Each of the Transfers was made on or within two years before the Filing Date.

189. Each of the Transfers constitutes a transfer of an interest of BLMIS in property within the meaning of sections 101(54) and 548(a) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3).

190. BLMIS received less than a reasonably equivalent value in exchange for each of the Transfers.

191. At the time of each of the Transfers, BLMIS was insolvent, or became insolvent as a result of the Transfer.

192. At the time of each of the Transfers, BLMIS was engaged in a business or a transaction, or was about to engage in a business or a transaction, for which any property remaining with BLMIS was an unreasonably small capital.

193. At the time of each of the Transfers, BLMIS intended to incur, or believed that it would incur, debts that would be beyond BLMIS's ability to pay as such debts matured.

194. Each of the Transfers constitute fraudulent transfers avoidable by the Trustee pursuant to section 548(a)(1)(B) of the Bankruptcy Code and recoverable from Maxam Fund pursuant to section 550(a) and SIPA § 78fff-(2)(c)(3).

195. As a result of the foregoing, pursuant to sections 548(a)(1)(B), 550(a), and 551 of the Bankruptcy Code, the Trustee is entitled to a judgment against Maxam Fund: (a) avoiding and preserving the Transfers, (b) directing that the Transfers be set aside, and (c) recovering the Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS.

**COUNT FIVE**  
**FRAUDULENT TRANSFER – NEW YORK DEBTOR AND CREDITOR LAW**  
**§§ 276, 276-a, 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(a) AND 551**

**Against Maxam Fund**

196. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

197. At all times relevant to the Transfers, there have been and are one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS

that are allowable under section 502 of the Bankruptcy Code or that are not allowable only under section 502(e) of the Bankruptcy Code.

198. Each of the Transfers constituted a conveyance by BLMIS as defined under DCL section 270.

199. Each of the Transfers was made by BLMIS with the actual intent to hinder, delay, or defraud the creditors of BLMIS. BLMIS made the Transfers to or for the benefit of Maxam Fund in furtherance of a fraudulent investment scheme.

200. Each of the Transfers was received by Maxam Fund with actual intent to hinder, delay or defraud creditors of BLMIS at the time of each of the Transfers, and/or future creditors of BLMIS.

201. As a result of the foregoing, pursuant to DCL sections 276, 276-a, 278 and/or 279, sections 544(b), 550(a), and 551 of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment against Maxam Fund (a) avoiding and preserving the Transfers, (b) directing that the Transfers be set aside, and (c) recovering the Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS, and (d) recovering attorneys' fees from Maxam Fund.

**COUNT SIX**  
**FRAUDULENT TRANSFER – NEW YORK DEBTOR AND CREDITOR LAW**  
**§§ 273, 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(a) AND 551**

**Against Maxam Fund**

202. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

203. At all times relevant to the Transfers, there have been and are one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS

that are allowable under section 502 of the Bankruptcy Code or that are not allowable only under section 502(e) of the Bankruptcy Code.

204. Each of the Transfers constituted a conveyance by BLMIS as defined under DCL section 270.

205. BLMIS did not receive fair consideration for the Transfers.

206. BLMIS was insolvent at the time it made each of the Transfers or, in the alternative, BLMIS became insolvent as a result of each of the Transfers.

207. As a result of the foregoing pursuant to DCL sections 273, 278 and/or 279, sections 544(b), 550(a), and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment against Maxam Fund: (a) avoiding and preserving the Transfers, (b) directing that the Transfers be set aside, and (c) recovering the Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS.

**COUNT SEVEN**  
**FRAUDULENT TRANSFERS – NEW YORK DEBTOR AND CREDITOR LAW**  
**§§ 274, 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(a) AND 551**

**Against Maxam Fund**

208. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

209. At all times relevant to the Transfers, there have been and are one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that are allowable under section 502 of the Bankruptcy Code or that are not allowable only under section 502(e) of the Bankruptcy Code.

210. Each of the Transfers constituted a conveyance by BLMIS as defined under DCL section 270.

211. BLMIS did not receive fair consideration for the Transfers.

212. At the time BLMIS made each of the Transfers, BLMIS was engaged or was about to engage in a business or transaction for which the property remaining in its hands after each of the Transfers was an unreasonably small capital.

213. As a result of the foregoing, pursuant to DCL sections 274, 278 and/or 279, sections 544(b), 550(a) and 551 of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment against Maxam Fund: (a) avoiding and preserving the Transfers, (b) directing that the Transfers be set aside, and (c) recovering the Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS.

**COUNT EIGHT**  
**FRAUDULENT TRANSFER – NEW YORK DEBTOR AND CREDITOR LAW**  
**§§ 275, 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(a) AND 551**

**Against Maxam Fund**

214. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

215. At all times relevant to the Transfers, there have been and are one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that are allowable under section 502 of the Bankruptcy Code or that are not allowable only under section 502(e) of the Bankruptcy Code.

216. Each of the Transfers constituted a conveyance by BLMIS as defined under DCL section 270.

217. BLMIS did not receive fair consideration for the Transfers.

218. At the time BLMIS made each of the Transfers, BLMIS had incurred, was intending to incur, or believed that it would incur debts beyond its ability to pay them as the debts matured.

219. As a result of the foregoing, pursuant to DCL sections 275, 278 and/or 279, sections 544(b), 550(a) and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment against Maxam Fund: (a) avoiding and preserving the Transfers, (b) directing that the Transfers be set aside, and (c) recovering the Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS.

**COUNT NINE**  
**RECOVERY OF SUBSEQUENT TRANSFERS - NEW YORK DEBTOR AND**  
**CREDITOR LAW §§ 273-279 AND 11 U.S.C. §§ 544, 548, 550(a) AND 551**

**Against the Maxam Defendants and Maxam Limited**

220. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

221. Each of the Transfers are avoidable under sections 544 and 548 of the Bankruptcy Code, DCL sections 273-276 and SIPA § 78fff-2(c)(3).

222. Upon information and belief, the Subsequent Transferee Defendants and Maxam Limited received Subsequent Transfers, which are recoverable pursuant to Section 550(a) of the Bankruptcy Code.

223. Each of the Subsequent Transfers was made directly or indirectly to, or for the benefit of, the Subsequent Transferee Defendants and Maxam Limited.

224. The Subsequent Transferee Defendants and Maxam Limited are immediate or mediate transferees of the Subsequent Transfers.

225. Each of the Subsequent Transfers was received by the Subsequent Transferee Defendants and Maxam Limited with actual intent to hinder, delay or defraud creditors of BLMIS at the time of each of the Subsequent Transfers, and/or future creditors of BLMIS.

226. As a result of the foregoing, pursuant to DCL sections 278 and/or 279, section 550(a) of the Bankruptcy Code, and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment against Subsequent Transferee Defendants and Maxam Limited recovering the Subsequent Transfers, or the value thereof, for the benefit of the estate of BLMIS and the recovery of attorneys' fees from Subsequent Transferee Defendants and Maxam Limited.

**COUNT TEN**  
**DISALLOWANCE OF CUSTOMER CLAIMS**

**Against Maxam Fund**

227. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

228. Maxam Fund filed customer claim No. 004554, which has not yet been determined.

229. Such customer claim should not be allowed pursuant to section 502(d) of the Bankruptcy Code, as Maxam Fund, which filed the customer claim is the recipient of transfers of BLMIS's property which are avoidable and recoverable under sections 544, 548 and/or 550(a) of the Bankruptcy Code, DCL sections 273-279 and SIPA § 78fff-2(c)(3) as set forth above, and Maxam Fund has not returned the Transfers to the Trustee.

230. The Claims Procedures Order includes a process for determination and allowance of claims under which the Trustee has been operating. As a result of the foregoing, the Trustee intends to resolve Maxam Fund's claim and any related objections through the mechanisms contemplated by the Claims Procedures Order.

**COUNT ELEVEN**  
**EQUITABLE SUBORDINATION OF CUSTOMER CLAIM**

**Against Maxam Fund**

231. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

232. Maxam Fund engaged in inequitable conduct, including behavior described in this Complaint, that has resulted in injury to the customers and creditors of the estate and has conferred an unfair advantage on Maxam Fund.

233. Based on Maxam Fund's inequitable conduct as described above, the customers of BLMIS have been misled as to the true financial condition of the debtor, customers have been induced to invest without knowledge of the actual facts regarding BLMIS's financial condition, and/or customers and creditors are less likely to recover the full amounts due to them because of the conduct of Maxam Fund.

234. The Court should exercise the full extent of its equitable powers to ensure that claims, payments, or benefits, of whatever kind or nature, which are asserted or sought by Maxam Fund directly or indirectly against the estate – and only to the extent such claims are allowed – are subordinated for distribution purposes pursuant to sections 510(c)(1) and 105(a) of the Bankruptcy Code.

235. Equitable subordination as requested herein is consistent with the provisions and purposes of the Bankruptcy Code.

**COUNT TWELVE**  
**IMPOSITION OF CONSTRUCTIVE TRUST**

**Against Defendants Walker Manzke and April Bukofser Manzke**

236. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

237. Defendants Walker and April wrongly received customer property of the BLMIS estate as the result of Defendant Manzke's fraudulent conveyance and/or transfer of her and the Manzke Trust's interests of property located in Pound Ridge, New York.

238. The foregoing conveyances, and any other such conveyances or transfers that may have been made, were improper, as Defendants Manzke, Walker and April had no authority from the Trustee to make or accept such conveyances.

239. By virtue of the fraudulent conveyance of the assets of the BLMIS estate, as set forth above, Defendants Walker and Manzke hold the converted interests in those assets, which upon information and belief amounts to a sum of approximately \$1.8 million and any other fraudulent conveyances of funds, assets or property from BLMIS, in trust.

240. Thus, the Trustee is entitled to all monies and interests held in trust on behalf of the BLMIS estate.

**COUNT THIRTEEN**  
**UNJUST ENRICHMENT**

**Against the Maxam Defendants**

241. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

242. The Maxam Defendants have been unjustly enriched. They have wrongfully and unconscionably benefitted from the receipt of stolen money from BLMIS and the Maxam Fund,

for which they did not in good faith provide fair value. These Defendants were further unjustly enriched as a result of aiding, abetting, enabling, and substantially participating in a fraudulent scheme.

243. Maxam Capital earned in excess of \$5.8 million in fees, which in turn was distributed to Defendants Manzke, Hammond, Walker and April in the form of distributions, dividends, salaries, bonuses, and other compensation. None of this money has been returned to the Trustee for equitable distribution to BLMIS customers who lost billions of dollars in the Ponzi scheme.

244. As described above, the Maxam Defendants were constantly faced with evidence that BLMIS was a fraud. They knew the consistency of Madoff's returns were, statistically, too good to be true. They knew that there were questions about Madoff's lack of transparency. Their own investors, along with numerous industry professionals, raised a number of concerns over and over again. They knew that they were relying on the inadequate due diligence of Tremont and did not perform their own due diligence on BLMIS, yet continued to funnel money into the scheme.

245. Instead of warning their investors and Madoff's other customers, and reporting Madoff to regulators, the Maxam Defendants helped Madoff market BLMIS to their own investors and perpetuated the Ponzi scheme by continuing to feed him investor money. Confronted with a plethora of red flags, these Defendants continued to try to raise millions of dollars from investors to enrich themselves.

246. Faced with the prospect of losing millions of dollars in fees, the Maxam Defendants chose to ignore the compelling evidence of Madoff's fraud and provide convenient

excuses for Madoff's inconsistencies. As a result, they have been unjustly enriched by over \$5 million that rightfully belongs to BLMIS customers.

247. Equity and good conscience require full restoration of the monies received by the Maxam Defendants, directly and indirectly, from BLMIS and any assets derived from those monies.

**WHEREFORE**, the Trustee respectfully requests that this Court enter judgment in favor of the Trustee and against the Defendants as follows:

1. On the First Claim for Relief, pursuant to sections 547, 550(a) and 551 of the Bankruptcy Code and section 78fff-2(c)(3) of SIPA: (a) avoiding and preserving the Preference Period Transfers, (b) directing that the Preference Period Transfers be set aside, and (c) recovering the Preference Period Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS;

2. On the Second Claim for Relief, pursuant to sections 547, 550(a) and 551 of the Bankruptcy Code and section 78fff-2(c)(3) of SIPA: (a) avoiding and preserving the Preference Period Transfers, (b) directing that the Preference Period Subsequent Transfers be set aside, and (c) recovering the Preference Period Transfers, or the value thereof, from the Subsequent Transferee Defendants and Maxam Limited for the benefit of the estate of BLMIS;

3. On the Third Claim for Relief, pursuant to sections 548(a)(1)(A), 550(a) and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3): (a) avoiding and preserving the Transfers, (b) directing that the Transfers be set aside, and (c) recovering the Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS;

4. On the Fourth Claim for Relief, pursuant to sections 548(a)(1)(B), 550(a) and 551 of the Bankruptcy Code and section 78fff-2(c)(3) of SIPA: (a) avoiding and preserving the

Transfers, (b) directing that the Transfers be set aside, and (c) recovering the Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS;

5. On the Fifth Claim for Relief, pursuant to DCL sections 276, 276-a, 278 and/or 279, sections 544(b), 550(a) and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3): (a) avoiding and preserving the Transfers, (b) directing that the Transfers be set aside, (c) recovering the Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS, and (d) recovering attorneys' fees from Maxam Fund;

6. On the Sixth Claim for Relief, pursuant to DCL sections 273, 278 and/or 279, sections 544(b), 550 and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3): (a) avoiding and preserving the Transfers, (b) directing that the Transfers be set aside, and (c) recovering the Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS;

7. On the Seventh Claim for Relief, pursuant to DCL sections 274, 278 and/or 279, sections 544(b), 550, and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3): (a) avoiding and preserving the Fraudulent Transfers, (b) directing that the Transfers be set aside, and (c) recovering the Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS;

8. On the Eighth Claim for Relief, pursuant to DCL sections 275, 278 and/or 279, sections 544(b), 550, and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3): (a) avoiding and preserving the Transfers, (b) directing that the Transfers be set aside, and (c) recovering the Transfers, or the value thereof, from Maxam Fund for the benefit of the estate of BLMIS;

9. On the Ninth Claim for Relief pursuant to DCL sections 273-279, sections 544, 548, and 550(a) of the Bankruptcy Code, and SIPA § 78fff-2(c)(3): recovering the Subsequent Transfers, or the value thereof, from Subsequent Transferee Defendants and Maxam Limited for

the benefit of the estate of BLMIS and attorneys' fees from Subsequent Transferee Defendants and Maxam Limited;

10. On the Tenth Claim for Relief, Maxam Fund's customer claim should not be allowed pursuant to section 502(d) of the Bankruptcy Code unless and until the Transfers are paid or turned over;

11. On the Eleventh Claim for Relief, Maxam Fund's customer claim should be subordinated for distribution purposes pursuant to sections 510(c)(1) and 105(a) of the Bankruptcy Code;

12. On the Twelfth Claim for Relief, for an order that Defendants Walker Manzke and April Bukofser Manzke hold the interest in the Pound Ridge property, in an amount equal to approximately \$1.8 million, in trust;

13. On the Thirteenth Claim for Relief, for the amount Subsequent Transferee Defendants have been unjustly enriched as a result of enabling Madoff's Ponzi scheme;

14. On all Claims for Relief, pursuant to federal common law and N.Y. CPLR 5001 and 5004 awarding the Trustee prejudgment interest from the date on which the Transfers were received;

15. On all Claims for Relief, establishment of a constructive trust over the proceeds of the transfers in favor of the Trustee for the benefit of BLMIS's estate;

16. On all Claims for Relief, assignment of Defendants' income tax refunds from the United States, state and local governments paid on fictitious profits during the course of the scheme;

17. Awarding the Trustee all applicable interest, costs, and disbursements of this action; and

18. Granting Plaintiff such other, further, and different relief as the Court deems just, proper, and equitable.

Dated: New York, New York  
December 8, 2010

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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*

## Exhibit A

BLMIS Account Name	BLMIS Account Number
MAXAM ABSOLUTE RETURN FUND LP	1M0232

BLMIS ACCOUNT NO. 1M0232 - MAXAM ABSOLUTE RETURN FUND LP

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Date	Transaction Description	Transaction Amount Reported in Customer Statement	Cash Deposits	Cash Withdrawals	Transfers of Principal In	Transfers of Principal Out	Balance of Principal	90-Day Preferential Transfers	2-Year Cash Withdrawals	6-Year Cash Withdrawals
7/5/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	3,000,000	-	-	-
7/5/2006	CHECK WIRE	150,000	150,000	-	-	-	3,150,000	-	-	-
7/5/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	6,150,000	-	-	-
7/5/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	9,150,000	-	-	-
7/6/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	12,150,000	-	-	-
7/6/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	15,150,000	-	-	-
7/6/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	18,150,000	-	-	-
7/6/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	21,150,000	-	-	-
7/6/2006	CHECK WIRE	1,000,000	1,000,000	-	-	-	22,150,000	-	-	-
7/6/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	25,150,000	-	-	-
7/6/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	28,150,000	-	-	-
7/6/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	31,150,000	-	-	-
7/6/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	34,150,000	-	-	-
7/7/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	37,150,000	-	-	-
7/7/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	40,150,000	-	-	-
7/7/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	43,150,000	-	-	-
7/7/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	46,150,000	-	-	-
7/7/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	49,150,000	-	-	-
7/7/2006	CHECK WIRE	3,000,000	3,000,000	-	-	-	52,150,000	-	-	-
7/7/2006	CHECK WIRE	500,000	500,000	-	-	-	52,650,000	-	-	-
7/13/2006	CHECK WIRE	2,900,000	2,900,000	-	-	-	55,550,000	-	-	-
8/2/2006	CHECK WIRE	5,900,000	5,900,000	-	-	-	61,450,000	-	-	-
8/3/2006	CHECK WIRE	2,400,000	2,400,000	-	-	-	63,850,000	-	-	-
8/7/2006	CHECK WIRE	1,000,000	1,000,000	-	-	-	64,850,000	-	-	-
9/1/2006	CHECK WIRE	1,300,000	1,300,000	-	-	-	66,150,000	-	-	-
9/1/2006	CHECK WIRE	7,200,000	7,200,000	-	-	-	73,350,000	-	-	-
9/5/2006	CHECK WIRE	15,000,000	15,000,000	-	-	-	88,350,000	-	-	-
9/8/2006	CHECK WIRE	937,000	937,000	-	-	-	89,287,000	-	-	-
10/2/2006	CHECK WIRE	6,300,000	6,300,000	-	-	-	95,587,000	-	-	-
11/2/2006	CHECK WIRE	5,000,000	5,000,000	-	-	-	100,587,000	-	-	-
11/2/2006	CHECK WIRE	4,000,000	4,000,000	-	-	-	104,587,000	-	-	-
12/5/2006	CHECK WIRE	2,700,000	2,700,000	-	-	-	107,287,000	-	-	-
1/2/2007	CHECK WIRE	(3,000,000)	-	(3,000,000)	-	-	104,287,000	-	(3,000,000)	(3,000,000)
1/4/2007	CHECK WIRE	3,000,000	3,000,000	-	-	-	107,287,000	-	-	-
1/5/2007	CHECK WIRE	10,000,000	10,000,000	-	-	-	117,287,000	-	-	-
1/23/2007	CHECK WIRE	5,500,000	5,500,000	-	-	-	122,787,000	-	-	-
2/1/2007	CHECK WIRE	10,000,000	10,000,000	-	-	-	132,787,000	-	-	-
2/1/2007	CHECK WIRE	8,700,000	8,700,000	-	-	-	141,487,000	-	-	-
2/2/2007	CHECK WIRE	1,300,000	1,300,000	-	-	-	142,787,000	-	-	-
4/2/2007	CHECK WIRE	8,400,000	8,400,000	-	-	-	151,187,000	-	-	-
4/2/2007	CHECK WIRE	10,000,000	10,000,000	-	-	-	161,187,000	-	-	-
5/2/2007	CHECK WIRE	5,000,000	5,000,000	-	-	-	166,187,000	-	-	-
5/2/2007	CHECK WIRE	3,000,000	3,000,000	-	-	-	169,187,000	-	-	-
5/2/2007	CHECK WIRE	5,000,000	5,000,000	-	-	-	174,187,000	-	-	-
5/2/2007	CHECK WIRE	5,000,000	5,000,000	-	-	-	179,187,000	-	-	-
5/2/2007	CHECK WIRE	2,000,000	2,000,000	-	-	-	181,187,000	-	-	-
5/11/2007	CHECK WIRE	(500,000)	-	(500,000)	-	-	180,687,000	-	(500,000)	(500,000)
6/1/2007	CHECK WIRE	2,800,000	2,800,000	-	-	-	183,487,000	-	-	-
7/3/2007	CHECK WIRE	5,000,000	5,000,000	-	-	-	188,487,000	-	-	-
7/3/2007	CHECK WIRE	15,000,000	15,000,000	-	-	-	203,487,000	-	-	-
7/3/2007	CHECK WIRE	5,000,000	5,000,000	-	-	-	208,487,000	-	-	-
7/5/2007	CHECK WIRE	4,000,000	4,000,000	-	-	-	212,487,000	-	-	-
7/5/2007	CHECK WIRE	15,000,000	15,000,000	-	-	-	227,487,000	-	-	-
7/5/2007	CHECK WIRE	15,000,000	15,000,000	-	-	-	242,487,000	-	-	-

BLMIS ACCOUNT NO. 1M0232 - MAXAM ABSOLUTE RETURN FUND LP

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
<u>Date</u>	<u>Transaction Description</u>	<u>Transaction Amount Reported in Customer Statement</u>	<u>Cash Deposits</u>	<u>Cash Withdrawals</u>	<u>Transfers of Principal In</u>	<u>Transfers of Principal Out</u>	<u>Balance of Principal</u>	<u>90-Day Preferential Transfers</u>	<u>2-Year Cash Withdrawals</u>	<u>6-Year Cash Withdrawals</u>
9/4/2007	CHECK WIRE	(36,300,000)	-	(36,300,000)	-	-	206,187,000	-	(36,300,000)	(36,300,000)
10/1/2007	CHECK WIRE	(10,000,000)	-	(10,000,000)	-	-	196,187,000	-	(10,000,000)	(10,000,000)
10/3/2007	CHECK WIRE	8,000,000	8,000,000	-	-	-	204,187,000	-	-	-
11/2/2007	CHECK WIRE	8,700,000	8,700,000	-	-	-	212,887,000	-	-	-
12/3/2007	CHECK WIRE	4,800,000	4,800,000	-	-	-	217,687,000	-	-	-
1/2/2008	CHECK WIRE	6,000,000	6,000,000	-	-	-	223,687,000	-	-	-
1/2/2008	CHECK WIRE	15,000,000	15,000,000	-	-	-	238,687,000	-	-	-
1/4/2008	CHECK WIRE	9,900,000	9,900,000	-	-	-	248,587,000	-	-	-
2/1/2008	CHECK WIRE	10,000,000	10,000,000	-	-	-	258,587,000	-	-	-
3/4/2008	CHECK WIRE	4,700,000	4,700,000	-	-	-	263,287,000	-	-	-
7/1/2008	CHECK WIRE	(13,000,000)	-	(13,000,000)	-	-	250,287,000	-	(13,000,000)	(13,000,000)
9/2/2008	CHECK WIRE	(10,000,000)	-	(10,000,000)	-	-	240,287,000	-	(10,000,000)	(10,000,000)
10/1/2008	CHECK WIRE	(5,000,000)	-	(5,000,000)	-	-	235,287,000	(5,000,000)	(5,000,000)	(5,000,000)
11/3/2008	CHECK WIRE	(15,000,000)	-	(15,000,000)	-	-	220,287,000	(15,000,000)	(15,000,000)	(15,000,000)
12/2/2008	CHECK WIRE	(5,000,000)	-	(5,000,000)	-	-	215,287,000	(5,000,000)	(5,000,000)	(5,000,000)
<b>Total:</b>			<b>\$ 313,087,000</b>	<b>\$ (97,800,000)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 215,287,000</b>	<b>\$ (25,000,000)</b>	<b>\$ (97,800,000)</b>	<b>\$ (97,800,000)</b>



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 18 will counsel, please, introduce  
 19 themselves beginning with the party  
 20 noticing this proceeding?  
 21 MR. POWERS: Good morning, Ms.  
 22 Manzke.  
 23 My name is Marc Powers. I am a  
 24 partner here at Baker & Hostetler.  
 25 With me here today is Maryanne

0006  
 1 Manzke  
 2 Stanganelli, Anagha Apte.  
 3 We have a summer intern named Nick  
 4 Rose and we have my partner from the  
 5 D.C. office Fritz Chockley.  
 6 We are here on behalf of the law  
 7 firm of Baker & Hostetler which is  
 8 counsel for the SIPC trustee Irving  
 9 Picard.  
 10 MR. KIM: Michael Kim and Carrie  
 11 Tendler, Kobre & Kim, representing the  
 12 witness.  
 13 MS. TENDLER: Carrie Tendler from  
 14 Kobre & Kim also on behalf of the  
 15 witness.  
 16 THE VIDEOGRAPHER: Will the court  
 17 reporter, please, swear in the witness?  
 18 SANDRA MANZKE PLATT, called as a witness  
 19 by the Plaintiffs, having been duly  
 20 sworn, testified as follows:

21 EXAMINATION  
 22 BY MR. POWERS:  
 23 Q. Good morning.  
 24 As I had previously indicated to  
 25 your counsel, the purpose of this deposition

0007  
 1 Manzke  
 2 here today is really for us as the counsel  
 3 for the SIPC trustee to both identify and  
 4 recover property of the estate of Bernard L.  
 5 Madoff Investment Securities and Bernard  
 6 Madoff individually and, in that regard, to  
 7 figure out and determine what is "customer  
 8 property" under the Securities Investor  
 9 Protection Act.

10 I thank you for taking the time to  
 11 come here today, Ms. Manzke.

12 A. No problem.

13 Q. Have you stated your full name for  
 14 the record?

15 A. Yes.

16 Q. You do understand that you are  
 17 under oath and that of course means that it  
 18 is the same thing as if you were testifying  
 19 in a courtroom, correct?

20 A. Correct.

21 Q. Let me ask you, have you ever been  
 22 charged or convicted of any crimes ever?

23 A. No.

24 Q. Have you ever been deposed before?

25 A. Yes.

0008

1 Manzke

2 Q. Can you tell us what was -- how

Page 3

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 3 many different times?  
 4 A. Only once that I can remember.  
 5 That was in regard to a lawsuit that was  
 6 brought against Tremont.  
 7 Q. When?  
 8 A. In the 1990s.  
 9 Q. What I wanted to remind you then  
 10 as you probably have been advised more  
 11 recently but through your counsel, is that,  
 12 you need to speak up when you are being  
 13 deposed, you need to listen fully to my  
 14 questions so you understand exactly what I  
 15 am asking, don't anticipate, just answer the  
 16 questions that I am asking and if you don't  
 17 understand a particular question or you want  
 18 me to rephrase it in a way that makes it  
 19 clearer for you, please feel free to ask me  
 20 to do that, okay?  
 21 A. Okay.  
 22 Q. Thank you.  
 23 Now, in terms of your testimony  
 24 today you are appearing here today pursuant  
 25 to a subpoena, correct?

0009  
 1 Manzke  
 2 A. Correct.  
 3 MR. POWERS: I would like to ask  
 4 the court reporter to mark as, I guess  
 5 we are a plaintiff, Plaintiffs' Exhibit  
 6 1 for identification which appears to be  
 7 a subpoena addressed to you and it is  
 8 dated June 1 of 2009.

9 (Subpoena dated June 1 of 2009 was  
 10 marked Plaintiffs' Exhibit 1 for  
 11 identification)

12 BY MR. POWERS:  
 13 Q. I show you what has been marked as  
 14 Plaintiffs' Exhibit 1 for identification,  
 15 Ms. Manzke, and tell me if you have seen  
 16 this before?

17 A. I have seen this before.

18 Q. What is it?

19 A. It was a subpoena to -- requesting  
 20 information from me to be sent to your  
 21 offices.

22 Q. Okay. You will notice that it  
 23 asks for various information.

24 I understand, through counsel, you  
 25 have produced a number of different

0010  
 1 Manzke  
 2 documents and information pursuant to the  
 3 document demands, correct?

4 A. Correct.

5 Q. Would you mind just telling us for  
 6 the record what efforts were done to cull  
 7 that without revealing any communications  
 8 directly that you would have had with your  
 9 counsel.

10 Just so you know, for purposes of  
 11 today, I never want to interfere, unless I  
 12 think there is an appropriate basis for  
 13 doing so, as to your communications you

Page 4

14 300039896\_1.TXT  
15 would have had with Mr. Kim, Ms. Tendler or  
16 others at the Kobre & Kim firm which might  
17 be subject to a privilege.

18 Always exclude that from any of  
19 your answers and identify the fact that you  
20 are excluding that out, okay?  
21 A. Yes.

22 I have undertaken to look at my  
23 house in Vermont where I moved a lot of  
24 documents because I moved out of my house in  
25 Pound Ridge a couple of years ago and  
0011 everything was sort of piled in boxes and so

1 Manzke  
2 I went through the documents, through the  
3 documents that I had available both at Maxam  
4 because my brokerage statements were always  
5 copied there, and through some of the boxes  
6 which I have taken the last couple of weeks  
7 to go through to dig up some of the  
8 documents that you requested.

9 I may have additional documents in  
10 Florida but I am not in Florida and I am not  
11 at any time until October scheduled to go  
12 back there but I will if I have to.

13 Q. You spend most of your time during  
14 the summers up in Vermont?

15 A. Yes.

16 Q. Then you spend most of your time  
17 in the winters down in Florida at this  
18 point?

19 A. Yes.

20 Q. Do you believe that all the  
21 documents that you did have either at the  
22 offices at the Maxam, I assume we are  
23 talking about Maxam Capital, correct?

24 A. Right.

25 Q. At Maxam or at your homes in the  
0012

1 Manzke  
2 northeast have been produced pursuant to  
3 subpoena?

4 A. All that I have so far I have  
5 given to Michael's offices but I am clearly  
6 missing a lot of documents.

7 Q. What additional information would  
8 there be that you feel you would be able to  
9 obtain that is in your possession, custody  
10 or control?

11 A. I have a couple of tax returns  
12 that I think are down in Florida but I am  
13 not sure.

14 Q. Right. We have the 2007, I think,  
15 was produced to us?

16 A. Yes, and 2006, I believe.

17 Q. Okay.

18 A. 2008 won't be ready for some time.  
REDACTED

22 Q. Why don't we see how the  
23 deposition goes here today? If there are  
24 additional specific documents that we want

25 300039896\_1.TXT  
0013 to ask for, we will communicate with your

1 Manzke  
2 counsel so you don't have to necessarily go  
3 through that effort, okay?  
4 A. Okay.  
5 Q. Are there any other categories  
6 though as you sit here now you also can  
7 identify that have not been produced and  
8 that you think exists?

REDACTED

0014  
1 Manzke  
REDACTED

13 MR. KIM: You are talking about  
14 2008, right, not 2009?  
15 THE WITNESS: 2008. No. Today is  
16 '9. 2008.

17 BY MR. POWERS:  
18 Q. We are in June 2009.  
19 A. 2008, last year.

REDACTED

0015  
1 Manzke  
2

6 R  
7 E  
8 Q. Right.  
9 Are there any other -- it probably  
would be useful for us to have some  
documentation about that --

300039896\_1.TXT

10 A. Okay.  
 11 Q. -- when you can gather that.  
 12 In terms of any other documents  
 13 related to requests covered by the subpoena?  
 14 A. I believe I had everything. I  
 15 believe I have everything.

REDACTED

23 Q. Got it. Very good. Thank you.  
 24 when did you come to consider  
 25 yourself a full-time resident of Florida,

0016  
 1 Manzke  
 2 what tax year was that?  
 3 A. I think, I believe it was three  
 4 years ago.  
 5 Q. Is that 2005 or 2006?  
 6 A. 2005. Again, I would have to  
 7 check that. It is on my tax returns which I  
 8 think you have the copies of.

9 MR. POWERS: At this time I would  
 10 like to mark as Plaintiffs' Exhibit 2, a  
 11 court order dated June 17, 2009 in this  
 12 matter.

13 (Court order dated June 17, 2009  
 14 was marked Plaintiffs' Exhibit 2 for  
 15 identification)

16 BY MR. POWERS:  
 17 Q. whenever I give you something, you  
 18 can take a moment to look it over, please.  
 19 Then I may use the words, can you identify  
 20 but that is basically meaning have you seen  
 21 it before, can you tell us what it is.  
 22 My primary question is, Ms.  
 23 Manzke, is whether or not you are appearing  
 24 here today pursuant as well to this court  
 25 order?

0017  
 1 Manzke  
 2 You will note the last  
 3 paragraph --

4 A. Yes.  
 5 Q. You will see that the order asks  
 6 you to testify unconditionally here other  
 7 than assertions of privileges and claims and  
 8 trade secrets and personal information which  
 9 we have agreed with your counsel to keep  
 10 confidential.

11 A. Correct.  
 12 Q. So there won't be a  
 13 misunderstanding about what things in  
 14 particular you want to keep -- you would ask  
 15 us to keep confidential of a personal  
 16 nature, just give me a little bit of a  
 17 heads-up that we are in that subject area,  
 18 okay?

19 A. Okay.  
 20 MR. POWERS: At this point I want  
 Page 7

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21 to have marked as Plaintiffs' Exhibit 3,  
 22 a cover letter and subpoena.  
 23 The cover letter is dated  
 24 September 27, 2009 as well as the  
 25 subpoena.

0018

1 Manzke  
 2 (Cover letter dated September 27,  
 3 2009 and subpoena was marked Plaintiffs'  
 4 Exhibit 3 for identification)

5 MR. POWERS: It is issued to just  
 6 Maxam Absolute in care of Prentiss Hall  
 7 Corporation Systems.

8 BY MR. POWERS:  
 9 Q. Take a moment to look at it and my  
 10 basic question on this one is similar to the  
 11 last one, have you seen this before and in  
 12 particular, you will note there is a  
 13 document demand associated with it.

14 If you could just tell us whether  
 15 or not, I know we received a number of  
 16 documents pursuant to the subpoena from your  
 17 counsel and specifically from Maxam Capital  
 18 and Maxam Absolute's counsel, which is the  
 19 firm that is representing you here today. I  
 20 want to note --

21 MR. KIM: I will make a quick  
 22 correction.

23 I think Maxam Absolute, you are  
 24 referring to the fund, is actually  
 25 separately represented by a different

0019

1 Manzke  
 2 firm.

3 MR. POWERS: Correct.  
 4 MR. KIM: obviously she can answer  
 5 the questions.

6 BY MR. POWERS:  
 7 Q. They are represented currently --  
 8 some new counsel has appeared for them. The  
 9 subpoena, you will note, requires -- Maxam  
 10 is meant to be broader than Maxam Capital  
 11 but to include Maxam Absolute as clarified  
 12 in the subsequent letter.

13 My real question to you is, have  
 14 you participated in the gathering of the  
 15 materials required or requested by this  
 16 subpoena?

17 A. No, I haven't.  
 18 Q. Do you know who was the one  
 19 primarily responsible at Maxam Capital or  
 20 otherwise to do so?

21 A. Suzanne Hammond is taking the lead  
 22 on that together with other employees of the  
 23 firm.

24 Q. Have you ever seen this Exhibit 3  
 25 before?

0020

1 Manzke  
 2 A. I believe I did, yes.  
 3 Q. Let's --  
 4 A. There are so many of them.  
 5 MR. POWERS: Let's introduce now  
 Page 8

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 6 as Plaintiffs' Exhibit 4 for  
 7 identification, a letter that I had sent  
 8 on to your counsel dated March 12, 2009,  
 9 which, essentially, is a clarification  
 10 and prioritization of some of the items  
 11 that have previously been subpoenaed in  
 12 that document.

13 (Letter dated March 12, 2009 was  
 14 marked Plaintiffs' Exhibit 4 for  
 15 identification)

16 BY MR. POWERS:

17 Q. Have you ever seen this before?

18 A. I haven't seen this before.

19 MR. POWERS: why don't we then  
 20 mark now as Plaintiffs' Exhibit 5,  
 21 another subpoena that has been issued,  
 22 this one specifically to Maxam Absolute  
 23 Return Fund Ltd. which is signed by me  
 24 and dated May 19, 2009.

25 It was sent in care of Maxam

0021

1 Manzke  
 2 Capital Management up in Darien.  
 3 (Subpoena dated May 19, 2009 was  
 4 marked Plaintiffs' Exhibit 5 for  
 5 identification)

6 THE WITNESS: Yes, I have seen  
 7 this.

8 BY MR. POWERS:

9 Q. Do you see that there are document  
 10 demands in this one as well, Ms. Manzke?

11 A. Yes.

12 Q. Were you at all involved in the  
 13 preparation of producing or arranging for  
 14 the production of documents pursuant to this  
 15 subpoena?

16 A. No. It is all handled internally  
 17 in my office for the people that can get  
 18 those documents.

19 Q. Under the supervision of  
 20 Ms. Hammond?

21 A. Yes.

22 Q. So apart -- just so we will be  
 23 clear. Apart from the documents which you  
 24 gathered and testified to earlier gathering  
 25 as relates to your personal subpoena, you

0022

1 Manzke  
 2 have not personally seen the productions  
 3 that were made pursuant to the subpoenas in  
 4 this case other than what you may have been  
 5 shown recently in preparation for your  
 6 testimony?

7 A. Correct. But I would know what  
 8 was sent. It is just that I can't -- I am  
 9 not computer qualified to go in and get  
 10 copies of those documents but I know and was  
 11 in touch with my office that they are  
 12 preparing the documents that they can  
 13 prepare in terms of this because, you know,  
 14 we have an issue with the offshore  
 15 documents.

16 Q. Right, but -- were you also aware  
 Page 9

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 17 of the documents that were being produced  
 18 then pursuant to the domestic fund?

19 A. Yes. My office kept me informed.

20 Q. So apart -- apart from the one  
 21 issue, which we have kind of flagged, which  
 22 relates to the investor lists for the  
 23 offshore, are there other types of documents  
 24 that, to your knowledge, have not been  
 25 produced pursuant to these subpoenas?

0023

1 Manzke

2 A. No. To my knowledge everything  
 3 that we have in our office that we could get  
 4 our hands on has been produced.

5 Q. Thank you.

6 One more subpoena, okay.

7 MR. POWERS: we will mark as

8 Plaintiffs' Exhibit 6 for  
 9 identification, also dated June 1, this  
 10 is a subpoena that is issued  
 11 specifically to Maxam Capital  
 12 Management.

13 (Subpoena dated June 1 was marked  
 14 Plaintiffs' Exhibit 6 for identification)

15 BY MR. POWERS:

16 Q. I direct your attention to page 3  
 17 of that subpoena which identifies the  
 18 documents to be produced.

19 A. This is June 1. Yes. We received  
 20 this.

21 Q. Has, to your knowledge, a search  
 22 been done for all of the documents --

23 A. There are some of these documents  
 24 that you requested I don't know how we would  
 25 produce them. We don't have -- some of

0024

1 Manzke

2 these databases and other things I don't  
 3 know how -- I don't think we are capable of  
 4 producing them.

5 Q. Let's go through. Which ones are  
 6 you referring to?

7 A. I saw the one --

8 Q. You would -- number 1, you would  
 9 have communications between you and Madoff  
 10 which is short side BL?

11 A. Which is already in the previous.

12 Q. Correct. Right.

13 Let's focus on that for a moment.  
 14 we will get to it later. I don't want to  
 15 jump too far ahead.

16 That is really the identification  
 17 of the investors, their addresses, the  
 18 officers, et cetera, and their capital  
 19 accounts. That stuff you would have, would  
 20 you not?

21 A. We have that, yes.

22 Q. Sure. So that is -- you would  
 23 have that also for the offshore fund, would  
 24 you not?

25 A. Yes.

0025

1 Manzke

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2 Q. That is number 5. So, and you  
3 have, in fact, produced the insurance  
4 policies so we have had that.

5 A. All of. I saw something in here  
6 about databases or something. Maybe I  
7 misunderstood it.

8 Q. Number 10 asks for the due  
9 diligence.

10 A. Yes.

11 Q. I assume.

12 A. Then we have had all -- we have  
13 had all of this. We have all of this, yes.

14 Q. Would you tell me just so I can  
15 make sure that later on I ask the right  
16 questions, what kind of documents, to make  
17 sure we have pulled them, would there be  
18 responsive to item number 10 which asks for  
19 "All documents concerning due diligence  
20 conducted by Maxam Management on behalf of  
21 any fund pertaining to investments with  
22 Madoff?"

23 That is the top of page 4.

24 A. Yes. We produced it because our  
25 due diligence was in reviewing all the

0026

Manzke

1 trading tickets.

2 Q. Anything else?

3 A. We had one document that was AIMR  
4 compliant that basically outlined our  
5 understanding of what Madoff's investment  
6 style and strategy was.

7 Other due diligence was, in fact,  
8 that when I started Maxam, we -- my clients  
9 moved over from Tremont and for a period of  
10 time we had invested with Tremont, through  
11 Bernie, and basically all the due diligence  
12 that was done on Bernie Madoff had been done  
13 when we were at the predecessor firm.

14 So we continued to get from  
15 Tremont, the audited financials from their  
16 financial statements.

17 We also had some investments in  
18 Kingate and also were relying on their due  
19 diligence from times that we were basically  
20 related to one another informally.

21 So when I started the company we  
22 did not have a Madoff account. I didn't  
23 know that I would get a Madoff account.

24 So basically there was this

0027

Manzke

1 transition period where all the due  
2 diligence had been done at the predecessor  
3 firm.

4 Q. Based on the documents produced I  
5 had a feeling you were going to say that.  
6 We will get there later.

7 A. Okay.

8 Q. Maybe a little sooner but in terms  
9 of the review of the trading tickets are you  
10 referring to the confirms?

11 A. The confirms, yes.

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13 Q. Who was the person over at Maxam  
14 Capital that reviewed those trading tickets?

15 A. There were a number of -- Suzanne  
16 Hammond reviewed them. That was her  
17 responsibility but Joe Soares also worked  
18 with her on the account and many times they  
19 would switch roles and have her review and  
20 he would review.

21 Q. What was the frequency of the  
22 review?

23 A. The frequency was whenever Madoff  
24 went into the market, they were spot  
25 checking the trades having had done, again,

0028

Manzke

1 Suzanne and Joe worked at Tremont and did  
2 some of the same things when they were  
3 there.

4 Q. So how frequently would he --  
5 would the review be done?

6 A. It was on -- done on a monthly  
7 basis.

8 They also would price out the  
9 portfolio at the end of the month using  
10 Bloomberg and reconcile to the Madoff  
11 statements.

12 Q. Did you ever discuss with them any  
13 aspects of that review?

14 Let's focus first on the confirms.

15 A. One of the things that we always,  
16 you know, would discuss as a group is,  
17 whether or not Madoff was in the office --  
18 is in the market, when he was out of the  
19 market and particularly again we had this  
20 account, it started in 2006, in July of  
21 2006, so it was a relatively short time  
22 period.

23 In 2007 and 2008 there were  
24 frequent times where he did go back into the

0029

Manzke

1 market but he was out of the market for a  
2 number of these time periods.

3 So one of the things that I do  
4 remember having a real discussion of is,  
5 looking at the trading tickets in 2008,  
6 because of what was going on in the  
7 financial market.

8 The banks were in free fall and it  
9 was very difficult in these markets to make  
10 money and it was interesting to me because  
11 over the years, the years that I have had  
12 money with Madoff, we always had similar  
13 stocks, they were the big names, big  
14 capitalization stocks and we noticed that he  
15 had stopped trading in many of the financial  
16 stocks.

17 We thought that was pretty darn  
18 smart of him.

19 All of a sudden Citibank was no  
20 longer in the mix and some of the other  
21 bigger financial stocks.

22 Q. Okay. So there was some level

Page 12

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24 review of the positions that he was putting  
25 on?

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Manzke

1  
2 A. Yes.  
3 Q. Or purportedly putting on?  
4 A. Correct.  
5 Q. But focusing specifically for the  
6 moment on the review of the confirms, what  
7 to the extent you know and I assume as a CEO  
8 you would have, I am hoping, what was  
9 Ms. Hammond looking for in reviewing the  
10 confirms?

11 A. One of the things that we said  
12 that we were doing was to make sure we were  
13 getting best execution.

14 We were looking at the high and  
15 low range of the day and whether or not his  
16 purchases were falling within that range.

17 Q. Okay. Were there any -- was there  
18 any written evidence?

19 A. No, we didn't --

20 MR. KIM: Let him finish the  
21 question.

22 BY MR. POWERS:

23 Q. Was there any written evidence of  
24 Ms. Hammond or Mr. Soares's review?

25 A. No. It was just done informally.

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Manzke

1 Q. Okay.  
2 MR. KIM: That is as far as you  
3 know, right?

4 THE WITNESS: Correct.

5 BY MR. POWERS:

6 Q. All right.

7 MR. POWERS: One of our other  
8 partners just joined us, Betsy Smith.

9 BY MR. POWERS:

10 Q. We don't have any documentary  
11 evidence of the due diligence or review of  
12 the confirms.

13 MR. KIM: She just testified she  
14 is not personally aware of any.

15 MR. POWERS: Correct. Okay.  
16 I haven't seen -- the production  
17 doesn't seem to show any.

18 If there is something, counsel,  
19 that you can point to in the production  
20 that evidences that other than maybe an  
21 e-mail or two, you should bring that to  
22 our attention.

23 MR. KIM: We will talk about it  
24 separately. Obviously, this witness

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Manzke

1 cannot contribute to it.

2 MR. POWERS: Correct.

3 BY MR. POWERS:

4 Q. You would have -- would there be a  
5 period of time where someone would also go  
6 over the monthly statements?

7 A. At the month end.

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9 Q. Would that be something that would  
10 be would done in connection with any  
11 organized meetings of Maxam Capital?

12 A. No.

13 Q. Or was this also something that  
14 Ms. Hammond would do?

15 A. No. It was not an organized  
16 meeting.

17 Q. Is there any other documentation  
18 that you can point to, apart from the Madoff  
19 confirms, that has been produced on which  
20 would evidence any of the due diligence at  
21 Maxam?

22 I do understand that there would  
23 have been a considerable amount and we will  
24 get into that in a few moments presumably  
25 over at Tremont but I am asking at Maxam.

0033

Manzke

1  
2 A. No, not to my knowledge. One of  
3 the things we did monitor is the Kingate  
4 fund and the Tremont fund because we had  
5 money with them, as I stated previously, for  
6 a period of time where there was an overlap.

7 One of the restrictions for some  
8 of our clients is that they couldn't have  
9 more than 10 percent in any one fund so they  
10 might have 10 percent in our cheaper Maxam  
11 version of the Tremont or the Kingate. So  
12 while we were looking at our confirms and  
13 our performance reports, we were also  
14 getting the reports from Tremont and from  
15 Kingate.

16 We would look at their accounts  
17 and see that they were very close in terms  
18 of the monthly rates of return adjusted for  
19 the differences in the fees.

20 So we were looking at the other  
21 feeder funds and getting the confirmation  
22 that our results were within the line of  
23 theirs.

24 Q. Got the performance?

25 A. Yes.

0034

Manzke

1 Q. Okay. That, purportedly, was  
2 being generated by the management of  
3 Mr. Madoff and his firm, correct?

4 A. Correct.

5 Q. We don't see, although I must say  
6 I didn't review every document that you  
7 produced, I had others that I relied upon to  
8 some degree for that purpose but we don't  
9 really see that -- those documents from  
10 either Tremont that you referred to or that  
11 came from Kingate.

12 Now, it might be also those were  
13 produced and if you would also make a note  
14 of that, perhaps, counsel, that if you could  
15 flag those for us or to the extent to which  
16 this helps you identify additional documents  
17 that maybe should be produced to us, that  
18 would be helpful.

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20 what I am also going to do, so you  
 21 know, one of the reasons why Mr. Chockley is  
 22 here is because he is part of our team, he  
 23 is actually the one that is focusing on  
 24 Kingate so at some point today, subject to  
 25 your counsel having no trouble with that, I

0035 1 Manzke  
 2 am going to let him ask about 10, 15 minutes  
 3 of questions sometime later today on  
 4 Kingate.

5 A. Okay.  
 6 Q. If that is okay.  
 7 A. Sure.  
 8 Q. We are done with the subpoenas, I  
 9 think.

10 Let's turn, however, to the  
 11 question, have you in preparing for your  
 12 testimony here today, presumably, you met  
 13 with your counsel, correct?

14 A. Correct.  
 15 Q. How many different times?  
 16 A. Twice.  
 17 Q. Who else was present besides your  
 18 counsel?

19 A. Tremont's counsel was present for  
 20 two hours of that preparation.

21 Q. When was that?  
 22 A. Yesterday. They asked me  
 23 questions basically.

24 Q. Which counsel was that?  
 25 A. Skadden, Arps.

0036 1 Manzke  
 2 Q. Whom at Skadden, Arps?  
 3 A. I would have to ask you.  
 4 MR. KIM: You don't know?  
 5 THE WITNESS: I don't remember  
 6 their names.

7 BY MR. POWERS:  
 8 Q. Chris Gunther, Seth Schwartz?  
 9 A. I don't remember their names. I  
 10 am a person, I get introduced and I forget  
 11 your names.

12 MR. KIM: The lawyers are  
 13 interchangeable.

14 MR. POWERS: We are commodities, I  
 15 am told.

16 THE WITNESS: I didn't get their  
 17 cards.

18 BY MR. POWERS:  
 19 Q. Male or female?  
 20 A. One male and one female.  
 21 Q. You have my card. Right?  
 22 A. I will remember your name. The  
 23 rest down on the table I have already  
 24 forgotten. I am sorry.  
 25 Q. All right.

0037 1 Manzke  
 2 So apart from these two meetings,  
 3 were there any other times that you have  
 4 prepared for your testimony outside of the

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5 presence of counsel?  
 6 A. No.  
 7 Q. Have you discussed your testimony  
 8 with others besides counsel?

9 A. No.  
 10 Q. What about with either people over  
 11 at Maxam Capital, do they know you are here  
 12 today?

13 A. Yes.  
 14 Q. Who there knows?

15 A. The entire office knows that I am  
 16 here today.

17 Q. What about any family members, do  
 18 they know?

19 A. Yes. My family members know I am  
 20 here.

21 I didn't discuss what I am going  
 22 to say because they are not really involved  
 23 with it.

24 Q. Which family members would that  
 25 be?

0038 1 Manzke  
 2 A. My children, my mother, my  
 3 husband, my brother.  
 4 Q. Anyone else?  
 5 A. Only that I have to go through  
 6 this torturous thing today.

7 Q. It is not meant to be torturous.  
 8 It is probably no more or less than being on  
 9 television so let's --

10 A. I will try to remember that.

11 Q. That's right.  
 12 A. We will have a friendly  
 13 conversation.

14 Q. It is to gather information. It  
 15 really is. That is really what it is about.

16 A. Yes, I know. I am very interested  
 17 in that.

18 Q. We need to make judgment calls, we  
 19 need to make decisions on things and that is  
 20 what it is about.

21 Please take it in that spirit no  
 22 matter how torturous it may appear to you.

23 In terms of background, now,  
 24 let's -- let's go to that. If you don't  
 25 mind, this, it is up to you if you want to

0039 1 Manzke  
 2 keep it confidential. When were you born?

3 A. **REDACTED**

4 Q. Okay. I think it is probably in  
 5 some ADVs anyway.

6 A. It is.

7 Q. Where did you grow up?  
 8 A. Stamford, Connecticut.

9 Q. Your primary residence I think you  
 10 testified earlier is down in Florida,  
 11 correct?

12 A. Correct.

13 Q. Where else do you maintain  
 14 residences? Is that in Vermont and anywhere  
 15 else?

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16 A. Up until -- I also have a house in  
17 Sacadaga Lake, New York that I go over  
18 periodically in July and August, but I also  
19 had a studio apartment at my son's house at  
20 12 Bishop Park Road and -- but that is going  
21 to be rented out now so I really don't have  
22 a place when they rent it in Pound Ridge any  
23 longer.

24 Q. So --  
25 A. There was a period when I was

0040  
1  
2 working at Tremont for a year that I had to  
3 rent an apartment in New Cannan,  
4 Connecticut.

5 Q. Okay. Since Tremont -- so the  
6 home in Pound Ridge at some point was fully  
7 owned by you and your husband, correct?

8 A. No. It was only owned by me but

REDACTED

0041  
1  
2 delivered up to that studio, correct, as of  
3 recently?  
4 A. Not really. I try to move  
5 everything. The only thing that comes there

REDACTED

13 R  
15 AT Yes.  
REDACTED

0042 Page 17

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REDACTED

Q. We will come back to that later to the extent that it is necessary.

A. You don't want to start on that right now because that will upset me.

Q. It also will take up other areas that I think are more important to focus on.

A. Okay.  
Q. You have how many children?

A. Two.  
Q. You have walker?

A. Yes.  
Q. Is there a Warner?

A. There is a Warner.  
Q. Those are both W names.

A. Yes. I wanted a Worth too but I never got the worth.

Q. What are each of their professions?

A. REDACTED

And walker did work at Maxam and currently is unemployed. But he has a part-time job right now working for an

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Manzke  
estate valuing their art.  
Q. When did he cease work at Maxam Capital?

A. In December when the news hit about Bernie. I laid him off, one of the first I laid off.

Q. Do you have any other relatives that did or currently work at Maxam Capital?

A. Yes. Walker's wife, April, started out in the firm as assistant to

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12 Spotswood Dudley, who was then the  
13 compliance officer, and she took --  
14 Spotswood was a lawyer so he was exempt from  
15 passing the compliance officer's test.  
16 She studied for it and passed on  
17 her first try and then became the chief  
18 compliance officer.  
19 Q. She is still serving in that  
20 capacity today?  
21 A. No. I had to lay her off also.  
22 Her last day of work was June 30.  
23 Q. Just last week?  
24 A. Yes.  
25 Q. We are going to get -- shortly, we

0045

1 Manzke  
2 will get to organizational structure, the  
3 size it was, maybe the size it is now.  
4 A. Then my brother, Roy Mehner, is  
5 the IT guy.  
6 Q. M-A?  
7 A. M-E-H-N-E-R.  
8 Q. Close.  
9 Is he still with you?  
10 A. No. He also was laid off but if  
11 you ask for documents, obviously he is the  
12 only one who can get them for us and,  
13 therefore, he comes in if we ask him to.  
14 Q. You attended Pratt Institute?  
15 A. Yes.  
16 Q. What year did you graduate?  
17 A. I think it was 1976. It could be  
18 1978 but --  
19 Q. With what type of degree?  
20 A. I have a Bachelor of Arts degree  
21 and majored in film making.  
22 Q. For the last five years could you,  
23 please, identify for the record all of your  
24 various business affiliations? I know we  
25 talked about -- because I am going to get

0046

1 Manzke  
2 into more detail later. I want to lay them  
3 out here.  
4 I know we talked about Maxam  
5 Capital but you have been and currently are  
6 the CEO, correct?  
7 A. Correct.  
8 Q. We talked a little bit about  
9 Kingate.  
10 A. I was a director of Kingate. I  
11 have to go back to Kingate to find out when  
12 they asked me to resign as a director  
13 because I did resign as a director of  
14 Kingate. They did not want -- there was a  
15 period of time where they really did not  
16 want Tremont involved in their activities  
17 any longer.  
18 They also did not want to have any  
19 U.S. affiliations and they asked me to  
20 resign.  
21 MR. KIM: Why don't you list  
22 him -- the entities for him? I think

Page 19

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23 that is what he is looking for.  
24 THE WITNESS: But I don't know  
25 that I was in the five-year period a

0047

1 Manzke  
2 director.  
3 BY MR. POWERS:  
4 Q. Got it. It may have preceded five  
5 years?  
6 A. Yes.  
7 Q. Apart from those two entities and  
8 I will get to Tremont in a moment, but you  
9 were the founder, correct?  
10 A. Correct.  
11 Q. We will go into more detail on  
12 that.  
13 What else?  
14 A. I had a small little bit in  
15 Vermont called Sandman, Inc. which basically  
16 was a tiny company that I set up to help my  
17 brother, my other brother, who does  
18 construction to basically get business doing  
19 that. I put some money, capital into it and  
20 it closed a couple of years ago.  
21 Q. Any other business affiliations?  
22 A. Not that I can remember.  
23 Q. Are you -- can you think of any  
24 other entities in which you are an officer  
25 or director?

0048

1 Manzke  
2 A. I was a director of the QAM Funds  
3 which were two offshore funds.  
4 Q. Spell that.  
5 A. Q-A-M.  
6 Q. Okay.  
7 A. I was a director of Preferred  
8 Offshore Fund.  
9 Q. This is during -- within the last  
10 five years or so?  
11 A. Yes. I was still a director,  
12 unpaid but a director.  
13 Q. Any others?  
14 A. Not that I can think of.  
15 Q. Real quickly, who are the  
16 principals of the QAM Fund?  
17 A. This is a Singapore emerging  
18 markets, there are two funds. I can't  
19 remember the names because they are very  
20 strange names.  
21 It was briefly for about a year.  
22 when the Madoff news hit, they asked me to  
23 resign because their investors were --  
24 didn't want to have a name on it that was  
25 tainted.

0049

1 Manzke  
2 It was basically a long shore --  
3 there were two funds. One was a global fund  
4 and one was an emerging markets fund.  
5 Q. Did you have any financial  
6 participation or compensation for serving as  
7 a director?

Page 20

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8 R  
10 Q. Did you have any financial  
11 interest in it?  
12 A. No.  
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Manzke  
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REDACTED

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Manzke  
what we are going to get back, I don't know.  
Q. The QAM funds, how long were you a  
director?  
A. A year-and-a-half. I also was a  
director of Zeron, Z-E-R-O-N, nonpaying. It  
was a -- but the fund has been not in  
existence for the last five years but I just  
remember doing some paperwork that says we  
are formally closing this fund and I just  
had to sign a form saying that I resigned as  
a director.  
Q. You are no longer a director of  
Kingate you said, correct?  
A. NO.  
Q. How many years were you a  
director?  
A. I would probably say five to seven  
years, in that range.  
Q. Any other business affiliations in  
which you are an officer or director in the  
last five years or so?  
A. There was a company that Tremont  
started called Hedge world that was sold but  
I can't remember, it was sold maybe four

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Manzke  
REDACTED

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Manzke  
Q. Let's turn to Tremont then if we  
may.  
A. Yes.  
Q. When did you found Tremont?  
A. In 1984.  
Q. What was its purpose?  
A. It was going to be a consulting  
firm to pension funds was the primary idea  
of the -- of forming the fund in the  
beginning.  
And then we would do some asset  
management in terms of fund -- of funds in  
long only-types of products.  
Q. Just explain for the record when  
you say "long only" what you mean.  
A. Long only would be traditional  
asset management.  
You are not using leverage, you  
are not getting performance fees. You are  
not -- you are, generally speaking, giving a

0054  
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3  
Manzke  
mandate and you have to be fully invested so  
it is mutual fund manager and pension fund  
Page 22

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4 managers what we call traditional asset  
5 management.

6 Q. What was your title and duties and  
7 responsibilities there?

8 A. When I founded the company, I was  
9 the CEO. There was a change in the company  
10 and I became president before going back to  
11 being CEO.

12 Q. What period of time were you  
13 president?

14 A. In 1991-1992, 1991 and 1992, I was  
15 the president.

16 Q. What were your duties and  
17 responsibilities as the CEO of Tremont?

18 A. I was to oversee the activities of  
19 the company to generate new business, to  
20 come up with new product ideas and to  
21 generally manage the staff of the company.  
22 That changed over time as the company got  
23 bigger.

24 Q. Of course, right. How many people  
25 did it start with?

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Manzke

1 A. It started with one and then we  
2 moved to two and by, I would say, the end of  
3 the second year, we had about seven  
4 employees.

5 Q. Then the business was sold in  
6 2001, correct?

7 A. No. There was some interim steps  
8 before that.

9 Q. I want to get a sense, just if I  
10 may, of when -- different size of the  
11 organization both in terms of employees,  
12 funds and money under management, by certain  
13 benchmarks, if you might be able to do so?

14 A. Yes.

15 Q. You started with zero dollars and  
16 one person?

17 A. Yes. And when, we had a couple of  
18 million dollars and then probably it kind of  
19 grew to 5 million and then 25 million, so it  
20 was exponential.

21 When I left Tremont, when Tremont  
22 was sold in 2001, the assets under  
23 management were probably closer to  
24 12 billion, I would like to say, there from

0056

Manzke

1 what I can remember.

2 Q. How many employees?

3 A. About 80.

4 Q. Located in Rye, New York?

5 A. In Rye, New York.

6 Q. When did you get -- how many  
7 different funds were there?

8 A. When I left there was probably  
9 close to 50 different funds.

10 Q. Between one fund and 50, when did  
11 it get to -- when did it get to 1, 2,  
12 \$3 billion? What caused it to kind of  
13 proliferate if I may ask it that way?

14

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15 A. What really caused the big growth  
16 was in the 1990s when hedge funds became so  
17 popular that it was what everybody wanted.

18 The fund of funds business was  
19 growing exponentially. Talented managers on  
20 Wall Street were leaving in droves to start  
21 hedge funds.

22 So there was kind of the 1990s I  
23 would call hedge fund mania where everyone  
24 wanted that particular product.

25 Q. When did you get to over 1 billion

0057

Manzke

1 in the management would you say?

2 A. I can't remember those dates.

3 MR. POWERS: The videotape needs  
4 to be changed. We need take a break.

5 THE VIDEOGRAPHER: The time is  
6 11:23 a.m.

7 This ends tape number 1 of the  
8 videotaped deposition of Sandra L.

9 Manzke.

(Recess)

10 THE VIDEOGRAPHER: The time is  
11 11:33 a.m.

12 This begins tape number 2 of the  
13 videotaped deposition of Sandra L.

14 Manzke.

BY MR. POWERS:

15 Q. Just a few followup.

16 Have you ever heard of Union Bank  
17 Privee?

18 A. Yes.

19 Q. What is it?

20 A. It is a Swiss private bank.

21 Q. Have you ever had any affiliation  
22 with that entity?

0058

Manzke

1 A. No.

2 Q. Ever do any business with it?

3 A. We used to have a division of our  
4 company where we would actually go and  
5 market investment managers to them. We used  
6 to have part of our business which was to  
7 introduce hedge fund managers to investors  
8 and that was one of the places that we would  
9 go to, just simply to introduce some product  
10 to.

11 Q. This is during your days over at  
12 Tremont?

13 A. Yes.

14 Q. Did you do that while you were at  
15 Maxam?

16 A. Not to my knowledge.

17 Q. Also to clarify, as it relates to  
18 the documents that you produced or your  
19 companies have produced, did that include a  
20 full search of the documents that you had up  
21 in Vermont?

22 A. Yes.

23 Q. Fine.

24 Now, prior to starting Tremont in  
25 Page 24

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0059

Manzke

1984 --

A. Yes.

Q. -- would you mind giving us your related employment history and background? Working it through, basically telling us the time periods, what your duties and responsibilities were at the main places.

A. Okay. It was a rather interesting time in terms of the investment management business. I was putting my husband through school when we got married as I said in 1969 and in January, I joined Scudder Stevens & Clark which was one of the oldest investment management companies.

Initially, my role was to calculate the performance of their mutual funds, do some of the charts, do presentations to clients.

The interesting part is the rate of return concept really didn't exist back then.

It took days to be able to be able to calculate a rate of return. Basically, we did market value adjusted capital value

0060

Manzke

charts.

And then I had gone to computer school and I worked basically on the project to begin to create a performance measurement system for the firm. I worked in performance management. I ended up with the title of investment manager.

while I was there, and then I was putting myself through school for the last two years, taking my vacation time to -- as time to go to school so I would work four-and-a-half hours and work weekends, et cetera, and then I left right before I graduated because I had matriculated before I was 25 and I had to take five credits of gym.

So I had to quit Scudder and then I graduated and I had a film degree and I did film, did some editing and decided I didn't like the business that much, I won't go into the details but I said, I would rather be in investment management.

Q. Can you take us from that time period when it was that you would have

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Manzke

graduated and the time you would have finished at Scudder?

A. Yes.

Q. What year was that? Did you say 1968, did you say '78?

A. '78, yes. So then I worked for Bernstein McCawley part time whenever I didn't have a film job and I must -- it must have been 1976 that I graduated because in

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11

1978, I joined Rogers Casey &amp; Barksdale.

12

Rogers Casey &amp; Barksdale was

13

formed right after basically the passage of

14

ERISA which then put a level of

15

responsibility back on the large pension

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funds that they actually had to demonstrate

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that they were picking the best investment,

18

manage inventories, manage the pension

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accounts rather than what they previously

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did was, give it to their insurance company

21

or their lender to manage.

22

So this was a whole new

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development of independent investment

24

management.

25

So we were one of the early firms

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Manzke

1

that were looking for independent investment

2

managers.

3

Q. That entity was a consulting

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advisory firm to help find money managers

5

not necessarily be the money managers?

6

A. No. We were always evaluators of

7

outside talent. All of our clients were

8

really Fortune 500 types of companies,

9

Kodak, Gannett, Singer pension plan, Morton

10

Salt. So we were growing pretty rapidly

11

with people looking for that type of

12

business. I became a partner of that firm.

13

There were -- Rogers Casey &amp;

14

Barksdale owned 30 percent of the company

15

and I owned 10 percent. While I was there,

16

I was -- I began by doing market analysis

17

and doing all the performance reports for

18

the clients and later on I started doing

19

consulting.

20

We also at that later -- about two

21

years before I left in 1984, we also started

22

to get into the investment management game

23

where we would be creating a group trust or

24

a fund that would charge investment

25

0063

Manzke

1

management fees, usually about 25 basis

2

points, back then that was normal, and we

3

were not only getting paid then as a

4

consultant, which was a flat fee rate, but

5

we also had products for those clients to

6

invest in where we got 25 basis points.

7

Q. What was the reason for you

8

leaving Rogers Casey?

9

A. Well, I was the 10 percent owner.

10

And it was sort of the firm was dividing

11

where Ed Barksdale was pushing for the

12

investment side where you get investment

13

management fees as opposed to the consulting

14

side.

15

And there were disagreements

16

between Ed and -- John Casey and Ed

17

Barksdale and Steve Rogers so I was always

18

on Ed's side but I was the 10 percent owner

19

and it was very frustrating so I never won.

20

Subsequently about, I would say,

21

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22 six to eight months I left, they actually  
23 agreed to separate the firm and Ed took the  
24 investment management side and Steve and  
25 John continued with the consulting side.

0064

Manzke

1 So, I, I had just gotten  
2 frustrated and I decided I would go and  
3 start my own business.

4 Q. When you started Tremont, was it  
5 with the idea of staying on one side as  
6 opposed to the other?

7 A. No. I felt we could do both  
8 things. So I wanted -- I actually felt that  
9 there would be several clients that would  
10 follow me but that didn't work out except  
11 the town of Fairfield actually did follow  
12 me.

13 We had a number of ideas of  
14 different products. I had worked in the  
15 Canadian market. One of my responsibilities  
16 when I was at Rogers Casey and we actually  
17 did do a pretty interesting fund, several  
18 funds up in Canada that were very  
19 successful.

20 Q. When you say you did certain  
21 funds, was it that you would help, was it  
22 you were doing the marketing side or were  
23 you also setting up the funds as well?

24 A. I have always been an idea person

0065

Manzke

1 and one of the things --

2 Q. Excuse me.  
3 when I say "you" I am talking  
4 about Tremont itself.

5 A. Yes. I basically had one idea for  
6 the Canadian market and took -- basically  
7 back then when I started Tremont, the  
8 Canadian banks didn't own any mutual fund  
9 and they didn't sell product and I thought I  
10 could get them to get into the mutual fund  
11 business.

12 It ended up I couldn't get them to  
13 do it but we went to the brokers, they liked  
14 the idea and we brought investment  
15 management talent to the Canadian  
16 marketplace and we launched about five  
17 different funds of which we were choosing  
18 the money managers for and we got paid on an  
19 asset-based value.

20 Q. You were setting up product which  
21 was for different types of -- for different  
22 types of investment strategies?

23 A. Yes. We were still using long  
24 only managers back then, we weren't in the

0066

Manzke

1 hedge fund, we did the Rodney Square Funds  
2 which was a group trust, multimanager,  
3 traditional asset management for Wilmington  
4 Trust so we had a lot of -- of very  
5 traditional asset management products that

Page 27

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7 we did in the early days.

8 Q. Was it your products or were they  
9 private label?

10 A. They were private labeled. I  
11 didn't have any personal money back then.  
12 We didn't have the capital to fund a product  
13 so, therefore, we went to those that could  
14 raise the money, be the money raisers where  
15 we were really the idea and the creator of  
16 the products.

17 Q. The entity that you started at  
18 Tremont was called what?

19 A. Tremont Partners LP.

20 Q. That was limited partnership?

21 A. Yes. I believe so. It is  
22 20-some-odd years ago.

23 Q. Ultimately, it morphed into too  
24 large a chart for me of entities so I kind  
25 of want to get there, okay, and quickly.

0067

Manzke

1 I don't want to spend a half a day  
2 on Tremont. I want to get a sense of who  
3 was the -- who was the adviser, which entity  
4 was the adviser, then if that changed over  
5 time, then a build-out, if there was holding  
6 companies that were set up, how you were  
7 involved in that and why was that done in a  
8 summary fashion.

9 A. Let me do it real quick.

10 Mario Gabelli came to me in 1987  
11 and needed to make an acquisition. We were  
12 acquired into the Lynch Corporation which  
13 was a company he bought, broken down company  
14 that he raised a lot of junk bonds for.

15 His idea was going to be his baby  
16 Berkshire Hathaway so originally then, we  
17 became part of Lynch and then in --

18 Q. What became part of Lynch?

19 A. Tremont became part of Lynch.

20 Q. LP?

21 A. Yes. We were called Lynch Asset  
22 Management at the time.

23 Q. What was Gabelli's role in that or  
24 participation?

0068

Manzke

1 He was the primary owner of the  
2 Lynch corporation which is still in  
3 existence today.

4 Q. Okay.

5 A. He had the idea that we would buy  
6 investment managers and that actually didn't  
7 work out so well.

8 Then he started buying baby Bells  
9 in there and we were a tiny little entity in  
10 this bigger corporation so he spun out on a  
11 rights offering in 1991 and that is when he  
12 brought in Leon Meyers to be the chairman of  
13 the company.

14 Q. You were reporting to him as the  
15 CEO, as president at that time?

16 A. President.

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18 Q. Got it.  
19 Is that the time you guys went  
20 public as well?  
21 A. No. Actually, it was -- we did --  
22 we were technically public but we were  
23 trading in the pink sheets and then we did  
24 another round of capital raising, I believe  
25 that was in 1994.

0069

1 Manzke  
2 Q. Okay. Leon Meyers, what was his  
3 background and experience?  
4 A. Leon Meyers was Mario's best  
5 friend and he had worked since college, and  
6 I would say at that time he was in his 40s,  
7 for a family office in New York called Sy  
8 Scheuer, big real estate company.  
9 He had invested their assets in a  
10 lot of different managers and a lot of  
11 different hedge funds. And Leon knew a lot  
12 of hedge funds and wanted to start his own  
13 personal fund of funds and that is why he  
14 was brought into the company.  
15 Q. Okay. He lasted there for two  
16 years?  
17 A. A year-and-a-half about.  
18 Q. Year-and-a-half. Why was that,  
19 short version?  
20 A. Short version is that he -- Steve  
21 Cohen, who is a very famous manager --  
22 Q. Yes, as they say.  
23 A. Yes, opened up once in the month  
24 of August and he was only opening up once.  
25 Q. Open up once, what do you mean by

0070

1 Manzke  
2 "open up once?"  
3 A. He was opening his fund and  
4 closing it on August 31.  
5 Q. Opening for investments?  
6 A. Investments. And he wasn't going  
7 to take anymore money. You had one shot to  
8 get in raising 40 million.  
9 Q. This is in the year?  
10 A. 1992. And he, Leon, didn't have  
11 the capital because he was fully invested in  
12 this, at that time it was called Tremont  
13 Advisers LP.  
14 It was our first proprietary fund  
15 of funds and he borrowed the money out of  
16 the capital of Tremont, Mario had a fit.  
17 They had a fight and he said, I am not  
18 listening to Mario and he quit.  
19 And so he took the Tremont  
20 adviser's fund with him, renamed it Mosaic  
21 and I remained friendly with him and we were  
22 the consultants to Mosaic.  
23 Q. Now, I know why people gave me  
24 information about Mosaic, because it is Leon  
25 Meyers' connection?

0071

1 Manzke  
2 A. Right.

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3 Q. He was running his -- it is a  
4 relatively small fund?  
5 A. Right after he left.  
6 Q. Correct. After he left.  
7 were you a consultant for that or  
8 an adviser for that?  
9 A. Yes. After he left we helped him  
10 administrate the fund.  
11 Q. After he left Mosaic?  
12 A. When he left Tremont he bought out  
13 the fund.  
14 Q. Correct.  
15 A. Took it with him and renamed it  
16 but Tremont still acted as an administrator  
17 to help him for about two years.  
18 We helped him out doing the back  
19 office which he didn't do very well.  
20 Q. So what was left of Tremont then?  
21 A. We had a lot of other accounts.  
22 We had our minority business, which was the  
23 long only traditional. We had a number of  
24 fund of funds that we consulted to and at  
25 that time we still had this money management

0072

1 Manzke  
2 raising money for money managers.  
3 For example, when Leon Cooperman  
4 started his Omega, he hired Tremont to raise  
5 the capital for him in the offshore fund.  
6 So we went over to Europe and raised all the  
7 money for that fund.  
8 Q. Okay. Maybe I missed it.  
9 What is the relevance of SAC?  
10 A. That -- you said why did Leon  
11 Meyers leave. It was over the funding of  
12 SAC.  
13 Q. Okay. Fine.  
14 A. I warned Mario in the beginning,  
15 he never did well working with his friends  
16 which proved to be true.  
17 Q. Mario, of course, had his Gabelli  
18 funds, right?  
19 A. Yes.  
20 Q. Was he also involved in Manhattan  
21 partners?  
22 A. That is his brother.  
23 Q. That is his brother. Manhattan  
24 partners, that is one of your investors?  
25 A. Investors.

0073

1 Manzke  
2 Q. Was it at Maxam, correct?  
3 A. At Maxam.  
4 Q. Was he also an investor over at  
5 Tremont?  
6 A. Yes. Leon Meyers is important  
7 because he was the one who had the Madoff  
8 account.  
9 Q. Okay. Thank you for the segue.  
10 But I still want to get a little bit more  
11 about filling out about Tremont to  
12 understand it.  
13 Then have -- you have Tremont  
Page 30

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14 Advisers which is -- is that effectively  
15 going to be, it -- is that effectively the  
16 money manager for the various funds that  
17 were being established because then you also  
18 have the spinout of Rye Select?

19 A. That was a little branding  
20 basically. It is kind of lights and  
21 mirrors. They didn't like the name Tremont  
22 Advisers.

23 Q. Where did the name come from, by  
24 the way?

25 A. I had the best chicken hash at the  
0074

1 Manzke  
2 Tremont Hotel in Chicago and I liked -- it  
3 was one of the things I liked to do. Half  
4 of these funds I named them. That was my  
5 art background coming up with branding.

6 Q. Okay.

7 A. But they didn't like the name  
8 Tremont Advisers so they made it Tremont  
9 Capital.

10 We had funds that were called the  
11 American Master's funds but then nobody  
12 liked the name American Master's in Europe  
13 because all of a sudden you had Europeans so  
14 there was a lot of name changes that went on  
15 over the years.

16 And then I think the reason -- the  
17 Rye Select came in after I had left but I  
18 think it was they didn't want the name  
19 Tremont broad market on the fund if you were  
20 selling to other fund of funds. It might be  
21 your competitor so they picked a new name.  
22 It is just branding.

23 Q. You are saying the Rye Select fund  
24 started after 2006 or it would have been  
25 2001?

0075 1 Manzke

2 A. No. They changed the name. They  
3 made it a separate division.

4 Q. Correct.

5 A. From what I understand,  
6 Oppenheimer said, okay, let's change, so we  
7 have the fund of funds business here and  
8 then we have proprietary products over here.

9 They did a Renaissance feeder  
10 fund. They did one of those activist  
11 managers. You couldn't get into -- they  
12 provided --

13 Q. They had different products for  
14 different kinds of client base and different  
15 kinds of strategies involved as well.  
16 Ultimately, who got the advisory fees or the  
17 management fees?

18 A. That would flow up to the holding  
19 company Tremont LLC. It would go to the  
20 different entities. If it was offshore it  
21 went to Tremont LLC, Tremont Limited,  
22 rather.

23 If it was domestic, it went to the  
24 domestic company.

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25 Q. Which was LLC?

0076

1 Manzke

2 A. Which was LP.  
3 I don't know. It might have been  
4 LLC. Yes. They changed it to an LLC.

5 Q. Okay.

6 A. I wasn't involved in that.

7 Q. Okay.

8 The -- when you were there -- you  
9 were still the CEO up until 2000, correct?

10 A. Correct.

11 Q. Ultimately, the management fees --  
12 first of all, just to back up.

13 As at Maxam, Tremont also did not  
14 charge a performance fee as I understand it.  
15 Is that basically right, they charged a  
16 management fee on --

17 A. On the Maxam Absolute -- on the  
18 Madoff, they didn't charge a performance  
19 fee.

20 Q. Correct. You charged it for  
21 others I understand?

22 A. On other things they charged  
23 performance fees.

24 Q. On the Maxam Absolute, correct,  
25 that would follow in some measure the model

0077

1 Manzke  
2 of Tremont in terms of management fees being  
3 charged, although it was a bit less, a 50  
4 basis points less, correct?

5 A. Yes.

6 Q. Okay. Did you have money, either  
7 you or a trust or any of your IRAs, directly  
8 or indirectly involved, invested in any of  
9 the Tremont products or funds?

REDACTED

0078

REDACTED

5 Q. Now, what was your ownership  
6 interest in Tremont?

7 A. I don't remember.

8 Q. You were not, as far as I can tell  
9 from the public documents, you were not a

Page 32

10 full owner, correct? 300039896\_1.TXT  
11 A. No. REDACTED

0079  
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D  
Manzke

21 REDACTED 300039896\_1.TXT

REDACTED

REDACTED

14 BY MR. POWERS:  
15 Q. Give me a sense of what your  
16 remuneration including stock, bonuses and  
17 options would look like in the late 1990s  
18 before the purchase.

REDACTED

0082  
1 REDACTED Manzke

17 Q. You sat on the board, correct?  
18 A. I sat on the board, yes.  
19 Q. Who were the members of the board  
20 in the late 1990s?  
21 A. Jimmy Thomas, former treasurer of  
22 Gannett, Allen Rein who was -- worked at  
23 Shearson, Lehman when Bob was there, John  
24 Keeley who was a major investor in the  
25 initial offering. I can't remember. I

0083  
1 Manzke  
2 think counsel was still Newman, I don't know  
3 whether he was a director.  
4 Those are the only ones I can  
5 remember.

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6 Q. Including yourself?  
7 A. Including myself and Bob.  
8 Q. Okay. When did Bob join?  
9 A. In, I would say, '93, '94,  
10 probably 1994.  
11 Q. How did you get along with him?  
12 A. In the initial early days I got  
13 along with him really, really well.  
14 Q. Then towards the end?  
15 A. After the company was sold to  
16 Oppenheimer, it became more and more  
17 strained.  
18

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D

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17  
REDACTED  
REDACTED

9 Q. Okay. So I think we understand  
10 that maybe in the early 1990s is when you  
11 would have come to know Bernard Madoff,  
12 would come to know of him?  
13 A. No. I knew of Madoff back in  
14 1991.  
15 Q. Early 1990s, that is what I said.  
16 Maybe I misspoke.  
17 A. I thought you meant the later  
18 '90s.  
19

R  
E  
D  
A  
C  
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E  
D

0087

1 Manzke  
2 withdraw that.  
3 were you still actively involved  
4 in the business once it was acquired or were  
5 you basically put on -- you were given some  
6 sort of employment agreement, consultant  
7 agreement and not asked to participate as  
8 much in management?  
9 A. No. I think that there was a  
10 sense that you want -- that Oppenheimer  
11 wanted this new generation. We acquired  
12 you, you and Bob in five years, you have a  
13 contract and manage the business, grow the  
14 business.  
15 we certainly had incentive pools  
16 that were put out there to continue to grow  
17 the business but there was a sense, let's  
18 get a lot more organization, more levels  
19 involved in this, and I kind of fought that  
20 because I loved interviewing managers.  
21 we didn't have, in the last couple  
22 of years when I -- before I left, I still  
23 maintained what I call the legacy clients,  
24 clients that I had from 10, 15 years that I  
25 still was the primary contact but I also

0088

1

Manzke

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2 wanted to be involved in emerging market  
 3 managers because we didn't have exposure.  
 4 So the last three years when I was  
 5 there after the acquisition, I did a lot of  
 6 traveling to interview emerging market  
 7 managers around the world and actually got  
 8 Tremont to start their emerging manager and  
 9 their commodity pools.

10 Q. Did Tremont have some sort of  
 11 investor management committee for selection?

12 A. Yes.

13 R

REDACTED

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13 R MR. POWERS: Let the record  
 14 reflect that my partner, Marc  
 15 Hirschfield, joined us.  
 16 Let the record reflect that the  
 17 people we are identifying now may not  
 18 necessarily be here all day. They may be  
 19 coming in and out.

20 I will be here all day though.

21 THE WITNESS: Me too.

22 You asked me then about Maxam, was  
 23 it the same.

24  
 25  
 0091

Manzke

1 BY MR. POWERS:

2 Q. Yes.

3 A. That is where I will pick up.

4 Q. Right.

5 A. When I left, I took a number of  
 6 people with me that had actually worked with  
 7 me for many years.

8 And what we wanted to do was to  
 9 build a more horizontal firm so that these  
 10 are all senior people, having had all of  
 11 this experience, I gave everybody in the  
 12 company ownership and that we would all make  
 13 decisions on a -- everybody in the firm  
 14 would have input on those decisions.

15 So we would meet when we had  
 16 changes to be made in the accounts or we  
 17 were finding new managers, present it to the  
 18 entire group and to decide on those  
 19 allocations.

20 Q. Okay. As it related to the  
 21 Absolute Fund, the domestic and the foreign,  
 22 which we will get into in a few minutes,  
 23 that money was all put with Madoff, correct?

24 A. Yes.

25  
 0092

Manzke

1 Q. So were there ever any meetings  
 2 while at Maxam -- was there a formal  
 3 investment committee that still met  
 4 regularly, monthly, or was it periodic or  
 5 sporadic?

6 A. It was when we were all in town,  
 7 we could all get together.

8 Harvey was, I can't remember his  
 9 last name, he was the head of research. He  
 10 took the junior people, they were meeting  
 11 with the managers on a regular basis. They  
 12 would come back to the investment, with --  
 13 to our group because anybody could come on  
 14 and sit in in the meetings but there was  
 15 a -- formal decision makers that were about  
 16 seven of us that would say, we want to use  
 17 this manager in this fund, we want to fire  
 18 this manager in that fund.

19 Q. Those are the ones identified in  
 20 the offering materials?

21 A. Yes. Most of our accounts were  
 22 not discretionary.

24 300039896\_1.TXT  
25 They really needed -- there were  
0093 investment committees on the various funds

1 Manzke  
2 because we didn't have any proprietary fund  
3 of funds.

4 Q. But just -- but the investment  
5 committee would not have had any review of  
6 the Absolute Fund once the money had been  
7 placed with Madoff, correct?

8 A. Correct.  
9 Q. In terms of -- before we get  
10 there, why don't you now tell me about --  
11 when you first learned of Mr. Madoff and you  
12 said that was like in '91 or so?

13 A. Yes.  
14 Q. How did that come about?  
15 A. Well, in general, this is, you  
16 know, serving my memory going back as far as  
17 I can, I was aware that Ezra Merkin, for  
18 example, when he ran Gabriel had actually  
19 farmed money out to other investment  
20 managers and one of the managers was Madoff,  
21 but my real knowledge of Madoff came when  
22 Leon Meyers joined the firm.

23 Leon had an account with Madoff  
24 going back to 1987 and he came in and said  
25 this is a terrific money manager. He has

0094 1 Manzke  
2 made --

3 Q. Personal account?  
4 A. Personal account, so he said,  
5 let's look at -- we want you to look at and  
6 the firm to look at, here is my brokerage  
7 statements, and somebody basically went  
8 through those tickets and calculated the  
9 historical rate of return that Leon had  
10 achieved. That account became one of the  
11 accounts that went into his -- went into  
12 Tremont Advisers that became Mosaic.

13 So that personal account was one  
14 of the funds that went into his original  
15 fund of funds.

16 Q. When he ended up having the  
17 discord with Gabelli and spun out a part of  
18 the business, he was really just taking his  
19 personal account and the assets from that  
20 that he threw --

21 A. He raised about \$10 million when  
22 he started the fund of outside money.

23 Q. Okay.

24 A. Leon came to the firm with the --  
25 just to create a fund of funds. He really

0095 1 Manzke  
2 didn't want to be involved in our minority  
3 business or the consulting side.  
4 He really wanted to team up with  
5 us, our knowledge of hedge funds coupled  
6 with his hedge fund knowledge to create a  
7 proprietary product, which is what he did.

8 Q. What did he tell you about Bernard  
Page 39

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9 Madoff or what had you known about him?

10 A. He said, and you have to remember  
11 that hedge funds back then were doing 25 to  
12 100 percent rates of return but Bernie was  
13 in the kind of 15 to 17 percent. Kind of  
14 consistent.

15 It wasn't a hedge fund. It was a  
16 brokerage account and Leon was, you know,  
17 hung out with all the wealthy families in  
18 Manhattan and they all had Madoff accounts  
19 back then.  
20

REDACTED

25 Q. Low vol? Low volatility?

0096

1 Manzke

2 A. Low volatility.  
3 Q. Can you explain for the record  
4 what "low volatility" means?

5 A. It would be a fund that had a very  
6 low standard deviation that didn't go up  
7 10 percent one month and down 9 the next and  
8 up 25. So it was plus or minus about 30  
9 basis points over the S&P in terms of  
10 standard deviation.

11 Q. I apologize if I asked this  
12 before. Where did Leon Meyers get his  
13 money?

14 A. Working for the Scheuer family.

15 Q. The Scheuer family. Got it. All  
16 right. The family office there?

17 A. Yes.

18 Q. Meyers brings to you this guy  
19 Madoff and you -- what, if anything, were  
20 you reviewing in that regard, why was he  
21 showing it to you?

22 A. He wanted to include that as one  
23 of the managers in our proprietary product.

24 Q. At that time did you have more  
25 than one proprietary product?

0097

1 Manzke

2 A. No. That was the first  
3 proprietary product.

4 Q. Whom was -- who was reviewing  
5 that? Was it just you and he? Were there  
6 others involved in that?

7 A. The entire firm was looking at it  
8 because it was our first proprietary  
9 product.

10 We didn't have any money to invest  
11 but we were all very interested in the  
12 creation of this product.

13 Q. What kind of review or due  
14 diligence did you undertake at that time?

15 A. In the early 1990s it was  
16 basically background checks on a manager and  
17 look at his track record, getting his  
18 audited financials that would go back for  
19 whatever time period he would be in

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20 business.  
 21 It was verifying whether or not  
 22 the prime broker --  
 23 R REDACTED

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5 REDACTED

21 Q. Is it your testimony then that you  
 22 went in to visit and meet with him prior to  
 23 investments in the proprietary fund that was  
 24 being established by Tremont?  
 25 A. I visited with him prior to the  
 0102  
 1 Manzke  
 2 formation of the proprietary product with  
 3 Tremont but as a kind of saying I think this  
 4 is a good manager but Leon had the account  
 5 that actually he folded into the proprietary  
 6 product.  
 7 Q. The proprietary product came to be  
 8 known as what?  
 9 A. Initially it was called Tremont  
 10 Advisers LP.  
 11 Q. What did it become?  
 12 A. Mosaic.  
 13 Q. Okay. Fine.  
 14 When you first met with him, this  
 15 would have been in 1991?

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16 A. Yes.  
 17 Q. What offices was he at, where was  
 18 he at the time? Was he in the Lipstick  
 19 Building? I don't know if they had it then.  
 20 A. I don't know. I can't remember.  
 21 It is just not -- the first meeting with  
 22 Madoff is something that I don't really have  
 23 any recollection of this day.

24 Q. That is what I was going to ask.  
 25 Are you able to tell us what you

0103

1 Manzke  
 2 recall being discussed at that meeting?  
 3 A. I remember discussing his  
 4 business, that basically his market making  
 5 was where he was making significant assets,  
 6 significant money, that that was his core  
 7 business.

8 He said he had a lot of  
 9 proprietary different trading models which,  
 10 you know, just like Bear Stearns or Morgan  
 11 Stanley, they have a prop desk and this was  
 12 one of his trading models that was a lower  
 13 volatility trading model. And this money  
 14 management side was a very small part of his  
 15 business.

16 Q. Okay. That sounds kind of like  
 17 there is a recollection of that.

18 A. I don't remember where it was.

19 Q. Was that the first -- is that what  
 20 you -- is this a composite of several  
 21 meetings or was this what you would have had  
 22 with him during that time period or is this  
 23 what you generally recall from the first?

24 A. That is generally what I recall.

25 Q. This isn't stuff that Meyers told

0104

1 Manzke  
 2 you. This is stuff that you recall  
 3 discussing with Bernard Madoff?

4 A. Yes.

5 Q. Okay. At that time do you recall  
 6 how much money under management he said he  
 7 was investing?

8 A. No. He didn't tell us at that  
 9 time.

10 Q. At that point?

11 A. That I remember.

12 Q. Okay. Apart from that initial  
 13 meeting, was Leon Meyers with you?

14 A. Yes.

15 Q. Was anyone else there besides  
 16 Bernard Madoff?

17 A. It -- kind of all the meetings  
 18 that I had with Bernie kind of flow  
 19 together. I remember his brother once later  
 20 on he would do the -- when he was really all  
 21 electronic and then he would bring -- go to  
 22 the trading room and introduce you to  
 23 different people, his kids prominently.

24 Q. I am going to ask you about Peter,  
 25 his brother, and his sons later on in terms

0105

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1 Manzke  
 2 of whether or not you met them. Let me get  
 3 there later.

4 At the moment though, to your best  
 5 recollection, it was you, Leon and Bernie  
 6 Madoff that would have met?

7 A. Yes.

8 Q. At some point this time you  
 9 established a fund. Was that fund then to  
 10 be fully invested through the account of  
 11 Leon Meyers?

12 A. No.

13 Q. Or was it a partial?

14 A. No.

15 Q. What was the plan?

16 A. After we met Madoff and said --  
 17 got references from a number of other  
 18 individuals that had money with him and we  
 19 were comfortable with him, we were receiving  
 20 the trade tickets with the year that Leon  
 21 was there, seeing when he went in the  
 22 market, when he went out of the market, and  
 23 then we started recommending Madoff to our  
 24 other clients.

25 And at that time we opened

0106

1 Manzke  
 2 brokerage -- if the client liked Madoff and  
 3 we were running their fund of funds, they  
 4 would open for that fund a separate  
 5 brokerage account.

6

R

REDACTED

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12 Q. For the period, from 1991, when  
13 you first met Mr. Madoff, when was the next  
14 time you would have met with him?

15 A. Whenever we had a client that was  
16 new that was interested in looking at  
17 Madoff, I usually was the one, up until when  
18 Bob joined the firm, that would go down and  
19 meet and introduce his capabilities to a  
20 client.

21 Q. Okay. You said Bob Schulman  
22 joined in 1993 or 1994?

23 A. Yes.

24 Q. There were several times then, if  
25 I am understanding you, where you would have

0108

1 Manzke  
2 had meetings either by yourself or with  
3 potential clients?

4 A. With the --

5 Q. Potential investors.

6 A. With the clients, yes.

7 Q. He would during those meetings --  
8 give us a general sense of what he would  
9 discuss?

10 A. The same old pony show that he  
11 did.

12 Q. Run by the pony show.

13 A. This is a proprietary trading  
14 model with typical algorithms, that black  
15 box, don't ever tell what is in it but  
16 basically he felt that one of his advantages  
17 that he had was the fact that he made a  
18 market in the stocks that he was trading in  
19 and, therefore, he wasn't selling at -- we  
20 weren't buying from something that had  
21 already been marked up.

22 At that time Ace Greenberg did a  
23 lot of business with Bernie.

24 Q. Ace Greenberg of Bear Stearns?

25 A. Of Bear Stearns, and they would

0109

1 Manzke  
2 buy the securities from him and put another  
3 markup. So we were getting better execution  
4 and also that he was -- he could make money  
5 through his option strategies in markets  
6 that could trend upward or downward but he  
7 couldn't make money in this strategy when  
8 markets were going like this. When they  
9 would be up 100 and down 200.

10 He said, I don't know that I can  
11 make money in those types of markets.

12 He said, I know I can't make money  
13 in those types of markets. Whenever there  
14 is a trend in the market we can capture that  
15 trend through this proprietary trading  
16 model.

17 Q. Did he explain at this time, Ms.  
18 Manzke, the nature of the trading? We all  
19 come to know in our documents or otherwise,  
20 he had the split strike conversion strategy.  
21 Did he call it that back then?

22 Did he discuss the nature of the  
Page 45

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23 black box or was he more generics, as you  
24 described it, back in the early 1990s?

25 A. I really don't remember

0110

1 Manzke  
2 specifically. That is kind of the general  
3 idea of how he explained it to us but I  
4 don't remember how specific he got.

5 Q. At what point in time did he get  
6 specific enough that you were able to  
7 understand he had this split strike  
8 conversion strategy where there was the  
9 purchase of a basket of securities  
10 supposedly and then the selling of calls and  
11 then the purchase of some puts?

12 A. I wish I had all the trading  
13 tickets to go back because in the early  
14 days, he didn't make a market in all 500  
15 stocks. So he actually had a smaller amount  
16 of securities that he would buy. They were  
17 all kind of, the stocks he was making a  
18 market in but he certainly didn't make a  
19 market in all those stocks.

20 And he felt he could pick out a --  
21 the baskets that could replicate the S&P and  
22 basically then do your put and call options  
23 around that particular basket of stocks.

24 MR. KIM: Is your answer to his  
25 question, you do not remember at what

0111

1 Manzke  
2 point?

3 THE WITNESS: I don't remember at  
4 what point though when --

5 BY MR. POWERS:

6 Q. Okay. How about, was it in the  
7 late 1990s, was it after -- let me back up.

8 At some point in your  
9 documentation Maxam PPMs and even an ADV for  
10 Tremont, there is a discussion of split  
11 strike strategy, right?

12 A. Yes.

13 Q. At what point in time did you guys  
14 understand that? Was that in the mid-1990s?

15 A. It was from the beginning that  
16 that was his strategy.

17 Q. Okay. Fine.

18 He may not have called it that but  
19 he did define it enough to explain there  
20 were puts and calls that had a trending bias  
21 to it that allowed it to have low volatility  
22 and was a way to make money in the market?

23 A. Correct.

24 Q. Was there, based upon that  
25 strategy, did you understand that there

0112

1 Manzke  
2 would be an inherent bias towards a  
3 trending -- where did they make the most  
4 money, in a trending downward or upward  
5 based upon that strategy?

6 A. There were different time periods  
7 that I don't really recall but generally

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8 speaking from my recollection, he was able  
9 to be more defensive and add to your fund of  
10 funds the negative markets as opposed to the  
11 up markets.

12 I do remember most clients in the  
13 1990s were not that interested in Madoff  
14 because why do they want to make these low  
15 returns when hedge funds were producing  
16 25 percent plus.

17 Q. Right. I will get there later  
18 obviously.

19 Part of the reason you are here  
20 is, I did want to kind of delve into more  
21 what your thinking was on these.

22 I guess my question is, you know  
23 the market went up substantially from the  
24 mid-1990s to 2001.

25 If the market -- if that strategy

0113

1 Manzke  
2 is more defensive oriented, there is more  
3 money to be made on the downside, how it is  
4 you would look and see that these would be  
5 consistently positive returns and whether or  
6 not that was ever an issue that you would  
7 have identified or thought about?

8 Do you understand my question?

9 A. I am not sure.  
10 while you say the market went up,  
11 it did not go up in a straight line. There  
12 was the Russian debt crisis.

13 Q. In 1998, yes.

14 A. There was the bond crisis where --  
15 the Venezuelan bond crisis.

16 There was also the -- when  
17 interest rates were cut in Germany when  
18 everybody expected them to go up.

19 The people that we were looking  
20 at, they were hedge fund investors, not  
21 traditional asset management which is kind  
22 of the buy and hold and you win.

23 So you were looking to make  
24 absolute returns every year, year in and  
25 year out, so there were a lot of busts in

0114

1 Manzke  
2 your hedge fund community over that period  
3 of the 1990s but, hopefully, you picked a  
4 basket of these managers that would be  
5 complimentary of one another.

6 Madoff always added value in our  
7 fund of funds in the negative markets where  
8 he was kind of the ballast in the portfolio  
9 but he never really participated in the  
10 upside.

11 Q. That is kind of why I am asking  
12 that. I can understand where like in the  
13 period of 2001, we will get there a little  
14 later in maybe more detail because you have  
15 some charts that show consistent positive  
16 returns for a 15 year period except for  
17 maybe three or four months, you know that,  
18 right?

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19 A. Yes.

20 Q. I can understand when the market  
21 is in 2001 or 2005 or 2006 where you might  
22 think that that is consistent positive  
23 returns make sense but I still don't  
24 fully -- I am wondering if you thought about  
25 that in the period what was then one of the

0115

1 Manzke  
2 longest bull markets in history from 1993 to  
3 2001?

4 A. I think there is a chart in --  
5 that we sent you that goes back. It depends  
6 on the time period that you are looking at.

7 There were other periods where you  
8 looked at Madoff and it basically was even  
9 with the S&P for that time period. But,  
10 again, it depends on what your ending date  
11 is.

12 Q. That is good because that is  
13 really what I am trying to elicit today.

14 I am trying to get inside of your  
15 thought processes to understand why you  
16 thought -- when you are looking at this  
17 chart, why you thought that that was  
18 explainable to you. Fair enough?

19 A. Fair enough.

20 Q. Let me -- I think we are running  
21 out of tape I am told right now.

22 This might be a good time to take  
23 a lunch break.

24 The food might even be here.

25 THE VIDEOGRAPHER: The time is

0116

1 Manzke

2 12:33 p.m.

3 This ends tape number 2 of the  
4 videotaped deposition of Sandra L.

5 Manzke.

6 (Luncheon recess: 12:33 p.m.)

0117

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0117

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Manzke  
AFTERNOON SESSION  
1:10 p.m.

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4 THE VIDEOGRAPHER: The time is  
5 1:10 p.m.  
6 This begins tape number 3 of the  
7 videotaped deposition of Sandra L.  
8 Manzke.  
9 BY MR. POWERS:  
10 Q. How did the sale of Tremont to  
11 Oppenheimer and Mass Mutual come about?  
12 A. Bob and I agreed that it was  
13 getting to be more difficult to compete with  
14 the Goldman Sachs and J.P. Morgans who  
15 really started getting into this hedge fund  
16 of funds business and we needed a big name  
17 partner so he took charge of that.  
18 Those are his skill levels, not  
19 mine.  
20 And hired Putnam Lowell and they  
21 went out and found two potential buyers and  
22 then Oppenheimer won on price.

REDACTED

0118

1 Manzke  
2 REDACTED  
3 Q. Did you think that the Oppenheimer  
4 sale has worked out?  
5 A. Today?  
6 Q. Yes.  
7 A. I don't think they think it worked  
8 out today because of Madoff.  
9 Q. Okay. Let's back up.  
10 Before December 11 of last year,  
11 even then, did you think that the sale to  
12 Opco had worked out?  
13 A. I think that overall they were  
14 happy with the sale.  
15 I think that the fund of funds  
16 business was concerning to them after I  
17 left. They lost a lot of assets. But  
18 primarily I think the bet was that  
19 Oppenheimer would be able to go retail with  
20 hedge funds in the United States and that  
21 never really came to pass.  
22 Other countries have retail  
23 products but in this country there certainly  
24 is regulations, makes it far too difficult  
25 to have a retail product.

0119

1 Manzke  
2 Q. Okay. Let me show you what will  
3 be marked as Plaintiffs' Exhibit 7 for  
4 identification.

..D

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E  
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D

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15 REDACTED

20 Do you see that?  
21 A. Yes.  
22 Q. Though it is not your words, I am  
23 just trying to understand the context of  
24 that.

REDACTED  
REDACTED

0121

1 Manzke  
2 REDACTED

11 Now, I don't want to belabor the  
12 numbers in terms of what your  
13 compensation -- what you received out of the  
14 sale but maybe we have it wrong, but we  
15 thought the number was closer to 16 million.  
16 Is that wrong or should I go through the  
17 documents and --

REDACTED

20 Q. I get that. We all have to pay  
21 taxes. You want to make the money to pay  
22 the taxes.  
23 A. It may be.  
24 Q. Let me quickly show you.

REDACTED

300039896\_1.TXT

0122

1 REDACTED Manzke  
 2  
 3 Q. It may in fact be. I just care  
 4 about getting to the right number and  
 5 knowing what it is just for the record.  
 6 Let me just show you -- this  
 7 document, I don't have to show you, you  
 8 remember the shares were being sold at \$19 a  
 9 share?  
 10 A. Yes.  
 11 Q. Let me turn to a form, a 10-K for  
 12 Tremont Advisers, Inc. that was filed on  
 13 August 20, 2001.  
 14 MR. POWERS: We will mark that as  
 15 Exhibit 8.  
 16 (10-K for Tremont Advisers, Inc.  
 17 Filed on August 20, 2001 was marked  
 18 Plaintiffs' Exhibit 8 for identification)  
 19 BY MR. POWERS:  
 20 Q. What I want to direct your  
 21 attention to is on page -- on the bottom of  
 22 the page 24 of the document. It identifies  
 23 the directors and named executive officers  
 24 of Tremont, and the number of options and  
 25 the exercise price for those options, and

0123

1 Manzke  
 2 then page 45 as well, which reflects the  
 3 ownership of shares, Class A and Class B and  
 4 the percentages.  
 5 You are identified as the first  
 6 person there.  
 7 A. It is what it is.  
 8 Q. Okay. I guess does this -- we  
 9 kind of came to about 16 million which could  
 10 be before taxes. The \$19 a share was for  
 11 both classes, correct?  
 12 A. Yes.  
 13 Q. So if you had about 750,000  
 14 shares, that is, right there, is about  
 15 15 million, something like that?  
 16 A. Okay.  
 17 Q. Or, actually, a little bit more  
 18 than that. Fine.  
 19 The one other thing that I want to  
 20 turn to is what was going -- what were going  
 21 to be your duties and responsibilities after  
 22 the sale. Was that changing?  
 23 A. Bob wanted to be co-chairmen but  
 24 it was he was actually acting as co-chairman  
 25 in the way we managed the company anyway.

0124  
 1 Manzke  
 2 But other than that, my duties really  
 3 weren't changing.  
 4 REDACTED

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REDACTED

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24 Q. were there -- was there a  
 25 noncompete attached to that agreement

0125

1 Manzke  
 2 because you didn't start the fund, the Maxam  
 3 fund until five years out after you  
 4 completed that term?

REDACTED

15 Q. Okay. When was it that you  
 16 stopped working there full time?  
 17 A. I left right at the end of  
 18 December.  
 19 Q. Of which year?  
 20 A. Of 2004.  
 21 Q. Of 2004. At that time up until  
 22 December of 2004 where were you still  
 23 living?  
 24 A. In Florida.  
 25 Q. You were commuting back and forth?

0126

1 Manzke  
 2 A. Yes. But I spent three months in  
 3 Florida. I didn't start Maxam formally  
 4 until July of 2005.  
 5 Q. Correct. I am trying to  
 6 understand, so the last few years that you  
 7 were at Tremont, I thought Pound Ridge seems  
 8 like the closest place to Darien. Were you  
 9 no longer going into Darien?  
 10 A. The thing is that, I think it was  
 11 in -- after I left Tremont that I switched  
 12 my residence to Florida.  
 13 Q. Okay.  
 14 A. The fact is that I never spent  
 15 time really, the most time I ever spent in  
 16 one place was in Florida because the rest of  
 17 the time I was basically on the road.  
 18 Q. Okay. When you -- when there were  
 19 discussions about you leaving early under  
 20 your employment agreement and you negotiate  
 21 in your severance agreement, what was it

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22 that caused that to occur at that time?  
 23 A. Barry Colvin went to Mass Mutual  
 24 and Oppenheimer.  
 25 Q. Barry Colvin is who, for the  
 0127 1  
 2 record?  
 3 A. He was, at that time, president, I  
 4 believe.  
 5 Q. Of OPCO?  
 6 A. Of Tremont.  
 7 Q. Of Tremont.  
 8 A. And they were grooming him to be  
 9 the new CEO if Bob and I retired and  
 10 basically Barry and I did not get along and  
 11 Oppenheimer decided that Barry would stay  
 12 and I would go.  
 13 Q. Okay. And did you enter -- you  
 14 entered into a severance agreement?  
 15 A. Yes.  
 16 Q. What were the financial terms of  
 17 that?

REDACTED

0128  
 1

Manzke  
 REDACTED

22 Q. What is the difference between a  
 23 launch and the formation and funding  
 24 earlier?  
 25 A. I don't think there is any. It  
 0129 1  
 2 started in 2006.  
 3 Q. Right. That is -- there was some  
 4 documentation that I found confusing on  
 5 that. I didn't think there was much of a  
 6 difference either.

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7 were any of the employees that you  
 8 ended up moving with you to start Maxam also  
 9 receiving compensation in terms of the sale?  
 10 A. Of Oppenheimer?  
 11 Q. Yes.  
 12 A. Everyone owned some shares of  
 13 stock. They were smaller owners.  
 14 Q. Since you left Tremont have you  
 15 done any other business or work with  
 16 Tremont?  
 17 A. Well, in the beginning, as I  
 REDACTED  
 20 do any other business with them.  
 21 I did have a conversation with  
 22 John Murphy but I don't think that is  
 23 business.  
 24 Q. Right. Mr. Murphy is whom?  
 25 A. He, at the time, was the chairman  
 0130 1  
 2 of Oppenheimer.  
 3 R  
 REDACTED

8 Q. You said earlier it was 12 billion  
 9 at the time of the sale?  
 10 A. I thought it was around that  
 11 amount.  
 12 Q. So, was it a million, was it --  
 13 1 billion, was it 5 billion?  
 14 A. To the best -- if I had to wager a  
 15 guess, it was probably 4 to 5 billion.  
 16 Q. You said you were not directly  
 17 involved in those due diligence?

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18 A. Negotiations, no.  
 19 Q. Or negotiations.  
 20 Did you participate in any  
 21 meetings that you attended, where you  
 22 introduced Madoff to the people at OPCO?  
 23 A. No.  
 24 Q. So you leave Tremont and you  
 25 decide to form Maxam.

0132 1 Manzke  
 2 The first question I have is, how  
 3 you came up with that name?  
 4 A. It was the name of my bull dog  
 5 spelled forward and backwards.  
 6 Q. A French bull dog or English?  
 7 A. An English.  
 8 MR. KIM: The next question is,  
 9 how did she name her bull dog?

10 BY MR. POWERS:  
 11 Q. We will adopt that one.  
 12 A. He was one of five.  
 13 Q. Good.  
 14 So when you started to form Maxam,  
 15 you formed first Maxam Capital Management,  
 16 correct?  
 17 A. Yes.  
 18 Q. That was with the intention then  
 19 of having multimanager funds, right?  
 20 A. Correct.  
 21 Q. One of those, was it understood at  
 22 the time that you did this, that one of  
 23 those was going to be a Madoff-related fund?  
 24 A. No. Not at the time that I formed  
 25 the firm -- fund, firm, rather, because I

0133 1 Manzke  
 2 didn't know that Madoff would give me an  
 3 account.  
 4 Q. Okay.  
 5 A. In the back of my mind it was  
 6 there, maybe I could get a Madoff account.  
 7 Q. When you formed it, what was the  
 8 purpose of you forming it?  
 9 A. There were several clients of mine  
 10 who did not want to stay with Tremont if I  
 11 wasn't there and they were predisposed to  
 12 already move with the firm. And I,  
 13 basically, I had very good friends at  
 14 Tremont who were not happy and I felt it was  
 15 a good business that I could start and teach  
 16 my children how to be in this business.  
 17 Q. Okay. So both your son and your  
 18 daughter-in-law started -- were the  
 19 beginning of both of it?  
 20 A. Yes. I should also note that  
 21 several of my clients that were offshore  
 22 clients put me on their investment committee  
 23 for the period of time, in some cases it was  
 24 over a year, before -- while Tremont was  
 25 still managing the account, before they

0134 1 Manzke  
 2 moved over to me.

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3 One I had to register with the SEC  
 4 and that didn't happen until the end of July  
 5 so I couldn't have accepted any formal  
 6 business at that time.  
 7 Q. Okay. While you were at Tremont  
 8 did Oppenheimer ever raise questions about  
 9 the operations or the performance of Madoff  
 10 that gave them pause even after the  
 11 acquisition?

12 A. Not to my knowledge.  
 13 Q. Maxam Capital Management became  
 14 registered as investment adviser, correct?  
 15 A. Correct.  
 16 MR. POWERS: I will introduce at  
 17 this time the Form ADV.  
 18 This is number 9.  
 19 (Form ADV was marked Plaintiffs'  
 20 Exhibit 9 for identification)

21 BY MR. POWERS:  
 22 Q. Have you ever seen this before?  
 23 A. Yes.  
 24 Q. What it is?  
 25 A. It is the Form ADV that is filed

0135 1 Manzke  
 2 with the SEC.  
 3 Q. This may be the one for 2008 --  
 4 2009. We don't have the earlier one just  
 5 handy.  
 6 Let me direct your attention to  
 7 page -- at the bottom right, it says 26 of  
 8 42 all the way at the bottom.  
 9 A. 26 of 42. Okay.  
 10 Q. This is an identification of  
 11 persons that have some ownership interest in  
 12 Maxam Capital, correct?  
 13 A. Yes.  
 14 Q. Your ownership interest is what?  
 15 A. Correct.  
 16 Q. What is -- what precisely is your  
 17 ownership interest?  
 18 A. I own 30 percent of the company.  
 19 Q. Spotswood Dudley?  
 20 A. I believe he owned 15 percent.  
 21 Q. And Arthur Samberg?  
 22 A. Around 5 percent.  
 23 Q. For each one of these?  
 24 A. Yes.  
 25 Q. Then what about on the next page,

0136 1 Manzke  
 2 does everyone else have about 5 percent?  
 3 A. Richard Phelan did not have any  
 4 stock because he came late into the company  
 5 and I didn't have anymore to give him.  
 6 Cathy Joe, Suzanne, Rosemary, I  
 7 believe own about 5 percent.  
 8 David Jennings owned, I think,  
 9 about 2 percent and April owned less than  
 10 1 percent.  
 11 Q. Let's turn to page 34. Just to go  
 12 back, these reflect the positions of each  
 13 one of the people at the adviser, correct?  
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14 A. Back to 26?  
 15 Q. Yes.  
 16 A. It was the ownership that we had  
 17 to report anybody over 5 percent and also  
 18 was a managing director of the firm.  
 19 Q. Under the title of status column  
 20 that accurately reflects what the titles  
 21 were of the various people?  
 22 A. Yes.  
 23 Q. That would have been true from the  
 24 time they joined Maxam up until the filing  
 25 of this?  
 0137  
 1 Manzke  
 2 A. David when he joined the firm  
 3 didn't have stock but I gave him stock later  
 4 on.  
 5 Q. In terms of their titles?  
 6 A. The titles were fine, yes.  
 7 Q. Turning to page 34, it indicates  
 8 at the top, the minimum investment is half a  
 9 million dollars.  
 10 Do you see that?  
 11 A. Yes.  
 12 Q. It indicates a total value of the  
 13 assets, that it looks to be 243 million. Is  
 14 that --  
 15 A. Correct, of the Maxam Absolute  
 16 Return Fund.  
 17 Q. Of that particular fund?  
 18 A. Yes.  
 19 Q. Was all of that money lost at the  
 20 time of the Bernard Madoff coming forward?  
 21 A. Essentially unless we are  
 22 recovering a lot of money.  
 23 Q. 100 percent of that firm was  
 24 invested with Madoff?  
 25 A. There was a couple hundred  
 0138  
 1 Manzke  
 2 thousand dollars in cash.  
 3 Q. If you would just run through the  
 4 persons that comprise the investment  
 5 committee at Maxam.  
 6 A. That would be myself, Sue Hammond,  
 7 Cathy Sweeney, Harvey Goldsmith, Joe Soares,  
 8 I think that is it.  
 9 Q. Do you know a Ray Soares?  
 10 A. Yes.  
 11 Q. What relationship, if any, does he  
 12 have to Joe?  
 13 A. It is Joey's brother.  
 14 Q. Ray worked at Tremont?  
 15 A. Yes. We believed in nepotism.  
 16 Q. Then there is an entity called  
 17 Maxam Capital GP, correct?  
 18 A. Yes.  
 19 Q. What is Maxam Capital GP?  
 20 A. They are the managing partners of  
 21 Maxam Absolute Return Fund.  
 22 Q. Who are the owners of Maxam  
 23 Capital GP?  
 24 A. It would be Spotswood Dudley and  
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25 myself.  
 0139  
 1 Manzke  
 2 Q. What are your ownership interests?  
 3 A. I don't know. Probably 50/50.  
 4 MR. POWERS: Why don't I now  
 5 introduce the PPM for the fund?  
 6 (Private Placement Offering  
 7 Memorandum for the Absolute Return Fund was  
 8 marked Plaintiffs' Exhibit 10 for  
 9 identification)  
 10 BY MR. POWERS:  
 11 Q. Can you identify that?  
 12 A. This is the private placement  
 13 offering memorandum for the Absolute Return  
 14 Fund.  
 15 Q. Directing your attention to page  
 16 1, I am going to be referring to the middle  
 17 bottom numerical references, partnership  
 18 investment strategy and process.  
 19 Do you see that?  
 20 A. Yes.  
 21 Q. It says here that, "while the  
 22 general partner retains the authority to use  
 23 the services of one or more broker-dealers,  
 24 it is likely that only the services of one  
 25 broker-dealer will be used."  
 0140  
 1 Manzke  
 2 Do you see that?  
 3 A. Yes.  
 4 Q. Which broker -- which  
 5 broker-dealer is being referred to there?  
 6 A. Madoff Securities.  
 7 Q. Is there a reason why Madoff  
 8 Securities is not specifically identified in  
 9 the PPM?  
 10 A. As I -- Madoff does not want his  
 11 name used in any offering memorandum and we  
 12 agreed that we would make sure our clients  
 13 knew that Bernie Madoff was the investor but  
 14 that was -- it was written that we could add  
 15 other broker-dealers at any time although it  
 16 wasn't our intention.  
 17 Q. How was it that you came to have  
 18 this discussion where he told you that or  
 19 when was that?  
 20 A. When I went down to ask for an  
 21 account.  
 22 Q. Okay. Tell us how it came to be  
 23 that Maxam was able to open an account at  
 24 Madoff Securities.  
 25 A. When I first left the firm, I  
 0141  
 1 Manzke  
 2 called Bernie to tell him that I was leaving  
 3 and --  
 4 Q. This would be December of 2004?  
 5 A. This is like in January or  
 6 February.  
 7 Q. Of 2005?  
 8 A. Of 2005, and I didn't ask for an  
 9 account at that point at all. I wasn't sure  
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10 that he would give me an account but we had  
11 a general discussion about, why didn't I  
12 retire and I said I wanted to build a new  
13 company for my children and my friends.  
14 That was basically the  
15 conversation.

16 I waited a time because, one, I  
17 was building a business, I wanted to get  
18 client accounts in, not be out marketing a  
19 new fund, and so we waited some time period  
20 before I actually approached him again.

21 Again, I didn't approach him the  
22 first time but I went down to visit Madoff,  
23 I believe it was around June.

24 Q. 2006 now?  
25 A. No. It wasn't then.

0142

1 Manzke  
2 I am so bad at dates. June.  
3 Okay. It was sometime in June because --

4 Q. 2006?  
5 A. Of 2006.  
6 Q. Like about a year-and-a-half  
7 later?

8 A. No. 2005. June of 2005 and I  
9 said, could I have an account and he  
10 basically said, I am closed, I can't do  
11 this.

12 But I -- but he said, why don't  
13 you wait, let me think about it.  
14 I went on about how I am one of  
15 his oldest clients. He asked me why did I  
16 need an account. I said, basically the  
17 other fund of funds had longer -- were  
18 giving longer lockups, 45 days' notice and  
19 that the fees were higher. We wanted to do  
20 something that was lower fee for our  
21 clients.

22 And basically he said, I will  
23 think about it. And come back after,  
24 sometime after July because he goes to the  
25 south of France during the month of July.

0143

1 Manzke  
2 So I waited and I went back in  
3 October and again discussed it, that why I  
4 wanted an account, what did I think I would  
5 have in terms of numbers. I said, starting  
6 out maybe in the first year, 100 million  
7 that I probably could grow that to 500. But  
8 we wanted to keep our firm small, and so he  
9 said, all right, he would give me an  
10 account.

11 Q. Okay. So how many different  
12 conversations did you have with him between  
13 the time when you first told him you wanted  
14 to start up a new money management business  
15 and the time he agreed to that?

16 A. About probably around three.  
17 Q. Were those all meetings or were  
18 they face-to-face or were they, some of them  
19 on the phone?

20 A. One was on the phone, maybe two  
Page 59

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21 were on the phone but one was again in  
22 person.

23 Q. Was anyone else present during  
24 these conversations?

25 A. No.

0144

1 Manzke

2 Q. Okay. What did you next do?  
3 A. We started to draft up our PPM.

4 Q. Okay. For whom?  
5 A. For the Maxam Absolute Return

6 Fund.  
7 Q. At this time you hadn't --  
8 chronologically, I am trying to make sure I  
9 have it right.

10 At some point you would have  
11 created Maxam Capital.

12 Did you create Maxam Capital  
13 Management at the time you created the  
14 Absolute Fund?

15 A. No. I had formed Maxam Capital  
16 earlier.

17 Q. Did it have any existing business  
18 or products?

19 A. We had -- we were working on -- we  
20 knew that clients were coming over but they  
21 wouldn't come over until we had actually  
22 completed our registration.

23 I was also working on raising  
24 capital from outside investors at the same  
25 time and so there were -- I was working

0145

1 Manzke  
2 there and Spotswood was working there but we  
3 didn't have any formal business contracts, I  
4 don't believe, at that time.

5 Q. Okay. What year are we in?  
6 A. 2005.

7 Q. We are. Okay. I don't know why I  
8 thought that Maxam Capital started in 2006,  
9 formed in 2006?

10 A. The fund formed.

11 Q. Maxam Capital management?

12 A. It is 2006. I get all the dates  
13 confused. I left, when was this? We  
14 started the fund in June of 2006, correct,  
15 the Maxam Absolute Return Fund.

16 Q. Yes.

17 A. I had my conversation with Bernie  
18 the previous October, so that is 2005.

19 Q. Yes. Okay. When -- okay.

20 In these conversations, how is it  
21 that -- was it in these conversations that  
22 he made clear that he didn't want you to  
23 talk about not putting him in the PPM?

24 How did that come about or when  
25 did that come about?

0146

1 Manzke

2 A. It came about in that he said, I  
3 have never been involved in Fairfield or  
4 Tremont's prospectus but because it is known  
5 that I do manage money, I want you to be

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6 clear in your document that you are using a  
7 broker-dealer as opposed to the way other  
8 fund of funds had described them as  
9 multimanager funds. He was described as a  
10 manager.

11 He said, I am not registered as an  
12 investment adviser and, therefore, I want  
13 you to be clear in your PPM that you are  
14 hiring a broker-dealer and giving them  
15 discretion over the account.

16 As a matter of just -- he says, I  
17 don't want my name in documents, I don't  
18 want you going out and marketing like crazy.  
19 So he said, just respect the fact that I  
20 don't want people coming back to me and  
21 saying you gave an account to that girl when  
22 I am turning down business.

23 Q. Which conversation was that of the  
24 three that you have had with him?

25 A. It was the initial one.

0147

Manzke

1 Q. When you had the face-to-face with  
2 him?

3 A. Yes.

4 Q. What was your response, if any, to  
5 that?

6 A. I agreed to work with him and to  
7 show him the documentation for the fund.

8 Q. At some point in time did you, in  
9 fact, show him the documentation before it  
10 was launched?

11 A. Yes.

12 Q. Did you hand it to him or was it  
13 sent over?

14 A. It was sent by postage.

15 Q. Okay. Was it sent by you or by  
16 Newman Tannenbaum?

17 A. It was sent by -- you know, I  
18 don't remember. I don't remember.

19 Q. Okay. Do you know whether or not  
20 he made any comments or suggested changes to  
21 the PPM?

22 A. I believe he did make some  
23 comments but I can't recall what they were.

24 Q. Do you have any documentation  
25 about that?

0148

Manzke

1 A. They were red lines and I am not  
2 sure when a red line was changed, it was  
3 changed. I don't know that they have going  
4 back the old documents because you copy it  
5 back onto the new one.

6 Q. Your testimony is that you can't  
7 recall what the changes were that he  
8 suggested, just that there were such?

9 A. There were.

10 Q. Okay. In the initial draft that  
11 was sent over to him, I assume it didn't  
12 contain his name, it didn't have Bernie  
13 Madoff, correct?

14 A. No.

15

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17 Q. Correct?

18 A. Correct.

19 Q. Did you have -- did you or your  
20 counsel have any issues with the idea of  
21 disclosing it this way as opposed to  
22 identifying the broker-dealer?

23 MR. KIM: The one thing I remind  
24 you is, conversations between you and  
25 Tannenbaum, before you disclose them, we

0149

Manzke

1 should talk about them.

2 Other than that, if you have an  
3 understanding other than revealing the  
4 conversations, you can certainly answer  
5 his question.

6 THE WITNESS: Could you ask the  
7 question again?

8 MR. POWERS: Why don't we just  
9 have it re-read?

10 (Record read)

11 THE WITNESS: Not to my  
12 recollection.

13 BY MR. POWERS:

14 Q. Let's turn to page, this -- let me  
15 back up.

16 This is a document pursuant to  
17 which you raised money for the fund,  
18 correct?

19 A. Correct.

20 Q. Page 14, please. Under certain  
21 risk factors. Number 5 says, "Lack of  
22 certain registration and regulatory  
23 protection."

24 Do you see that section?

0150

Manzke

1 A. Yes.

2 Q. Read the last sentence there.

3 A. "The customer accounts established  
4 by the partnership will be with the  
5 broker-dealer and subject to rules imposed  
6 on such broker-dealer, some of which might  
7 not always work to the benefit of the  
8 partnership. Lastly, the general partners  
9 advise that the broker-dealer is not  
10 registered as an investment adviser under  
11 the Adviser Act."

12 Q. This is to the concept that you  
13 talked about before, he was a registered  
14 broker-dealer but not an IA?

15 A. Right.

16 Q. Independence on the general  
17 partner, that is the GP, Maxam Capital GP?

18 A. Yes.

19 Q. The second paragraph talks about  
20 that the success of the partnership depends  
21 on the ability of the investment manager,  
22 which was Maxam Capital, right, to be  
23 successful in selecting broker-dealers, but  
24 this seems to suggest there might be other  
25

0151

Manzke

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24 most charge a performance fee, correct?  
25 A. There still are some out there who

0156

1 charge no base fee.  
2

3 Q. There may be, let me make sure I  
4 get an answer to my question first.

5 Hedge fund traditionally in the  
6 last 15, 20 years, they charge a percentage  
7 of assets under management, correct?

8 A. The majority of them do.

9 Q. The majority of them also -- well,  
10 hedge funds much more than majority, almost  
11 all of them do?

12 A. Well, there is a few now that are  
13 charging higher performance fees and no base  
14 fees and you have Renaissance, who is one of  
15 the largest hedge funds out there, who gives  
16 investors a wide range of choices of what  
17 they want their funds to be.

18 Q. Let's not talk about 2009. Let's  
19 talk about prior to December 11 of 2008.

20 My real question is for hedge  
21 funds, all of them charge and they charge a  
22 management fee of a percent of fees under  
23 management and/or a performance fee; is that  
24 correct.

25 A. The vast majority of them do.

0157

1 Manzke  
2 Q. Right. So even a Renaissance may  
3 not charge as much -- for a net asset  
4 management fee but they charge a higher  
5 performance fee?

6 A. They have, you can -- Renaissance,  
7 you can choose to pay a 3 percent flat rate,  
8 no performance fee or you can pay lower.

9 Clarium, who is one of the other  
10 largest, biggest hedge funds out there, has  
11 no base fee and they charge 30 percent of  
12 profit, 30 percent of profits.

13 Q. Performance fee?

14 A. Performance fee but no base fee.

15 Q. Madoff did either of those. He  
16 didn't charge performance fee and he didn't  
17 charge a base or net asset fee, correct?

18 A. Correct.

19 Q. Now, here under the possibility of  
20 fraud or misappropriation, it says that the  
21 assets are being held by, are not being held  
22 independently, they are being held by him.

23 I guess there are other situations  
24 where custodians would hold, money managers  
25 would hold assets, like prime brokers, like

0158

1 Manzke  
2 Goldman or Bear or something like that, but  
3 he was not a Goldman or Bear, right?

4 A. There was one time that he was the  
5 16th largest broker-dealer in this country.

6 Q. Right. He was not an adviser?

7 A. No.

8 Q. He was not a registered adviser?

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9 A. No.  
10 MR. KIM: As far as you know at  
11 that time?

12 THE WITNESS: As far as I knew.  
13 He said he wasn't.

14 BY MR. POWERS:

15 Q. "Such actual custody rests with  
16 the broker-dealers, therefore, there is the  
17 risk that a broker-dealer could abscond with  
18 those assets or that such assets could be  
19 underlized or misappropriated."

20 Do you see that?

21 A. Yes.

22 Q. That is kind of what occurred  
23 here, right?

24 A. That is what occurred, they say.

25 Q. It also says that, "In addition,

0159

1 Manzke  
2 information supplied by the broker-dealer  
3 may be inaccurate or even fraudulent."

4 Do you see that?

5 A. Yes.

6 Q. Do you believe you gotten accurate  
7 or fraudulent -- focusing on Maxam, forget  
8 about Tremont, do you believe that Maxam was  
9 given either inaccurate or fraudulent  
10 information buy the Madoff Securities?

11 A. Today I do.

12 Q. What information do you believe  
13 that was inaccurate or fraudulent?

14 A. He told us he was not registered  
15 with the SEC. He told us that he was making  
16 these trades.

17 He cleared through -- J.P. Morgan  
18 was the -- that he had counterparty risk  
19 with J.P. Morgan on his options and  
20 obviously he lied about his assets under  
21 management, the size that he was, the size  
22 of his broker-dealer.

23 Q. What was your understanding at the  
24 time you opened up the Maxam Absolute Fund  
25 as to the amount of assets that Madoff had,

0160

1 Manzke  
2 was managing?

3 A. I, you know, had taken into  
4 consideration the fund of funds that we knew  
5 were out there and still felt there was only  
6 a few feeder funds out there, was not aware  
7 of all the feeder funds that obviously have  
8 come up but that he also had other accounts  
9 with individuals that were not necessarily  
10 traded in the same model, so in his own  
11 proprietary, he kind of led me to believe  
12 that he was a very wealthy individual. So I  
13 kind of estimated that he might have been  
14 running anywhere from 20 to \$30 billion.

15 Q. Okay. Did he ever discuss with  
16 you the amount?

17 A. No.

18 Q. You -- you had some sense of the  
19 amount of money that Fairfield Greenwich

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20 had?  
 21 A. Yes.  
 22 Q. How much was that about?  
 23 A. It was like \$6 billion.  
 24 Q. Then you had yours, Tremont,  
 25 another 5 or 6, so that is 12?  
 0161  
 1 Manzke  
 2 A. I knew there was feeder fund in  
 3 Paris. I didn't know who it was but there  
 4 were rumors there was a fund in Paris.  
 5 I knew Ezra Merkin had a fund, I  
 6 didn't know how big it was, and I didn't  
 7 know that it was -- he said -- I knew he had  
 8 a Bernie feeder fund but I didn't know what  
 9 size it was.  
 10 I know there was a small guy in  
 11 New Cannan with 100 million that I had heard  
 12 about but that was kind of the extent of it.  
 13 Q. Did you know that, that the terms  
 14 under which Merkin had had a fund that  
 15 invested with Madoff?  
 16 A. No. You know, I knew, we invested  
 17 in Gabriel a long, long time ago and I knew  
 18 he had farmed out money. When we pulled out  
 19 at Tremont, when that one guy who was  
 20 working for him went to jail, I basically --  
 21 Q. Victor Teicher?  
 22 A. Yes, that is it. We said, no, we  
 23 are not going to be in Gabriel any longer.  
 24 I knew through -- because Leon Meyers is  
 25 friendly with him, and he said he had a  
 0162  
 1 Manzke  
 2 small feeder fund but he never -- small to  
 3 me means under 100 million.  
 4 Q. Did you know that Merkin was  
 5 charging a performance fee?  
 6 A. No.  
 7 Q. You didn't. Okay. Let me ask you  
 8 your view on that.  
 9 Since I know you have actually  
 10 talked about the industry a little bit more  
 11 recently.  
 12 We understand that, in fact, there  
 13 was a performance fee associated with one or  
 14 more of the Merkin funds.  
 15 Forget about Merkin. Let's use  
 16 the idea that there were funds that charged  
 17 a performance fee in addition to a net asset  
 18 value percentage. Okay.  
 19 What -- and that basically all  
 20 that money was being placed with Madoff so  
 21 that all the money was being -- the  
 22 investment decisions were all being made by  
 23 him and so I kind of wonder what extent that  
 24 person was doing much in terms for their  
 25 compensation but I want to hear your  
 0163  
 1 Manzke  
 2 thoughts on that issue.  
 3 MR. KIM: What is the question?  
 4 BY MR. POWERS:

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5 Q. Do you have any view as to the  
 6 appropriateness of someone receiving a  
 7 performance fee in addition to a percentage  
 8 for the money under management when all that  
 9 money is with -- had been placed with  
 10 Madoff?  
 11 A. Let me comment generally because  
 12 you know that before Madoff hit that I was  
 13 rather turned off by the hedge fund industry  
 14 period and this is an industry that has  
 15 gotten so popular that these managers think  
 16 they can charge anything and change fees,  
 17 raise fees and the investors are a little  
 18 bit like lemmings who stay in.  
 19 People charge what they think the  
 20 market will bear and fees in general are  
 21 absolutely outrageous right now.  
 22 Q. I am focusing on a slightly  
 23 different issue and then we will take a  
 24 break.  
 25 My issue isn't the fact that the  
 0164  
 1 Manzke  
 2 fees are being high for the performance of  
 3 services which people think they are  
 4 entitled to this performance fee for.  
 5 This is where there appears to be  
 6 a lack of any effort or work or analysis  
 7 that needs to be done because you have  
 8 farmed out entirely your investment  
 9 management decision making?  
 10 A. Well, isn't that the fund of funds  
 11 business? You -- the fund of funds, there  
 12 are people who charge 2 percent and 20 on  
 13 the fund of funds and all they are doing is  
 14 allocating money to managers they selected  
 15 who they hope will do well in the aggregate.  
 16 The fees in this industry have  
 17 gotten out of control.  
 18 MR. POWERS: Good place to break.  
 19 Thank you.  
 20 THE VIDEOGRAPHER: The time is  
 21 2:10 p.m.  
 22 This ends tape number 3 of the  
 23 videotaped deposition of Sandra L.  
 24 Manzke.  
 25 (Recess)  
 0165  
 1 Manzke  
 2 MR. POWERS: Mark this as number  
 3 11.  
 4 (Part 2 of Form ADV was marked  
 5 Plaintiffs' Exhibit 11 for identification)  
 6 THE VIDEOGRAPHER: The time is  
 7 2:20 p.m.  
 8 This begins tape number 4 of the  
 9 videotaped deposition of Sandra L.  
 10 Manzke.  
 11 BY MR. POWERS:  
 12 Q. I would like you to take a moment  
 13 to take a look at what has been marked as  
 14 Plaintiffs' Exhibit 11 for identification  
 15 and tell us what it is, please.  
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16 A. This is the Part 2 of our Form  
 17 ADV.  
 18 Q. For the period, top right dated  
 19 March 2008, go inside of it. Top right.  
 20 A. Yes. March 2008.  
 21 Q. You have seen this before?  
 22 A. Yes.  
 23 Q. This, I think, was signed by  
 24 Ms. Hammond. No. It is not signed.  
 25 Prepared by -- who is it prepared by?  
 0166

Manzke

1 A. The chief compliance officer.  
 2 Q. Which is whom?  
 3 A. March of 2008.  
 4 Q. Is that April?  
 5 A. It is around that time that she  
 6 became the chief compliance officer but it  
 7 would have either been Spotswood and April  
 8 together.  
 9 Q. Looking at page 1 of the document,  
 10 would you explain for the record the  
 11 difference between advisory services and  
 12 supervisory services?  
 13

R

REDACTED

25 Q. When on page 1, it indicates that,  
 0167

Manzke

1 in the second paragraph, that you would  
 2 provide advisory services and then monitor  
 3 the fund or manage the account in the  
 4 achievement of the objectives.  
 5 Earlier you said that one of the  
 6 things that you did was to monitor the  
 7 Absolute Fund, was to -- Ms. Hammond would  
 8 review the confirms, is that right?  
 9 A. Correct.  
 10 Q. And then she would monthly also,  
 11 you said, review the monthly statements to  
 12 check the prices and that this was primarily  
 13 geared towards the best execution issues,  
 14 correct?  
 15 A. Mostly on best execution but also  
 16 to make sure that he was trading within the  
 17 averages of the day.  
 18 Q. The next page on page 2 in the  
 19 middle of it indicates that, "Maxam may in  
 20 fact charge a performance fee in compliance  
 21 with Rule 2053 of the Adviser's Act."  
 22 Do you see that in the middle,  
 23 page 2?  
 24 A. Yes.  
 25  
 0168

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Manzke

1 Q. Which of your funds did you charge  
 2 a performance fee for?  
 3 A. We have one offshore fund client  
 4 that we take a very low base fee and we can  
 5 be paid up to, I think it is, 10 percent  
 6 over the LIBOR plus 3 so -- and that is set  
 7 at the beginning of the performance at the  
 8 time, at the beginning of each year.  
 9 If LIBOR was at 6, we would have  
 10 to do 8 percent before we get a performance  
 11 fee.  
 12 Q. Okay.  
 13 A. There is also a number of smaller  
 14 strategy funds again of which we get a very  
 15 low base fee and can get up to 20 percent of  
 16 profits.  
 17 Q. Are there other high water marks  
 18 imposed on each one of those scenarios?  
 19 A. No. Those are -- actually, no. I  
 20 think it is just a performance fee.  
 21 Q. Okay. Bottom of this page, if you  
 22 would read that 2G section to yourself?  
 23 I guess my primary question is, is  
 24 this describing the Madoff Securities  
 25

0169

Manzke

1 management?  
 2 A. Correct.  
 3 Q. The last sentence that goes on to  
 4 the next page where it talks a little bit  
 5 about what they trade in the S&P 500 and S&P  
 6 100 options.  
 7 It says, "Maxam continuously  
 8 reviews such broker-dealer's performance."  
 9 So apart from looking at the  
 10 confirms and the monthly statements, what,  
 11 if any, other review was done as it relates  
 12 to the performance or activities of Bernard  
 13 L. Madoff Investment Services?  
 14 A. It was calculating the  
 15 performance. We put out a little  
 16 performance report that was sent out to the  
 17 investors and then there was the back office  
 18 obviously associated with that,  
 19 communicating with clients, reviewing for  
 20 your -- know your client, checking for  
 21 anti-money laundering regulations.  
 22 Those were all part of the duties  
 23 that we were taking on and providing access  
 24 to this Madoff account.  
 25

0170

Manzke

1 Q. So when you said anti-money  
 2 laundering, you were referring to the fact  
 3 that clients you allowed to go into the  
 4 Absolute Fund, making sure they gave the  
 5 proper level of disclosure?  
 6 A. We had to know who our clients  
 7 were.  
 8 Q. In terms of your review of the  
 9 performance or activities of Bernard L.  
 10 Madoff Investment Securities, what did you  
 11

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12 guys do, what did Maxam do?  
 13 A. One of the things is, we had an  
 14 administrator so we were putting those  
 15 trades into an independent system, we were  
 16 making sure that the -- we got all the  
 17 dividends in accordance when all the  
 18 dividends were paid.  
 19 We were also for the non -- the  
 20 offshore investors, calculating the dividend  
 21 withholding on, for foreign investors, the  
 22 30 percent dividend withholding and  
 23 obviously remitting that money to the proper  
 24 authorities and just also, we looked at the  
 25 range of the options trading although he was  
 0171  
 1 Manzke  
 2 in the over-the-counter and there was no  
 3 quoted market, we saw they were in line with  
 4 the quoted options.  
 5 Q. Who did that?  
 6 A. Suzanne and Joe.  
 7 Q. How would they go about looking to  
 8 see if the option prices were in line with  
 9 the options?  
 10 A. With the quoted options.  
 11 Q. With the quoted options?  
 12 A. On Bloomberg.  
 13 Q. How frequently did they do that?  
 14 A. To my understanding they were  
 15 doing it on a regular basis.  
 16 Q. What does regular mean?  
 17 A. Whenever, he didn't -- first of  
 18 all, when he went into the market it wasn't  
 19 that many times during the year so it was  
 20 when he went in and purchased his options  
 21 they would look at the range of the options  
 22 for the day when he did go into the market.  
 23 And when they expired --  
 24 Q. How long did he normally stay in  
 25 the market, let's use the period from 2000  
 0172  
 1 Manzke  
 2 to 2008?  
 3 A. It would depend. Generally more  
 4 than a month, sometimes a little -- never  
 5 less than a month.  
 6 Q. How long would he stay in on the  
 7 long side?  
 8 A. When the options expired he sold  
 9 everything.  
 10 Q. He normally would buy the next  
 11 month out options?  
 12 A. Not necessarily, a lot of times he  
 13 sat on cash.  
 14 Q. When he puts on a strategy he was  
 15 normally selling calls and buying puts, that  
 16 expired in a month or two, they were not  
 17 long-term options, correct?  
 18 A. They were not long.  
 19 Q. I am correct?  
 20 A. Correct.  
 21 Q. He was normally in the market then  
 22 for a period of a month, two or three max,  
 Page 71

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23 and then he was out for a period of time,  
 24 that was the idea?  
 25 A. Sometimes he would go right back  
 0173  
 1 Manzke  
 2 in but other times he would stay out of the  
 3 market for a while.  
 4 Q. You are saying at the time he put  
 5 on the positions that is when Suzanne or  
 6 Soares would look at the prices or whatever  
 7 and make sure they were within a range?  
 8 A. Right.  
 9 Q. That was part of the review  
 10 process that you say was done at Maxam?  
 11 A. Yes.  
 12 Q. We don't see any documentary  
 13 evidence of that stuff.  
 14 A. He didn't document it. What were  
 15 you going to write, we reviewed it today? I  
 16 shouldn't ask you a question. We --  
 17 Q. I will say this to answer your  
 18 question because I have been asking them all  
 19 day.  
 20 A. Sorry.  
 21 Q. It is okay.  
 22 Broker-dealers do have an  
 23 obligation to document their review and  
 24 supervisory review of what they are doing to  
 25 make sure things are being done and  
 0174  
 1 Manzke  
 2 compliance.  
 3 I understand you were an  
 4 investment adviser and there are somewhat  
 5 different rules but there are bookkeeping  
 6 requirements as a registered investment  
 7 adviser and the like, and I am just  
 8 commenting that I don't see anything that  
 9 seems to reflect a review.  
 10 I am not saying it didn't happen.  
 11 I am saying, suggesting by my comment that,  
 12 to the extent to which there were documents  
 13 that would be supportive of that and that  
 14 that hasn't been produced and that that  
 15 might be something you want to show us.  
 16 MR. KIM: Similar to what you  
 17 raised before, this is something that we  
 18 can provide you information on.  
 19 It is clear, you are just  
 20 testifying based on your personal  
 21 knowledge, right?  
 22 THE WITNESS: Correct.  
 23 MR. KIM: This witness is not  
 24 personally aware of the documentation  
 25 but we can help you with that.  
 0175  
 1 Manzke  
 2 MR. POWERS: That might be.  
 3 Frankly, I would like to just have Ms.  
 4 Manzke as being the only person I speak  
 5 to at Maxam. That is initially my  
 6 thought.  
 7 I don't want to have to go through  
 Page 72

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8 a number of different people and  
9 documents necessarily if I can avoid  
10 that. That might be helpful.

11 MR. KIM: We will help you. It is  
12 actually in your production. We will  
13 help you locate --

14 MR. POWERS: That is fine.

15 BY MR. POWERS:

16 Q. Let me ask you since we are on a  
17 topic of review of the transactions or  
18 positions that were being put on, it appears  
19 that the documents, even though we  
20 understand now that none of the trades were  
21 actually done, that they appear to be going  
22 into cash at the end of either every quarter  
23 or at the end of annual calendar year.

24 Did you ever observe that or were  
25 you ever aware of that?

0176

Manzke

1 A. I do not -- I know that he started  
2 to go in the short time that we had an  
3 account with him, that he did go in on the  
4 end, at the end of a quarter but that wasn't  
5 true of necessarily his pattern. I did not  
6 observe any pattern in that.

7 It just simply was the way it  
8 worked out this period but prior to that, he  
9 did not -- he was not always out on a  
10 quarter. At the end of every year, yes.

11 He did go to cash at the end of  
12 every single year since I have had an  
13 account with him and he explained to us that  
14 he did go to cash at the end of every year  
15 and that was to make his audit extremely  
16 simple because he had no positions on his  
17 books.

18 Q. You found that credible?

19 A. Yes. I mean, if I were a -- I  
20 just have another manager who did the same  
21 thing.

22 He did it in November, however,  
23 because he didn't want to have any  
24 accusations or any of his investors to say

0177

Manzke

1 there is an issue with pricing so if I sell  
2 everything --

3 Q. But Madoff was not buying illiquid  
4 securities, he was always buying registered  
5 securities that were traded on the markets,  
6 correct?

7 A. Correct. So was this manager but  
8 that is what he decided he would do also.

9 Q. Does that make any sense to you?

10 How is it any easier to audit a  
11 stock that you can get the price from the  
12 New York Bloomberg everyday that is priced  
13 in an efficient market than it is to be in  
14 cash?

15 A. That is -- didn't seem unusual to  
16 us at that time and Monday morning  
17 quarterbacking you can say, well, maybe that

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19 was one of the reasons but he also stated he  
20 didn't want the world to know how much money  
21 he was managing and from a point of view of  
22 a family-owned business that he didn't want  
23 to suddenly find himself on the Forbes 100  
24 list because that information was out there  
25 in the general public.

0178

Manzke

1 Q. Why would being in cash as opposed  
2 to having securities positions and options  
3 positions make it any less transparent about  
4 the size of the money you were managing?

5 A. Because you would have a lot more  
6 accounts that you were having to audit  
7 instead of just the cash positions.

8 Q. What do you mean the "accounts"?  
9 I am not following that.

10 A. If he had no positions on the  
11 books, he didn't have any filing  
12 requirements to say how much money he was  
13 managing. Because you don't report your  
14 cash.

15 Q. Well, you do report the money you  
16 have under management.

17 A. He wasn't registered. He didn't  
18 have to report money under management.

19 MR. KIM: You are now testifying  
20 about your understanding at the time?  
21 THE WITNESS: Correct.

22 BY MR. POWERS:

23 Q. Right. Explain that to me again.  
24 Yes, he -- at some point he was a

0179

Manzke

1 registered investment adviser, I think, in  
2 2006. But putting that issue aside, I am  
3 still trying to understand your thought  
4 process of why, what he was explaining --  
5 maybe it is best to say it like this.

6 I am trying to understand what he  
7 was explaining to you and then we can  
8 discuss why you think that was not unusual  
9 to you or didn't raise a red flag in your  
10 mind or anything. That is fine and fair.

11 That is why you are here today.  
12 Okay, in part. So -- but I do want to first  
13 understand what he said about that issue  
14 because I don't understand why it is that  
15 you would have less reporting obligations if  
16 you -- whether you are a registered  
17 investment adviser or registered IA, you  
18 still would be reporting the amount of money  
19 you are managing or the amount of money you  
20 have unless you are saying it is different  
21 because he was a broker-dealer?

22 A. I think it is different because he  
23 was a broker-dealer and he would not have to  
24 do, what it is, a 13F filing, I am not sure

0180

Manzke

1 which one relates to the -- a broker-dealer  
2 but if you had no positions on your books at  
3 Page 74

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 4 the end of the year you had nothing to  
 5 report.  
 6

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 CTED

12 MR. KIM: Why don't you testify  
 13 about everything that you recall what  
 14 Mr. Madoff said to you about this topic.  
 15 THE WITNESS: There were two  
 16 things -- well, a couple of things.  
 17 He said, I go to cash at the end  
 18 of every year because I don't want to  
 19 have any positions on my books so that  
 20 being a family office and owned by only  
 21 family members, the assets that I have  
 22 currently under management, he didn't  
 23 want to go into any public domain.  
 24 The second reason is that he said,  
 25 it makes my audit very simple because I

0182  
 1 Manzke  
 2 have no positions on the books.  
 3 BY MR. POWERS:  
 4 Q. Okay. That didn't -- that sounded  
 5 satisfactory to you?  
 6 A. At the time it did but now it sort  
 7 of is bothering me.  
 8 Q. There is a reference on page 8 of  
 9 the ADV to a subadvisory agreement with a  
 10 wholly-owned subsidiary of, I guess, Maxam  
 11 Capital called Maxam Capital Management  
 12 Limited.  
 13 Is that effectively the separate  
 14 entity that was created for purposes of  
 Page 75

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 15 servicing the foreign Maxam Absolute Fund?  
 16 A. Yes.  
 17 Q. Do I have that right?  
 18 A. Actually, we never really used  
 19 that company. It was set up initially for  
 20 the administration until we got the Bermuda  
 21 license and it was a Cayman Islands company  
 22 and then once we had the Bermuda license for  
 23 registration, we didn't use that.  
 24 Q. You didn't need it?  
 25 A. It was a temporary quick thing to

0183  
 1 Manzke  
 2  
 3 do.  
 4 Q. Got it.  
 5 Then the paragraph right below  
 6 that references the fact that it is you and  
 7 Mr. Dudley the owners of the GP, correct?  
 8 A. Correct.  
 9 MR. POWERS: Let's turn to the PPM  
 10 for the Maxam Absolute Return Fund  
 11 Limited. That is Plaintiff's Exhibit  
 12 12.  
 13 (PPM for the Maxam Absolute Return  
 14 Fund was marked Plaintiffs' Exhibit 12 for  
 15 identification)  
 16 BY MR. POWERS:  
 17 Q. Are you able to identify what this  
 18 is?  
 19 A. This is the offshore PPM for  
 20 non-U.S. investors.  
 21 Q. Great.  
 22 Looking at IV page, which is under  
 23 the directory, a page or two in, that  
 24 basically sets forth the various roles of  
 25 the various entities and persons associated  
 with this, correct?

0184  
 1 Manzke  
 2 A. Yes.  
 3 Q. Let's turn then to page 1 under  
 4 the section called "The Fund."  
 5 It talks about a master fund in  
 6 the middle there.  
 7 It says that, "The fund will  
 8 implement its strategy by investing all of  
 9 the fund's assets in a centralized  
 10 management company commonly known as a  
 11 master fund."  
 12 That appears to be the master  
 13 fund?  
 14 A. Correct.  
 15 Q. All the monies raised for this  
 16 foreign fund were then invested in the  
 17 domestic fund that was all invested in  
 18 Madoff?  
 19 A. Correct. It came in as one  
 20 investor.  
 21 Q. At one investor, right.  
 22 So the investors then in the  
 23 foreign fund also lost all the money that  
 24 was in that foreign fund, right?  
 25 A. Correct.

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22 and therefore have put their funds into  
23 liquidation.

24 The long only business --  
25 Q. Let me understand that.

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0191

Manzke  
You are talking about the likes of  
someone that was an investor in the Absolute  
Fund or --

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Q. Right. A portion of its money?

A. Yes.

Q. So from that those funds then went  
into liquidation because the people didn't  
want to keep their money in otherwise?

A. It eroded confidence.

Q. That is what I am trying to  
understand. Okay.

Let's go back to 9 if we could.  
This is from January, I think, of earlier  
this year, this Form ADV.

I am looking at page 11 where it  
talks about the amount of money under  
manage. It looks like the total here seems  
to be 10 billion.

A. Page 9.

Q. Let me make sure I have that  
right.

A. I never had 10 billion.

Manzke  
Q. Sorry, 100 million.

A. Where?

Q. You tell me. Maybe I am not  
reading this right.

A. What page are you on?

Q. I am looking at page 11. Item F,  
not looking at the top, looking at the  
bottom. Page 11 of 42. We are looking at  
the Form ADV.

A. I am at Form ADV. I go to page 11  
and I don't see anything.

MS. STANGANELLI: The 2009 ADV,  
Exhibit Number 9.

THE WITNESS: What page?

BY MR. POWERS:

Q. Page 11.

A. Of 42?

Q. Yes. This seems to show 1 billion  
under management at this time?

A. That is in --

Q. January of this year. Or at least  
for -- certainly for year end of 2008 which  
would have taken into account, presumably,  
the Madoff money.

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REDACTED

18

11 Q. Got it.  
 12 So how many current employees are  
 13 there of Maxam Capital?  
 14 A. Two.  
 15 Q. You and who else?  
 16 A. I am --  
 17 Q. You are still --  
 18 A. I am still with the company though  
 19 I am not taking any money so I am working  
 20 for free but Suzanne and Richard Phelan are  
 21 working on all of the closings of all the  
 22 funds and et cetera, and Joe Soares is done  
 23 at the end of July because the  
 24 administrative work for Preferred is now  
 25 being run pari passu with the new

0197

1 Manzke  
 2 administrator to make sure there is no  
 Page 81

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3 problems with the transition. So at the end  
 4 of July the new administrator takes over.  
 5 Q. Where has everybody kind of gone?  
 6 We know where Cathy Sweeney went and  
 7 Phelan --  
 8 A. They all have no jobs. They are  
 9 all on unemployment, every one of them, and  
 10 they can't get a job and these are my  
 11 friends so --  
 12 Q. Now, let's introduce as 14 and 15,  
 13 the two investment management agreements  
 14 that you had for the two Maxam Absolute  
 15 funds.  
 16 MR. POWERS: Mark this as 14.  
 17 (Investment Advisory Agreement  
 18 appointing Maxam Capital was marked  
 19 Plaintiffs' Exhibit 14 for identification)  
 20 MR. POWERS: Mark this as 15.  
 21 (Another investment advisory  
 22 agreement appointing Maxam Capital was  
 23 marked Plaintiffs' Exhibit 15 for  
 24 identification)  
 25

0198

1 Manzke  
 2 BY MR. POWERS:  
 3 Q. If you could just look at what has  
 4 been marked as Plaintiffs' Exhibits 14 and  
 5 15 and tell us what they are, please.  
 6 A. This is the investment advisory  
 7 agreement appointing Maxam Capital as the  
 8 manager of the fund.  
 9 Q. Compensation was basically  
 10 approximately 1 percent of the NAV?  
 11 A. Correct.  
 12 Q. Was there also an administrative  
 13 fee?  
 14 A. Yes. There was an administrative  
 15 fee of 20 basis points I think it was.  
 16 Q. Do you recall how much in total  
 17 the management fees were received by Maxam  
 18 Capital for managing these two funds?  
 19 A. I don't have that off the top of  
 20 my head. The funds relatively launched with  
 21 10 million and it grew slowly over this time  
 22 period so obviously at the end of the year,  
 23 if we had kept the assets 2.4 million, we  
 24 would have made 2.4 million in fees but it  
 25 wasn't big enough the year before, probably

0199

1 Manzke  
 2 maybe -- I really don't want to say because  
 3 I don't really know off the top of my head.  
 4 Q. There are -- okay. I want -- let  
 5 me kind of do this all seriatim -- together  
 6 as one exhibit. These are financial  
 7 statements from 2006 and 2007.  
 8 The numbers, based on the amount  
 9 of money that would have been under  
 10 management seemed low based on these  
 11 documents.  
 12 I wanted you to help me understand  
 13 them. You can do each one separately. Make  
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14 one 16 and one 17.  
 15 (Financial statement was marked  
 16 Plaintiffs' Exhibit 16 for identification)  
 17 (Financial statement was marked  
 18 Plaintiffs' Exhibit 17 for identification)  
 19 BY MR. POWERS:  
 20 Q. When you look at 16 and 17, you  
 21 will see the first year for 2006, it looks  
 22 like the number is less than 150,000. At  
 23 least according to the expenses on page 3 of  
 24 the income statement.  
 25 I was wondering if that seems to  
 0200  
 1 Manzke  
 2 make sense to you.  
 3 Do you see where I am looking?  
 4 A. We made 5 million of net income on  
 5 page 3. That was for the entire fund.  
 6 Q. I am looking at the statement of  
 7 income on page 3.  
 8 A. Right.  
 9 Q. I am looking under expenses.  
 10 It says, if you add the management  
 11 administrative fees, it is only about  
 12 \$150,000.  
 13 A. The fund was very small in 2006.  
 14 Q. These are accurate numbers?  
 15 A. These are accurate numbers.  
 16 Q. Looking at 2007, that appears to  
 17 be about a million dollars if you look at it  
 18 the same way?  
 19 A. That sounds about right.  
 20 Q. Does that sound about right to  
 21 you?  
 22 A. Yes.  
 23 Q. Turn a moment to page 3.  
 24 A. The million 033?  
 25 Q. Right.  
 0201  
 1 Manzke  
 2 A. Right. We also have to say part  
 3 of the administration fee actually, we  
 4 received the administration fee but we had  
 5 to pay the administrator so it didn't go  
 6 directly to us.  
 7 Q. You didn't keep the full part of  
 8 the administrative fee?  
 9 A. No.  
 10 Q. Actually, you had some subadvisers  
 11 for some of the management fees as well. I  
 12 guess not for this one?  
 13 A. Not for this one.  
 14 Q. Right.  
 15 Then for 2008, which we don't have  
 16 a financial statement for, do you have a  
 17 sense of how much approximately that would  
 18 have been?  
 19 would that have been the same  
 20 amount of 2007, more, less?  
 21 A. There was 243 million at the end  
 22 of December, 240 million. And monies came  
 23 in and out during that year and because many  
 24 of our investors used the Maxam Absolute  
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25 Return Fund as its liquidity component  
 0202  
 1 Manzke  
 2 within the fund of funds.  
 3 Remember, most fund of funds have  
 4 one-year lockups or three-year lockups and  
 5 quarterly notice periods.  
 6 Our funds were getting hit with a  
 7 lot of redemptions because investors were  
 8 getting upset with hedge funds and the  
 9 markets in general. Many times money came  
 10 out but came back in the next month when the  
 11 quarterly could come out of one of the other  
 12 managers. So the money kind of stayed about  
 13 the same over the years so there is about --  
 14 I would say we made \$2.4 million  
 15 approximately in 2008.  
 16 Q. Fine.  
 17 It came to a little more than  
 18 3.5 million during the relationship?  
 19 A. Yes.  
 20 Q. Thank you.  
 21 A. Not worth ruining a business over,  
 22 was it?  
 23 MR. POWERS: I will mark as  
 24 Plaintiffs' Exhibit 18 what appears to  
 25 be the account opening documents for the  
 0203  
 1 Manzke  
 2 Maxam fund over at Bernie Madoff  
 3 investment securities.  
 4 (Account opening documents for the  
 5 Maxam fund was marked Plaintiffs' Exhibit 18  
 6 for identification)  
 7 BY MR. POWERS:  
 8 Q. Can you just take a moment to look  
 9 at this and tell me if you can identify it,  
 10 please?  
 11 A. These were the agreements that --  
 12 for opening the customer account with Bernie  
 13 Madoff, our wire instructions, our taxpayer  
 14 identification form and the -- identifying  
 15 the signing powers of the employees.  
 16 Q. Thank you.  
 17 MR. POWERS: Let's mark as 19,  
 18 Plaintiffs' Exhibit 19, the Form D.  
 19 I just really want you to tell us  
 20 what this document is and I think to  
 21 have you authenticate it. I think it  
 22 bears your signature.  
 23 (Form D for the U.S. Securities  
 24 and Exchange Commission, was marked  
 25 Plaintiffs' Exhibit 19 for identification)  
 0204  
 1 Manzke  
 2 THE WITNESS: This is the Form D  
 3 for the U.S. Securities and Exchange  
 4 Commission.  
 5 BY MR. POWERS:  
 6 Q. Signed by you on the last page?  
 7 A. Yes.  
 8 Q. Do you know why this was filed  
 9 back in February of 2008?  
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10 A. I don't remember why.  
 11 Q. Okay.  
 12 A. It must have been a regulation.  
 13 MR. POWERS: Let me mark then next  
 14 the subscription agreement for the  
 15 foreign fund for the investment in the  
 16 domestic fund of Maxam Absolute. This  
 17 is number 20.  
 18 (Subscription agreement for  
 19 foreign fund for investment in domestic fund  
 20 of Maxam Absolute was marked Plaintiffs'  
 21 Exhibit 20 for identification)  
 22 MR. KIM: Did you say you wanted  
 23 the foreign fund? I think this is for  
 24 the domestic.  
 25 MR. POWERS: I believe -- just  
 0205  
 1 Manzke  
 2 take a look.  
 3 MR. KIM: The subscriber is the  
 4 foreign fund?  
 5 MR. POWERS: Correct. Yes.  
 6 BY MR. POWERS:  
 7 Q. If you would take a moment to look  
 8 at it and if you could state for the record  
 9 what it is?  
 10 A. This is the form that an investor  
 11 would complete to be an investor in the  
 12 fund.  
 13 Q. Does this appear to bear the  
 14 signature of Ms. Hammond?  
 15 A. That is Suzanne's signature.  
 16 Q. This would have been the  
 17 subscription agreement for the Maxam foreign  
 18 fund to become an investor in the Maxam  
 19 domestic, correct?  
 20 A. This looks like the subscription  
 21 agreement for the LP but a foreigner would  
 22 use this to be an investor in the LP, right.  
 23 You are right. What you said was right.  
 24 Yes. Got it.  
 25 Q. I have been preparing for a few  
 0206  
 1 Manzke  
 2 days here, okay.  
 3 A. Good. That is good.  
 4 Q. Do I have it right?  
 5 A. Yes.  
 6 Q. Let's turn to the -- so there were  
 7 a number of investors -- let me back up.  
 8 withdrawn.  
 9 Can you just explain for the  
 10 record why it is you might set up a parallel  
 11 foreign fund to a domestic fund, just  
 12 generally?  
 13 A. It was exactly -- we only had one  
 14 fund from Madoff. We couldn't get two. And  
 15 I didn't want to go to the well so we had  
 16 one fund.  
 17 our lawyers advised us --  
 18 MR. KIM: why don't you skip the  
 19 legal advice and just tell us.  
 20 THE WITNESS: And says this is the  
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21 way they set it up. They would have a  
 22 domestic partnership and the offshore  
 23 fund would invest in the domestic.  
 24 BY MR. POWERS:  
 25 Q. Generally, based upon your years  
 0207  
 1 Manzke  
 2 of experience, why are there funds that are  
 3 set up to be foreign funds, putting aside  
 4 the Madoff situation in this particular  
 5 fund, primarily for foreign investors?  
 6 A. It is so that you can keep track  
 7 of your foreign investors so you can do your  
 8 dividend withholding. It eliminates the  
 9 need to have two separate funds and two  
 10 separate administrators and two separate  
 11 boards of directors.  
 12 Q. Approximately how many investors  
 13 were there in the foreign Maxam Absolute  
 14 Fund?  
 15 A. Off the top of my head I couldn't  
 16 tell you.  
 17 Q. 3, 25, 82?  
 18 A. Probably more, 15 to 20.  
 19 Q. Approximately how much money was  
 20 raised initially then over time by the  
 21 foreign fund?  
 22 A. It is my recollection but again, I  
 23 never really focus on this because it is  
 24 somebody else's responsibility in the firm  
 25 but there was more money in the foreign fund  
 0208  
 1 Manzke  
 2 than there was in the domestic.  
 3 Q. In the foreign --  
 4 A. Yes.  
 5 Q. Meaning how much?  
 6 A. I would say 60 percent of the fund  
 7 I believe was foreign, thereabouts, if I  
 8 recall correctly.  
 9 Q. If -- approximately 250 million  
 10 was put in by the domestic fund, correct?  
 11 A. No. That is the total of  
 12 everything.  
 13 Q. 250 million went into the Madoff  
 14 Securities in total?  
 15 A. Yes.  
 16 Q. So 60 percent was comprised of the  
 17 foreign fund you are saying?  
 18 A. Yes.  
 19 Q. So that would be approximately  
 20 150, right, 150 million?  
 21 A. I don't have those facts and  
 22 figures in front of me and I wouldn't want  
 23 to say that is it. I just don't know.  
 24 Q. Okay.  
 25 MR. POWERS: Let me mark now as  
 0209  
 1 Manzke  
 2 Plaintiffs' Exhibit 21, a letter from  
 3 your counsel dated March 27, 2009.  
 4 (Letter dated March 27, 2009 was  
 5 marked Plaintiffs' Exhibit 21 for  
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6 identification)  
7 THE WITNESS: Can I also add one  
8 thing. The composition of the fund also  
9 changed over time.  
10 BY MR. POWERS:  
11 Q. Composition being?  
12 A. Offshore versus domestic.  
13 Q. In terms of percentages, is that  
14 what you mean?  
15 A. Yes.  
16 Q. Okay.  
17 MR. POWERS: Once you get this  
18 there may be a few questions and there  
19 may be some colloquy with counsel. We  
20 only have five minutes left on the  
21 video.  
22 why don't I give you an  
23 opportunity to prepare your client on  
24 how she should be expected to answer  
25 this?  
0210  
1 Manzke  
2 MR. KIM: Instruct her to answer  
3 what?  
4 MR. POWERS: I will be asking  
5 questions about the investors.  
6 MR. KIM: Are you going to ask for  
7 the identity of the investors?  
8 MR. POWERS: That will be among  
9 the questions that I am going to ask.  
10 MR. KIM: Okay.  
11 MR. POWERS: So why don't we take  
12 this time to take a break?  
13 THE VIDEOGRAPHER: The time is  
14 3:16 p.m.  
15 This ends tape number 4 of the  
16 videotaped deposition of Sandra L.  
17 Manzke.  
18 (Recess)  
19 THE VIDEOGRAPHER: The time is  
20 3:28 p.m.  
21 This begins tape number 5 of the  
22 videotaped deposition of Sandra L.  
23 Manzke.  
24 BY MR. POWERS:  
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Q. So the custodian bank is basically -- it is kind of a DVP/RVP kind of relationship?  
A. Correct.

Manzke  
Q. Where they are just getting -- they are just in charge of the flow of funds but the situs effectively of the customer is in a different location?  
A. Correct.

Q. So this is identifying, again without getting specifically into the name of the customer here, this is, for the moment, this is just identifying that there are different kinds of custodial accounts that are established for each one of these ultimate clients?

A. Clients.  
Q. Now, will you tell us the name of the Swiss bank?

MR. KIM: I am going to object and just to save you time, I am going to object to all similar questions and instruct the witness not to answer on account of, among other things, our understanding that to reveal the information you are asking for would constitute potentially a significant violation of Cayman Islands law.

Manzke  
So I will instruct you not -- advise you not to answer that particular question and all similar questions about this chart.

BY MR. POWERS:  
Q. Let me ask you, that would go for all six of the identified investors banks, correct?

MR. KIM: Correct.  
As I mentioned to you outside of this deposition, we will discuss these

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13 issues in a different context.  
14 MR. POWERS: Sure. Let me just  
15 follow up with another question.  
16 BY MR. POWERS:  
17 R

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Manzke  
BY MR. POWERS:  
Q. Are you going to be following the advice of your counsel on both of those instructions?

A. Yes.  
MR. POWERS: I do just want to know for the record and I don't think it has to be identified or put in the record as an exhibit here today, I had sent a letter last week to your office, Mr. Kim, dated July 1, 2009, in which we cite authorities particularly in the Southern District and other courts, that states that revealing customer information of a Cayman Islands bank, Cayman Islands fund, would not necessarily be a violation of Cayman Islands law.

Do you have any authority that you can identify for us today that would state to the contrary?

MR. KIM: We have a lot of things to say in response but I am not sure doing it in front of this witness in

0218

Manzke  
this context is what we want to do.  
MR. POWERS: Just so we will be clear, that we have joined the issue for the purposes of the record, any questions that I would ask about who the customers are, any type of identifying information, how much money they would have invested, information as it relates to their capital accounts, and other similar type of information, financial related information to these customers, you would instruct Ms. Manzke not to answer?

MR. KIM: That's correct.

BY MR. POWERS:  
Q. You would follow those instructions?

A. Yes.  
Can I ask you one question?  
MR. KIM: Without the microphones on. We will be right back.

24 THE VIDEOGRAPHER: The time is  
25 3:35 p.m. We are going off the record.  
0219

1 Manzke  
2 (Discussion off the record)  
3 THE VIDEOGRAPHER: The time is  
4 3:37 p.m. and we are back on the record.

5 BY MR. POWERS:  
6 Q. Anything else you want to add at  
7 this time?

8 A. No.  
9 Q. Let me back up for two more  
10 minutes on Maxam.

11 I don't think I asked you before  
12 what your compensation was at Maxam Capital  
13 prior to 2009. Can you tell us what that  
14 was?

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1 Manzke  
REDACTED

7 Q. Apart from the other issues  
8 relating to your business and all of that?  
Page 91

9 A. Correct. And we have that  
10 documentation. I believe it was in --  
11 Q. We have seen that. I wanted to  
12 have it just for the record here.  
13

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12 Q. Now, starting with the period of,  
13 after the initial three telephone calls or  
14 meetings that you had with Mr. Madoff when  
15 he ultimately agreed to allow the account to  
16 be opened, how many times after that did you  
17 either speak or meet with him?

18 A. Until we launched the fund only  
19 once or twice as I mentioned previously.  
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 20 Our fund then launched July 1 of  
 21 2006. I didn't really talk to him the rest  
 22 of 2006. I did talk to him that I can  
 23 remember but I did talk to him and visit  
 24 with him and I have to go back to my  
 25 scheduling where I wrote meeting, I stopped

0224  
 1 Manzke  
 2 and we have, once a year you meet a manager  
 3 in his office. I stopped in in 2008.

4 Q. You think you met with him once in  
 5 2007?

6 A. I know I met with him in his  
 7 office once but I did have a couple, hi, how  
 8 are you, calls, what do you think of the  
 9 market kind of thing.

10 Q. Anything more than that you recall  
 11 in 2007?

12 A. Not in those. It was in October  
 13 of 2008 that I had the big conversation. I  
 14 called Madoff and said --

15 Q. Before we get to it, was there any  
 16 other meetings or conversations in 2008  
 17 prior to October?

18 A. I think there was one meeting. I  
 19 have to go back to my -- do you want my date  
 20 book is what you really need I guess.

21 MR. POWERS: You will just  
 22 double-check that, Mr. Kim.

23 MR. KIM: Sure.

24 BY MR. POWERS:

25 Q. Go ahead.

0225

1 Manzke

2 A. And -- but I called him in  
 3 October.

4 Q. This is after the whole Lehman  
 5 Brothers debacle?

6 A. Yes. I said I wanted to thank him  
 7 for being one bright spot in this horrible  
 8 environment and I also said -- I  
 9 congratulated him on the fact that he had  
 10 pulled out of all of these financial stocks  
 11 and I was really impressed that he didn't  
 12 have that mix and he -- I will just always  
 13 remember this comment.

14 He said, "I think what the  
 15 investment bankers have done to this country  
 16 is abhorrent. This is amazing that they are  
 17 taking down this country."

18 And then I said, "Well, I am  
 19 calling you to tell you that because you are  
 20 the only liquidity source in this market  
 21 right now with all the gating and closing of  
 22 funds and locking up, that you are going to  
 23 get hit with huge redemptions."

24 And he was very, very cool. He  
 25 said, "Well, thus far, we have only had

0226

1 Manzke  
 2 about 5 percent redemptions," and he wasn't  
 3 worried about it.

4 I said, "I assume in this market  
 Page 93

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 5 you are going to stay in cash."

6 He said, "Well, you know, I am  
 7 hoping that there might be one or two,  
 8 maybe." He said, "I am not expecting any  
 9 opportunities but I am hoping there might be  
 10 an opportunity to go back in the market  
 11 before the end of the year."

12 Q. So at that time he was out of the  
 13 market completely?

14 A. He was completely out of the  
 15 market.

16 Q. Do you recall at what time  
 17 according to the statements he completely  
 18 had left the market, when that was?

19 A. Not off the top of my head.

20 Q. Okay.

21 A. He went back in, I think it was,  
 22 November 11abouts.

23 Q. If he is not in the market how  
 24 could he be -- how was he generating income  
 25 or profits in a particular month?

0227

1 Manzke

2 A. He bought T bills. He was making  
 3 a money market rate of return.

4 Q. The T bills in 2006 or 2005?

5 A. Pretty de minimis.

6 Q. Would be de minimis?

7 A. Yes.

8 Q. I guess, if the man is out of the  
 9 market for a period of months at a time, how  
 10 is it that if he is, at best, in T bills,  
 11 how is it that he is able to get 6 or 8 or  
 12 10 or 12 percent?

13 A. He didn't get 6 to 10 percent in  
 14 our account. That was his return for the  
 15 entire year, last year was only about  
 16 6 percent until he made money in November.  
 17 We didn't make that much money.

18 Q. So that -- obviously that  
 19 conversation sticks out in your head. Why  
 20 does that stick out in your head?

21 A. Because it was -- first, I was  
 22 warning him that he is going to get hit with  
 23 human redemptions.

24 One would think he would have had  
 25 some reaction to that given the events that

0228

1 Manzke

2 were about to unfold.

3 Second, his comment about who is  
 4 destroying this, the investment advisory  
 5 business or the financial system, was, you  
 6 know, to me, like the pot calling the kettle  
 7 black in retrospect.

8 And just if I thought, first of  
 9 all, you know --

10 MR. KIM: I think his question is  
 11 why do you remember.

12 THE WITNESS: well, I am  
 13 projecting to myself how nervous I would  
 14 have been and how could I be that  
 15 nonchalant about it.

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16 MR. KIM: If you were Madoff?  
 17 THE WITNESS: If I were Madoff.  
 18 That is how I remember it. It stuck out  
 19 in my mind.

20 BY MR. POWERS:  
 21 Q. Was that the last conversation you  
 22 had with him?  
 23 A. With him, yes.  
 24 Q. We will get to any events of  
 25 December 11 and what you or your staff or

0229 1 Manzke  
 2 your offices may have had a little bit  
 3 later.

4 A. Okay.  
 5 Q. First, I want to flush out the  
 6 time of Maxam, the level of communications  
 7 by you or others at Maxam with the Madoff  
 8 firm.

9 Apart from the conversations you  
 10 have just identified, what would have been  
 11 the nature of the contact between Maxam  
 12 personnel and Madoff?

13 A. The account representative was  
 14 DiPascalli and so every month, we either had  
 15 money coming in or money going out and we  
 16 would call and discuss that, what our cash  
 17 flows were with DiPascalli.

18 Q. Who would be making those calls?  
 19 A. Suzanne or Joe. It depends. If  
 20 she wasn't in the office, he would be her  
 21 backup.

22 Q. She was the one -- regular contact  
 23 with DiPascalli?

24 A. Well, on a monthly basis because  
 25 we always had ins and outs.

0230 1 Manzke

2 Q. Right.  
 3 A. Then there was the one situation  
 4 where I know there are some e-mails  
 5 regarding a pricing difference between  
 6 Bloomberg and New York Stock Exchange and it  
 7 was a different feed on Bloomberg.

8 So there was one month where our  
 9 numbers did not match Madoff's end of the  
 10 month numbers and we researched that and  
 11 discovered that Bloomberg had used a  
 12 different feed and not the ending New York  
 13 Stock Exchange prices and that month we went  
 14 with Madoff's pricing.

15 Q. Right. I saw that. I will get to  
 16 that e-mail too.

17 A. There was some discussion with  
 18 that.

19 MR. KIM: wait for his next  
 20 question.

21 THE WITNESS: Sorry.

22 BY MR. POWERS:  
 23 Q. I guess my general -- my first  
 24 question is, relating generally, the nature  
 25 of the context. It would be at least

0231

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1 Manzke  
 2 monthly context to talk about the inflows  
 3 and outflows -- would there be discussions  
 4 about what the value of the account was at  
 5 the end of the month, would that be part of  
 6 the conversation?

7 A. If there was any kind of a  
 8 mismatch, yes, but we didn't have any  
 9 mismatches in that period.

10 Q. Whenever you visited the offices  
 11 of Madoff Investment Securities, what floors  
 12 did you go to there?

13 A. On some occasions -- most of the  
 14 occasion, I would meet in Madoff's office,  
 15 into the conference room that was on the  
 16 side of his office.

17 There were times where in the past  
 18 I didn't do it when I was at Maxam but that  
 19 we would walk -- we would take the elevator  
 20 to the trading floor and he would just walk  
 21 through it. He liked to show off his  
 22 paperless trading floor.

23 Q. What about the 17th floor? Which  
 24 is the floor that had a lot of investment  
 25 management work going on?

0232

1 Manzke

2 A. You know, I can't remember what  
 3 floor I was on in the building. If you  
 4 asked me what floor I came in in the  
 5 building, I can't remember.

6 Q. 11.

7 A. I would have said 6 but okay.

8 Q. What about DiPascalli, did you  
 9 ever visit with him?

10 A. No, I didn't.

11 Q. Did Suzanne?

12 A. No. Joe had drinks with him one  
 13 night, just --

14 Q. Anything substantive discussed?

15 A. No. It was just go out and  
 16 entertain the client, whatever.

17 Q. Do you know if anyone else at  
 18 Maxam, apart from yourself, would have  
 19 visited the offices?

20 A. Not of my employees.

21 Q. Apart from DiPascalli would there  
 22 have been someone else who would have been a  
 23 contact person at Madoff Investment  
 24 Securities?

25 A. Those were the only people we

0233

1 Manzke

2 dealt with.

3 Q. Did you ever speak with Mark  
 4 Madoff or Andrew Madoff?

5 A. I was introduced to them on the  
 6 floor but not any deep conversation.

7 Q. What about with his brother Peter?

8 A. His brother Peter I met once or  
 9 twice, just, this is my brother. When we  
 10 had some clients in or he said, here is  
 11 Peter, he is my partner, but nothing really

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12 substantive.  
 13 Q. what about Shaina --  
 14 A. Never.  
 15 Q. -- Madoff?  
 16 REDACT  
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0235  
 1 Manzke  
 2 Q. Around the end of the year?  
 3 A. Around the end of October but that  
 4 is where I warned about redemptions too.  
 5 MR. POWERS: I show you  
 6 Plaintiffs' Exhibit 24, what appears to  
 7 be a due diligence questionnaire for  
 8 Maxam Absolute funds.  
 9 (Due diligence questionnaire for  
 10 Maxam Absolute funds was marked Plaintiffs'  
 11 Exhibit 24 for identification)  
 12 THE WITNESS: Yes. This is one of  
 13 the industry standard AIMR compliant due  
 14 diligence questions that, typically, you  
 15 have on file, but this is for our Maxam  
 16 Absolute Fund so that any investor would  
 17 get a copy of this report.  
 18 BY MR. POWERS:  
 19 Q. This one was for the period in or  
 20 around June of 2008 according to the first  
 21 page?  
 22 A. Correct.

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23 Q. You number them just so there is a  
 24 record of how many people you are making  
 25 them available to?

0236  
 1 Manzke  
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6 Q. Turning to page 5 of the fund,  
 7 there is -- at the top it indicates that the  
 8 manager's own dollar commitment to the  
 9 strategy has about \$12 million from  
 10 employees with these funds, correct?  
 11 A. Correct.  
 12

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23 Q. Page 6, that talks about a  
 24 selected broker-dealer and refers to that  
 25 split strike conversion strategy, right?

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 1 Manzke  
 2 A. Correct.

3 Q. The next page on 7, it talks about  
 4 the fact that at the very top it says, "In  
 5 selecting the broker-dealer, we try to  
 6 manage expectations within reasonable time  
 7 parameters. Maxam professionals have been  
 8 evaluating and monitoring the strategy with  
 9 a selected broker-dealer for over 20 years."  
 10 Do you see that?

11 A. Yes.  
 12 Q. This refers to Suzanne and Joseph  
 13 Soares being in charge of that kind of  
 14 activity, correct?

15 A. I don't think I understand the  
 16 question.

17 Q. It seems to me that this is a  
 18 suggestion that it is really Suzanne and  
 19 Joseph Soares's --

20 A. No.  
 21 MR. KIM: Let him finish the  
 22 sentence.

23 BY MR. POWERS:  
 24 Q. -- responsibility to monitor the  
 25 strategy of the broker-dealer?

0238  
 1 Manzke  
 2 A. When Suzanne and Joe were at  
 3 Tremont part of their duties were to work on  
 4 the Madoff account. They brought in some  
 5 other people. Suzanne basically stayed with  
 6 the firm that entire time period.  
 7 Prior to Suzanne and Joe --

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 8 actually Suzanne, I think, joined our --  
 9 joined Tremont in 1989 so -- but before that  
 10 with Leon we are including that in the  
 11 entire time period.

12 Q. Okay.  
 13 Under a little bit further down it  
 14 asks about how would you mitigate the risk  
 15 of unauthorized trading and the response is  
 16 that, "The broker-dealer has a secure  
 17 trading platform with checks and balances  
 18 that monitors capital allocations and firm  
 19 capital allocations."

20 Do you see that?

21 A. Yes.

22 Q. It also indicates, "The trader  
 23 position, two persons must approve the trade  
 24 and transactions are placed on blocks," that  
 25 is what it says?

0239

1 Manzke

2 A. Right.

3 Q. It says that, "Maxam believes  
 4 there are ample systems in place to  
 5 protect against unauthorized trade at the  
 6 broker-dealer level."

7 what systems are being referred to  
 8 in here?

9 A. This was out of, obviously,  
 10 Madoff's mouth that he had these checks and  
 11 balances in place, that before, that they  
 12 had two people that approved these trades  
 13 when they decided to go into the market.

14 And conversations that I have had  
 15 over time with Bob Schulman, who was  
 16 basically more involved in that relationship  
 17 was that, there was -- whenever they were  
 18 going into the market, it was firmly  
 19 announced that they were going into the  
 20 market at that date and they had these  
 21 systems in place.

22 Second, we were relying on the  
 23 fact that now FINRA, before that it was  
 24 NASDAQ, that this is a very regulated  
 25 company and that they have been blessed over

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1 Manzke  
 2 the years, there was no problem ever  
 3 reported with Madoff Securities.

4 Q. Who were the two persons that must  
 5 approve the trades and transactions?

6 A. I am assuming that it was -- I  
 7 don't know who they had in the firm but I  
 8 would know that Bernie and DiPascalli were  
 9 very involved in it.

10 Q. Do you know if they are the ones  
 11 that were positioned to approve the  
 12 transactions?

13 A. I don't know.

14 Q. What did Maxam do to verify the  
 15 checks and balances that Madoff was telling  
 16 you about?

17 A. Well, basically, it was a  
 18 continuation of the investment that we had  
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 19 at Tremont and over those years there was  
 20 never any problem and we -- it was the same  
 21 system, nothing changed.

22 It was the same people, it was the  
 23 same account managed the same way it was at  
 24 Tremont. Our performance numbers matched.

25 Q. What were the checks -- you are

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1 Manzke

2 saying this, obviously, you said this comes  
 3 from Madoff, right?

4 what did you do? If it -- it  
 5 wasn't done at Maxam, tell me what was done  
 6 at Tremont.

7 Let me ask the question.

8 What did Maxam do to verify that  
 9 there were checks and balances in place at  
 10 Madoff Investment Securities to monitor the  
 11 capital allocations and the firm capital?

12 A. We relied on the fact that we had,  
 13 over the years, audited statements from our  
 14 different auditors, Ernst & Young, and over  
 15 the years KPMG, and these were statements  
 16 that Bernie Madoff made and we assumed that  
 17 these were correct and proper statements.

18 Q. The auditors were auditors for  
 19 Tremont, correct?

20 A. Later for ourselves.

21 Q. Later for Rye Select, right?

22 A. And later for Maxam Capital.

23 Q. Later for Maxam. So you are  
 24 saying that you had expected the auditors  
 25 for E&Y to look into the checks and

0242

1 Manzke

2 balances, is that what is your testimony?

3 A. That they would, that they would  
 4 look and verify that these positions were in  
 5 place over different time periods, yes.

6 Q. Let's not confuse positions with  
 7 what I am asking.

8 The position -- the positions of  
 9 securities is one thing. I am not talking  
 10 about the securities, the custody of  
 11 securities now.

12 I am talking about the fact that  
 13 this says there is a secure trading platform  
 14 with checks and balances that monitors the  
 15 capital allocations. It is referring to  
 16 checks and balances, that Madoff Investment  
 17 Securities.

18 I am asking what, if anything, did  
 19 you do either as a CEO of Maxam or  
 20 previously that people do over at Tremont to  
 21 verify that there were indeed checks and  
 22 balances?

23 A. I can't say specifically. We say  
 24 that this is what Madoff told us. There is  
 25 no way that I can go into any firm and say

0243

1 Manzke

2 there are secure checks and balances.

3 MR. KIM: Did you visit the

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4 offices and talk to the people who  
5 worked there?  
6 THE WITNESS: I talked to Madoff  
7 and I met DiPascalli and met the  
8 different people at the firm but we --  
9 these were adequate because he told us  
10 that they were.

BY MR. POWERS:

11 Q. What did Madoff -- to the extent  
12 to which there would have been conversations  
13 about the firm, that would have been  
14 exclusively with Madoff with you, correct?

15 A. Correct.

16 Q. There was never a conversation you  
17 had with DePasquali about checks and  
18 balances at the shop?

19 A. No. But I do know when I was at  
20 Tremont when they -- first of all, when  
21 Oppenheimer bought the firm, there was  
22 extensive due diligence where they met and  
23 reviewed all of these, this account in great  
24 detail, which you will have to get from  
25

0244

Manzke

1 Oppenheimer obviously.  
2 But, second, when we launched the  
3 leveraged version, the providers of leverage  
4 on an account were actually in Madoff's  
5 offices looking at all the systems and  
6 approved the leverage.  
7

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5 Q. Let's turn to page 8 where it  
6 talks about risk management.  
7 Under 8II, it talks about what  
8 risk factors you do monitor. I think we  
9 have -- unless there is more to add, I think  
10 we talked about the monitoring of the  
11 pricing.

12 You checked the monthly statements  
13 and make sure that is accurate as relates to  
14 Bloomberg or otherwise.

15 The high and low I think you  
16 talked about, right, just to make sure that  
17 the pricing is kind of on a best execution  
18 basis, right, Suzanne Hammond or Soares  
19 would do that?

20 A. Right.

21 Q. What about the security  
22 weightings. I don't think you have spoken  
23 about. What is that referring to?

24 A. That is just looking that it is  
25 diversified amongst all the different -- the

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Manzke

industry levels.

We also have -- he was also authorized to trade in the S&P 500 stocks so we were making sure that all the stocks were in the S&P 500.

Q. Okay. Look at the bottom there on page 8 under the process. Who in the firm is responsible for risk management?

Do you see that? Do you see that?

A. Yes.

Do you see it says, "Prior to funding, we conducted an on-site visit" -- let me back up.

First, it says, "Suzanne Hammond as managing director is responsible for risk management of the fund. Prior to funding we conducted an on-site visit to meet the team at the broker-dealer and evaluate the systems used in their process. We meet with their traders and back office. We verify that the third-party providers, i.e., auditors, were legitimate."

Do you see all of that?

A. Yes.

0249

Manzke

Q. Let's break it out. This does say she is responsible for risk management?

A. For that fund. Not for risk management for the entire firm --

Q. Because of her prior relationship from Tremont with Soares?

A. Correct.

Q. It says, "Prior to funding we conducted an on-site visit to meet the team at the broker-dealer."

Who -- was that, in fact, done to your knowledge?

A. I think she meant prior to funding at Tremont, so she was relating that back to the Tremont experience.

She did not do any on-site meeting. I already determined what we did to get the account.

Q. Okay. You have gone through the history of the meetings that would have existed between Maxam and Madoff, right?

A. Correct, yes.

Q. Like you said earlier, you don't recall whether or not you ever visited like

0250

Manzke

the 17th floor there, correct?

A. I don't.

Q. It says here that not only did you do an on-site visit to meet the team but that there was, to evaluate the systems used in the process.

What systems are being talked about here?

A. It was, they were talking about

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their computer systems.

Q. That is kind of generic.

MR. KIM: Let's wait for a

question. He made a comment.

MR. POWERS: It was a kind of a question.

MR. KIM: Is your question, do you believe that is generic? Answer that question.

BY MR. POWERS:

Q. Okay. When you say "computer systems," what do you mean by that?

A. The trading system.

Q. I know they have computer systems.

But your answer needs to be addressing my

0251

Manzke

question. I know what a broker-dealer has in terms of its system. This question is more focused.

I am asking specifically as you sit here today if you can tell me what particular systems at Madoff Investment Securities were, in fact, evaluated and if in fact they were when that occurred?

A. I can't go back to when it was. That was the language we used when we were at Tremont.

Q. To the extent it did occur, it would have occurred at the time you guys were at Tremont?

A. Yes.

MR. KIM: You are speaking from your personal knowledge?

THE WITNESS: Again, from my personal knowledge of what was done at Tremont over the years.

MR. KIM: You were not directly involved in this process. This is Suzanne Hammond?

THE WITNESS: Correct.

0252

Manzke

BY MR. POWERS:

Q. When it says, "We meet with their traders and back office," to your knowledge, there were no such meetings with Suzanne and/or Joe and their traders other than that one time for drinks?

A. Correct.

Q. The back office that is referred to, where was that?

A. That was --

Q. Don't go by news articles. I am asking obviously from your personal knowledge.

A. That was all at Madoff Securities.

Q. Do you know where there --

A. No. No.

Q. You don't. Okay.

Then it says that you guys would bear, and I apologize for the colloquialism, but it says, "We verified that their party

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 22 providers, i.e., auditors, were legitimate."  
 23 The "we" there, I guess, is Maxam  
 24 Capital, correct?  
 25 A. It is Maxam and our previous

0253  
 1 Manzke  
 2 relationship with Tremont.  
 3 Q. So who were the auditors?  
 4 A. Freelancer and whatever their  
 5 name.  
 6 Q. Sorry?  
 7 A. The auditing firm, I don't  
 8 remember the last name, Freelander.  
 9 Q. Horowitz?  
 10 A. And Horowitz, whatever.  
 11 Q. What did you or anyone else at  
 12 Maxam do to verify that they -- let me ask  
 13 you -- withdrawn.  
 14 What does it mean to be  
 15 legitimate?  
 16 A. That they were listed as auditors,  
 17 that they indeed were certified.  
 18 MR. KIM: In public accountancy?  
 19 THE WITNESS: Yes.

20 BY MR. POWERS:  
 21 Q. Did you ever speak to them?  
 22 A. Personally, I believe I did but it  
 23 was many years ago. I know.  
 24 Q. 1990s or '80s.  
 25 A. 1990s, yes. I met the guy that

0254  
 1 Manzke  
 2 died, the one that was in Palm Beach.  
 3 Q. The one that recently died?  
 4 A. Yes. The father-in-law. That was  
 5 back in the early '90s.  
 6 Q. You did know that it was a small  
 7 operation?  
 8 A. Yes, we did.

R  
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 REDACTED

20 It was something that no one  
 21 particularly liked but the explanation  
 22 seemed plausible.

23 Q. Did it raise any concerns or  
 24 issues for you that, in fact, it was a  
 25 family business that -- withdrawn.

0256  
 1 Manzke  
 2 Putting the auditors to the side  
 3 for the moment, the fact that Bernard Madoff  
 4 Securities, Investment Securities, was a  
 5 family business in and of itself so that it  
 6 wouldn't have had necessarily the same  
 7 degree of independence that you had in other  
 8 types of broker-dealer contexts, did that  
 9 raise any issues for you at any point in  
 10 time?  
 11 A. Well --  
 12 Q. Or your investors?  
 13 A. My investors never really -- the  
 14 ones that had met him and had done some  
 15 research on him -- you know, I knew Arthur  
 16 Leavitt when he was at the SEC. He had nice  
 17 things to say about Bernie.  
 18 Over the years we have seen Madoff  
 19 be a go-to guy for the SEC when they had  
 20 questions on the industry.  
 21 When the industry went from the  
 22 eighths to the tenths, Bernie led that  
 23 charge even though it meant reduced rates  
 24 for -- reduced -- more competition for him.  
 25 So we were looking at the fact that this was

0257  
 1 Manzke  
 2 an upstanding person that was well respected  
 3 in the investment business.  
 4 I like family businesses. I  
 5 always think that we are all in it together  
 6 better than having, in some cases, the  
 7 people you don't know cause more of the  
 8 problems for your growth than the people you  
 9 do know. So I was always more bent to  
 10 family type of businesses.  
 11 Q. The answer then I guess to the  
 12 question just to close the loop is, to the  
 13 extent to which there -- to the extent there  
 14 would have been any checking out of the  
 15 auditor, that would have been from the  
 16 preexisting relationship of Tremont and  
 17 going back to the 1990s?

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18 A. Yes, it was.  
 19 Q. Turn to the next page, page 9.  
 20 You may have already covered this already.  
 21 We may have.  
 22 If you look down at item 2, II,  
 23 number 4, it talks about broker-dealer risk.  
 24 Do you see that?  
 25 A. Yes.

0258  
 1 Manzke  
 2 Q. It says that, "talked with the  
 3 broker-dealer at least monthly and visit at  
 4 least annually. We also talk with our  
 5 competitors for feel."  
 6 The monthly conversations, that is  
 7 what you talked about earlier when there  
 8 would be the calls with Suzanne?  
 9 A. Correct.  
 10 Q. The visits I think you testified  
 11 you normally did those, correct?  
 12 A. Correct.  
 13 Q. Fine.

REDACT  
 ED

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3 REDACTED

19 MR. POWERS: Let's mark that as  
 20 Plaintiff's Exhibit 26 what appears to  
 21 be another due diligence.  
 22 (Marketing booklet was marked  
 23 Plaintiffs' Exhibit 26 for identification)  
 24 MR. POWERS: This is a due  
 25 diligence report.

0261  
 1 Manzke  
 2 BY MR. POWERS:  
 3 Q. Take a look at that and tell me  
 4 what it is.  
 5 A. This would be -- it is not a due  
 6 diligence report. It is a marketing  
 7 booklet.  
 8 Q. Correct. Right. Thank you for  
 9 that clarification.  
 10 If you could look at starting with  
 11 page 10, this is described in somewhat the  
 12 strategy, right?  
 13 A. Right.  
 14 Q. As employed by Madoff.  
 15 Page 11, what is that showing?  
 16 A. This would be, the straight line  
 17 kind of going up is the performance of  
 18 Madoff, the fund strategy, and what we did  
 19 there was, we took our historical returns  
 20 from when we started the fund and then,  
 21 no -- this is just the Rye Select broad  
 22 market fund.  
 23 we didn't have the performance  
 24 going back in time so we demonstrated the  
 25 performance of the Rye Select fund.

0262  
 1 Manzke  
 2 Q. Which was 100 percent in Madoff,  
 3 correct?  
 4 A. Which is 100 percent in Madoff.  
 5 Q. So the other lines are  
 6 representative of what, the S&P and the  
 7 LIBOR?  
 8 A. And then the Lehman bond index.  
 9 Q. Why would these be in here as  
 10 comparisons because you had S&P and  
 11 treasuries and the like?  
 12 A. Yes. I mean, we kind of looked  
 13 Madoff as a cash-plus strategy because he  
 Page 108

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14 had returns that were more similar to the  
15 bond market than the equity market.

16 So as a comparison of your three  
17 choices generally of the S&P going into the  
18 bond market or investing in T bills, this  
19 would give you an indication of the growth  
20 of a million dollars or \$1,000 over that  
21 time period.

22 Q. This is shown basically in a  
23 ten-year period, \$1000 becoming close 37 or  
24 3800, is that right?

25 A. Correct.

0263

Manzke

1 Q. Did you participate in preparing  
2 this type of presentation materials?

3 A. No.

4 Q. You are familiar with them?

5 A. I am familiar with them. I could  
6 do it if you really pressed me to. I don't  
7 know if I could chart it but I could give  
8 you the numbers.

9 Q. Did you or anyone else ever have  
10 any -- find it odd or question the idea that  
11 the line for the -- for the performance was  
12 so consistent?

13 A. No. I mean, again, if you look at  
14 different time periods, the line has always  
15 been consistent but that is what Madoff did.  
16 It was a cash plus strategy so if you look  
17 at LIBOR, it kind of goes up really slowly  
18 because that is a cash type of return.

19 But you can see back in 1991,  
20 1992, most of the investors weren't that  
21 interested in the S&P -- in Madoff because  
22 they thought they would do better in the  
23 market.

24 Again if you juxtapose on here the

0264

Manzke

1 composite of some of the hedge fund  
2 managers, this would look like a terrible  
3 investment.

4 Q. Most of the strategy comprised the  
5 purchase of stocks, correct?

6 A. Yes. But he also -- he never had  
7 a stocks out raw. He always had a put on a  
8 call option around that as a hedge.

9 Q. Yes. But, nonetheless, the  
10 profitability was, in part, dependent upon  
11 the rise or fall of the underlying basket of  
12 securities he purchased, correct?

13 A. When the market --

14 Q. Is that correct?

15 A. The basket was one component on  
16 it. Sometimes he made money on the  
17 option -- on the put and sometimes he made  
18 money on the call. We actually have  
19 analyzed that.

20 I don't know if it is in your  
21 files but we showed when did he make money  
22 on the basket, when did he make money on the  
23 call and when did he make money on the put.

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25 Q. I don't think -- I don't know if

0265

Manzke

1 that is in our files. I don't think we have  
2 seen that.

3 when was that analysis done?

4 A. When we did it every month we  
5 would show that he made money, how much  
6 basis points did he make on the put or the  
7 call option and when did he make it on the  
8 basket so we did --

9 Q. You did that regularly, that was  
10 done regularly?

11 A. I believe so.

12 Q. At Maxam we are talking about or  
13 Tremont?

14 A. At Maxam.

15 Q. Was it also done at Tremont?

16 A. I believe so.

17 Q. There was an analysis to identify  
18 where the products were?

19 A. Attribution of where did the  
20 performance come from.

21 Q. Nevertheless, the S&P line  
22 obviously fluctuates and there is volatility  
23 to that. Similarly, you have a -- you do  
24 have less of a line, straight line for the

0266

Manzke

1 bond index or even the LIBOR at some level?

2 A. Yes.

3 Q. It is at a lower level, is it not?

4 A. They are at lower levels but the  
5 LIBOR and the Lehman, on average, are kind  
6 of slowly going up, performance.

7 MR. POWERS: If they haven't been  
8 produced. Maybe you can identify where  
9 those reports would be located. That  
10 would be helpful.

11 THE VIDEOGRAPHER: The time is  
12 4:32 p.m.

13 This is the end of tape number 5  
14 of the videotaped deposition of Sandra  
15 L. Manzke.

(Recess)

16 THE VIDEOGRAPHER: The time is  
17 4:40 p.m.

18 This begins tape number 6 of the  
19 videotaped deposition of Sandra L.  
20 Manzke.

BY MR. POWERS:

21 Q. We are back on the record.  
22 Did you have anymore -- anything

0267

Manzke

1 you wanted to add to your testimony about  
2 the chart we have just gone over?

3 A. Yes. There are several things.

4 This is obviously marketing and it  
5 is showing a ten-year track record for a  
6 manager, many of which don't stay in  
7 business for ten years. The average life of  
8 the money manager is probably close to five  
9

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 10 years. At least in hedge fund land it is.  
 11 I want to point out that back in  
 12 1997, interest rates were very high. They  
 13 ranged in that 11 to 13 percent at one  
 14 point.

15 If you had juxtaposed a line of  
 16 active cash management over that time  
 17 period, you would have come up with a return  
 18 that is probably closer to Madoff is a  
 19 little bit -- as I said, we always thought  
 20 of him as cash plus.

21 But if you take a different time  
 22 period here and you look at the chart from  
 23 January of 2005 and you say, okay, the S&P  
 24 was at 1400 and the Madoff was at 2600 and  
 25 you take off the difference, there is 1200  
 0268

1 Manzke  
 2 points difference.  
 3 If you then ended the same  
 4 comparison in approximately November of 2007  
 5 or October of 2007, he is at 34 and the S&P  
 6 is at 18. You take off the 1200, he is  
 7 actually below the S&P 500.

8 Q. The 1200?  
 9 A. 3400 minus the 12 that we have  
 10 taken off from the beginning, he is now  
 11 at --

12 Q. The 1200 being representative of  
 13 the LIBOR?

14 A. I am just trying to reposition, at  
 15 this point in time, if we were to redraw the  
 16 chart and start it at the beginning. Say,  
 17 okay, I invested in January of 2005. We  
 18 would be back to zero.

19 Q. Yes.  
 20 A. So to get to that point, I am  
 21 taking the 26 that he is at minus 14, so  
 22 that is 1200.

23 And then if you took the 1200 he  
 24 is at 22 and the S&P would be at 18, so he  
 25 is only outperforming by 400. In that case  
 0269

1 Manzke  
 2 \$400.  
 3 So different time frames when you  
 4 look at comparisons you will draw different  
 5 conclusions.

6 This looks terrific because of  
 7 some of the time frames that where we  
 8 started from vis-a-vis where the ending is.  
 9 It is taking into account a pretty  
 10 precipitous drop in 2000 and 2003. And  
 11 again the big drop that we had in 2007 to  
 12 2008.

13 Q. That is precisely the point I  
 14 guess of my question. You had a substantial  
 15 burst of the tech bubble, right?

16 A. Yes.  
 17 Q. In 2001 where you had the  
 18 precipitous drop of the S&P?

19 A. Correct.  
 20 Q. And, nonetheless, you don't show  
 Page 111

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 21 any decline in the line at all and you would  
 22 have assumed that by the hedge of the  
 23 position you are still not, you are still  
 24 not being fully protective of your position  
 25 by the call that is around it, is that fair  
 0270

1 Manzke  
 2 from --

3 A. Not really. Not totally because  
 4 you have to remember that, many times he was  
 5 not in the market. This wasn't a perpetual  
 6 buy the stocks, put the collar in and then  
 7 stay in the market and renew it.

8 Part of the time he was able to  
 9 get these consistent returns was by not  
 10 being in the market and sitting out in cash.  
 11

R  
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 D

18 Q. Do you know as you sit here now  
 19 whether or not he was out of the market for  
 20 the year following the market, the bubble  
 21 burst which started in March of 2001?

22 A. I can't -- I don't have that in  
 23 the top of my head.  
 24 One of the other points too is  
 25 that we had confidence in this strategy  
 0272

1 Manzke  
 2 because we would get brokerage confirms  
 3 within two business days of when he would go  
 4 in the market or go out of the market.  
 5 One of the things when you are  
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6 going in the market you are buying, we are  
7 getting real time, granted a two-day lag,  
8 but real time he bought securities at the  
9 end of whatever month or two month period on  
10 a monthly basis.

11 when we priced out those  
12 securities, they made money. How does then  
13 one have -- you would have to have a one-day  
14 reverse computer event that would come and  
15 something that you could say 30 days later  
16 this portfolio made money.

17 I think that is the point that no  
18 one has addressed in this whole Madoff  
19 fraud. How did he generate statements that  
20 30 days later made money.

21 Q. I won't comment on that but I  
22 think -- okay. I won't comment on that.

23 Do you know whether or not the  
24 confirms indicated the trade date as well as  
25 the settlement dates?

0273

Manzke

A. Yes.

3 Q. Do you know whether or not the --  
4 these are the monthly statements for the  
5 Maxam account issued by Madoff since we are  
6 on the topic now.

This is 27.

8 (Monthly statements for Maxam  
9 account issued by Madoff was marked  
10 Plaintiffs' Exhibit 27 for identification)

BY MR. POWERS:

12 Q. These were produced by your -- by  
13 Maxam so I assume you are familiar with  
14 these, right?

A. Correct.

16 Q. What are they?  
17 A. These are the copies of the  
18 trading tickets that he -- the confirms that  
19 he would send out to us.

20 Q. Are these confirms or are these  
21 monthly statements?

22 A. Sorry. I didn't look through the  
23 whole thing. These are the monthly summary  
24 sheets of what happened during the month.

25 Q. Monthly statements?

0274

Manzke

A. Correct.

3 Q. Right. Starting from when the  
4 account was opened through -- you know,  
5 going through the end. Okay. Through the  
6 statement at least through November of 2008.

7 So tell me, did you separately  
8 produce confirms? I don't know if you did.

MR. KIM: I am not sure.

10 THE WITNESS: There is a gazillion  
11 of them.

BY MR. POWERS:

13 Q. I don't know if I asked for them.

14 A. You may have not asked for them.

15 Q. If you wouldn't mind producing to  
16 us.

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17 MR. KIM: Do you want all of them?

18 MR. POWERS: No. Just give me a  
19 sample for, pick one month a year, okay.

20 THE WITNESS: When he was going in  
21 the market?

22 MR. POWERS: Yes. Otherwise there  
23 wouldn't be confirms, right.

BY MR. POWERS:

24 Q. I want to focus in on one or two  
25

0275

Manzke

things on this with you.

I am kind of getting two issues.

I may have raised questions in your mind.

They might not have and I want to

hear the explanations why they didn't.

I am trying to be fair.

Tell me your point you were making

before that maybe I missed, about the fact

that you have got confirms like two or three

days afterwards.

Normally, you get confirms in the

mail after a transaction occurs. I am

trying to understand your point on that.

A. Let's go to the first one. On

7/13.

Q. Looking at the monthly statement

for July?

19 A. For July of 2006, he went into the  
20 market on July 13 and he -- you see a list  
21 of all the securities he bought.

Q. Right.

23 A. On July 15, depending on whether  
24 or not it was a Monday or whatever, I don't  
25 know what July 13 was, I can look it up

0276

Manzke

right now, I don't have 2006 on my calendar.

We would receive technically on July 15

individual confirms that said we bought in

this case 4897. It is actually reversed on

the confirms, it says you sold them because

he is buying from himself.

We bought wal-Mart on the 15th.

Q. Right. That is not unusual, is

it?

A. No. That is what you normally get

if you make a transaction with your broker,

you usually get a confirmation of that in

the mail.

Q. Right.

A. He buys these securities. We

have, every time he would go into the

market, he bought securities.

Q. Right.

A. At the end whether it is 45 days

later or 30 days later, those stocks

produced gains. How does someone in real

time buy securities that he would know that

30 days later would make money? This is

what all the shows are trying to figure out.

0277

Manzke

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2 No one has yet and the reason why we were  
3 all fooled is, we were getting real time  
4 confirmations two days lag that either the  
5 basket made money, the put made money or the  
6 call made money. This is forward.

7 It isn't that we got these  
8 statements at the end of the month and they  
9 are saying we bought those securities.

10 We were getting the confirms and  
11 booking them into the system when they  
12 happened. If I told you I bought you IBM  
13 today in your own account and I bought it at  
14 whatever, I don't know what IBM is these  
15 days, I don't remember, but how would I,  
16 over a ten-year period of you getting these  
17 confirmations, how would I know that they  
18 would make money, that that purchase would  
19 make money 30 days later.

20 Q. He ultimately sold them. When he  
21 sold them, you would lock in the profit,  
22 correct?

23 A. No. It is within the high and low  
24 of the day. You don't know what the market  
25 is going to do.

0278

Manzke

1 How would I know when I sold it I  
2 would make money.

3 Q. This isn't reflective of both the  
4 purchase and sale, is it?

5 A. It will when he sells them.

6 Q. When he sells them?

7 A. Without these monthly  
8 statements -- forget these are monthly  
9 statements.

10 Just think about, you are getting  
11 confirmations and you are booking them into  
12 your system, I am typing them into my -- our  
13 administrative system. We run it through  
14 our independent source. It actually would  
15 say, okay, you were due a dividend on that  
16 stock. It gets posted. That also is  
17 reflected at the end of the month when I  
18 look at this.

19 But I actually booked that  
20 purchase and that purchase made money  
21 whether it was 20 days later or 30 days  
22 later or 45 depending on when he stayed in  
23 the market.

24 How did -- how could that happen?

0279

Manzke

1 That is key to this whole thing. That is  
2 what everybody should be figuring out. How  
3 did he have a system so it doesn't ever  
4 happen again but how did he have a system  
5 that could have fooled everybody?

6 MR. KIM: Do you want to move on  
7 to your next question? I think, at this  
8 point, we are having a forum. That is  
9 fine. It is a helpful answer.

10 THE WITNESS: That is my point on  
11 how this happened.

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13 BY MR. POWERS:

14 Q. I understand your answer.

15 MR. KIM: Your testimony is why  
16 you thought that that was reasonable and  
17 legitimate; isn't that right?

18 THE WITNESS: I would not imagine  
19 that this was not legitimate given the  
20 returns that he actually reported he  
21 made.

22 BY MR. POWERS:

23 Q. Now, looking at these monthly  
24 statements, there is a date column, correct?  
25 A. Correct.

0280

Manzke

1 Q. What is that, is that the trade  
2 date or the settlement date?

3 A. I believe that is a settlement  
4 date.

5 MR. KIM: We are told you do have  
6 samples of the confirms along the  
7 lines --

8 MR. POWERS: Fine. It may be that  
9 people didn't pull those for my  
10 preparation.

11 Thank you.

12 BY MR. POWERS:

13 Q. Did you say settlement, is that  
14 what you just said?

15 A. I believe this is the settlement  
16 date.

17 Q. Did you find it unusual that you  
18 got monthly statements that just only  
19 reflected one date on them?

20 A. That is the date you went into the  
21 market. When he went into the market he  
22 would go in on that one day. Sometimes he  
23 lagged in.

24 Q. Let me back up. Let me show you

0281

Manzke

1 the monthly statement that you got, your own  
2 personal monthly statement that you got from  
3 Bear Stearns -- make that Morgan Stanley.

4 MR. POWERS: This is number 28.

5 (Monthly statement from Morgan  
6 Stanley was marked Plaintiffs' Exhibit 28  
7 for identification)

8 BY MR. POWERS:

9 Q. You are looking under the section  
10 that talks about the activity in the  
11 account. This is one page of the document.  
12 Do you see where the document --  
13 it is a monthly statement from a regular  
14 brokerage firm, which is what Madoff was, a  
15 brokerage firm.

16 On the statement it shows a trade  
17 date and a settlement date.

18 Do you see that?

19 A. Yes.

20 Q. I can pull now your statement that  
21 you also got from Bear Stearns, they show  
22 also a trade date and a settlement date,  
23

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24 right?  
 25 Let me ask my question. Isn't  
 0282  
 1 Manzke  
 2 it -- you do understand that apart from the  
 3 ones I have just showed you from Madoff, you  
 4 have never seen another brokerage firm  
 5 statement that has not had both a trade date  
 6 and a settlement date, have you?  
 7 A. I don't know. I don't have  
 8 brokerage statements going back in time from  
 9 different brokers.  
 10 Q. This is 2006. The ones I showed  
 11 you from Madoff. It is not like we are  
 12 talking about the 1980s or 1970s.  
 13 I guess my real question is, it is  
 14 correct that the brokerage firms' monthly  
 15 statements would normally show a trade date  
 16 and a settlement date on for transactions,  
 17 correct?

- REDA  
 CTED

24 BY MR. POWERS:  
 25 Q. Did you not find it unusual that  
 0283

1 Manzke  
 2 the Madoff statements did not have  
 3 identification as to what in fact that date  
 4 was representative of?  
 5 A. Because he is buying from his own  
 6 supply. His trade date and his settlement  
 7 date can be the exact same date.  
 8 Q. Says who? Is that what your  
 9 understanding was?  
 10 A. I have to go look at the other  
 11 confirms to determine that.  
 12 Q. Do you know that -- what it means  
 13 to have a settlement date, what that means?  
 14 A. Yes.  
 15 Q. I assumed you did.  
 16 A. Yes.  
 17 Q. Why don't you state what a  
 18 settlement date means.  
 19 A. You put in a trade and it actually  
 20 doesn't settle so that it takes a day or two  
 21 to settle that trade when the actual and the  
 22 cash goes into your account.  
 23 Q. Actually, did you ever hear the  
 24 phrase T plus 3?  
 25 A. Yes.

0284  
 1 Manzke  
 2 Q. State for the record what that  
 3 means.  
 4 A. That is the trade plus 3 days of  
 5 settlement.  
 6 Q. What do you have to do by that  
 7 third day?  
 8 A. Have the cash in your account.

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9 Q. Pay for the securities action?  
 10 A. Right.  
 11 Q. Or if you sell a position you get  
 12 paid within three days, correct?  
 13 A. Correct.  
 14 Q. So the settlement date you  
 15 understand for brokerage securities  
 16 transactions in the United States markets is  
 17 three days after the trade date, you do know  
 18 that, right?  
 19 A. I do know that.  
 20 Q. Good.  
 21 And so you will note that on a  
 22 statement I gave you, it shows a trade date  
 23 of, for example, 8/19, that is three days  
 24 late as settlement date for stocks, correct?  
 25 A. Correct. I guess. I am not sure

0285  
 1 Manzke  
 2 what you are saying. We wired the money in  
 3 on the 7th.  
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19 Q. Options, you understand, have a  
 20 one-day settlement date, correct?  
 21 A. Yes, I have heard of that before.  
 22 Q. If you are not familiar --  
 23 A. I am not familiar with options  
 24 trading.  
 25 Q. So what the bottom line is, it

0286  
 1 Manzke  
 2 doesn't sound like you would -- you found  
 3 anything unusual by the monthly statements  
 4 that you received from Madoff Investment  
 5 Securities in the fact that it doesn't  
 6 indicate more than one date for the purchase  
 7 or sale of the positions, correct?  
 8 A. Correct.  
 9 Q. Fine. Let's turn to the next  
 10 document.

11 MR. POWERS: This is 29.  
 12 (Letter prepared for the SEC was  
 13 marked Plaintiffs' Exhibit 29 for  
 14 identification)

15 BY MR. POWERS:  
 16 Q. I ask you to take a look at this  
 17 exhibit, please, and tell me if you can  
 18 identify it?

19 Have you ever seen this before?  
 Page 118

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20 A. No, I didn't.  
 21 Q. Do you know the circumstances  
 22 under which this was prepared or submitted  
 23 to the SEC?  
 24 A. I can venture a good guess. The  
 25 SEC came into our offices.

0287  
 1 Manzke  
 2 Q. For an examination?  
 3 A. And did an audit for an  
 4 examination in September, October, and they  
 5 had probably requested this information from  
 6 Madoff.  
 7 Q. So this was in September, October  
 8 of 2008. It is not dated, the letter, but  
 9 two pages later there is a reference to  
 10 Bernie Madoff providing the information to  
 11 the SEC.

12 Do you see that?  
 13 A. Yes. It had to be because of the  
 14 examination because they never came in and  
 15 requested this information except through  
 16 our examination.

17 Q. That is kind of what I thought it  
 18 was. I wanted to know that this was  
 19 generated by a request by the SEC to your  
 20 shop, not to Madoff's shop, do I have that  
 21 right?

22 A. Yes.  
 23 Q. Did you have any conversations  
 24 with your daughter-in-law about this  
 25 request?

0288  
 1 Manzke  
 2 A. Yes. I had conversations about  
 3 what the SEC was looking at. They went  
 4 through the -- they were going through the  
 5 Madoff documents.  
 6 They were asking questions about  
 7 them going through our processes but she  
 8 didn't tell me that they asked for something  
 9 directly from Bernie Madoff.

10 Q. What did she tell you was what  
 11 they were looking at about Madoff?

12 A. It wasn't just April. We had  
 13 Suzanne and Joe were in the SEC, didn't  
 14 quite understand some of the statements  
 15 because when the individual conference comes  
 16 through instead of a purchase, they are  
 17 really a sell because it is the reverse  
 18 because he is buying from his own supply,  
 19 supposedly, so they were confused about  
 20 that.

21 They wanted to go through that  
 22 account in detail and they spent some time  
 23 on it going through the statements and the  
 24 things that we were doing in terms of  
 25 checking the prices, et cetera.

0289  
 1 Manzke  
 2 Q. Was this the first time that the  
 3 SEC had come in for an exam of Maxam Capital  
 4 as an investment adviser?

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5 A. It was the first time for Maxam.  
 6 Q. You had been involved in other  
 7 exams while you were at Tremont?

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11 Q. Did the SEC conclude its audit of  
 12 Maxam?

13 A. Yes.  
 14 Q. Did they provide any deficiency  
 15 letters?

16 A. Yes.  
 17 Q. What were the deficiencies noted?  
 18 A. They had some questions about our  
 19 marketing material by using another fund and  
 20 to make some of the older documents that  
 21 were in the file didn't explicitly say this  
 22 was the Tremont fund or this was -- so we  
 23 had actually corrected some of them.

24 They also felt that we should have  
 25 checked the T bill prices on the Madoff

0290

1 Manzke  
 2 statements because we really didn't  
 3 collect -- do that and to look at the  
 4 options trading, which we couldn't, there is  
 5 no over-the-counter market quotes.  
 6 We used the quoted options and  
 7 that is -- maybe a few other small things  
 8 but nothing major.

9 Q. Okay. Did you provide that -- do  
 10 you know if that has been provided to us?  
 11 MS. TENDLER: We will check.

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17 BY MR. POWERS:  
 18 Q. Whose handwriting is on that  
 19 second page? Maybe, if you are able to read  
 20 that.  
 21 A. This is Joe Soares'.  
 22 Q. Can you read it for us?  
 23 A. "Provide list not statement. List  
 24 would not show activity. Can we have a  
 25 statement format on some kind of

0291

1 Manzke  
 2 confirmation format. Call DTC for audit  
 3 confirm."

4 Q. Do you know what he is getting at  
 5 there?

6 A. No.  
 7 Q. Was there anything in the  
 8 conversations you had with April or your  
 9 other personnel at Maxam as a result of the  
 10 audit which caused issues or concerns to you  
 11 relating to Madoff?

12 A. No.  
 13 Q. Were there some investors or  
 14 potential investors that would not invest in  
 15 your fund, meaning the domestic or foreign

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3 Q. I am not going to spend time  
4 asking you questions about it because -- but  
5 I do want to ask you whether or not there is  
6 anything you would want to amplify on or  
7 modify terms of your response from your  
8 Frontline interview. Let me put that in.  
9 I think I have your answers from  
10 today and what your answers were as relates  
11 to those issues.

12 My real question before I give it  
13 for exhibition is, I want you to confirm the  
14 accuracy of what was stated and if there is  
15 anything you wish to add to -- to your  
16 assertions in there.

17 A. Of course. Whenever you do any  
18 interview, there is selective editing and  
19 originally what I had agreed to do for  
20 Frontline was really talk about the industry  
21 and so a lot of what I was explaining kind  
22 of got cut and paste, there was nothing  
23 about the industry in there.

24 So there was a lot of statements  
25 that kind of sounded more flip than they

0298

1 Manzke  
2 were the explanations, were deleted.

3 Q. I am going to just -- what I am  
4 going to do there is, three spots in  
5 particular that I will direct you to and  
6 then if there is more you want to add, fine.  
7 If not we will just move on to the next  
8 exhibit.

9 This will be 31.  
10 (Frontline transcript was marked  
11 Plaintiffs' Exhibit 31 for identification)

BY MR. POWERS:

12 Q. I am going to direct your  
13 attention to the first spot which will be on  
14 page -- the top right, look at page 12 of  
15 29.

16 This basically just references  
17 when you first met Mr. Madoff.

18 I am not sure there is more you  
19 need to add on to that which you haven't  
20 already testified to, the middle of the  
21 page?  
22

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23  
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0299

A. Yes. In early 1990s.  
Q. Right.  
A. Right.

1

2 Manzke  
3 Q. The next -- it does continue on  
4 through the middle of the next page. So if  
5 you just want to read that over and see if  
6 there is anything you need to add on to that  
7 from what you have already testified to.

8 A. I think there is a question here  
9 on transparency, what did we mean by  
10 transparency. When he said, you call for  
11 transparency in the industry, I felt that we  
12 were getting complete transparency with  
13 Madoff and the fact was that we did name --  
14 tell our clients that this was Bernie  
15 Madoff.

16 There was no client that invested  
17 with us that said they didn't know it was  
18 Madoff.

19 Q. Right. The only thing from what  
20 your testimony earlier today is, it wasn't  
21 to be in like the PPMs but it could be in  
22 conversations and the like?

23 A. The other point that again was  
24 edited out here was the fact that many funds  
25 actually did farm money out to other  
managers. Michael Steinhardt did it, Julian

0300

1 Manzke  
2 Robertson did it.

3 They didn't identify who they  
4 farmed money out but they would test out  
5 some managers.

6 It became an issue later on  
7 because they were giving them 15 percent of  
8 the profits and then charging still  
9 20 percent on that money so there was a  
10 double fee in this.

11 Somebody like Izzy Englander, he  
12 has a fund today that has many traders on it  
13 and he will not identify who they are.

14 It depends on the managers. The  
15 industry has grown up over the last several  
16 years so there is more disclosure if you  
17 were farming it out but many people don't --  
18 didn't back then identify managers.

19 Q. Okay. Directing your attention to  
20 page -- bottom of page 14, going into page  
21 15, the last, by Martin Smith.

A. Okay.

23 Q. Anything to add on to that, was  
24 that the point you had raised earlier?

25 A. Yes. Still the point I raised and

0301

1 Manzke  
2 actually I had a discussion with Martin  
3 about the issue that we were just talking  
4 about before and he said, you know, I am  
5 going to go look into it and he did e-mail  
6 me back, I couldn't find anything wrong with  
7 those statements.

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8 Q. Directing your attention to page  
9 19, in the middle of the page. This relates  
10 to the accounting firm.  
11 A. Correct.  
12 Q. Anything to add to that?  
13 A. No. I think we went over that.  
14 Q. Okay. That is it for this  
15 document. Thank you.  
16 Are you familiar with --  
17 withdrawn.  
18 Are you familiar that there were  
19 articles in 2001 relating to Bernard Madoff?  
20 A. Yes.  
21 Q. At the time which I guess the  
22 first one would have been, there would have  
23 been one I guess both in May, I thought one  
24 was in March, but the first one was in  
25 Barron's. Did you read it at the time?

Manzke

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21 Q. Everyday you know that the -- you  
22 have regulated entities, broker-dealers,  
23 brokers and advisers which are sued by the  
24 SEC for fraud, you know that, right?  
25 A. Yes.

Manzke

1 Q. So the fact that someone --  
2 someone is a registered broker-dealer or  
3 regulated entity doesn't mean they are not  
4 fraudulent, you agree with that, right?  
5 A. I agree that it is very hard to  
6 determine fraud.  
7 Q. No. My only point is, you keep  
8 saying that the SEC was -- he was  
9 registered?

10 A. No. I didn't say he was  
11 registered.

12 MR. KIM: Let's not have a debate.  
13 Have him ask a question.

BY MR. POWERS:

15 Q. Everyday you read in the SEC web  
16 site that they are suing people that are  
17 registered, you know that, right?

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19 A. Correct.  
20 Q. Those are people that are  
21 registered and therefore would be subject to  
22 the same examinations that Bernard L. Madoff  
23 Securities are, correct?  
24 A. Correct.  
25 Q. It doesn't mean that they are

0304

Manzke

1 legitimate or that they are not engaging in  
2 fraud, correct?  
3 A. Correct.  
4 Q. So the responsibility of the  
5 adviser, that is being paid a fee, is, in  
6 part, to do due diligence, is it not, to  
7 ensure that the person that they are giving  
8 the money to is acting appropriately and in  
9 a non-fraudulent way in part, fair?  
10 A. We -- due diligence is a term that  
11 is used very broadly. I am not trained in  
12 fraud detection. I could not go into Madoff  
13 Securities and audit his firm and be able to  
14 determine whether there is fraud.  
15 Q. Fair comment. Let me get back to  
16 this document.  
17 when you had someone, a reporter  
18 raising questions -- Barron's is relatively  
19 respectable, would you agree?  
20 A. Yes.

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17 MR. POWERS: Let's mark this then  
18 for the record if it hasn't been.

19 Number 32.  
20 (Article in Barron's was marked  
21 Plaintiffs' Exhibit 32 for identification)

22 MR. POWERS: we will mark the next  
23 one, another article called "Madoff Tops  
24 charts, Skeptics Ask How," and it is  
25 from the Hedge Fund Publication also in

0306

Manzke

1 May of that year. That is number 33.  
2 (Article called "Madoff Tops  
3 Page 126

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4 Charts, Skeptics Ask How" was marked  
 5 Plaintiffs' Exhibit 33 for identification)  
 6 BY MR. POWERS:  
 7 Q. Apart from what you have testified  
 8 to when these two articles came out around  
 9 the same time in 2001, was there anything  
 10 else you recall doing?  
 11 A. Did you personally have any  
 12 conversations with Madoff?  
 13 A. Not at that time.  
 14 Q. Anything else you recall that was  
 15 done at that time?  
 16 A. I do remember speaking with  
 17 Kingate and Carlo Grosso and he did go visit  
 18 Madoff and look at the aggregate positions  
 19 that he was holding which he reported made  
 20 sense.  
 21 Q. That is perfect because it is a  
 22 good segue to turn this over to my partner,  
 23 Fritz Chockley, who will ask questions about  
 24 Kingate, if I may?  
 25 A. Okay.

Manzke

EXAMINATION

BY MR. CHOCKLEY:

Q. Good afternoon, Ms. Manzke. My  
 name is Fritz Chockley. We met earlier  
 today.

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25 THE VIDEOGRAPHER: The time is  
0313  
1 Manzke  
2 5:37 p.m.  
3 This ends tape number 6 of the  
4 videotaped deposition of Sandra L.  
5 Manzke.  
6 (Recess)  
7 MR. CHOCKLEY: Mark this as 34.  
8 (Complaint by Faust, Rabbach,  
9 Stanger & Oppenheim against Sandra L. Manzke  
10 and Sonja Kohn was marked Plaintiffs'  
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11 Exhibit 34 for identification)  
12 THE VIDEOGRAPHER: The time is  
13 5:40 p.m.  
14 This begins tape number 7 of the  
15 videotaped deposition of Sandra L.  
16 Manzke.  
17 BY MR. CHOCKLEY:  
18 Q. Ms. Manzke, you have now been  
19 handed a copy of what has been marked as  
20 Exhibit 34, correct?  
21 A. Correct.  
22 Q. That appears to be a Complaint by  
23 plaintiff Faust, Rabbach, Stanger &  
24 Oppenheim against Sandra L. Manzke and Sonja  
25 Kohn, does it not?  
0314  
1 Manzke  
2 A. Correct.  
3 Q. Do you recall this lawsuit now  
4 that you have seen a copy of the complaint?  
5 A. No, I don't.  
6 Q. Do you see in the paragraph 2 that  
7 it refers to your office located at Theodore  
8 Fremd Avenue?  
9 A. Correct.  
10 Q. When did you move into that  
11 office?  
12 A. Off the top of my head I don't  
13 remember. Let me though put -- we were in  
14 the office when we spun out on the rights  
15 offering so that was around 1992.  
16 Q. You say you recalled her coming to  
17 meet with you before you moved to that  
18 office, correct?  
19 A. Correct.  
20 Q. So, in other words, she must have  
21 come to see you then before 1992?  
22 A. Yes.  
23 Q. Or around 1992?  
24 A. Yes.  
0315  
1 Manzke  
2 Q. The length of your interaction  
3 with her was how long again?  
4 A. It was from this -- if we went  
5 into the lawsuit, it had to be two years  
6 from this document.  
7 Q. It went until 1994. You haven't  
8 had any contact with her in 15 years  
9 roughly?  
10 A. No. I didn't like the woman. I  
11 wanted to stay as far away from her as I  
12 could.  
13 Q. Did you introduce her to Bernie  
14 Madoff?  
15 A. No.  
16 Q. Did she introduce you to Bernie  
17 Madoff?  
18 A. No.  
19 Q. Did you have any involvement with  
20 her business known as Eurovaleur, Inc.?  
21 A. That was the name of the idea she  
Page 130

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 22 had to create a product and to sell that  
 23 product. I am not -- I don't remember what  
 24 her company was named.  
 25 I know that the idea would be to

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1 Manzke  
 2 create this group trust under the Eurovaleur  
 3 name.

4 Q. If you look at paragraph 4 of the  
 5 complaint it refers to the trust as  
 6 Eurovaleur Group Trust Fund. Does that ring  
 7 a bell?

8 A. That is probably the name of it.

9 Q. Does that refresh your  
 10 recollection as to the name?

11 A. Yes.

12 Q. What I am asking you is whether  
 13 you also had any relationship or contact  
 14 with a company known as Eurovaleur, Inc.?

15 A. I can't remember.

16 Q. Did you have a position with this  
 17 trust fund in formation, in other words, was  
 18 it intended that you would be an officer or  
 19 manager or --

20 A. No. It was that we would be the  
 21 consultant to the fund and counsel has a  
 22 copy of that brochure because I brought it  
 23 to him yesterday. It clearly states we were  
 24 going to be the consultant.

25 Q. As a consultant, what were you

0317

1 Manzke  
 2 going to do?

3 A. Oversee the selection of managers  
 4 for that trust in conjunction, she would  
 5 have the final call on that document, which  
 6 is probably long since gone, but I did save  
 7 the brochure in -- I save brochures that we  
 8 did over the years. It is my art  
 9 background.

10 Q. Did she, that is, did Sonja Kohn  
 11 provide any services to Tremont?

12 A. No.

13 Q. Did she provide any services to  
 14 Maxam?

15 A. No.

16 Q. Did she provide any services to  
 17 you in any other respect?

18 A. No.

19 Q. To your knowledge, did she provide  
 20 any services to the Kingate fund?

21 A. To my knowledge, no.

22 Q. Did you pay her anything?

23 A. No.

24 Q. Did she pay you anything?

25 A. I don't believe so.

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1 Manzke

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8 THE WITNESS: Thank you.  
 9 EXAMINATION (CONTINUED)  
 10 BY MR. POWERS:  
 11 Q. So when did you last speak with  
 12 Bernie Madoff?  
 13 A. In October.  
 14 Q. Of 2008. When did you learn about  
 15 the fact that Bernie Madoff was -- had been  
 16 arrested?  
 17 A. Suzanne Hammond called me in my  
 18 office, called me at my home in Palm Beach  
 19 where I was and said she had just gotten a  
 20 call from an individual who reported to her  
 21 that Bernie Madoff was arrested.  
 22 Q. What happened next?  
 23 A. I got -- I could not believe it.  
 24 And I called Bernie's office, reached one of  
 25 his secretaries and told them that I had  
 0334  
 1 Manzke  
 2 news that Madoff had been arrested and was  
 3 this true.  
 4 Q. Okay. What happened next? What  
 5 did she say?  
 6 A. She said, I don't know anything  
 7 about that. Where did you hear it from?  
 8 Who did you hear it from?  
 9 I said it didn't matter. It was  
 10 just an individual who knew of Madoff. I  
 11 said it can't be true. She didn't say --  
 12 she said, who was it.  
 13 It is just a person who knew that  
 14 we had business with Madoff and that was the  
 15 end of it. I hung up the phone.  
 16 Q. What happened?  
 17 A. I turned on the news and about an  
 18 hour later it came across the news that  
 19 Madoff had been arrested.  
 20 Q. What did you then do?  
 21 A. Probably had a drink but it was --  
 22 my heart was pounding. I didn't know what  
 23 to do so we all were very, very upset.  
 24 Q. You were still down in Palm Beach  
 25 at that time?  
 0335  
 1 Manzke  
 2 A. Yes.  
 3 Q. Did you then have calls with  
 4 people at Maxam or Tremont or who did you  
 5 reach out to?

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6 A. I really only -- we all just -- it  
7 was just my firm. I didn't call Tremont or  
8 anybody. I just was in a state of shock  
9 so -- and we all personally knew that we  
10 were in big trouble and from our own -- from  
11 not only the business but also from a  
12 financial point of view because this was  
13 going to be a very terrible event for the  
14 financial community.

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17 REDACTED

17 Q. Then they turned around and sued  
18 you?

19 A. They are a pension fund and they  
20 have to and it was, the town is divided on  
21 it from what I understand.

22 Q. Let's talk about the redemptions.  
23 I think we have kind of gone through that on  
24 the 90 days based on the document provided  
25 by your counsel before.

0339

1 Manzke  
2 What I would like to focus in a  
3 moment on, just your assets and the like.  
4 Your counsel and I am not going to -- you  
5 have given me a document.

6 Do you want me to use this as a  
7 guide or should I introduce this if you  
8 think it is helpful?

9 MR. KIM: whatever you want.

10 MR. POWERS: why don't I just  
11 introduce it?

12 We will make this as part of the  
13 exhibits so it is out there as part of  
14 the record.

15 Number 37.  
16 (Personal financial disclosure  
17 statement of Sandra Manzke was marked  
18 Plaintiffs' Exhibit 37 for identification)

19 BY MR. POWERS:

20 Q. Can you tell us what it is?

21 A. It is my personal financial  
22 disclosure statement.

23 Q. As of when?

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1 Manzke

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14 Q. All right. I am not going to ask  
15 about the different lawsuits that are out  
16 there against Maxam Capital or personally  
17 against you other than to ask in terms of  
18 the indemnification rights that you might  
19 have or insurance.

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20 Are you being covered through  
21 other indemnification rights or insurance  
22 proceeds for the defense of those  
23 litiaations?

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23 Q. The bank statements that were at  
24 the Bank of America for Maxam and the Maxam  
25 fund and the like, would you be the one that

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Manzke

1 would regularly review those or would that  
2 be someone else?

3 A. That would be someone else.

4 Q. Who would that be?

5 A. Rich Phelan who was our chief  
6 financial officer.

7 Q. When Maxam Capital was being paid  
8 management fees, how would it get paid fees  
9 from the Absolute Fund?

10 A. The Maxam Absolute return funds  
11 fees for the domestic investors were paid to  
12 the Bank of America account for the  
13 corporation so the Maxam fund was its own  
14 limited liability corporation and fees would  
15 be going to, on the domestic fund, the LP  
16 would go to the Maxam LLC corporation.

17 Q. Maxam Capital?

18 A. Of course.

19 Q. Management.

20 A. The offshore investment management  
21 fees went to the Bank of Bermuda, which is  
22 now HSBC, and when -- they would be left  
23 there and when we needed money, we would  
24 dividend that money up to the LLC Maxam  
25

0352

Manzke

1 Capital.

2 Q. Okay.

3 MR. POWERS: I don't have any  
4 Page 145

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5 further questions for you as we sit  
6 here.

7 MR. KIM: I have two quick  
8 questions.

9 MR. POWERS: So I wanted to give  
10 you or you counsel the opportunity if  
11 there are things you wanted to clarify  
12 or ask questions.

13 This has been a long day. I only  
14 kept it extended in part because I  
15 didn't want to ask you to come back  
16 again. This is -- we are not in an  
17 adversary proceeding.

18 I don't want to have to drag this  
19 out in terms of getting a sense of as  
20 much information as I can so we could  
21 make evaluations here.

22 I want to first thank you for the  
23 day you spent with us today and your  
24 time and your candor.

25 EXAMINATION

0353

Manzke

1 BY MR. KIM:

2 Q. During the relevant period, did  
3 you regard Bernard Madoff as an investment  
4 manager?

5 A. No. I did -- had no idea that he  
6 ever registered as an investment manager.  
7 He was a broker-dealer that we  
8 gave discretion to.

9 Q. During today's testimony were you  
10 testifying about everything you know about  
11 the topics asked or were you just answering  
12 the questions that were put to you?

13 A. I have been answering the  
14 questions that have been put to me.

15 MR. KIM: No further questions.  
16 (Continued on next page)

0354

Manzke

1 MR. POWERS: Thank you.

2 THE VIDEOGRAPHER: The time is  
3 6:38 p.m.

4 This ends tape number 7 of the  
5 videotaped deposition of Sandra L.  
6 Manzke.

7 (Time noted: 6:38 p.m.)

8  
9  
10  
11  
12 SANDRA MANZKE PLATT

13 subscribed and sworn to

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14 before me this 300039896\_1.TXT  
of 2009. day

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0355  
1 Manzke  
2 CERTIFICATE  
3 STATE OF NEW YORK )  
 : Ss  
4 COUNTY OF NEW YORK)  
5 I, Steven Neil Cohen, a Registered  
6 Professional Reporter and Notary Public  
7 within and for the State of New York, do  
8 hereby certify: That SANDRA MANZKE PLATT,  
9 the witness whose deposition is herein  
10 before set forth, was duly sworn by me and  
11 that such deposition is a true record of the  
12 testimony given by such witness.  
13 I further certify that I am not  
14 related to any of the parties to this action  
15 by blood or marriage and that I am in no way  
16 interested in the outcome of this matter.  
17 I further certify that neither the  
18 deponent nor a party requested a review of  
19 the transcript pursuant to Federal Rule of  
20 Civil Procedure 30(e) before the deposition  
21 was completed.  
22 In witness whereof, I have  
23 hereunto set my hand this 13th day of July  
24 2009.  
25

-----  
STEVEN NEIL COHEN, RPR  
STEVEN NEIL COHEN, RPR

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15  
16 2 Court order dated June 16  
17 17, 2009  
18  
19 3 Cover letter dated 18  
20 September 27, 2009 and

21 subpoena 300039896\_1.TXT  
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23 4 Letter dated March 12, 20  
24 2009

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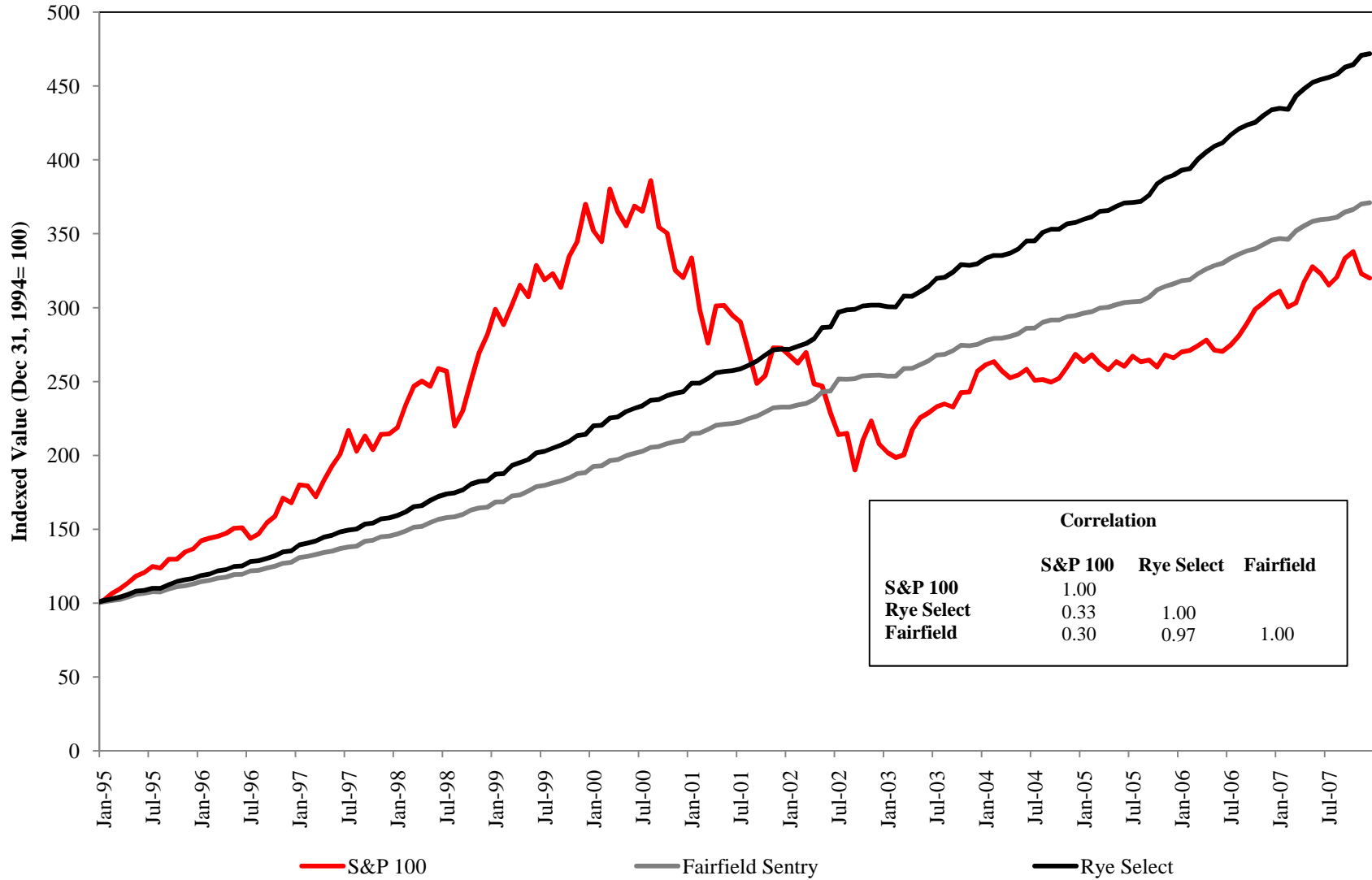
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Subscribed and sworn to before  
me this \_\_\_\_ day of \_\_\_\_ 2009.

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## Value of Investment in Madoff Feeder Funds and S&P 100 Index 1995 - 2007



**Summary of Improbable Equity Trades**  
**Maxam Account**  
**July 2006 - December 2007**

	Equity	Date	Buy/Sell	Volume		
				Maxam <sup>a</sup>	Market <sup>b</sup>	Outlying <sup>c</sup>
1	JPMorgan	12/22/06	Sell	17,367	8,342,000	6,900
2	IBM	04/16/07	Buy	14,368	6,865,100	6,000
3	Medtronic	04/20/07	Buy	10,512	6,887,956	1,600
4	Merck	04/20/07	Buy	20,148	18,680,165	6,200
5	McDonald's	09/11/07	Buy	14,988	17,275,900	4,300
6	Exxon Mobil	09/12/07	Buy	58,620	25,136,700	21,200
7	Verizon	09/13/07	Buy	22,816	10,226,510	5,500
8	AT&T	11/02/07	Sell	55,208	24,377,473	24,800
9	United Technologies	11/12/07	Buy	13,992	5,273,175	5,758
10	American Express	11/26/07	Sell	19,453	9,654,618	9,424
11	Bank of NY Mellon	11/26/07	Sell	17,956	7,450,022	1,900

**Notes:** Data was reviewed for the following months: 07/06, 09/06, 10/06, 12/06, 02/07, 03/07, 04/07, 06/07, 09/07, 11/07. The equities in the chart are a representation of the findings.

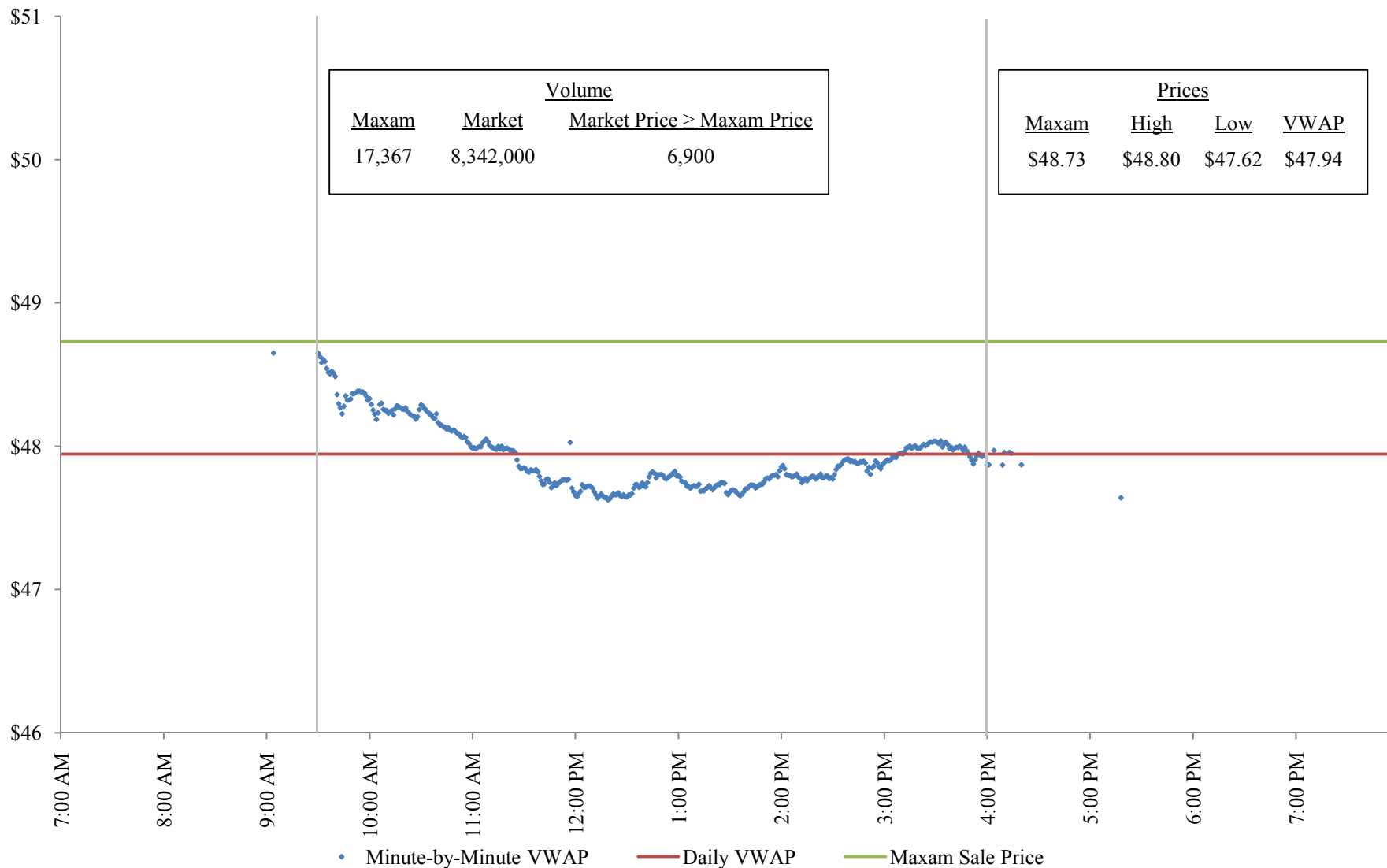
a. Maxam Volume is the volume of equities traded from the Maxam Capital Management LLC Fund.

b. Market Volume is the total volume reported using Tick Data.

c. Outlying Volume is the number of market shares whose price was less than or equal to the maxam price for buys and the number of market shares whose price was greater than or equal to the maxam price for sells.

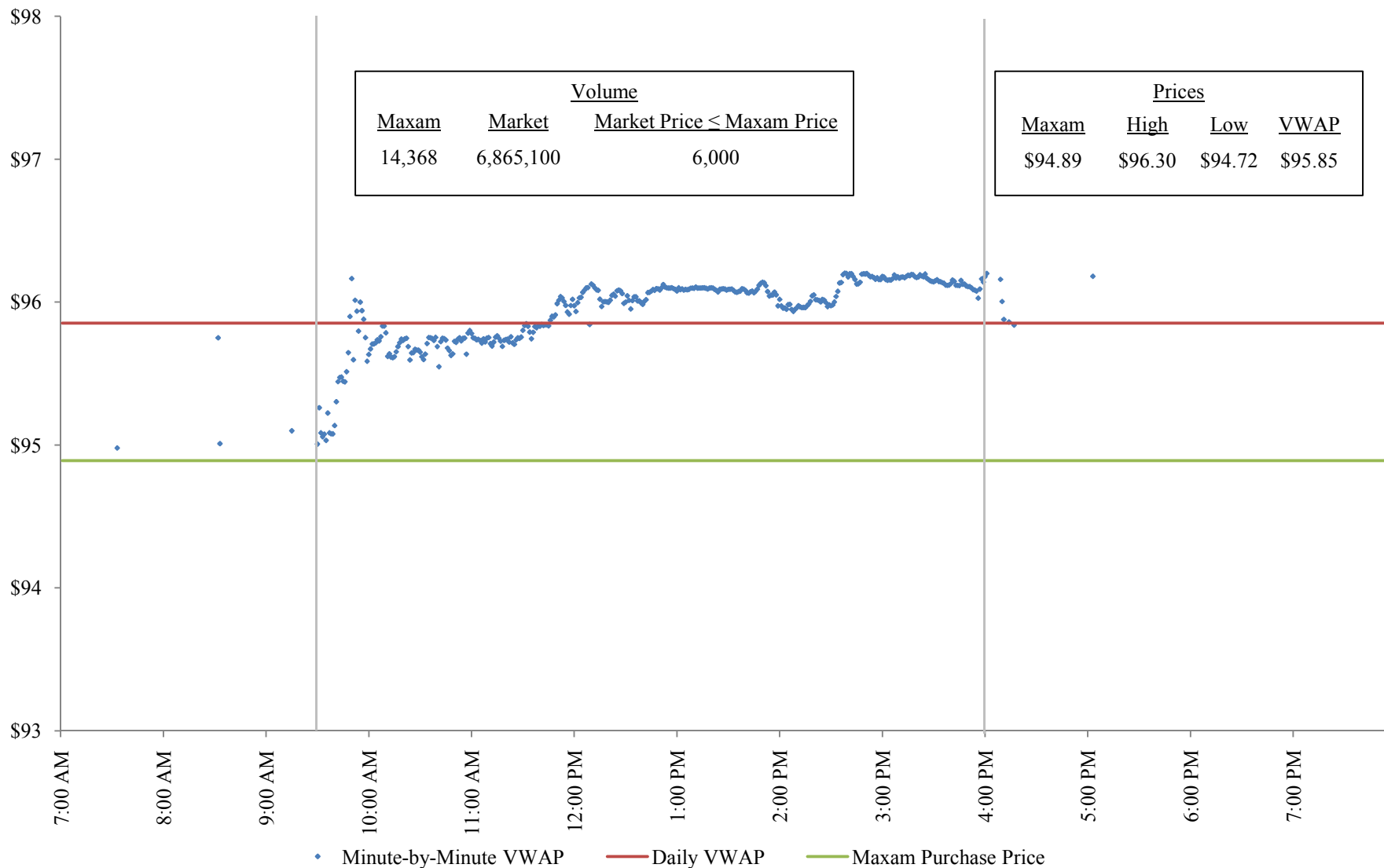
**Sources:** Bloomberg LP, Tick Data, Maxam trade records.

### JPMorgan Intraday Prices Maxam Sale Price vs. Volume Weighted Average Price December 22, 2006



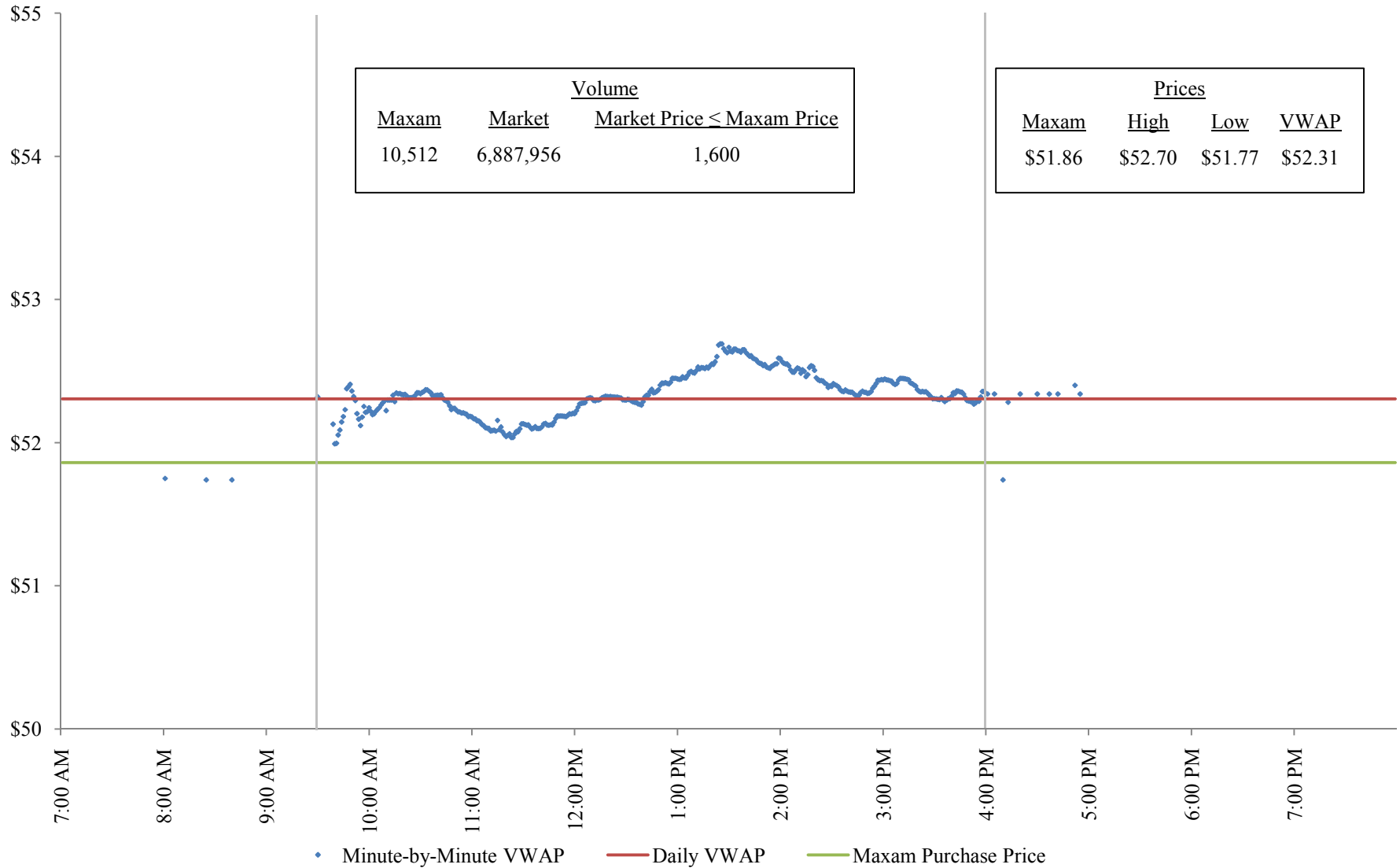
Sources: Bloomberg LP, Tick Data, Maxam trade records.

### IBM Intraday Prices Maxam Purchase Price vs. Volume Weighted Average Price April 16, 2007



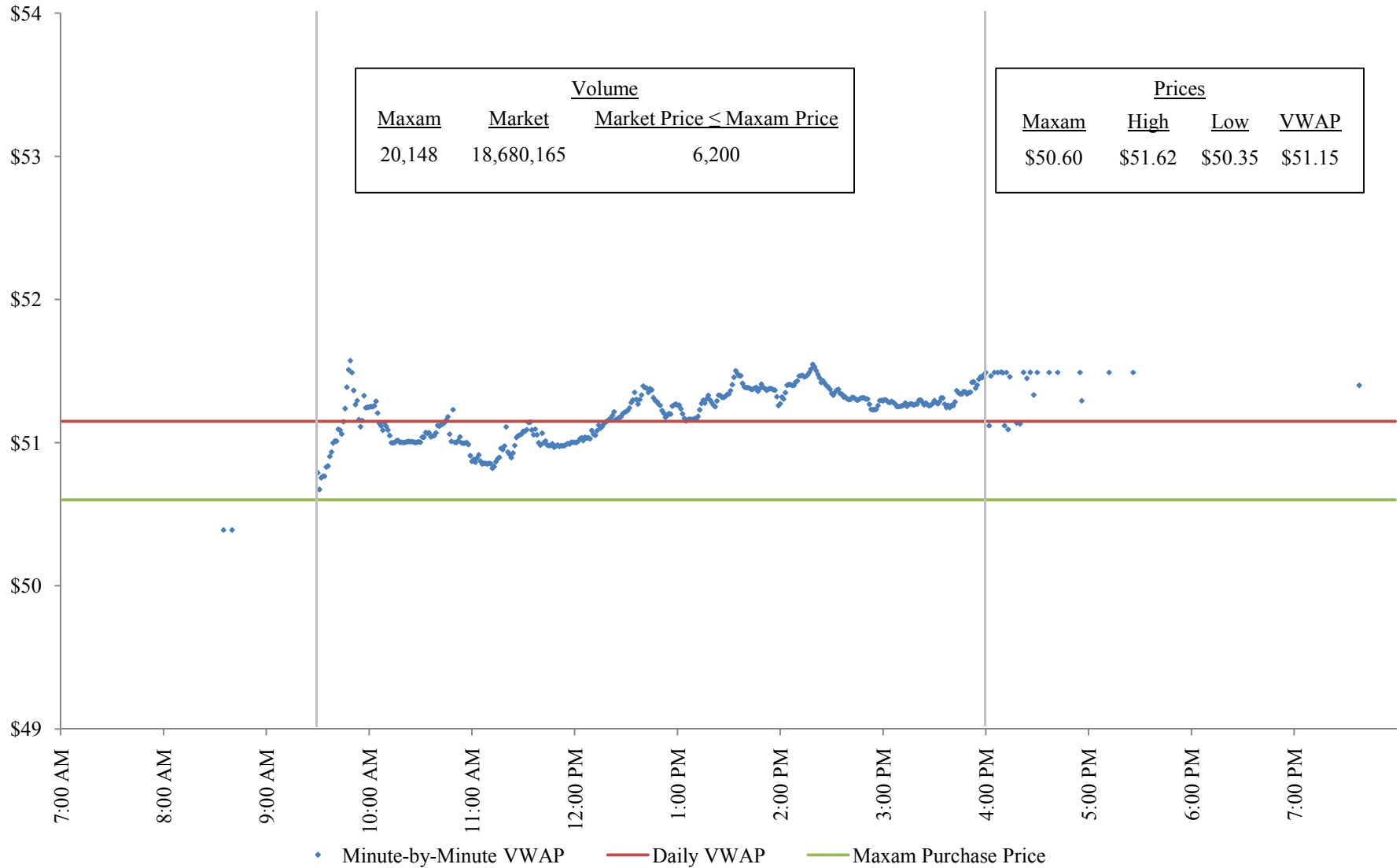
Sources: Bloomberg LP, Tick Data, Maxam trade records.

### Medtronic Intraday Prices Maxam Purchase Price vs. Volume Weighted Average Price April 20, 2007



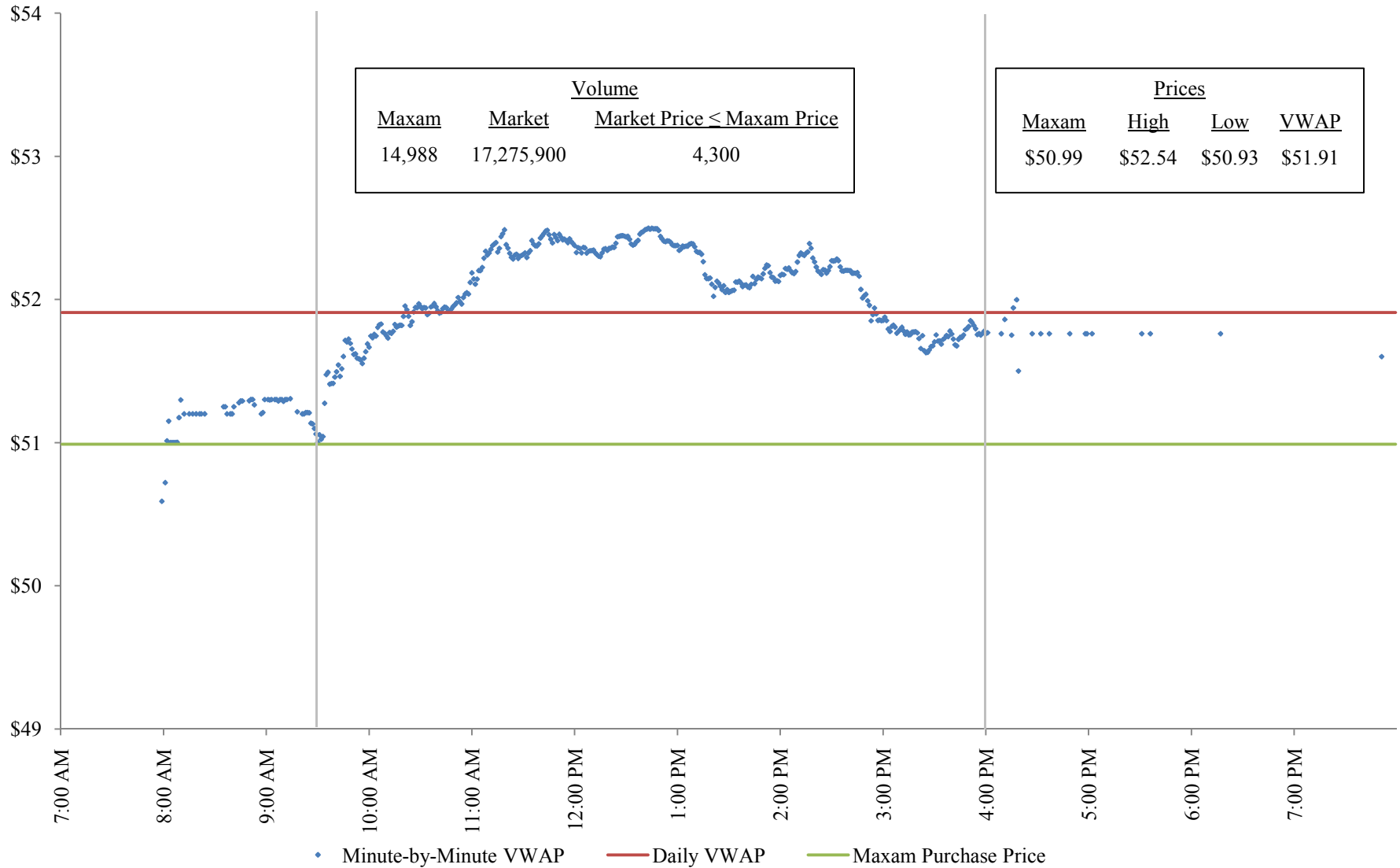
Sources: Bloomberg LP, Tick Data, Maxam trade records.

### Merck Intraday Prices Maxam Purchase Price vs. Volume Weighted Average Price April 20, 2007



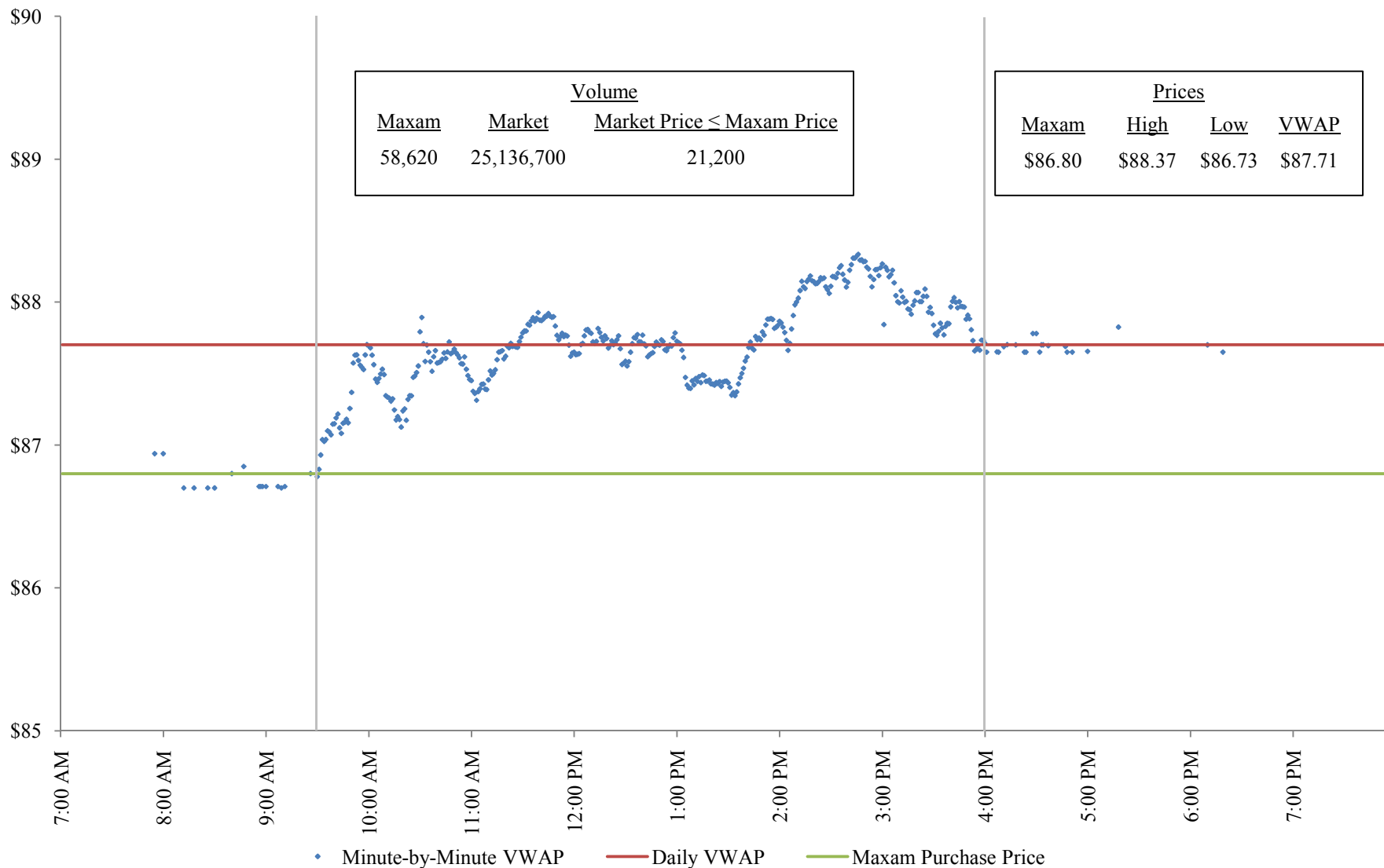
Sources: Bloomberg LP, Tick Data, Maxam trade records.

### McDonald's Intraday Prices Maxam Purchase Price vs. Volume Weighted Average Price September 11, 2007



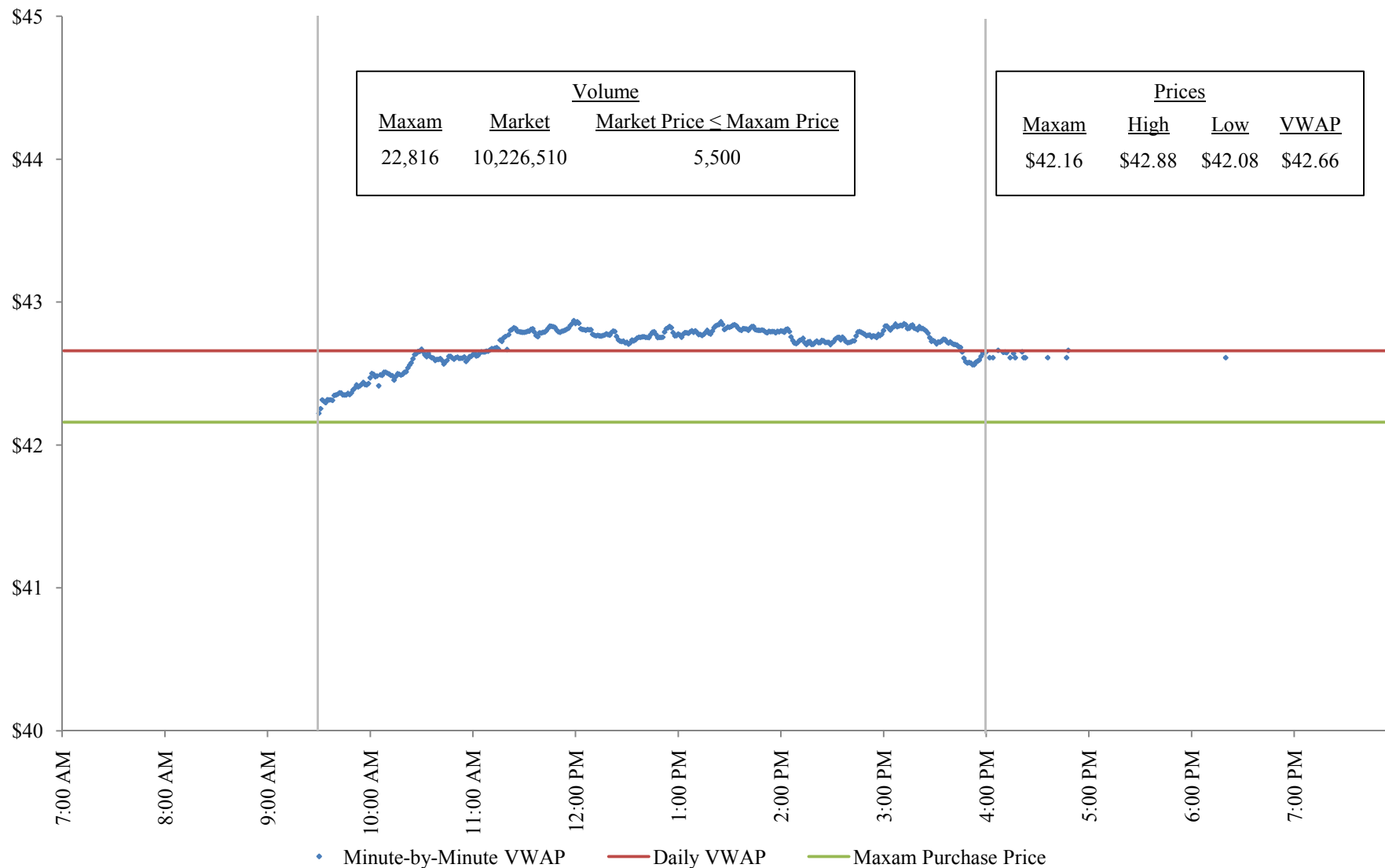
Sources: Bloomberg LP, Tick Data, Maxam trade records.

### Exxon Mobil Intraday Prices Maxam Purchase Price vs. Volume Weighted Average Price September 12, 2007



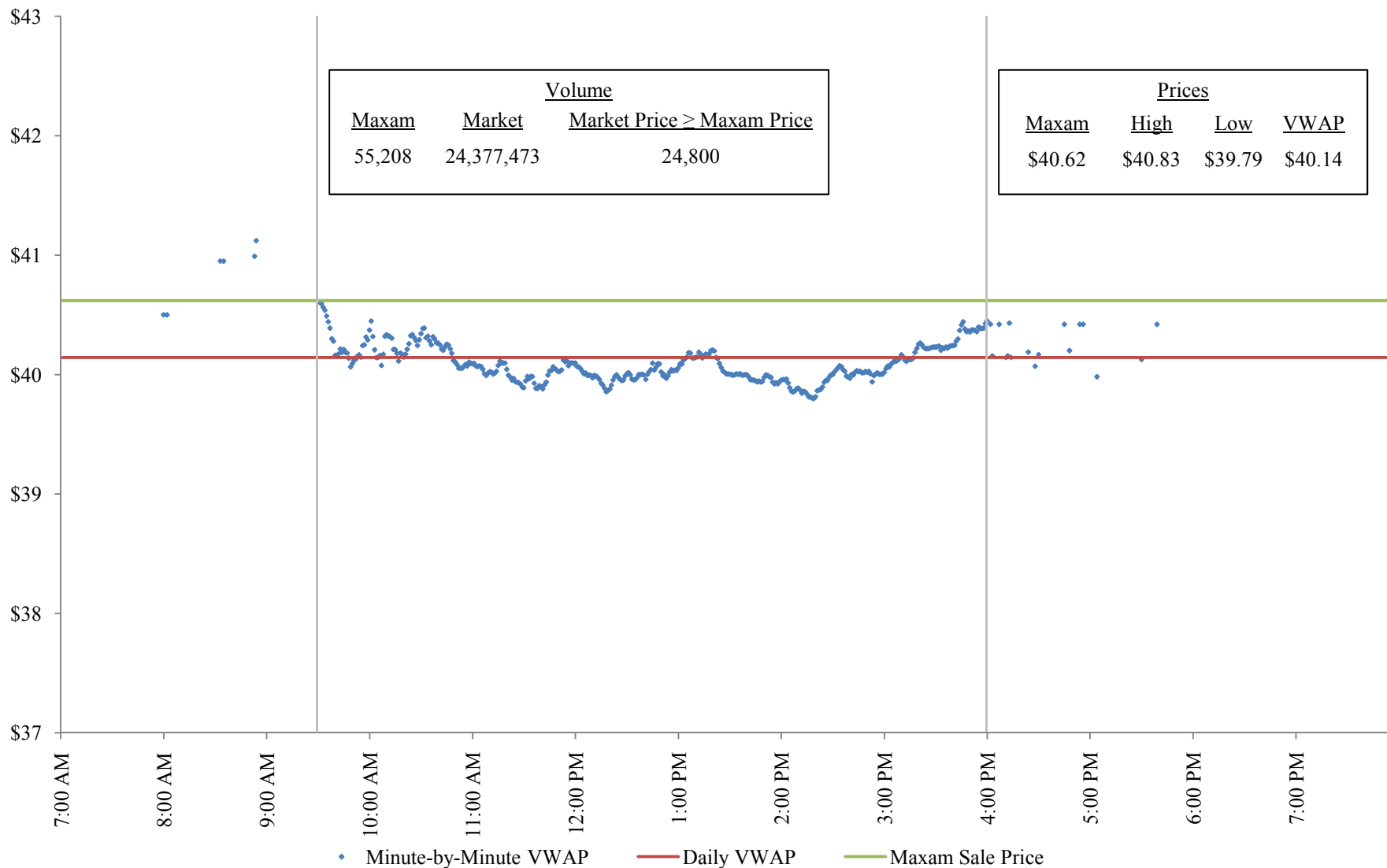
Sources: Bloomberg LP, Tick Data, Maxam trade records.

### Verizon Intraday Prices Maxam Purchase Price vs. Volume Weighted Average Price September 13, 2007



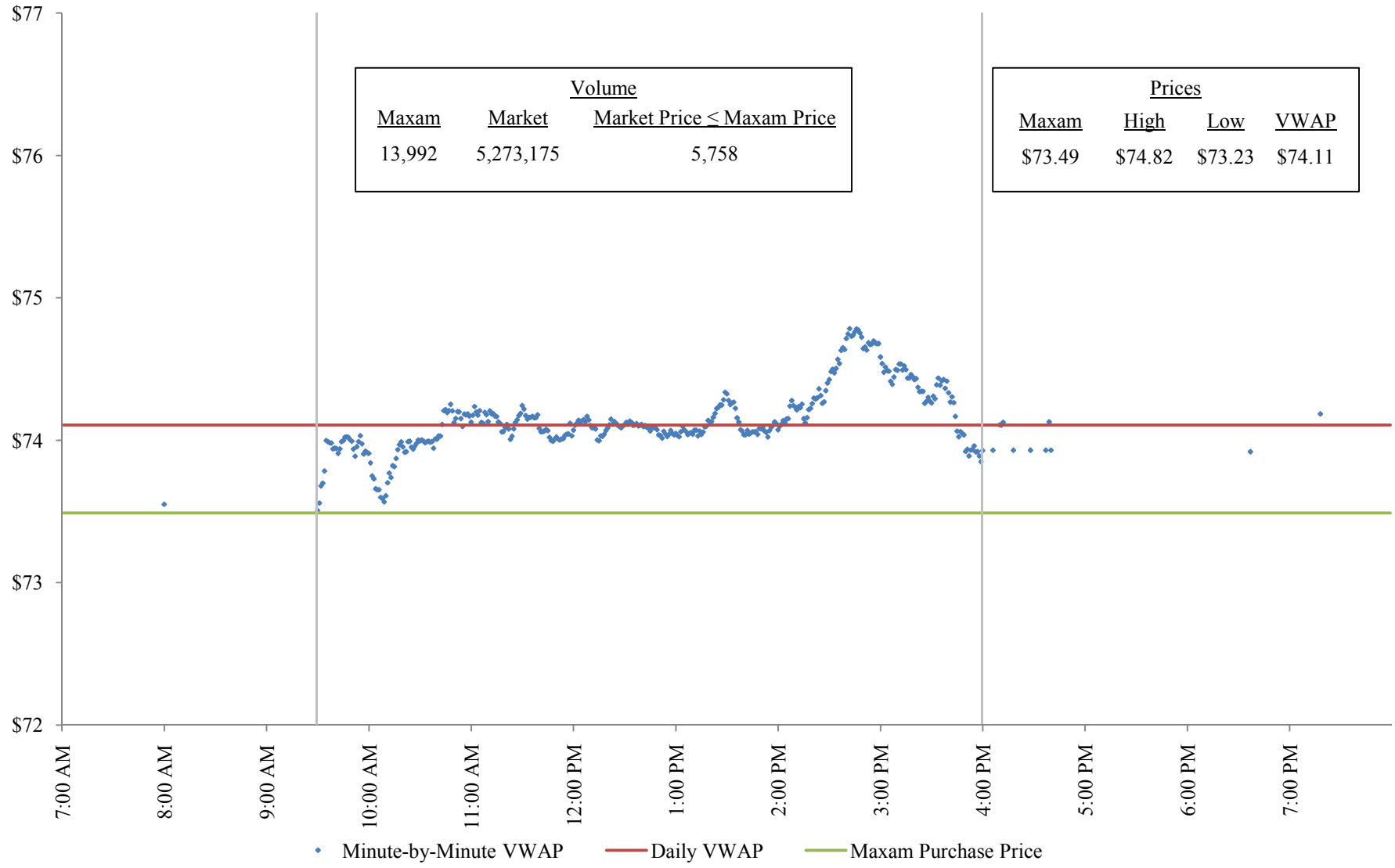
Sources: Bloomberg LP, Tick Data, Maxam trade records.

### AT&T Intraday Prices Maxam Sale Price vs. Volume Weighted Average Price November 2, 2007



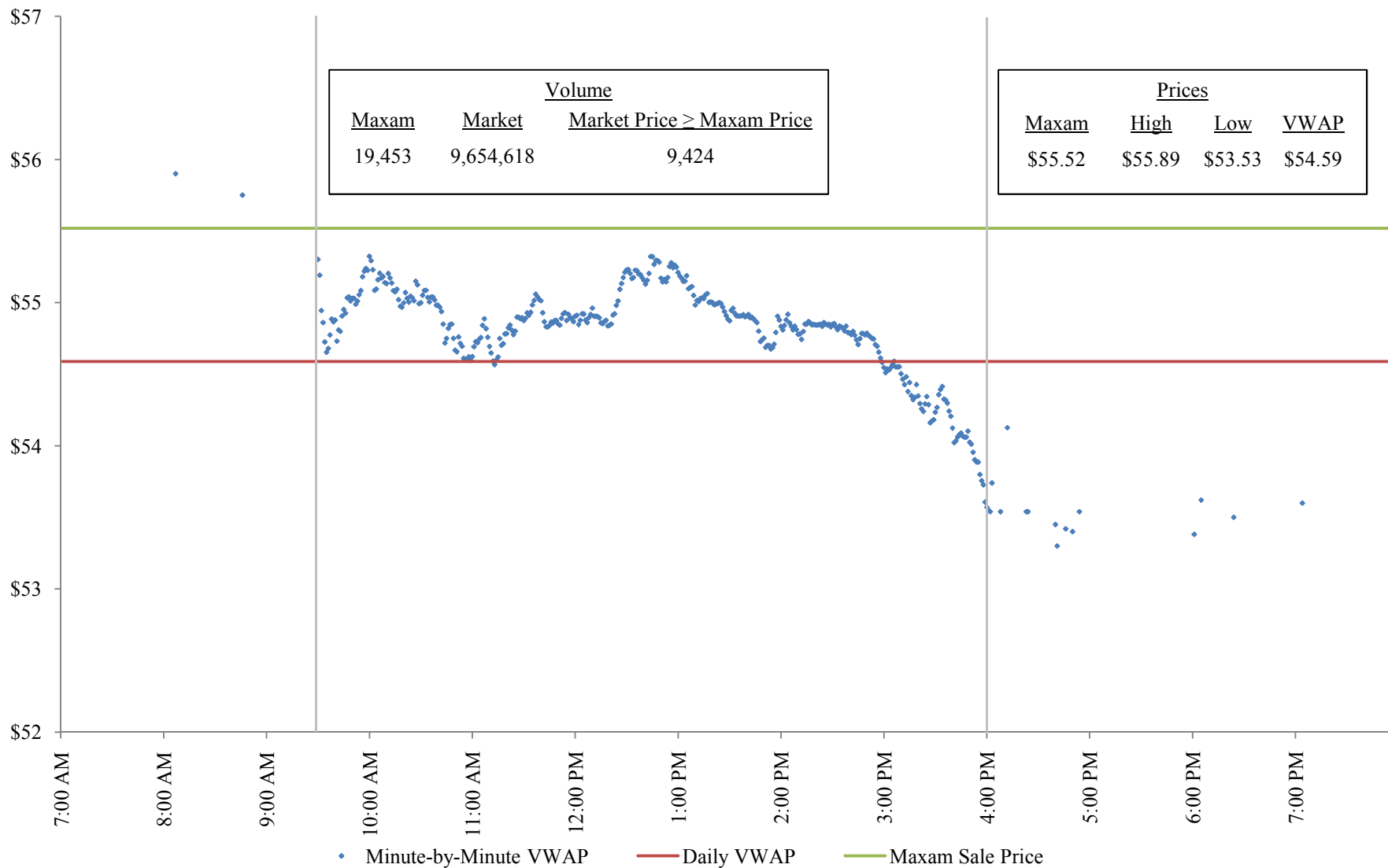
Sources: Bloomberg LP, Tick Data, Maxam trade records.

### United Technologies Intraday Prices Maxam Purchase Price vs. Volume Weighted Average Price November 12, 2007



Sources: Bloomberg LP, Tick Data, Maxam trade records.

### American Express Intraday Prices Maxam Sale Price vs. Volume Weighted Average Price November 26, 2007



Sources: Bloomberg LP, Tick Data, Maxam trade records.

### Bank of New York Mellon Intraday Prices Maxam Sale Price vs. Volume Weighted Average Price November 26, 2007



Sources: Bloomberg LP, Tick Data, Maxam trade records.