

**BAKER & HOSTETLER LLP**

45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and the Chapter 7 Estate of Bernard L. Madoff*

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

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

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

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,  
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,  
ASCOT FUND LTD., GABRIEL CAPITAL  
CORPORATION,

Defendants.

Adv. Pro. No. 09-01182 (SMB)

**DECLARATION OF LAN HOANG IN SUPPORT OF  
TRUSTEE'S MOTIONS IN LIMINE NUMBERS 1 THROUGH 4**

I, Lan Hoang, declare the following:

1. I am a Partner with the law firm of Baker & Hostetler LLP, counsel to Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.*, and the chapter 7 estate of Bernard L. Madoff (“Madoff”).

2. I submit this declaration in support of the Trustee’s Motion *In Limine* Number 1 to Exclude All Evidence and Testimony on the Actions or Inactions of the United States Securities and Exchange Commission; Trustee’s Motion *In Limine* Number 2 to Limit Testimony of J. Ezra Merkin; Trustee’s Motion *In Limine* Number 3 to Exclude the Opinions and Testimony of Jeffrey M. Weingarten; and Trustee’s Motion *In Limine* Number 4 to Exclude Exhibits Not Produced During Discovery.

3. True and correct copies of the following documents are attached:

Exhibit 1: Defendants J. Ezra Merkin and Gabriel Capital Corporation’s Supplemental Response to Plaintiff’s Second Set of Interrogatories and Requests for Admission in Accordance with Decision #3 dated August 30, 2013 (filed with the Court on October 8, 2015, ECF No. 286-12).

Exhibit 1A: Verification of J. Ezra Merkin dated February 23, 2015 to Defendants J. Ezra Merkin And Gabriel Capital Corporation’s Supplemental Responses To Plaintiffs Second Set of Interrogatories and Requests for Admissions In Accordance With Decision # 3, dated August 30, 2013 (filed with the Court on November 25, 2015, ECF No. 293-55).

Exhibit 2: Excerpts from the deposition transcript of J. Ezra Merkin dated February 24, 2015.

Exhibit 3: Excerpts from the deposition transcript of J. Ezra Merkin dated February 25, 2015.

Exhibit 4: Excerpts from the deposition transcript of Jeffrey M. Weingarten dated July 15, 2015.

- Exhibit 5: Expert Report of Jeffrey M. Weingarten dated March 19, 2015.
- Exhibit 6: Rebuttal Report of Jeffrey M. Weingarten dated May 14, 2015.
- Exhibit 7: Randall Smith, *Wall Street Mystery Features a Big Board Rival*, THE WALL STREET JOURNAL, Dec. 16, 1992, Bates Nos. GCC-P 0393125-126 (filed with the Court on October 8, 2015, ECF No. 286-5).
- Exhibit 8: *U.S. v. Madoff*, No. 09-CR-213 (S.D.N.Y.), Plea Allocution dated March 12, 2009.
- Exhibit 9: 2003-2007 Black Oak Capital, LLC and Akula Energy, LLC statement.
- Exhibit 10: 1994-2009 Bracebridge Composite Performance.
- Exhibit 11: 1999-2008 Millennium USA LP At A Glance – “Portfolio Update” (NYAG SJ Ex. 93).
- Exhibit 12: 1977-2009 Elliott Associates, LP Performance (net of all fees) (NYAG SJ Ex. 94).
- Exhibit 13: 1996-2009 SAC Capital Internal (net of all fees) dated November 27, 2009 (NYAG SJ Ex. 95).
- Exhibit 14: Correspondence from Matthew Tulchin dated January 14, 2011.
- Exhibit 15: Ascot Fund Limited’s Initial Disclosures dated January 13, 2014.
- Exhibit 16: Initial Disclosure Statement of Defendants J. Ezra Merkin and Gabriel Capital Corporation dated January 14, 2011.
- Exhibit 17: Trustee Irving H. Picard’s First Set of Requests for Production of Documents, Interrogatories, and Requests for Admission to Defendants J. Ezra Merkin and Gabriel Capital Corporation dated January 14, 2011.
- Exhibit 18: Second Set of Requests for Production of Documents to Defendants J. Ezra Merkin and Gabriel Capital Corporation dated January 13, 2012.
- Exhibit 19: Trustee’s Fourth Set of Requests for Production of Documents to Defendants J. Ezra Merkin and Gabriel Capital Corporation dated April 12, 2013.

Exhibit 20: Trustee's Fourth Set of Requests for Production of Documents to  
Defendants Ascot Partners, L.P. dated June 3, 2013.

I declare under penalty of perjury that the foregoing is true and correct pursuant to 28  
U.S.C § 1746 (2).

Dated: April 7, 2017  
New York, New York

By: /s/ Lan Hoang  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
Email: lhoang@bakerlaw.com



## **EXHIBIT 1**

DECHERT LLP  
 1095 Avenue of the Americas  
 New York, New York 10036  
 Tel: (212) 698-3500  
 Fax: (212) 698-3599  
 Andrew J. Levander  
 andrew.levander@dechert.com  
 Gary J. Mennitt  
 gary.mennitt@dechert.com  
 Neil A. Steiner  
 neil.steiner@dechert.com

*Attorneys for Defendants J. Ezra Merkin  
 and Gabriel Capital Corporation*

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

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In re:	:	
	:	
BERNARD L. MADOFF INVESTMENT	:	SIPA LIQUIDATION
SECURITIES LLC,	:	
	:	No. 08-01789 (BRL)
Debtor.	:	
-----	X	
IRVING H. PICARD, Trustee for the Liquidation	:	
of Bernard L. Madoff Investment Securities LLC,	:	
	:	
Plaintiff,	:	
	:	Adv. Proc. No. 09-01182 (BRL)
v.	:	
	:	
J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,	:	
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,	:	
GABRIEL CAPITAL CORPORATION,	:	
	:	
Defendants.	:	
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**DEFENDANTS J. EZRA MERKIN AND GABRIEL CAPITAL CORPORATION'S  
 SUPPLEMENTAL RESPONSES TO PLAINTIFF'S SECOND SET OF  
 INTERROGATORIES AND REQUESTS FOR ADMISSIONS  
IN ACCORDANCE WITH DECISION #3**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (made applicable by Rules 7026 and 7033 of the Federal Rules of Bankruptcy Procedure), Rule 7033-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”), and Judge Cyganowski’s Decision #3, Defendants J. Ezra Merkin (“Merkin”) and Gabriel Capital Corporation (“GCC” and with Merkin, “Defendants”), by their attorneys, Dechert LLP, hereby supplement their responses to Interrogatories No. 1, 2, 3, 7, 8, 9, 10, 11, 13, 15 and 16 of Plaintiff’s Second Set of Interrogatories and Request No. 9 of Plaintiff’s Requests for Admissions. These supplemental responses incorporate by reference the General Objections and each of the Specific Objections set forth in Defendants’ Answers and Objections to Plaintiff’s Second Set of Interrogatories and Responses to Plaintiff’s Requests for Admissions, as if fully set forth herein, and are made without waiver of any such objections.

**SUPPLEMENTAL ANSWER TO INTERROGATORY NOS. 1, 2, 3, 7, 8, 9, 10, 11 AND 13:**

Subject to and without waiving their objections, and expressly preserving the right to supplement this Interrogatory Response, Defendants state as follows:

Prior to investing with Mr. Madoff, Mr. Merkin had conversations with a number of sophisticated investors who were clients of Mr. Madoff and had accounts with his firm, Bernard L. Madoff Investment Securities, LLC (“BLMIS”), concerning Mr. Madoff’s reputation, trading strategy and risks. Those investors included Leon Meyers (at the time the manager of the Scheuer family office), Sandra Manske (at the time a senior executive of the Tremont funds and later the founder of the Maxam funds), David Gottesman (the founder of First Manhattan Corporation and a director of Berkshire Hathaway), Gedale Horowitz (who at the time ran Salomon Brothers’ municipal bond department), and Daniel Hoffert (a successful Wall Street investor), all of whom spoke very highly of Mr. Madoff and his investment

strategies. Mr. Merkin also had conversations with customers of BLMIS's market-making operations. And Mr. Merkin discussed Mr. Madoff with his father, Hermann Merkin (a successful businessman and investor), who told his son that "I know Bernie, and he's okay," which Ezra Merkin understood to be high praise coming from his father.

In addition, prior to investing with Mr. Madoff, Mr. Merkin met with Mr. Madoff in Mr. Madoff's offices, and discussed Mr. Madoff's trading strategies as well as Mr. Madoff's market-making activities. Mr. Madoff also explained that BLMIS operated a significant wholesale business, in which its customers included Charles Schwab and Fidelity. They also discussed Mr. Madoff's and his brother's involvement in industry affairs. As Mr. Merkin understood, Mr. Madoff at that time had a sterling reputation; was heavily involved in industry affairs; and his firm was a very dominant market maker with an extraordinary share of the trading in certain NYSE stocks, particularly heavily traded, large cap stocks. Indeed, Mr. Madoff subsequently became the chairman of NASDAQ.

Mr. Merkin first invested with Mr. Madoff and BLMIS through Mr. Meyers and the Scheuer family's account with Mr. Madoff. After a period of time and gaining additional comfort with Mr. Madoff and his trading strategies, Mr. Merkin thereafter opened managed accounts with BLMIS on behalf of Gabriel Capital L.P., Ariel Fund Limited, Ascot Fund Limited (which was subsequently transferred to the account of Ascot Partners, L.P., in connection with a reorganization of the domestic and offshore Ascot funds), and Ascot Partners, L.P. (collectively, the "Funds"), and delegated trading authority over those accounts to Mr. Madoff.

As an additional part of his due diligence on and monitoring of Mr. Madoff and BLMIS, Mr. Merkin maintained a file that included newspaper articles and profiles of Mr.

Madoff, notes of certain of his meetings with Mr. Madoff, and information concerning other funds that had significant investments with Mr. Madoff and BLMIS. For example, Mr. Merkin reviewed and retained a 1989 article from *Forbes* describing how BLMIS made markets in 250 of the largest, most actively traded stocks and identifying some of its biggest customers, including A.G. Edwards, Charles Schwab, and Fidelity. Another *Forbes* article, from 1992, similarly described Mr. Madoff and his firm as one of the biggest of the new age traders on Wall Street who were competing with the New York Stock Exchange for trades, and an April 1993 *International Herald Tribune* likewise discussed how Mr. Madoff was gaining the upper hand in a competition with the New York and American Stock Exchanges. And a very significant *New York Times* article from 1992 discussed the United States Securities and Exchange Commission's ("SEC") investigation into unregistered notes being marketed by Avellino & Bienes, a Florida accounting firm, and reported on the SEC's relief that all of the money that had been raised from the sale of the notes -- \$440 million -- had been deposited in an account with BLMIS and managed by Mr. Madoff, and was able to be liquidated and returned to the note purchasers almost immediately.

Moreover, Mr. Madoff was widely credited with breaking the New York Stock Exchange's hegemony over Wall Street trading. Thus, by 1999 -- as reflected in *New York Times* and *Wall Street Journal* articles that Mr. Merkin read and retained in his file -- BLMIS entered into a joint venture with Goldman Sachs, Morgan Stanley, Salomon Smith Barney, and Merrill Lynch to establish the first electronic trading platform for NYSE stocks. That those four well-established Wall Street firms were willing to enter into a joint venture with BLMIS further enhanced Mr. Madoff's reputation and provided additional comfort to Mr. Merkin. Moreover, as Mr. Merkin knew, Mr. Madoff frequently met with industry leaders at

the SEC and regularly testified in Congress about developments in the securities industry and the ongoing transformation of the U.S. financial markets.

As an additional part of his due diligence and monitoring of the Funds' investments, Mr. Merkin met with Mr. Madoff ten to fifteen times a year by phone or in person to discuss trading strategies. These conversations ranged from general discussions of Mr. Madoff's trading strategies, to potential changes in or refinements of the trading strategies, to discussions about the market, then-current market trends, and other market participants. From time to time, Mr. Merkin arranged and participated in meetings between Mr. Madoff and certain investors in the Funds, including Gedale Horowitz, Ludwig Bravmann, Alec Hackel, Christof Reichmuth, Patrick Erne, Michael Matlin, and Roman Igilnikov and others from Union Bancaire Privee. Mr. Merkin also discussed Mr. Madoff and his investment strategy with many other customers of Mr. Madoff and BLMIS, including Ludwig Jesselson, David Gottesman, and Leon Meyers, as well as with other sophisticated investors including people who served on the Yeshiva University Investment Committee. Mr. Merkin also discussed Mr. Madoff, his trading strategy and BLMIS with representatives of BNP Paribas as part of their due diligence in connection with a proposal to create a levered version of Ascot.

Mr. Merkin also knew that BLMIS was a registered broker-dealer and later registered as an investment advisor, and therefore was subject to periodic and surprise inspections by its primary regulator, the SEC. The fact that Mr. Madoff and his firm were regularly inspected by the SEC and the SEC had never raised any significant issue about the firm's operations -- in one of their many conversations, Mr. Madoff reported that the SEC had visited BLMIS's offices to conduct reviews eight times in sixteen years -- gave Mr. Merkin additional comfort about Mr. Madoff's bona fides.

As a further part of the due diligence on and monitoring of the Funds' investments, Mr. Merkin had complete transparency to what he -- and many others -- understood was the trading being conducted by Mr. Madoff in the Funds' accounts. BLMIS sent confirmations of every trade supposedly made in the accounts, which were reviewed by GCC employees and input into GCC's portfolio management system ("PMS"). GCC employees then reconciled GCC's accounting records against to the monthly statements received from BLMIS. The PMS system enabled GCC employees to generate daily reports showing any transactions as well as profit and loss information for the portfolio, which Mr. Merkin would review on a daily basis. Mr. Merkin also regularly checked the portfolio to ensure that there were a sufficient number of put options to cover the value of the equities owned when the account was invested in the market.

Another important part of Defendants' due diligence and monitoring of the Funds' investments was the annual audit of the Funds' financial statements conducted by BDO Seidman LLP ("BDO"). BDO was given unfettered access to GCC's employees and records to conduct its audits of the financial statements in accordance with generally accepted auditing standards. As part of its audit, BDO reviewed and tested various trade confirmations and monthly statements, and communicated directly with BLMIS concerning the value of the Funds' investments. In addition, BDO requested and received copies of audited financial statements and statements of internal controls certified by BLMIS's auditor, and never raised any issue about either the contents of those statements or the identity or qualifications of BLMIS's auditor (Mr. Madoff had explained to Mr. Merkin that he used a small accounting firm because they understood his business and provided superior customer service and partner-level attention compared to a larger firm).

Perhaps most significantly, Mr. Merkin had a nearly two-decade track record of receiving timely withdrawals on demand from the Funds' BLMIS accounts, and was aware that other clients of Mr. Madoff had a similar experience. The ability timely to withdraw capital from the BLMIS accounts provided additional comfort as part of Mr. Merkin's due diligence and monitoring of the Funds' investments.

**SUPPLEMENTAL ANSWER TO INTERROGATORY NOS. 15 AND 16:**

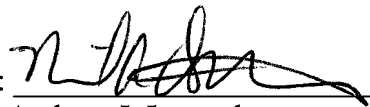
Subject to and without waiving their objections, Defendants state that information responsive to this request can be found in documents produced to Plaintiff, including Defendants' tax returns for the years 2000 to 2008, as part of Defendants' May 22, 2013 production. These tax returns can be located in documents bearing Bates numbers GCC-P 0602380-0605295 and GCC-P 0628856-0636284.

**SUPPLEMENTAL RESPONSE TO REQUESTS FOR ADMISSION NO. 9:**

Denied.

Dated: New York, New York  
August 30, 2013

DECHERT LLP

By:   
Andrew J. Levander  
Gary J. Mennitt  
Neil A. Steiner  
1095 Avenue of the Americas  
New York, New York 10036  
(212) 698-3500  
andrew.levander@dechert.com  
gary.mennitt@dechert.com  
neil.steiner@dechert.com

*Attorneys for Defendants J. Ezra Merkin  
and Gabriel Capital Corporation*



## **EXHIBIT 1A**

DECHERT LLP  
1095 Avenue of the Americas  
New York, New York 10036  
Tel: (212) 698-3500  
Fax: (212) 698-3599  
Andrew J. Levander  
andrew.levander@dechert.com  
Neil A. Steiner  
neil.steiner@dechert.com

*Attorneys for Defendants J. Ezra Merkin  
and Gabriel Capital Corporation*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	
	:	
	:	SIPA LIQUIDATION
BERNARD L. MADOFF INVESTMENT	:	
SECURITIES LLC,	:	
	:	No. 08-01789 (SMB)
Debtor.	:	

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IRVING H. PICARD, Trustee for the Liquidation	:	
of Bernard L. Madoff Investment Securities LLC,	:	
	:	
Plaintiff,	:	
	:	
	:	Adv. Proc. No. 09-01182 (SMB)
v.	:	
	:	
J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,	:	
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,	:	
ASCOT FUND LTD., GABRIEL CAPITAL	:	
CORPORATION,	:	
	:	
Defendants.	:	

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Verification

STATE OF NEW YORK     )  
                                      )  
COUNTY OF NEW YORK    )     ss.:

I, J. Ezra Merkin, being duly sworn, state that I am a Defendant in the above-captioned action and the President of Defendant Gabriel Capital Corporation ("GCC"); I have read and know the contents of (1) Defendants J. Ezra Merkin And Gabriel Capital Corporation's Responses And Objections To Plaintiff's Second Set of Interrogatories, dated July 6, 2012 and (2) Defendants J. Ezra Merkin And Gabriel Capital Corporation's Supplemental Responses To Plaintiff's Second Set of Interrogatories and Requests for Admissions In Accordance With Decision # 3, dated August 30, 2013; and the Answers to Interrogatories, Supplemental Answers to Interrogatories, and Supplemental Response to Request for Admission contained therein are believed to be true to my own knowledge, information and belief. The grounds of my belief as to all matters not stated upon my own knowledge are as follows: review of GCC's books and records and conversations with employees of GCC.

  
\_\_\_\_\_  
J. EZRA MERKIN

Sworn to before me this  
23<sup>rd</sup> day of February, 2015.



NEIL A. STEINER  
Notary Public, State of New York  
No. 02816651028  
Qualified in New York County  
Commission Expires November 13, 2019

2018

## **EXHIBIT 2**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT                      Adv.Pro.No.  
SECURITIES LLC,    08-01789 (BRL)  
Debtor.

-----x

IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,  
Plaintiff,    Adv.Pro.No.  
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,  
L.P., ARIEL FUND LTD., ASCOT  
PARTNERS, L.P., GABRIEL CAPITAL  
CORPORATION,

Defendants.

-----x

VIDEOTAPED DEPOSITION OF J. EZRA MERKIN,  
as reported by Nancy C. Bendish, Certified Court  
Reporter, RMR, CRR, and Notary Public of the  
State of New York, at the offices of Baker  
Hostetler, 45 Rockefeller Plaza, New York, New  
York, on Tuesday, February 24, 2015, commencing  
at 9:47 a.m.

1 Q. Do you know when he invested with  
2 Mr. Madoff?

3 A. I don't know. I don't know. It  
4 may have been a number of years prior to this.  
5 If this is the late '80s, this might have been  
6 either directly or perhaps with friends, and I'm  
7 just not sure, he may have been an investor as  
8 much as a decade earlier or sometime in between  
9 and it may have been not under his name. So,  
10 that is he may have been an investor in an  
11 entity that was an investor of Mr. Madoff's. My  
12 first investment with Mr. Madoff was through  
13 something called 61M Associates, something like  
14 that.

15 Q. Did you ever discuss with your  
16 father his investment experience with  
17 Mr. Madoff?

18 A. My father was not a person of many  
19 words and my father was very sparing in praise  
20 and had a very constructive opinion of  
21 Mr. Madoff and his investing abilities.

22 Q. That sounds, pardon me, like a  
23 conclusion. What I'm asking is whether or not  
24 you ever discussed the actual investment  
25 experience that your dad had with Mr. Madoff.

1           A.       So when I said he was a person of  
2       spare praise and few words, he spoke in  
3       conclusions. So he would say I knew Bernie, I  
4       know Bernie and Bernie's okay, or I know Bernie  
5       and he's okay. That's what I mean. You  
6       consider that is a conclusion, perhaps, but  
7       that's what he said.

8           Q.       Is that the extent of the  
9       conversation you and he had?

10          A.       At that particular time, that is  
11       certainly the extent that I remember. This is  
12       going back a while.

13          Q.       I understand.

14          A.       I don't remember -- I don't  
15       remember specifics about what was bought or sold  
16       or owned for that investment process.

17          Q.       Okay. Did there come a time after  
18       that when you had any, any discussions with your  
19       father about investing with Bernie Madoff?

20          A.       Well, my father died in 1999 and  
21       so let's just say roughly ten years later, then  
22       this period of time, so maybe '11, I don't know,  
23       the late '80s versus the late '90s -- no, I do  
24       know when my father passed away but I'm  
25       saying -- so my father was 92 -- was not quite

1 92 when he died, and I didn't have that many  
2 further discussions that I remember with him on  
3 that subject.

4 Q. Okay. Let's go back to your  
5 meeting, if I may, with Mr. Madoff.

6 So, how was it that you came to  
7 meet with him in the first place?

8 A. I don't remember the circumstances  
9 of the first meeting and I don't remember when  
10 the first meeting was, exactly, and I have a  
11 vague memory that I met Bernie downtown, meaning  
12 he -- it may have been before he moved his  
13 office uptown and I don't know when he moved his  
14 office uptown. I have a vague memory that I met  
15 him still when he was on Wall Street. I mean  
16 that literally, that he had an office on a  
17 street called Wall Street. I don't mean the  
18 financial district.

19 Q. I understand.

20 A. It's in the financial district but  
21 if there was there was one. This was the  
22 beginning of our due diligence process and the  
23 discussions that I remember more clearly are  
24 already uptown at Third Avenue in the east 50s.

25 Q. What were you doing at that time?



1 can be very, very, very additive.

2 Q. You indicated -- I'm sorry, I'm  
3 moving around. I'm going to page 5 of this  
4 document, 354. Down in the last paragraph.

5 A. Just one second.

6 Q. Sure, take your time.

7 A. Just trying to get there. Sorry.

8 Q. It's a paragraph that starts,  
9 "Mr. Merkin also knew." And if you travel on  
10 down, you start -- you discuss the SEC. I want  
11 to be sure I don't miss something here. Sorry,  
12 I might have jumped over something.

13 A. It's okay.

14 Q. Boy, your memory place tricks  
15 here.

16 A. Would you say that for the record,  
17 please.

18 Q. I would readily admit it to the  
19 jury. Just ask Brian Williams.

20 Let's go back to page 5 and the  
21 SEC.

22 A. Last paragraph?

23 Q. Yeah, last paragraph. I'm going  
24 to just read it. "In one of their many  
25 conversations, Mr. Madoff reported that the SEC

1 had visited BLMIS's offices to conduct reviews  
2 eight times in 16 years, and that gave you  
3 additional comfort about Mr. Madoff's bona  
4 fides." Do you see that?

5 A. I do.

6 MR. STEINER: It wasn't exactly a  
7 correct reading, but close enough.

8 MR. SHEEHAN: All right. I stand  
9 by the record, not by what I said, all right?  
10 Just suggesting a question.

11 Q. But can you tell me what you  
12 discussed that gave you comfort?

13 A. Unless I'm missing, it says -- the  
14 specific reference to the SEC reviews?

15 Q. Yes. Did he tell you what they  
16 did?

17 A. Oh. I thought you were saying  
18 something about the comfort.

19 Q. No.

20 A. He had either scheduled or  
21 surprise visits from the SEC with some  
22 regularity and some frequency, perhaps more on  
23 the regular than on the surprises. He was very  
24 proud of his overall compliance record and just  
25 sort of a clean bill of health with occasional

1 references to one or two smaller things, and it  
2 certainly meant a great deal to me that the SEC,  
3 with the power of subpoena, with the ability to  
4 spend days at the firm, which is how he  
5 presented it, came away and said, you know,  
6 thank God for Bernie. And that was very  
7 significant to me.

8 Q. My question, though, was, maybe I  
9 wasn't clear so I'll restate it.

10 Did he tell you what exactly the  
11 SEC did during these visits?

12 A. Yeah. He -- his operation was  
13 reviewed by the SEC. It is my memory on the --  
14 on what I thought of as the two sort of aspects  
15 of the business.

16 Q. What I'm asking you for is  
17 specifically, for example, did he tell you that  
18 they asked for access to DTCC to verify the fact  
19 that he had the stock he said he had?

20 A. I don't remember that  
21 conversation.

22 Q. Did he ever represent to you that  
23 that happened?

24 A. I truly don't remember.

25 Q. Okay. Page 6 if you would,

1 bump into him then a couple times a year for  
2 that. And there was always or almost always an  
3 opportunity to ask him something that I wasn't  
4 sure about in terms of where the strategy --  
5 whether it had been executed properly or where  
6 the strategy might be headed to next.

7 Madoff's continued and growing  
8 success and prominence in the securities  
9 industry was very significant. He did end up in  
10 the position he achieved at NASDAQ, as its  
11 chairman, and he went to Washington for hearings  
12 for testimony.

13 I remember an occasion when he and  
14 the president of the stock exchange and a former  
15 chairman of the SEC were basically the three  
16 persons who congressional committees wanted to  
17 speak to. That all goes to various and  
18 different forms of due diligence.

19 Continued to talk to investors,  
20 continued to talk to investors of his not  
21 through us, who I thought were thoughtful and  
22 insightful investors, bringing investors to see  
23 him was a big part of what we were after.

24 Various events that took place in  
25 the securities industry mattered to me a great

1 deal. Not at the very beginning but closer to  
2 then than the end the way an accounting firm  
3 called Avellino & Bienes' pool was unwound by  
4 the SEC's regional administrator in New York,  
5 all the assets, or very substantially all the  
6 assets to be managed at Madoff and with the very  
7 clear reassurance from the SEC that every penny  
8 was properly accounted for, was a very important  
9 piece of information.

10 It meant that the SEC, which had  
11 every reason to look especially careful,  
12 especially carefully at a fund that had been put  
13 together that had clear legal issues, forcing  
14 the liquefaction of the fund and putting the  
15 fund out of business was basically saying we  
16 found the fund to be managed by Madoff and we  
17 were very, very happy to tell you that  
18 everything is there.

19 There was a quote from Richard  
20 Walker who was then the regional administrator  
21 in an article in the Wall Street Journal, and it  
22 was very important. The development of  
23 something called Primex, which was a trading  
24 platform, that was to be managed by Madoff.

25 Madoff didn't really look for

## **EXHIBIT 3**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT                      Adv.Pro.No.  
SECURITIES LLC,    08-01789 (BRL)  
Debtor.

-----x

IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,  
Plaintiff,    Adv.Pro.No.  
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,  
L.P., ARIEL FUND LTD., ASCOT  
PARTNERS, L.P., GABRIEL CAPITAL  
CORPORATION,

Defendants.

-----x

CONTINUED VIDEOTAPED DEPOSITION OF  
J. EZRA MERKIN, as reported by Nancy C. Bendish,  
Certified Court Reporter, RMR, CRR, and Notary  
Public of the State of New York, at the offices  
of Baker Hostetler, 45 Rockefeller Plaza, New  
York, New York, on Wednesday, February 25, 2015,  
commencing at 9:42 a.m.

1 A. Oh, how much time passed?

2 Q. How much time had passed before  
3 you started speaking about BLMIS.

4 A. I don't remember.

5 Q. How often would you speak about  
6 BLMIS?

7 A. With Mr. Meyers?

8 Q. Yes.

9 A. Over the years?

10 Q. In the initial time frame. In  
11 this late '80s time period.

12 A. I don't remember.

13 Q. Did Mr. Meyers tell you that he  
14 conducted due diligence on BLMIS?

15 A. I don't remember the nature of  
16 those conversations.

17 Q. Do you have any documentation from  
18 those discussions?

19 A. Again, I suppose the answer to the  
20 question is yes if the note in the file, if  
21 that's what it is, that we referred to, say,  
22 five or ten minutes ago, so if it's in fact his,  
23 and regardless of whether it's B-E-M-I-S at the  
24 top of it or not, if it's there, then that would  
25 have been something that he would have sent me



1 around that time.

2 One way of determining that is  
3 seeing what the last year on that is because he  
4 would have sent me something that was reasonably  
5 up to date. So, therefore, I'm not testifying,  
6 but speculating, those are two different  
7 functions, reasonably contemporaneous with the  
8 period you're talking about.

9 Q. After your initial conversations  
10 with Mr. Meyers, did you have any discussions  
11 with him regarding the performance of your  
12 respective BLMIS accounts?

13 A. When you say respective, at that  
14 time they weren't respective.

15 Q. After your initial discussions,  
16 after, in 1990, did you ever have conversations  
17 with Mr. Meyers regarding the performance of  
18 your respective BLMIS accounts?

19 A. Yes. Yes.

20 Q. What do you recall from those  
21 discussions?

22 A. Well, Leon Meyers and I have had  
23 conversations about the investment world going  
24 back, let's just say, to '85, '86, '87 and have  
25 had one as recently as last week. So I have

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1 spent all those years talking to Leon, I suppose  
2 possibly twice a day, sometimes twice a week,  
3 sometimes twice a month, sometimes twice a  
4 quarter. I think my guess would be in all  
5 instances more frequently than twice a year. So  
6 I'm not going to go to twice a year. And Madoff  
7 was a theme of our conversations, surely not  
8 every one, but was a constant theme of our  
9 conversations. Performance would certainly have  
10 been part of it. Most of them focused on  
11 visits, telephone calls, understandings, changes  
12 in the strategy, possible changes in the  
13 strategy, and was he in or was he out, if that  
14 was something that we were then talking about.

15 Q. Did you ever have any  
16 conversations with Mr. Meyers where you tried to  
17 determine how Mr. Madoff chose to enter and exit  
18 the market?

19 A. Probably.

20 Q. Did you ever come to any  
21 conclusions with Mr. Meyers?

22 A. About what he -- how he --

23 Q. How Mr. Madoff chose to enter and  
24 exit the markets.

25 A. You're asking me specifically

1 whether Mr. Meyers and I in a conversation  
2 concluded that this is how he did it?

3 Q. Yes.

4 A. I don't remember any specifics of  
5 that kind of a -- I just don't remember any  
6 specific conversation on that.

7 MR. SONG: We've been talking  
8 about an hour, I think now is a good time for a  
9 break.

10 MR. STEINER: Sure.

11 THE VIDEOGRAPHER: Off the record,  
12 10:42.

13 (Recess taken.)

14 THE VIDEOGRAPHER: Back on 11:07.

15 BY MR. SONG:

16 Q. Mr. Merkin, can I have you turn to  
17 Trustee's Exhibit 363, which is your, what we  
18 designated yesterday as your Madoff file.

19 A. So we're done with this for the  
20 moment?

21 Q. For the moment, yes.

22 A. That's that big thing you gave me  
23 yesterday in rubber bands?

24 Q. Yes.

25 A. Keep a semblance of order here.

1 she did.

2 Q. What do you recall that  
3 relationship to be?

4 A. I think she had an -- she  
5 supervised either a pooled vehicle there or a  
6 series of accounts, and was proficient on the  
7 subject and knew what she was talking about.

8 Q. Do you recall when you had those  
9 discussions with -- let me back up.

10 When do you recall having  
11 discussions with Ms. Manzke about BLMIS?

12 A. The specific dates? I don't  
13 remember. Early that period of time, perhaps  
14 very late '80s, perhaps not quite so late '80s,  
15 perhaps '90, around that period of time.

16 Q. Do you know if you had more than  
17 one conversation with Ms. Manzke?

18 A. Yes. I mean, yes I -- either in  
19 person or on the phone?

20 Q. Yes.

21 A. Including those conversations,  
22 yes.

23 Q. Do you have an estimate as to how  
24 many times you spoke to her prior to investing  
25 with BLMIS?

1           A.       Nothing terribly reliable, the  
2 estimate.

3           Q.       Did Ms. Manzke tell you that she  
4 had conducted due diligence on BLMIS?

5           A.       I don't remember the specifics of  
6 the conversation, but I remember forming an  
7 impression that she had been to the office, that  
8 she knew Bernie, that she'd had conversations  
9 about the strategies.

10          Q.       And did Ms. Manzke send you any  
11 documentation in the course of your  
12 conversations -- or in the course of your due  
13 diligence on BLMIS?

14          A.       She may have. I don't remember.

15          Q.       Did you take any notes of your  
16 conversations with Ms. Manzke?

17          A.       I don't remember.

18          Q.       If you had taken notes regarding  
19 your conversations about BLMIS with Ms. Manzke,  
20 would you have put them in your Madoff file?

21          A.       If I had them, very likely, yes.

22          Q.       The next name on the list on page  
23 2 is David Gottesman.

24          A.       Gottesman, yes.

25          Q.       Gottesman. And prior to 1990 did

1 investor or the funds became investors of  
2 Mr. Madoff's.

3 Q. And what did you discuss with  
4 Mr. Gottesman?

5 A. Mr. Madoff, his personal  
6 reputation, the strategy and so forth.

7 Q. Were you aware at that time, prior  
8 to 1990, whether Mr. Gottesman had a personal  
9 investment with BLMIS or whether it was in a  
10 pooled vehicle or investor money?

11 A. I don't remember.

12 Q. And did Mr. Gottesman tell you  
13 that he conducted due diligence on BLMIS?

14 A. I don't remember his saying that  
15 in those words. I know Mr. Gottesman and he  
16 doesn't -- he's a very careful and methodical  
17 investor. In his case, one of the impressions I  
18 do remember, he had a very high opinion of  
19 Bernie Madoff, the person. Thought he was an  
20 innovative person, that some of the things he  
21 had done in terms of his challenge of on-board  
22 versus off-board trading, his willingness to  
23 take on the (indiscernible) of the New York  
24 Stock Exchange were all things that  
25 Mr. Gottesman knew about, was aware of.

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1                   It was not quite at this time, but  
2                   Mr. Gottesman's decision to have Mr. Madoff join  
3                   the university board and become the chairman of  
4                   their business school board, become at some  
5                   point the treasurer of the university, a member  
6                   of the executive committee, were later events,  
7                   some of them not that much later because that  
8                   takes place over a series of years, that I think  
9                   reflected those views.

10                  Q.           Did Mr. Gottesman ever share with  
11                  you how much he invested in BLMIS?

12                  A.           I don't remember.

13                  Q.           Would the amount of money that  
14                  Mr. Gottesman placed with BLMIS be of any  
15                  significance to you?

16                  MS. ARCHER: Object to the form.

17                  A.           I don't remember. At the time  
18                  Mr. Gottesman had -- was a very, very, very  
19                  significant investor in Berkshire Hathaway.  
20                  It's possible that even then I was aware, or I  
21                  believe is the case which is he was the largest  
22                  single individual shareholder in Berkshire other  
23                  than Mr. Buffett. They're institutional  
24                  investors, but I think at some point I realized  
25                  he had a larger -- perhaps was a larger investor

1 than anybody -- any other individual.

2 So nothing -- he was never going  
3 to invest with some other person. Just for  
4 sheer size, of what he might have had with  
5 Berkshire and therefore what he had someplace  
6 else was not something that I necessarily asked  
7 about or remember hearing about or paid that  
8 much attention to. Unless it was trivial, but I  
9 don't have any memory that it was trivial.

10 Q. What would be a trivial amount in  
11 your mind?

12 A. Then?

13 MR. STEINER: Objection to form.

14 Q. Yes.

15 A. I don't know.

16 Q. The next name on the list is  
17 Mr. Gedale Horowitz.

18 A. Um-hum.

19 Q. Again, prior to 1990, did you have  
20 a relationship with Mr. Horowitz?

21 A. Yes.

22 Q. How would you describe that  
23 relationship?

24 A. I knew him. I knew him probably a  
25 little bit less well than I knew Mr. Gottesman



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1 but not that much less well. He was a -- had  
2 been a figure at the Yeshiva University board.  
3 I'm not sure he was still on the board but he  
4 was the chairman of their investment committee  
5 at that time and I had, by then I'm pretty sure,  
6 joined the investment committee. I'm not sure I  
7 necessarily was then chairing it. Pardon me.  
8 Can't quite place the time sequence today.

9 He ran Solomon Brothers' municipal  
10 department, municipals department which, when he  
11 ran it, until -- the department was closed, was  
12 sort of a huge firm within a firm. He was  
13 probably one of the leading spokesmen for the  
14 muni industry. The nature of the muni industry  
15 is such that government relations are very  
16 critical because municipals are debt securities  
17 issued by government entities, perhaps without  
18 exception. They don't qualify for their tax  
19 advantages.

20 What I remember from a  
21 conversation with him, very specifically at that  
22 time, was the extent to which the regulatory  
23 world and the congressional world held  
24 Mr. Madoff in such high esteem. That would have  
25 been something that would have been important to

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1 me and he would have been a very critical figure  
2 in knowing, because he was constantly traveling  
3 among states, and specifically to Congress in  
4 Washington, on governmental relations, because  
5 they're so important to the muni industry, and  
6 because Solomon was such a dominant name in  
7 municipals. And he kept saying to me -- he was  
8 the person who said to me at that time, Bernie  
9 Madoff, a legend on Wall Street. He said, but  
10 you -- but possibly even more so, even more than  
11 a legend in Congress. Given Bernie's testifying  
12 down there and given the extent to which they  
13 had looked to him for certain issues in the  
14 securities industry.

15 Q. Did you know whether or not  
16 Mr. Horowitz had a -- any kind of a personal  
17 relationship with Mr. Madoff at that point in  
18 time?

19 A. I don't really remember today  
20 whether that was the case or not. I have very  
21 specific memories of their knowing each other  
22 subsequent to that time. In other words, I can  
23 tell you about things subsequent to that, but  
24 they did very clearly know each other, but I  
25 don't remember today whether I knew that then or

1 whether I didn't know that then.

2 Q. And the reason I'm asking is the  
3 conversation that you had with Mr. Horowitz  
4 regarding Mr. Madoff's reputation, do you know  
5 whether that was based on Mr. Horowitz's  
6 personal knowledge or whether he also learned  
7 that through -- or he was relaying to you  
8 Mr. Madoff's reputation from other people?

9 A. The short answer is I don't know.

10 Q. Do you know whether or not  
11 Mr. Horowitz had a personal account with BLMIS?

12 A. I don't know whether he had a  
13 personal account at that time.

14 Q. Do you know if he ever had a  
15 personal account?

16 A. Oh, I thought you asked me that.  
17 I don't know for sure.

18 Q. Do you know whether or not  
19 Mr. Horowitz was ever personally invested  
20 through any vehicle with BLMIS?

21 A. Yes.

22 Q. What vehicle was that?

23 A. Ascot Partners LP.

24 Q. And when did --

25 A. I'm not sure it was him

1 personally. I think it was family trusts, but I  
2 would take that to be something that you would  
3 want me to answer yes to in your question.

4 Q. Yes. Do you know when  
5 Mr. Horowitz began his investments with Ascot  
6 Partners?

7 A. Early on in Ascot history and I  
8 can't place the exact date or time or year.

9 Q. Did Mr. Horowitz ever tell you  
10 that he conducted due diligence on BLMIS?

11 A. I don't remember.

12 Q. And if you hadn't -- if you -- do  
13 you have any documentation regarding your  
14 discussions and conversations with Mr. Horowitz  
15 regarding BLMIS?

16 A. None that comes to mind, but I  
17 don't remember.

18 Q. If you had such documentation, you  
19 probably would have put it in your BLMIS file?

20 A. Probably.

21 MR. STEINER: Objection to form.

22 A. But depends.

23 Q. Do you recall a meeting between  
24 yourself, Mr. Madoff and Mr. Horowitz in  
25 February of 2003?

1           A.       I recall a meeting. I can't quite  
2 place when it was.

3           Q.       Do you recall what the purpose of  
4 that meeting was?

5           A.       I think Mr. Horowitz was  
6 interested in -- either had already become an  
7 investor in Ascot Partners LP or was  
8 contemplating becoming an investor. I would  
9 imagine by that time Yeshiva University was an  
10 investor. I think he was the chairman of the  
11 investment committee when Yeshiva University  
12 became an investor. Obviously his views of  
13 Mr. Madoff mattered much to that investment.

14                   Mr. Gottesman was either on -- was  
15 either already the chairman of the board or  
16 certainly on the investment committee when that  
17 happened, and if that happened at this time,  
18 that would have been part of the discussions  
19 about Madoff with these two people. I just  
20 don't -- you may know, I'm trying to answer the  
21 question. If you know when that investment was  
22 made, it either fits in your time period or it's  
23 a little bit later, but it's not a long time  
24 later.

25           Q.       Okay. Do you recall anything?

1 was a bit of discussion about SEC chairman but  
2 I'm not sure I -- that that is in front of me.  
3 That is what I remember their talking about.

4 Q. Did you arrange the meeting  
5 between Mr. Horowitz and Mr. Madoff?

6 A. I think so.

7 Q. Do you know why you needed to  
8 arrange the meeting if Mr. Horowitz and  
9 Mr. Madoff had a personal relationship?

10 A. I think Mr. Horowitz, as either a  
11 fiduciary for or as an investor in Ascot  
12 Partners LP, thought that that was the way to  
13 have the introduction, or have the request made.

14 Q. And did you take any notes from  
15 this meeting?

16 A. Again, I'm not sure I was at the  
17 meeting or this is my memory of what they told  
18 me about the meeting. They meaning mostly  
19 Gedale.

20 Q. Other than this one meeting that  
21 we were discussing, do you recall any other  
22 occasions in which you arranged a meeting  
23 between Mr. Horowitz and Mr. Madoff?

24 A. I don't remember if there was a  
25 request for another meeting, that didn't happen

1 list is Daniel Hoffert. Am I saying that right?

2 A. Hoffert, I think.

3 Q. Prior to -- again prior to 1990  
4 did you have a relationship with Mr. Hoffert?

5 A. Yes.

6 Q. And how would you describe that  
7 relationship?

8 A. I knew Mr. Hoffert, he was  
9 probably older than I am, and he was someone I  
10 knew from our neighborhood and community in New  
11 York City when I was growing up. He no longer  
12 lived in New York City, probably even then, he  
13 lived in Florida.

14 Q. Mr. Merkin, can I ask you not to  
15 put your hand to your mouth.

16 A. Okay.

17 Q. Did there come a time in which  
18 Mr. Hoffert became an investor with Gabriel?

19 A. Yes. Or some family entity did.

20 Q. And do you recall when you first  
21 met Mr. Hoffert to discuss BLMIS?

22 A. I don't remember that, when we met  
23 to discuss it. I think he was already in  
24 Florida, called me and asked me one or two  
25 questions about Madoff. He said he had had -- I

1 think I remember the conversation going  
2 something like as follows, because I told him  
3 that Gabriel Capital LP -- this is either around  
4 the time that he became an investor, or maybe it  
5 was earlier. We had discussed the merger  
6 arbitrage business and he said to me, you must  
7 know somebody else who's in the merger arbitrage  
8 business. That's not such an infrequent  
9 question. And I said, who'd you have in mind  
10 and he said, Bernie Madoff. And I said, I would  
11 not think of Bernie Madoff as someone who is in  
12 the merger arbitrage business. And he said, no,  
13 no, no, not merger arbitrage business.  
14 Arbitrage business. He's an arbitrage. "He"  
15 meaning Madoff, not Mr. Hoffert. And I thought  
16 in some sense that made some sense. And he sent  
17 me some form of either a confirmation or perhaps  
18 it was a monthly statement to give me some sense  
19 of why he called him an arbitrage and what he  
20 was doing with him.

21 Q. I'm going you to go back to your  
22 Madoff file.

23 A. To the rubber bands?

24 Q. Yes. This will be relatively easy  
25 to find.



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1 have been an earlier document. That's what I'm  
2 trying to get at, that I didn't keep or that I  
3 don't have that wasn't in the file, wasn't  
4 there. So I'm not sure that this is the  
5 document that I was referring to when I said we  
6 had the earlier conversations and the earlier  
7 document.

8 Q. Okay. Did Mr. Hoffert tell you  
9 that he conducted due diligence on BLMIS?

10 A. I don't remember the conversation.

11 Q. And do you know when Mr. Hoffert  
12 passed?

13 A. I am guessing around -- the answer  
14 is no, I don't. I'm guessing around 2010.

15 Q. Do you know if Mr. Hoffert was  
16 asked to testify in any matters regarding your  
17 investments in BLMIS?

18 A. I have no idea.

19 Q. If you turn to page 3 of the  
20 interrogatory response --

21 A. Okay. Let me put this -- may I  
22 seek your advice. Am I putting the rubber bands  
23 back on or not?

24 Q. I would not put the rubber bands  
25 back on.

1           A.       I asked the right person the right  
2 question.

3           Q.       If you turn to page 3, the first  
4 full sentence at the top says you had  
5 conversations with customers of BLMIS's market  
6 making operations.

7           A.       Um-hum.

8           Q.       Do you recall who those customers  
9 were?

10          A.       Well, Fidelity for sure. And I  
11 don't remember at the moment who else it might  
12 have been. There might have been somebody at  
13 Charles Schwab. I just don't remember.

14          Q.       Do you recall the particular  
15 person you spoke to at Fidelity?

16          A.       No.

17          Q.       And did Fidelity send you any  
18 documentation regarding BLMIS's market making  
19 operations?

20          A.       I don't think so.

21          Q.       Do you know Henry Kaufman?

22          A.       I do.

23          Q.       How do you know Mr. Kaufman?

24          A.       How do I know Mr. Kaufman? I know  
25 Mr. Kaufman because he and his wife, for a

1 period of decades, were very active in something  
2 that related to a school for music and culture  
3 generally on the west side of Manhattan, in a  
4 school that my family has had an involvement  
5 with for, must be half a century or 40 years,  
6 something like that. Meaning my parents,  
7 myself, my siblings, my brother I think might  
8 still be on the board. So I knew him a little  
9 bit from there. And I knew him from going back  
10 to his Solomon days a little bit. We also had  
11 additional friends in common. One would have  
12 been Leon Levy.

13 Q. Did you ever speak to Mr. Kaufman  
14 regarding BLMIS?

15 A. Yes.

16 Q. And when were those conversations?

17 A. Can't say I remember specifically  
18 when they were.

19 Q. Do you recall whether it was prior  
20 to your investments in BLMIS, so prior to 1990,  
21 or was it later on?

22 A. I certainly can't recall -- I  
23 certainly can't recall with specific precision  
24 that they were prior or else I would have  
25 included them in the document. So it must have

1 failed some precision test of my own. But it's  
2 an older relationship, so it could have well  
3 been back then as well.

4 Q. Did you discuss -- do you know  
5 whether or not Mr. Kaufman had any investments,  
6 either personal or through family entities, with  
7 BLMIS?

8 A. I believe he did.

9 Q. And was that the subject of your  
10 conversation regarding BLMIS?

11 A. It certainly came up. I mean, it  
12 wasn't the only part of it, but it came up. He  
13 had a gentleman who worked with him, whose name  
14 I can't remember at the moment, and we had the  
15 conversations in his office.

16 Q. What was the nature of those  
17 conversations?

18 A. Where to invest, how to invest,  
19 what kinds of returns he was looking for, what  
20 kinds of risk he was willing to take, what kinds  
21 of liquidity requirements he had.

22 Q. And did you have any conversations  
23 with Mr. Kaufman regarding due diligence on  
24 BLMIS?

25 A. I had conversations with him about

1 Mr. Madoff. I can't pinpoint them and say, this  
2 is what the due diligence component of it was.

3 Q. Do you have any -- do you have any  
4 notes or other documentation regarding your  
5 discussions with Mr. Kaufman on BLMIS?

6 A. Not that I remember.

7 Q. And do you know whether or not  
8 Mr. Kaufman was ever called to testify in any of  
9 the litigations, arbitrations, regarding your  
10 investments in BLMIS?

11 A. I don't know.

12 Q. Do you know Norman Levy?

13 A. I think I've been introduced to  
14 him once or twice. I don't know him. He -- I  
15 know I had perhaps a little bit of a -- he may  
16 have been a small owner of the building in which  
17 our office is, and we may have been paying him,  
18 directly or indirectly, some rent.

19 Q. Do you know whether Mr. Levy had  
20 any investments with BLMIS?

21 A. Only from newspaper accounts that  
22 appeared subsequent to late 2008.

23 Q. Did you have any discussions  
24 with --

25 A. Although, you know what, I can't

1 A. Yes, true.

2 Q. Do you recall whether or not you  
3 discussed Mr. Jesselson's investments with BLMIS  
4 in your conversations with him?

5 A. I'm sorry? I just didn't -- you  
6 just trailed off. Say it again.

7 MR. STEINER: Just to correct one  
8 thing, you just said that Mr. Jesselson doesn't  
9 appear on page 5, and he certainly does.

10 MR. SONG: Oh, yes.

11 A. Two Ludwigs.

12 Q. Two Ludwigs.

13 Do you recall whether you  
14 discussed Mr. Jesselson's investments with BLMIS  
15 in your conversations?

16 A. With Mr. Jesselson?

17 Q. With Mr. Jesselson.

18 A. I think I said he talked, when we  
19 discussed Mr. Madoff, he talked as an investor  
20 of Mr. Madoff would talk. So it was clear to me  
21 that he was an investor. Whether it was him  
22 personally or the family foundation, not sure it  
23 would have made a big difference to me, and I  
24 just don't remember which one it was. And it  
25 may have been another charity as well.

1 Q. And did Mr. Jesselson tell you  
2 that he conducted due diligence on BLMIS?

3 A. In those words, in those many  
4 words, I don't remember.

5 Q. And did Mr. Jesselson send you any  
6 documents or materials regarding BLMIS?

7 A. I don't think so.

8 Q. Do you know Leon Levy?

9 A. I did.

10 Q. And who is Mr. Levy?

11 A. Mr. Levy was one of the two  
12 co-founders and principals at an entity called  
13 Odyssey Partners LP. And before that had had a  
14 career at Oppenheimer & Company.

15 Q. And did you have a relationship  
16 with Mr. Levy?

17 A. Yes.

18 Q. How would you describe that  
19 relationship?

20 Again, sir, if you could move your  
21 hands away.

22 A. Oh, sorry.

23 We were fairly close. Leon is  
24 somebody else I would put on the short list,  
25 perhaps not on the scale of Mr. de Picciotto in

1 other customers of Mr. Madoff. Then we  
2 discussed Mr. Jesselson, Mr. Gottesman and  
3 Mr. Meyers. And then it's other sophisticated  
4 investors, including people who served on the  
5 Yeshiva University investment committee.

6 A. Um-hum.

7 Q. Could you tell me who those other  
8 sophisticated investors are?

9 A. Well, surely Mr. Horowitz. On the  
10 YU investment committee, I would probably  
11 include in that Morris Smith, Jonathan Kolatch.  
12 Don't want to repeat names, so...

13 Those are the names that come to  
14 mind at the moment. I'm sure there are more,  
15 but those are the ones that I remember at the  
16 moment.

17 Q. What do you recall discussing --  
18 we've already covered Mr. Horowitz. What do you  
19 recall discussing with Mr. Smith?

20 A. He was just present at YU  
21 investment committees, either he or an entity  
22 that he was related to were limited partners or  
23 became limited partners in Ascot Partners LP,  
24 probably as well as Gabriel, if I remember  
25 correctly. And I think it's possible his



1 mother-in-law became an investor. So it was  
2 ongoing conversations.

3 The Ascot investment was a, not  
4 necessarily every meeting but was a fairly  
5 constant motif at YU investment committee  
6 meetings. I don't remember when Morris joined  
7 the committee, but he was pretty diligent in  
8 attendance, less diligent in attentiveness  
9 because he was constantly on his phone. You  
10 know, he was constantly emailing throughout the  
11 meetings. But he came. Morris worked at my  
12 office for a period of years and a lot of the  
13 meetings were in my office.

14 So Madoff came up and Morris was a  
15 fan. Morris was a fan of Ascot generally.  
16 Ascot was, some of that would -- Gedale always  
17 asked about, Mr. Gottesman asked about, came up,  
18 conversations and so forth. Also as I've  
19 previously alluded to Mr. Madoff became  
20 something of a figure at Yeshiva University  
21 board, chairman of the business school, officer  
22 of the board when he became the treasurer, and  
23 the executive committee, which was only eight or  
24 nine people, included him.

25 Q. Still on page 5, if you go to the

1 Q. You're not aware of a direct  
2 investment with BLMIS?

3 A. I'm not aware of one but I would  
4 not necessarily be aware of one.

5 Q. And what were the circumstances  
6 related to the meeting that you set up between  
7 Mr. Bravmann and Mr. Madoff?

8 A. Don't remember.

9 Q. Do you recall what time frame this  
10 was in?

11 A. No.

12 Q. Did you attend that meeting?

13 A. I don't remember.

14 Q. Did you have -- did you take any  
15 notes of that meeting?

16 A. I don't remember.

17 Q. And do you know if you have any  
18 documentation at all evidencing this meeting?

19 A. Did we produce any, may I ask?

20 Q. Would you have had an email, say,  
21 with Mr. Bravmann setting up the meeting?

22 A. I might have. I don't know. I  
23 would not testify that we didn't but I don't --  
24 I don't know that that's the way it would have  
25 happened. It may have just been telephone calls

1 name after Christof Reichmuth, so to take those  
2 three names together rather than two names  
3 together...

4 Q. Sure.

5 A. ...worked.

6 Q. Did there come a time when you set  
7 up a meeting between Mr. Reichmuth, Mr. Hackel  
8 and Mr. Madoff?

9 A. I set up meetings for Mr. Hackel,  
10 I set up meetings for Mr. Reichmuth, I set up  
11 meetings for Mr. Erne. I don't know at which  
12 meetings the two of them might have overlapped.

13 Q. Did -- I want to start with  
14 Mr. Reichmuth. Do you recall when you set up  
15 the meeting for Mr. Reichmuth?

16 A. Christof?

17 Q. Yes.

18 A. This would have probably been not  
19 that long after Reichmuth & Company was started  
20 by his father. So early in the period we're  
21 talking about, but I don't remember when.

22 Q. Does the late 1990s sound correct  
23 to you?

24 A. That's early in the period we're  
25 talking about, so I can't remember exactly when.

1 I would have conjectured 2000 but, you know,  
2 it's not a different -- not a completely  
3 different answer.

4 Q. Do you recall attending the  
5 meeting with Mr. Reichmuth and Mr. Madoff?

6 A. I recall attending meetings at  
7 Mr. Madoff's office with various members of the  
8 Reichmuth staff. I'm not sure I remember this  
9 one specifically.

10 Q. Okay. Do you recall what the  
11 purposes were of the -- do you recall what the  
12 purposes of the meeting between Mr. Reichmuth  
13 and Mr. Madoff were?

14 A. Broadly speaking, Reichmuth &  
15 Company had money management clients, of which  
16 possibly Mr. Hackel was one and then had a whole  
17 series of clients who I didn't know, and they  
18 had -- over a period of time were in the process  
19 of setting up at least one and probably two what  
20 became fairly large fund of funds.

21 In the first one, chronologically,  
22 they had a very large position relative to the  
23 size of the fund in Ascot Fund Limited.

24 Q. Did you ever tell Mr. Reichmuth  
25 that BLMIS only acted as a broker for Ascot

1 Fund?

2 A. No.

3 Q. Do you recall how many meetings  
4 you set up between Mr. Reichmuth and Mr. Madoff?  
5 Mr. Christof Reichmuth.

6 A. No.

7 Q. Was it more than one?

8 A. Could very well be.

9 Q. Did you ever disclose to  
10 Mr. Christof Reichmuth that Ariel had capital  
11 invested with BLMIS?

12 A. To Christof specifically?

13 Q. Yes.

14 A. I don't remember a specific  
15 conversation with Christof.

16 Q. Okay. Do you recall setting up a  
17 meeting for Mr. Patrick Erne and Mr. Madoff in  
18 October of 2007?

19 A. Sounds right.

20 Q. Do you know if Mr. Matlin attended  
21 that meeting?

22 A. I believe he did.

23 Q. And do you recall anybody else  
24 that attended that meeting?

25 A. Me.

1 Q. Anybody else from GCC?

2 A. Don't think so. I don't remember,  
3 but -- not that I remember.

4 Q. Why was this meeting arranged?

5 A. I'm sorry?

6 Q. Why was the meeting arranged?

7 A. At some point I guess both Michael  
8 and Patrick had asked for a meeting with  
9 Mr. Madoff, and -- Patrick was not here that  
10 often. He used to swing around about three  
11 times to year to visit managers, and so I asked  
12 Bernie if it was okay to sort of basically  
13 double up and to save wear and tear all around,  
14 come to his office with two different investors  
15 who had no relation with each other.

16 Q. So was the meeting -- did  
17 Mr. Madoff meet with both Mr. Erne and  
18 Mr. Matlin simultaneously?

19 A. It was one meeting.

20 Q. It was one meeting. And all four  
21 of you were together at the meeting?

22 A. Correct.

23 Q. Do you have any specific  
24 recollection of what was discussed?

25 A. I think we started from scratch

1 and went over the, whatever the strategy was at  
2 the time, the strategy we've talked about. Lots  
3 of questions were asked, questions were  
4 answered. I don't think any questions were  
5 declined that I can remember. And I think both  
6 Patrick and Michael were actually rather  
7 thankful for the meeting because I think I  
8 remember getting emails saying thank you so much  
9 for setting it up and how, if not in this word,  
10 in this sense how illuminating it was, or how  
11 much light it shed on, you know, things that  
12 they had already known but had perhaps a fuller  
13 understanding of or a broader understanding of  
14 and so forth.

15 Q. And those were emails from both  
16 Mr. Erne and Mr. Matlin?

17 A. It might have been one email and  
18 one phone call, I'm just not quite sure.

19 Q. Did you take any notes of this  
20 meeting?

21 A. I don't remember.

22 Q. Was this the only meeting that you  
23 arranged on behalf of Mr. Matlin and Mr. Madoff?

24 A. Might have been. I'm not sure.

25 Q. Do you recall whether or not

1 A. With Mr. Madoff?

2 Q. Yes.

3 A. I'm sorry. What was the question?

4 Q. At the meeting in October of 2007  
5 with Mr. Erne, Mr. Matlin and Mr. Madoff, did  
6 you discuss Ariel's investment with BLMIS, or  
7 was it just an overall discussion on Mr.  
8 Madoff's strategy?

9 A. It was surely the latter, okay,  
10 about the -- yes, it was a discussion of the  
11 strategy. They were there to meet Mr. Madoff,  
12 not to meet me. If I remember correctly, I  
13 think I had a meeting with one of them  
14 immediately before or immediately after, but it  
15 was on the same day. I think they met in my  
16 office and -- we met in my office and then we  
17 walked over to Third Avenue immediately  
18 following the meeting with me and then had the  
19 meeting with Bernie. That would probably have  
20 been with Patrick. And then had the meeting  
21 with Bernie.

22 Q. And prior to December of 2008, did  
23 you ever tell Mr. Erne that Ariel was invested  
24 with BLMIS?

25 A. I don't remember a specific



1       vaguest memory that she either was a compliance  
2       person or perhaps a legal person, but that  
3       doesn't mean she didn't function within the risk  
4       review group.

5               Q.       All right.

6               A.       If people who went on a due  
7       diligence visit, to your way of asking  
8       questions, by definition are part of a risk  
9       review, then maybe they are. That depends how  
10      you think about the relationship between due  
11      diligence and risk. Then I would say she  
12      probably was part of that because she went on  
13      due diligence visits.

14              Q.       Okay.

15              A.       But I don't know what her --

16              Q.       You don't know what her job title  
17      is?

18              A.       Correct.

19              Q.       Or what her role is at UBP?

20              A.       I certainly don't know what her  
21      job title is. I know enough about her role to  
22      say -- and it's not very much -- to say that she  
23      was part of a due diligence review.

24              Q.       Do you recall setting -- arranging  
25      a meeting between Mr. Igolnikov and Mr. Madoff

1 in early 2004?

2 A. Not specifically, no.

3 Q. Let me get, Oleg, 133 and 134.

4 (Exhibits Trustee 370 and Trustee  
5 371 marked for identification.)

6 Q. Mr. Merkin, the court reporter has  
7 handed you what's been marked as Trustee's  
8 Exhibit 370, which is UBPAMMERKIN00000004.

9 A. Um-hum.

10 Q. And Trustee Exhibit 371, which is  
11 Bates number GCC-P 0152946. And we're going to  
12 start with 370.

13 A. Okay.

14 Q. Do you recognize Trustee's 370?

15 A. Well, this looks like it's an  
16 email from Roman Igolnikov to me in February of  
17 2004. Assuming that his email system spells his  
18 name correctly, it looks like we did not spell  
19 it correctly on page 5, first full paragraph.

20 Q. And what is Mr. Igolnikov -- what  
21 is the subject of this email?

22 A. I assume it starts from the  
23 bottom?

24 Q. Yes.

25 A. So he's asking me, consistent with

1 It sounds like he may otherwise have had some  
2 difficulty in doing so from the third sentence,  
3 and was appreciative of the access and of the  
4 meeting.

5 Q. To your understanding was this the  
6 first time Mr. Igolnikov met with Mr. Madoff?

7 A. I don't remember, if I knew.

8 Q. Do you recall -- did you attend  
9 that meeting between Mr. Igolnikov and  
10 Mr. Madoff?

11 A. I don't remember.

12 Q. Did Mr. Igolnikov ask to bring  
13 anyone with him to the meeting?

14 A. I don't remember.

15 Q. Did you ever tell Mr. Igolnikov  
16 that BLMIS does not take visitors?

17 A. Did I ever tell that to Roman?

18 Q. Yes.

19 A. While setting up a meeting?

20 Q. Yes.

21 A. No.

22 Q. Did you tell Mr. Igolnikov that it  
23 was a big deal for you to take him to see  
24 Mr. Madoff?

25 A. No. Certainly not that I

1 not they knew of the Madoff involvement in  
2 Ascot, and whether they knew about the Madoff  
3 involvement in Ariel.

4 Q. Yes.

5 A. If they knew of the Madoff  
6 involvement in Ascot, in my opinion, is a fact.  
7 I think it's more likely than not that they knew  
8 of the involvement in Ariel. My level of  
9 conviction there is not as high as it was or is  
10 on the Ascot piece, and we did not challenge  
11 them on Ariel. We challenged them only on Ascot  
12 for that reason.

13 Q. And you're referring to some sort  
14 of litigation between you and Reichmuth &  
15 Company?

16 A. Yes.

17 Q. Mr. Merkin, do you recall  
18 yesterday you referred to an accounting firm  
19 called Avellino & Bienes?

20 A. Yes.

21 Q. And Avellino & Bienes was the  
22 subject of several news articles that you kept  
23 in your Madoff file, correct?

24 A. I don't know how many, but yes.

25 Q. Other than those articles, did you

1 have any other source of information regarding  
2 Avellino & Bienes?

3 A. Other than a discussion with  
4 Mr. Madoff about them, no.

5 Q. And what was --

6 A. In addition to that I'm saying, in  
7 addition to the articles I had conversations  
8 with Bernie about them, but that was it.

9 Q. And what was your discussions with  
10 Mr. Madoff about it?

11 A. He kind of said, yeah, it was me  
12 and them. I didn't know anything about Avellino  
13 & Bienes until I read the first of the articles  
14 that I read, which was the Wall Street Journal  
15 article, and it was already over.

16 Q. And did you and Mr. Madoff discuss  
17 the subsequent SEC investigation of Avellino &  
18 Bienes?

19 A. I don't know if it was subsequent.  
20 That is, I have to go back and read the Journal  
21 article and see whether that was written only  
22 after the SEC investigation was over. I doubt  
23 it, but I just don't remember the sequence.

24 Q. Take out the word "subsequent."  
25 Did you have a conversation with Mr. Madoff

1 regarding an SEC investigation into Avellino &  
2 Bienes?

3 A. There's a reference to the SEC  
4 investigation in that article. And Richard  
5 Walker, who was the regional administrator in  
6 New York at the SEC at that time, is quoted. I  
7 don't remember exactly what he says in that  
8 quote, because I don't remember the article that  
9 well, but I believe he is named or maybe he's  
10 just referred to and there's not a quote in  
11 quotations. I just don't remember it that  
12 clearly.

13 But we discussed the article and  
14 we may have discussed Richard Walker, in which  
15 case the answer to your question did we discuss  
16 anything about the SEC would have been yes. If  
17 we didn't bring up Richard Walker, I don't  
18 remember otherwise a discussion about the SEC.

19 Q. How often would you talk about the  
20 SEC with Mr. Madoff?

21 A. I don't know.

22 Q. In your 10 to 15 conversations per  
23 year, do you recall whether you had a  
24 conversation once or twice per year or was it  
25 one time in your entire, the entire span of your

## **EXHIBIT 5**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X	
In re:	:
	:
BERNARD L. MADOFF INVESTMENT	:
SECURITIES LLC,	:
	:
Debtor.	:
	X
-----	
IRVING H. PICARD, Trustee for the Liquidation	:
of Bernard L. Madoff Investment Securities LLC,	:
	:
Plaintiff,	:
	:
	:
v.	:
	:
J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,	:
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,	:
ASCOT FUND LTD., GABRIEL CAPITAL	:
CORPORATION,	:
	:
Defendants.	:
----- X	

**Expert Report of Jeffrey M. Weingarten**

**I. Scope of Assignment**

If called as an expert to testify in this action, I anticipate that my testimony would concern the matters addressed in this report, the opinions that I have formed, and the materials that I have relied upon in forming my opinions. Furthermore, I anticipate that my testimony would also address any response or rebuttal by any experts testifying on behalf of the Trustee.

**II. Background and Qualifications**

My background includes over 40 years of education and experience in finance, investment research, fund management and investing.

I received a BS Economics from the Wharton School of the University of Pennsylvania in 1970. Immediately upon graduation, I worked as a securities analyst for Scheinman, Hochstin & Trotta and then Wertheim & Co. until I joined Goldman Sachs in 1977.

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My career at Goldman Sachs included tenure in the US research department both as an analyst and in charge of recruiting and training. I then went to work in London as head of International Equity Research and a Global Investment Strategist. Shortly after becoming a Partner in 1990, I became CEO of Goldman Sachs Asset Management International and Chief Investment Officer of Global Equities. In 1996, I again became a Global Investment Strategist.

I retired as a General Partner in 1998 to form Buttonwood Capital Partners, a fund management company that ran European equity hedge funds. I ran that company and those funds until 2008.

After retiring from the hedge fund business, I became a consultant and later Chairman of Grosvenor Fund Management, a property fund management business based in London. With the retirement of the CEO, I took on those responsibilities on an interim basis from 2011 to 2013. I am currently on the Board of Grosvenor Group Limited and on the Board of Aviva Investors. From 2010 to 2014, I also served on the foundation Board of the College of Charleston and on its Finance and Investment Committees.

In the course of my career, I have performed due diligence on companies, investment managers and of course had due diligence performed on me and the many funds which I managed. A copy of my curriculum vitae is attached at Exhibit A.

### **III. Materials Considered**

In forming my opinions, I considered and relied on my forty year experience analyzing investments and twenty-plus years as a hedge fund manager. In addition, I relied on knowledge of investment fund prospectuses and performance data accumulated over the course of my career. Further, I considered the documents and testimony listed on Exhibit B.

### **IV. Compensation**

I am being compensated at a rate of \$800 per hour. My fee is neither contingent on the outcome of this matter nor on the opinions provided herein. A list of all cases in the last four years in which I have provided expert testimony, either in deposition or at trial, is attached at Exhibit C.

### **V. Summary of Conclusions**

Having been retained to opine on the adequacy of the due diligence on Bernard Madoff and his organization, Bernard L. Madoff Investment Securities ("BLMIS") (collectively "Madoff"), I have reached the conclusion that the due diligence performed by J. Ezra Merkin and Gabriel Capital Corporation (collectively "Merkin Defendants") met or exceeded industry standards. The due diligence performed considered and evaluated all of the relevant investment factors normally associated with a money manager including: Investment Philosophy, Process and Procedures. Mr. Merkin also carefully considered the People involved in generating the investment returns and whether or not those returns were proportional to both the level of expected returns and the amount of risk incurred. This due diligence process was undertaken on an ongoing basis throughout the time of Gabriel Capital, L.P.'s, Ariel Fund Limited's, Ascot Partners, L.P.'s and Ascot Fund Limited's (collectively, the "Funds") investment with Madoff. Moreover, Mr. Merkin was aware that various regulators, auditors, administrators, and

sophisticated institutional and individual investors were also looking at many of these factors and reached the conclusion that nothing was untoward about the activities in which Madoff was purportedly engaged. With the benefit of hindsight, much has been made about a lack of due diligence, when, in reality, this was a very elaborate fraud spanning decades that was never uncovered by a myriad of agencies, auditors, regulators and sophisticated investors.

As I will discuss below, there is no precise formula or written rules for adequate due diligence. Over the many years during which I have performed or been the subject of such reviews, it is clear that certain information about prospective investments need to be adequately obtained and verified.

In my experience, due diligence has been done in a wide variety of ways and included a wide variety of information, and, particularly in the area of hedge funds, has changed over the years, most notably since the collapse of Lehman Brothers and the revelation of Madoff's fraud in 2008. Due diligence has run the gamut from lengthy (as many as 20 page) questionnaires at one extreme to as little as a fairly brief conversation with minimal, if any, written materials at the other. Some involved several face-to-face meetings and others just a single telephone conversation or just the sending of a prospectus.

Adequate due diligence of an investment manager, in my opinion, with many years of experience in this regard, involves the determination of the five following characteristics: **Philosophy**, what is the manager trying to achieve in his strategy; **Process**, how does the manager go about the strategy; **Procedures**, how is the process executed; **People**, who is the principal for executing the investment strategy and what is his background and reputation; and finally **Performance**, what have been the investment returns and are those returns consistent with the strategy.

In my opinion, Mr. Merkin obtained and reinforced all of this information over the years in which the Funds invested with Madoff. All of this was in various degrees documented in Mr. Merkin's files and notes.

It is very clear that Mr. Merkin had a clear understanding of the investment **Philosophy** of Mr. Madoff and his investment advisory operations. There were notes in Mr. Merkin's files from others who invested in this strategy and there were conversations which reinforced the notion that Madoff was investing to achieve good returns (better than T-bill returns) with substantially below average risk. Mr. Merkin's notes referenced Mr. Madoff's objective to achieve capital appreciation within a defined risk parameter. It is also clear that the philosophy would forgo potential higher profit opportunities in order to avoid risk of loss. For example, being out of the market around highly volatile periods during which options expire would be part of the philosophy. This is a strategy to which many market practitioners adhere. It is clear that the philosophy of preventing risk of loss was more important than the reach for gain.

The **Process** by which this investment philosophy was to be achieved was the Split Strike Conversion strategy but with added "benefits". The Split Strike Conversion strategy is adequately described elsewhere so I will not discuss it here except to say that the process is consistent with the philosophy of reduced risk. The "with benefits" part of the process was understood to be how the majority of the returns were to be generated. It is clear from the

documents and testimony I have reviewed that Mr. Merkin understood that Madoff had the ability to predict short-term trends in the market as a result of a proprietary model and access to order flow. Mr. Merkin understood that Mr. Madoff had, by virtue of his long experience, the knowledge and ability to take advantage of both market timing and stock selection to improve returns over that which would have been generated by a formulaic putting on of the trades.

The Process was consistent with the philosophy in that the Split Strike Conversion strategy was a risk controlled strategy and the knowledge and ability of Mr. Madoff could permit returns to be generated above what an ordinary “dumb” Split Strike Conversion strategy would generate. It was, as others have described, a relatively simple process, but one that could and would be executed in an uncommon way.

The **Procedures** were also clearly and transparently (or so Mr. Merkin had reason to believe) adhered to. The Merkin Defendants continually received both literal and figurative confirmations. Although, in my experience, it is almost never the case that an investor can access and scrutinize the individual trades of any manager, the information about the trades that Madoff purported to have done was available. This made Madoff’s procedure, in my opinion, more transparent than that of a typical fund manager. Although we now know that these were fabricated, almost no amount of due diligence at the time would have made that obvious. Others, including the SEC and many other investors, had looked over the procedures and found no fault with them.

Consistent with good due diligence practice, on several occasions, Mr. Merkin reviewed both Process and Procedures with Madoff. I noted that Mr. Merkin had regular meetings and calls with Mr. Madoff and documented many of those reviews and updates in his file.

It was clear from the outset that Mr. Merkin knew the **People** who were going to do the investing. Mr. Madoff was well known to Mr. Merkin because of a long-term relationship with his business—dating back to the early 1990s—and Mr. Madoff was well known to the finance community at large. He was widely reputed to be a pioneer in his field and had of course been the Chairman of NASDAQ. He was the vice-chairman and a member of the board of governors of the NASD. He had a joint venture with the most reputable Wall Street firms, Goldman Sachs and Merrill Lynch, to develop a trading system as an alternative to the New York Stock Exchange, which Mr. Merkin noted with articles in his file. What is more important from a due diligence perspective is that Mr. Merkin knew that Mr. Madoff’s experience and reputation was entirely consistent with what he was being asked to do from a fund manager’s perspective. Mr. Madoff knew the markets and understood how information regarding “flow” could be put to good use in managing money. In my opinion, the People part of the due diligence process is critical. In knowing what he knew about Mr. Madoff, Mr. Merkin had every reason to believe that he was highly reputable, highly regarded and had direct and relevant experience in managing money in precisely the manner in which he intended to do.

The **Performance** data that was available as part of the initial and ongoing due diligence process was both reasonable relative to the mandate in the aggregate and consistent with the Philosophy, Process and Procedures outlined above. The returns were not volatile and better than would be

expected from a typical Split Strike Conversion strategy. When the market was down, the fund outperformed the overall market. When the market was up sharply, the fund underperformed.

Much has been made after the fact that the returns achieved by Madoff were too good. That of course is easy to say now. The after-the-fact logic is that the returns were not consistent with the low volatility. It is clear that these returns were uncommon, but why would anyone invest with someone who had common returns? Although uncommon, in my experience, these returns were not implausible. Over the course of my career, I have seen many reports comparing fund managers and observed many fund managers' results where the returns were high and volatility was proportionately low. The oft referred to Sharpe ratio was relatively high for Madoff, but I have counted many funds with very high Sharpe ratios (return per unit of volatility). Madoff's results were above average, yes, but certainly they were achievable.

Another, but absolutely critical, part of the due diligence process was the determination that the performance was realizable. By that I mean could you get your money back. Without question, from the evidence in the Merkin Defendants' files, until December 11, 2008, Madoff was always able to meet redemption requests on time and in the full amount. Based on this redemption history, there would have been no reason to doubt that the performance as depicted was real or that the funds that were invested were actually there. For example, Mr. Merkin knew that in 1992, Madoff met a \$440 million redemption without hesitation, following an investigation by the SEC against third parties who had invested the funds with Madoff. Mr. Merkin retained a copy of the news article about that investigation and Madoff's prompt return of the investor funds in his file. It is also worth noting that in connection with that government investigation Mr. Madoff was not charged with any wrongdoing.

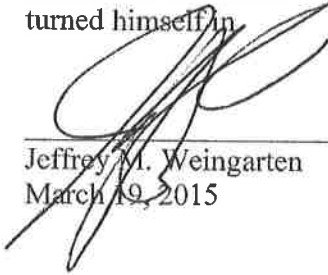
Although not usually part of the formal due diligence I performed, I often applied the plausibility rule. Is it plausible that these people doing this process in this way could achieve these results? It would appear from all the documents made available to me that the Merkin Defendants at the time believed this, and that reasonable belief was reinforced repeatedly over many years. Madoff's "plausibility" would also be reinforced because Mr. Merkin knew that many other highly sophisticated and experienced investors were clients of Madoff. As former chairman of the SEC, Harvey Pitt said, "there were a lot of people who were duped and that happens a great deal when you've had somebody decide to be unscrupulous."

It is clear now that this was a very elaborate fraud involving many people capable of avoiding detection by many organizations for many years. In my opinion, the Merkin Defendants performed more than adequate due diligence on Mr. Madoff and his organization. They adequately understood the investment Philosophy; they understood and carefully examined the Process; had transparent knowledge of the Procedures; and knew Mr. Madoff both personally and by reputation. The Performance, both in terms of the results and in terms of realizing the cash from those results were entirely consistent. Moreover, this due diligence was not a one off event but was continued through the life of the Funds' investments.

## VII. Conclusion

Taken on the whole, the Merkin Defendants, in my opinion, pursued what would certainly be described as adequate due diligence on Madoff, his investment strategy and his operations. The due diligence process was thorough in its construct dealing with the key issues of Philosophy, Process, Procedures, People and Performance. This diligence was both ongoing and broad. Questions that were raised were all addressed.

Indeed, no one found sufficient issue with Mr. Madoff to bring him any form of justice. He turned himself in



---

Jeffrey M. Weingarten  
March 19, 2015

# Exhibit A

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**JEFFREY M. WEINGARTEN**

**Education**

1970 BS Economics with Honors  
The Wharton School of the University of Pennsylvania

**Work Experience**

1970-1971 Securities Analyst Sheinman, Hochstin & Trotta  
New York

1971-1977 Securities Analyst Tobacco & Beverages, Wertheim & Co  
New York

1977-1987 Food Beverage and Tobacco Analyst, Goldman Sachs  
Director of Recruiting and Training for Research Company  
New York

1987-1991 Director of International Equity Research, Goldman Sachs  
Global Investment Strategist  
London

1990-1998 Partner, Goldman Sachs

1991-1997 CEO Goldman Sachs Asset Management International  
CIO Goldman Sachs Asset Management International Equities

1997-1998 Global Investment Strategist, Goldman Sachs

1999-2008 Founder and Managing Director, Buttonwood Capital Partners

**Awards and Honors**

1976-1986 Institutional Investor #1 Tobacco Analyst

1977-1986 Institutional Investor #2 – #3 Beverage Analyst

1989-1991 Institutional Investor #3 Investment Global Strategist

**Other Interests**

1998 to 2005 The Wharton School of the University of Pennsylvania Advisory Board

1995 to 2005 Development Council National Theatre

2004 to present Student Disability Services Advisory Board at the University of Pennsylvania

2009 to present Consultant/Chairman of Grosvenor Fund Management/Member of Grosvenor Group Ltd. Board

2009 to present Member, Board of Advisors, School of Languages, Cultures, and World Affairs at the College of Charleston

2010 to 2014 Member, Foundation Board, College of Charleston

2015 to present Non-executive Director of Aviva Investors

CONFIDENTIAL

**Jeffrey M. Weingarten**

Jeffrey M. Weingarten has almost 40 years of investment experience in investment research and fund management.

Jeffrey began his career as a securities analyst at Sheinman Hochstein & Trotta from 1970-1971 moving to Wertheim & Co from 1971-1977 as a securities analyst and Vice President. In 1977 he joined the research division at Goldman Sachs & Co in New York and over the next ten years was voted Institutional Investor's top tobacco and beverage analyst in the US. In 1987 he became Director of Research in London responsible for all non-US research activities as well as the International Portfolio Strategist. He became a general partner of Goldman Sachs & Co in 1990. From 1991-1997 Jeffrey was the Chief Investment Officer and Managing Director of Goldman Sachs Asset Management International. In 1997 he returned to International Equity Research as the Global Strategist and retired as a General Partner in order to form Buttonwood in 1998.

Buttonwood was principally a European long short equity fund which produced superior returns for almost 10 years. During that time Buttonwood Fund outperformed the European Index almost three times with much less volatility.

Jeffrey holds a BS Economics cum laude from The Wharton School, University of Pennsylvania, is a Certified Financial Analyst and was a member of the New York Society of Security Analysts and International Investment Analysts Group.

Jeffrey was a board member of the Wharton Executive Board for EMEA, board member of the Student Disability Services Advisory Board at the University of Pennsylvania and Chairman of Grosvenor Fund Management in London. He is also on the Board of Advisors, School of Languages, Cultures, and World Affairs at the College of Charleston and was a member of the Foundation Board of the College.

Jeffrey is a director of Grosvenor Group Ltd. and a director of Aviva Investors.



# **Exhibit B**

CONFIDENTIAL

**JEFFREY M. WEINGARTEN**  
**DOCUMENTS CONSIDERED**

Third Amended Complaint in this action

Complaints filed by Picard in other actions including, *Picard v. ABN Amro Bank N.V. et. al.*, Adv. Pro. No. 10-05354 (Bankr. S.D.N.Y.), *Picard v. Citibank N.A. et. al.*, Adv. Pro. No. 10-05345 (Bankr. S.D.N.Y.), *Picard v. Defender Limited et. al.*, Adv. Pro. No. 10-05229 (Bankr. S.D.N.Y.), *Picard v. Natixis et. al.*, Adv. Pro. No. 10-05353, and *Picard v. Nomura Bank International PLC et. al.*, Adv. Pro. No. 10-05348 (Bankr. S.D.N.Y.).

Merkin's file on Madoff

Audio files produced by Defendants

Emails produced by Defendants

Trade confirmations and monthly statements from Madoff

PMS data

Excel file on Madoff Investment History

Transcript of Autera Testimony in this action (individual and as 30(b)(6) designee)

Transcript of Merkin Testimony in this action

Transcript of Merkin Testimony in NYAG litigation

Transcript of Merkin Testimony in NYU litigation

November 7, 2005 Submission to the SEC by Harry Markopoulos

August 31, 2009 Report by the SEC Office of the Inspector General

# Exhibit C

CONFIDENTIAL

**JEFFREY M. WEINGARTEN**  
**DEPOSITION, TRIAL AND ARBITRATION TESTIMONY**  
**IN THE PAST FOUR YEARS**

<b>Case Name</b>	<b>Date(s)</b>	<b>Testimony Type</b>
<i>Born et. al. v. Merkin,</i> Arbitration No. 13 148 Y 01799 10	July 19, 2011	Arbitration Testimony
<i>Massachusetts Mutual Life Insurance Company, et al. v. Certain Underwriters at Lloyd's of London Subscribing to Bond Nos. B0391/FD020720G AND B0391/FD020730G, et al., C.A. No. N10C-11-219 FSS CCLD</i>	August 21, 2014	Deposition Testimony

## **EXHIBIT 6**

**CONFIDENTIAL**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X	
In re:	:
	:
BERNARD L. MADOFF INVESTMENT	:
SECURITIES LLC,	:
	:
	SIPA LIQUIDATION
	:
	No. 08-01789 (SMB)
Debtor.	:
	X
-----	
IRVING H. PICARD, Trustee for the Liquidation	:
of Bernard L. Madoff Investment Securities LLC,	:
	:
Plaintiff,	:
	:
	:
v.	:
	Adv. Proc. No. 09-01182 (SMB)
	:
J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,	:
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,	:
ASCOT FUND LTD., GABRIEL CAPITAL	:
CORPORATION,	:
	:
Defendants.	:
----- X	

**Rebuttal Expert Report of Jeffrey M. Weingarten**



### **I. Scope of Assignment**

I have considered the Initial Expert Witness Report of Dr. Steve Pomerantz. If called as an expert to testify in this matter, in addition to the opinions expressed in my initial Expert Report, and as noted in that report, I anticipate that my testimony would include a rebuttal to the opinions offered by Dr. Pomerantz.

### **II. Materials Considered**

In forming my opinions, in addition to the experience and materials relied on in my initial Expert Report, I considered and relied on Dr. Pomerantz's Initial Expert Report and certain of the exhibits on which he relied, specifically the 1997 and 2001 due diligence questionnaires published by the Alternative Investment Management Association ("AIMA") as well as the book *Investment Manager Analysis* by Frank J. Travers.

### **III. Summary of Conclusions**

I disagree with the fundamental premise on which the report by Dr. Pomerantz was founded. What is portrayed by Dr. Pomerantz was not even close to the customary standard of Due Diligence at the time in question. What is not considered in the report is the important fact that the mere fact of the Madoff fraud caused the entire industry to focus on issues that previously were not standard concerns. The mere fact of the Madoff fraud exposed issues that were not written into some of the Due Diligence templates referred to in the report. Almost none of the after-the-fact forensics conducted by Dr. Pomerantz was routine before Madoff himself went public with his fraud.

Moreover, most of what was written in the report as "concerns" were well covered by the many articles written after the fact and indeed were even raised contemporaneously. These concerns include, for example, the issue of BLMIS's accounting firm, the fact that confirms were manual, the issue of self clearing. These issues were publically known and discussed at the time and did not prevent some of the most sophisticated investors from investing with Madoff. It is worth pointing out again and frequently that all of the regulators charged with oversight of Madoff's business failed to uncover this fraud and they all had much greater access to information than any outsider conducting Due Diligence would ever have had.

Another fundamental flaw in the logic suggested in Dr. Pomerantz's report is that the only possible explanation for the results allegedly achieved by Madoff was fraud. This is clearly NOT the only possibility. Most investors, including Mr. Merkin, were aware that there often were some time lapses in effecting the split strike conversion strategy and these time lapses would have permitted returns to exceed, even modestly, the results that would have resulted from a simultaneous implementation of the trades. So much time and effort has been wasted by after the fact forensic accountants and experts trying to replicate what Madoff allegedly was doing on the assumption that all the trades were done at the same time. Even small gaps in executing the

sale of calls would be sufficient to achieve the results. Madoff was thought by many to have not only an ability to time the markets but had access to flow of funds information, which would have been beneficial to achieving these results. This access would not necessarily have been the result of nor caused by front running since the knowledge would have been general flows and did not necessarily result from running in front of client trades.

As is almost always true in the investment world, there will be more views on the appropriateness and the desirability of an investment strategy than there are investors making that determination. Many looked at Madoff's record and rejected it for any number of reasons. Many billions were invested by very sophisticated investors knowing the same facts as those who chose not to invest. The level of Due Diligence conducted by these investors varied considerably, as will always be the case. The level of Due Diligence suggested by Dr. Pomerantz, although with the perfect hindsight we now all possess would have been preferable, was not at that time the industry standard in numerous respects. For example, the AIMA guidelines issued in 1997 and reiterated in 2001 referenced by Dr. Pomerantz do not mention contacting counterparties. Nor does Mr. Travers' book. Similarly, extensive review of reported prices and volumes, undertaken after the fact by Dr. Pomerantz, was not indicated in either the AIMA guidelines or by Mr. Travers.

#### Industry Standard Due Diligence

As I indicated in my initial Expert Report, industry standard due diligence is something of a misnomer in that there was very wide variation in practice. Most industry "standards" revolved around determining the investment philosophy, process, people, performance and ultimately price. Although we used slightly different wording, there does not appear to be fundamental disagreement between Dr. Pomerantz and me on this approach.

#### Philosophy

It does not appear to be disputed that Mr. Merkin understood that he was investing with Madoff to achieve better than t-bill returns with substantially below average risk. It was clear to Mr. Merkin that foregoing potential higher returns was, or could be, the cost of avoiding volatility. This would certainly explain why he would accept that Madoff might be out of the market at certain periods of expected high volatility such as often occurred around the end of the quarter and certainly the end of the year. This understanding was critical to both the initial and ongoing Due Diligence conducted by Mr Merkin.

#### Process and Procedures

Several issues have been raised by Dr. Pomerantz regarding the Process and Procedures, again all with the benefit of perfect hindsight and again most of which were known concerns at the time when Mr. Merkin and many other investors were already investing with Madoff.



Among the issues raised was the use of written confirmations. But written confirmations were not unusual at the time the Funds first began investing with Mr. Madoff. Even at the time I was running a hedge fund in 2007, I was still receiving written and faxed confirmation from brokers.

### People

The reputation and qualification of the person or people doing the investing is critical to the Due Diligence process. To suggest otherwise is not only erroneous, it flies in the face of standard industry practice both before and after Madoff's fraud was uncovered. Indeed, in his book on hedge funds, Mr. Travers attaches 30% of the Due Diligence weight to the Investment Professionals, the highest weight of any other factor!

There are numerous examples of investors placing money with people who just by nature of the reputation of the firms for whom they once worked, have raised billions of dollars with no visible track record of managing money on their own. To suggest otherwise is at best naïve and certainly at variance with industry practice.

In the case of Madoff, Mr. Merkin had a long history of both familial and business relationships before investing. That ongoing relationship continued throughout the investing period.

Madoff's reputation as an industry leader and prominent figure in the investing community would certainly have been enough Due Diligence for many at the time and indeed would be a critical if not determinative factor in any Due Diligence conducted even today.

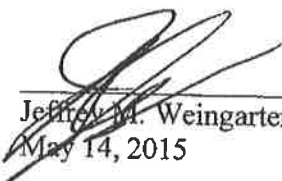
### Performance

Dr. Pomerantz makes a big deal about Sharpe ratios. A number of funds identified in Bloomberg had Sharpe ratios greater than 2.5, including SMN Diversified Futures Fund (4.68), the Eclectica Fund (3.80), and Episode Inc. (2.61), as of April 20, 2015. Similarly, several funds had more than 75% up months.

#### IV. Conclusion

As indicated above, several of the sources used by Dr. Pomerantz provide guides for what standard Due Diligence looked like at the time Mr. Merkin was conducting both initial and ongoing Due Diligence. None of these even suggest the kind of backward looking forensics that Dr. Pomerantz suggested was standard. While these forensics may have been possible, they were certainly not standard. What has been done by Dr. Pomerantz rather represents fairly standard after the fact examination of information that, when you know the outcome, would lead you to conclude that the outcome was possibly a fraud. It is proving what we know to be true.

It always needs to be pointed out that despite numerous regulators having investigated and numerous sophisticated investors performing Due Diligence, including sophisticated investors who discuss Madoff with Mr. Merkin, this very elaborate fraud eluded public detection for many years. Going back now and determining how it was done is relatively easy. Madoff in the end was determined to be a fraud only after he turned himself in.



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Jeffrey M. Weingarten  
May 14, 2015

## **EXHIBIT 7**

THE WALL STREET JOURNAL.

# MONEY & INVESTING

WEDNESDAY, DECEMBER 16, 1992 C1

Money Rates.....	C21	Odd-Lot Trading.....	C5
Mutual Funds.....	C22	Oil Prices.....	C14
Nasdaq Stocks, ADRs.....	C6	OTC Focus.....	C1
New Securities Issues.....	C23	Stock Market Data Bank.....	C2
NYSE/Amex Bonds.....	C16	Treasury/Agency Issues.....	C17
NYSE Highs & Lows.....	C6	U.S. Regional Markets.....	C10
NYSE Stocks.....	C3	World Markets.....	C11

JOURNALPHONE<sup>SM</sup> NEWSPAPER AND CURRENT QUOTES  
SEE GUIDE ON PAGE 10 FOR DETAILS  
1-900-JOURNAL

## Wall Street Mystery Features a Big Board Rival

By RANDALL SMITH  
Staff Reporter of THE WALL STREET JOURNAL  
Here's a tantalizing Wall Street mystery:

The Securities and Exchange Commission recently cracked down on one of the largest-ever sales of unregistered securities. Investors had poured \$440 million into investment pools raised by two Florida accountants, who for more than a decade took in money without telling the SEC or making required financial disclosures to investors.



Bernard L. Madoff

The pair had promised investors hard-to-believe annual returns of 13.5% to 20%—to be obtained by turning the money over to be managed by an unnamed broker.

Regulators feared it all might be just a huge scam. "We went into this thinking it could be a major catastrophe," says Richard Walker, the SEC's New York regional administrator.

But when a court-appointed trustee went in, the money was all there. Indeed, the mystery money manager was beating the promised returns by such a wide margin that the two accountants ditched their accounting business in 1984 to concentrate on their more lucrative investing

Who was the broker with the Midas touch? The SEC, which last month went to court to shut down the operation, won't say. Neither will the lawyer for the two accountants, Frank J. Avellino and Michael S. Bienes of Fort Lauderdale.

But the mystery broker turns out to be none other than Bernard L. Madoff—a highly successful and controversial figure on Wall Street, but until now not known as an ace money manager.

Mr. Madoff is one of the masters of the off-exchange "third market" and the bane of the New York Stock Exchange. He has built a highly profitable securities firm, Bernard L. Madoff Investment Securities, which siphons a huge volume of stock trades away from the Big Board. The \$740 million average daily volume of trades executed electronically by the Madoff firm off the exchange equals 9% of the New York exchange's.

Mr. Madoff's firm can execute trades so quickly and cheaply that it actually pays other brokerage firms a penny a share to execute their customers' orders, profiting from the spread between bid and asked prices that most stocks trade for.

In an interview, the 54-year-old Mr. Madoff says he didn't know the money he was managing had been raised illegally. And he insists the returns were really nothing special, given that the Standard & Poor's 500-stock index generated an average annual return of 16.3% between November 1982 and November 1992. "I would be surprised if anybody thought that matching the S&P over 10 years was

In fact, most investors would have been delighted to be promised such returns in advance, as the accountants' investors were. That's especially true since the majority of money managers actually trailed the S&P 500 during the 1980s.

The best evidence that the returns were very attractive: the size of the pools mushroomed by word-of-mouth, without any big marketing effort by the Avellino & Bienes partnership. The number of investors eventually grew to 3,200 in nine accounts with the Madoff firm. "They took in nearly a half a billion dollars in customer money totally outside the system that we can monitor and regulate," says the SEC's Mr. Walker. "That's pretty frightening."

An SEC civil complaint filed in New York federal court Nov. 17 charged that Messrs. Avellino and Bienes "have operated A&B as an unregistered investment company and have engaged in the unlawful sale of unregistered securities," and ordered the money returned to investors by a court-appointed trustee, New York attorney Lee Richards.

The two 56-year-old accountants declined to comment. Their attorney, Ira Lee Sorkin, says they didn't know that the notes they had issued to their clients should have been registered with the SEC, and he says that investors got their money back and haven't complained.

If the notes had been registered, they would have had to include a description of how the money was being invested, and by whom. In addition, Avellino & Bienes would have had to send investors annual

But how did Mr. Madoff rack up his big investment returns? Early investors in the late 1970s were told — and Mr. Madoff confirms — that their money was being used to engage in so-called convertible arbitrage in securities of such companies as Occidental Petroleum Corp., Limited Stores Inc. and Continental Corp.

In such a strategy, an investor buys a company's preferred stock or bonds that pay high dividends and are convertible into the company's common stock; the investor simultaneously sells borrowed common stock of the same company in a "short sale" to hedge against a stock-price decline.

The investor earns the spread between the higher dividend paid on the convertible securities and the lower dividend on the common stock, plus interest from investing the proceeds of the stock short sale. Using borrowed money, or leverage, to magnify returns, an investor can reap double-digit returns. But the strategy carries big risks if interest rates rise and stock prices go down.

Mr. Madoff said his investment strategy changed around 1982, when his firm began using a greater variety of strategies tied to the stock market, including the use of stock-index futures and "market-neutral" arbitrage, which can involve buying and selling different stocks in an industry group.

Mr. Madoff said, "The basic strategy was to be long a broad-based portfolio of S&P securities and hedged with derivatives," such as futures and options. Such a

## A Wall Street Mystery Features New York Stock Exchange Rival

Continued From Page C1

strategy, he said, allowed the investors "to participate in an upward market move while having limited downside risk." For example, he said, the Madoff firm made money when the stock market crashed in 1987 by owning stock-market index puts, which rose in value as the market declined.

In the mid-1980s, one investor says, the limited reports that Avellino & Bienes sent to investors changed, and investors stopped being told in which securities their money was invested. The interest rate on some new notes sold by the accountants was also lowered to 16% or less. One investor who complained about the vaguer reports said he was told that if he didn't like the reports, he could withdraw his investment. The investor chose to remain.

Perhaps the biggest question is how the investment pools could promise to pay high interest rates on a steady annual basis, even though annual returns on stocks fluctuate drastically. In 1984 and 1991, for example, the stock market delivered a negative return, even after counting dividends. Yet Avellino & Bienes — and Mr. Madoff — maintained their double-digit returns.

The answer could be that Mr. Madoff's use of futures and options helped cushion the returns against the market's ups and downs. Mr. Madoff says he made up for the cost of the hedges — which could have

caused him to trail the stock market's returns — with stock-picking and market timing.

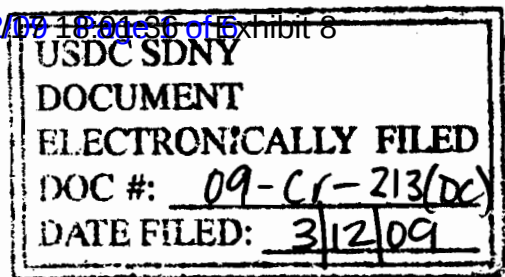
One person familiar with the Avellino & Bienes case speculated that having the assets of the investment pools under management may have helped Mr. Madoff's firm by giving him an inventory of securities that could help him to execute other trades for his firm. Not true, said Mr. Madoff: "One thing has nothing to do with another."

As the investment pools swelled, two other accountants, Steven Mendelow of New York City and Edward Glantz of Lake Worth, Fla., started their own pool, Telfran Ltd., to invest in Avellino & Bienes notes. Telfran by itself sold \$89.6 million in unregistered notes, a separate SEC civil lawsuit charges. The two men, also represented by Mr. Sorkin, declined to comment. The SEC said Telfran made money by investing in Avellino & Bienes notes paying 15% to 19% annually, while paying Telfran investors lower rates.

All the while, Mr. Madoff was scoring investment returns that comfortably exceeded the hefty returns Avellino & Bienes was promising its noteholders. That excess return generated big profits for the two accountants, the SEC suit indicates. The SEC has asked that those profits be returned as "unjust enrichment," a demand Mr. Sorkin calls "totally unwarranted." For his part, Mr. Madoff says he charged the investment pools only what he described as standard brokerage commissions. He termed turnover in the accounts "not very active," almost nil in some years.

DEC 16 1992

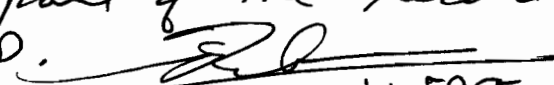
## **EXHIBIT 8**



Plea Allocation of Bernard L. Madoff

Your Honor, for many years up until my arrest on December 11, 2008, I operated a Ponzi scheme through the investment advisory side of my business, Bernard L. Madoff Securities LLC, which was located here in Manhattan, New York at 885 Third Avenue. I am actually grateful for this first opportunity to publicly speak about my crimes, for which I am so deeply sorry and ashamed. As I engaged in my fraud, I knew what I was doing was wrong, indeed criminal. When I began the Ponzi scheme I believed it would end shortly and I would be able to extricate myself and my clients from the scheme. However, this proved difficult, and ultimately impossible, and as the years went by I realized that my arrest and this day would inevitably come. I am painfully aware that I have deeply hurt many, many people, including the members of my family, my closest friends, business associates and the thousands of clients who gave me their money. I cannot adequately express how sorry I am for what I have done. I am here today to accept responsibility for my crimes by pleading guilty and, with this plea allocation, explain the means by which I carried out and concealed my fraud.

The essence of my scheme was that I represented to clients and prospective clients who wished to open investment advisory and individual trading accounts with me that I would invest their money in shares of common stock, options and other securities of large well-known corporations, and upon request, would return to them their profits and principal. Those representations were false because for many years up and until I was arrested on December 11, 2008, I never invested those funds in the securities, as I had promised. Instead, those funds were deposited in a bank account at Chase Manhattan Bank. When clients wished to receive the profits they believed they had earned with me or to redeem their principal, I used the money in the Chase Manhattan bank account that belonged to them or other clients to pay the requested

*This statement shall be docketed  
& made a part of the record.  
SO ORDERED.*  3/12/09  
WST

funds. The victims of my scheme included individuals, charitable organizations, trusts, pension funds and hedge funds. Among other means, I obtained their funds through interstate wire transfers they sent from financial institutions located outside New York State to the bank account of my investment advisory business, located here in Manhattan, New York and through mailings delivered by the United States Postal Service and private interstate carriers to my firm here in Manhattan.

I want to emphasize today that while my investment advisory business – the vehicle of my wrongdoing – was part of my firm Bernard L. Madoff Securities, the other businesses my firm engaged in, proprietary trading and market making, were legitimate, profitable and successful in all respects. Those businesses were managed by my brother and two sons.

To the best of my recollection, my fraud began in the early 1990s. At that time, the country was in a recession and this posed a problem for investments in the securities markets. Nevertheless, I had received investment commitments from certain institutional clients and understood that those clients, like all professional investors, expected to see their investments out-perform the market. While I never promised a specific rate of return to any client, I felt compelled to satisfy my clients' expectations, at any cost. I therefore claimed that I employed an investment strategy I had developed, called a "split strike conversion strategy," to falsely give the appearance to clients that I had achieved the results I believed they expected.

Through the split-strike conversion strategy, I promised to clients and prospective clients that client funds would be invested in a basket of common stocks within the Standard & Poor's 100 Index, a collection of the 100 largest publicly traded companies in terms of their market capitalization. I promised that I would select a basket of stocks that would closely mimic the price movements of the Standard & Poor's 100 Index. I promised that I would opportunistically



time these purchases and would be out of the market intermittently, investing client funds during these periods in United States Government-issued securities such as United States Treasury bills. In addition, I promised that as part of the split strike conversion strategy, I would hedge the investments I made in the basket of common stocks by using client funds to buy and sell option contracts related to those stocks, thereby limiting potential client losses caused by unpredictable changes in stock prices. In fact, I never made the investments I promised clients, who believed they were invested with me in the split strike conversion strategy.

To conceal my fraud, I misrepresented to clients, employees and others, that I purchased securities for clients in overseas markets. Indeed, when the United States Securities and Exchange Commission asked me to testify as part of an investigation they were conducting about my investment advisory business, I knowingly gave false testimony under oath to the staff of the SEC on May 19, 2006 that I executed trades of common stock on behalf of my investment advisory clients and that I purchased and sold the equities that were part of my investment strategy in European markets. In that session with the SEC, which took place here in Manhattan, New York, I also knowingly gave false testimony under oath that I had executed options contracts on behalf of my investment advisory clients and that my firm had custody of the assets managed on behalf of my investment advisory clients.

To further cover-up the fact that I had not executed trades on behalf of my investment advisory clients, I knowingly caused false trading confirmations and client account statements that reflected the bogus transactions and positions to be created and sent to clients purportedly involved in the split strike conversion strategy, as well as other individual clients I defrauded who believed they had invested in securities through me. The clients receiving trade confirmations and account statements had no way of knowing by reviewing these documents that

I had never engaged in the transactions represented on the statements and confirmations. I knew those false confirmations and account statements would be and were sent to clients through the U.S. mails from my office here in Manhattan.

Another way that I concealed my fraud was through the filing of false and misleading certified audit reports and financial statements with the SEC. I knew that these audit reports and financial statements were false and that they would also be sent to clients. These reports, which were prepared here in the Southern District of New York, among things, falsely reflected my firm's liabilities as a result of my intentional failure to purchase securities on behalf of my advisory clients.

Similarly, when I recently caused my firm in 2006 to register as an investment advisor with the SEC, I subsequently filed with the SEC a document called a Form ADV Uniform Application for Investment Adviser Registration. On this form, I intentionally and falsely certified under penalty of perjury that Bernard L. Madoff Investment and Securities had custody of my advisory clients' securities. That was not true and I knew it when I completed and filed the form with the SEC, which I did from my office on the 17th floor of 855 Third Avenue, here in Manhattan.

In more recent years, I used yet another method to conceal my fraud. I wired money between the United States and the United Kingdom to make it appear as though there were actual securities transactions executed on behalf of my investment advisory clients. Specifically, I had money transferred from the U.S. bank account of my investment advisory business to the London bank account of Madoff Securities International Ltd., a United Kingdom corporation that was an affiliate of my business in New York. Madoff Securities International Ltd. was principally engaged in proprietary trading and was a legitimate, honestly run and operated business.

Nevertheless, to support my false claim that I purchased and sold securities for my investment advisory clients in European markets, I caused money from the bank account of my fraudulent advisory business, located here in Manhattan, to be wire transferred to the London bank account of Madoff Securities International Limited.

There were also times in recent years when I had money, which had originated in the New York Chase Manhattan bank account of my investment advisory business, transferred from the London bank account of Madoff Securities International Ltd. to the Bank of New York operating bank account of my firm's legitimate proprietary and market making business. That Bank of New York account was located in New York. I did this as a way of ensuring that the expenses associated with the operation of the fraudulent investment advisory business would not be paid from the operations of the legitimate proprietary trading and market making businesses.

In connection with the purported trades, I caused the fraudulent investment advisory side of my business to charge the investment advisory clients \$0.04 per share as a commission. At times in the last few years, these commissions were transferred from Chase Manhattan bank account of the fraudulent investment advisory side of my firm to the account at the Bank of New York, which was the operating account for the legitimate side of Bernard L. Madoff Investment Securities – the proprietary trading and market making side of my firm. I did this to ensure that the expenses associated with the operation of my fraudulent investment advisory business would not be paid from the operations of the legitimate proprietary trading and market making businesses. It is my belief that the salaries and bonuses of the personnel involved in the operation of the legitimate side of Bernard L. Madoff Investment Securities were funded by the operations of the firm's successful proprietary trading and market making businesses.

Your Honor, I hope I have conveyed with some particularity in my own words, the crimes I committed and the means by which I committed them. Thank you.

## **EXHIBIT 9**

# Black Oak Capital, LLC

2003	2004	2005	2006	2007
	37987	38353	38718	Jan-07
	38018	38384	38749	Feb-07
	38047	38412	38777	Mar-07
	38078	38443	38808	Apr-07
	38108	38473	38838	May-07
Jun-03	1.97%	Jun-05	Jun-06	Jun-07
Jul-03	2.35%	Jul-05	Jul-06	Jul-07
Aug-03	4.69%	Aug-05	Aug-06	Aug-07
Sep-03	2.14%	Sep-05	Sep-06	Sep-07
Oct-03	0.15%	Oct-05	Oct-06	Oct-07
Nov-03	1.65%	Nov-05	Nov-06	Nov-07
Dec-03	8.41%	Dec-05	Dec-06	Dec-07
	17.15%		27.95%	
		76.98%		14.55%

Returns are presented net of fees and costs  
Based on 1% management fee payable quarterly in advance, 20% incentive compensation allocation payable quarterly, with a 10% bonus incentive for returns above 25% payable annually.

Returns are audited from June 11, 2003 (inception) to December 31, 2007

\*2008 returns are not audited and subject to change / adjustment

# Akula Energy, LLC

2006-2007	2007-2008	2008-2009*
Return	Return	Return
71.70%	-59.90%	73.30%

0510.0001

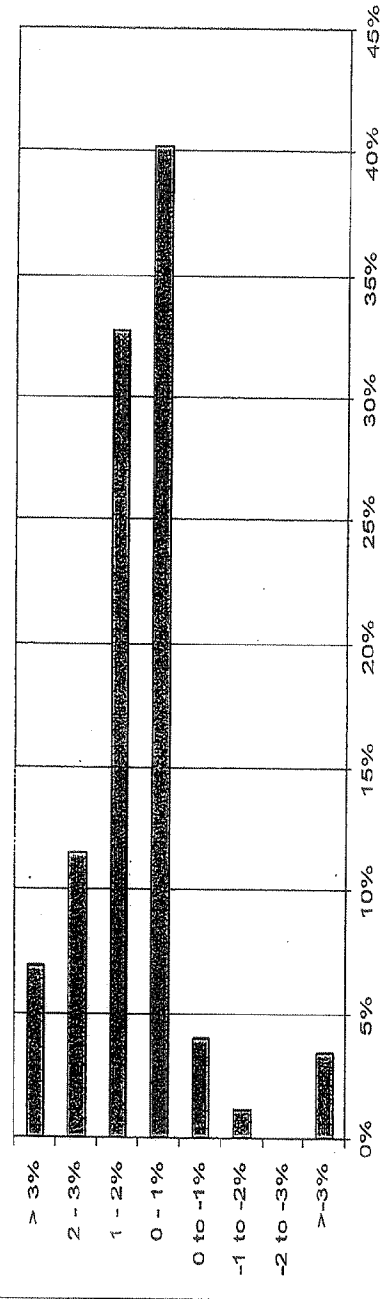
## **EXHIBIT 10**

# Bracebridge Composite Performance

## Net monthly performance

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
2009	0.85%	0.72%	1.91%	1.80%	4.50%	6.26%	2.67%	3.02%	2.27%	-4.99%	-8.09%	-5.77%	26.57%
2008	0.26%	-1.55%	0.74%	1.25%	1.17%	1.31%	-0.30%	0.56%	-3.22%	1.66%	-0.35%	0.15%	-17.62%
2007	-0.02%	0.70%	0.35%	0.83%	1.26%	0.92%	0.54%	-0.30%	1.66%	1.66%	-0.35%	0.15%	7.63%
2006	1.43%	0.88%	0.96%	0.95%	0.32%	1.40%	0.92%	1.37%	1.20%	0.64%	1.18%	1.28%	13.28%
2005	0.67%	0.75%	1.08%	0.40%	0.35%	0.79%	0.87%	0.89%	0.94%	0.48%	0.71%	0.61%	8.87%
2004	1.63%	1.36%	1.36%	0.55%	0.62%	0.63%	0.85%	1.11%	0.88%	0.80%	0.95%	1.00%	12.39%
2003	1.56%	1.24%	1.11%	1.71%	2.20%	1.56%	1.34%	1.20%	1.57%	0.92%	1.16%	1.69%	18.67%
2002	1.06%	0.39%	1.42%	1.66%	0.96%	0.63%	0.05%	0.26%	0.16%	0.48%	0.54%	0.66%	8.57%
2001	2.31%	0.68%	0.89%	1.43%	1.86%	0.99%	0.73%	0.71%	-0.98%	0.89%	0.18%	0.04%	10.12%
2000	5.41%	2.81%	3.05%	0.73%	2.11%	1.08%	3.24%	2.19%	1.14%	0.94%	0.46%	0.66%	26.47%
1999	2.38%	2.67%	1.52%	1.71%	1.07%	2.76%	0.95%	0.29%	1.55%	2.52%	4.84%	3.49%	28.90%
1998	0.78%	1.87%	2.29%	1.14%	-0.79%	-0.85%	1.22%	-14.18%	-8.16%	-11.70%	1.29%	-1.33%	-26.43%
1997	1.60%	1.51%	0.84%	0.80%	1.50%	2.24%	1.85%	1.32%	1.57%	1.08%	0.88%	2.17%	18.78%
1996	1.11%	0.78%	0.43%	0.95%	1.66%	3.24%	2.98%	2.84%	2.85%	2.11%	0.89%	1.13%	23.03%
1995	1.29%	1.35%	1.36%	0.95%	0.49%	0.24%	1.27%	2.04%	1.44%	1.80%	1.63%	2.60%	17.72%
1994						-7.60%			6.80%			6.16%	4.77%

Histogram of Monthly Returns since Inception (1994 - Present)



The Bracebridge Absolute Return composite includes all commingled funds managed by Bracebridge with substantially similar investment objectives and which are currently offered by Bracebridge, is net of management fees and performance fees and expenses, and reflects the reinvestment of dividends or other earnings. The composite excludes individually managed accounts and single-investor funds. (See prior page for further description of the composite.) Composite figures are unaudited, but individual fund returns are audited annually. Past performance is not necessarily indicative of future results, and an investment in any Bracebridge fund could result in returns different from the composite returns stated herein. It is possible to lose money on an investment in a Bracebridge fund.

Returns for the  
Bracebridge Absolute  
Return composite are  
historically largely  
uncorrelated with  
equity and fixed  
income markets  
returns.

Data as of September 30, 2009



September 2009  
Proprietary and Confidential

0509.0001



## **EXHIBIT 11**

Millennium USA LP ("USA") pursues a multi-strategy approach to investing, exploiting market inefficiencies and engaging in financial arbitrage. Our aim is to achieve absolute returns with minimal risk rather than outperform a given benchmark or asset class.

We believe that our record demonstrates our focus on these goals.

## MILLENNIUM USA LP AT A GLANCE

Cumulative Total Return	1,668.11%
Average Annualized Return	15.73%
Percentage of Up Months	88.56%
Percentage of Down Months	11.44%
Best Monthly Return	5.14%
Worst Monthly Return	-4.94%
Standard Deviation (S&P 500 Index = 15.06%)	4.64%
Sharpe Ratio (S&P 500 Index = 0.25)	2.53
Largest Net Consecutive Gain (9/98 - 5/01)	127.90%
Second Largest Net Consecutive Gain (11/95 - 5/98)	83.85%
Largest Net Drawdown (7/08-12/08)	-7.07%
Second Largest Net Drawdown (6/98 - 8/98)	-6.93%
Minimum Investment	\$5,000,000
New Capital Accepted	Currently Open
Performance Information	Updated weekly via secure website
Incentive Fee	20.00%

## NET MONTHLY RETURNS<sup>1</sup>

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Return	-0.35	0.91	1.28	0.40	0.80	0.40	1.88	3.16	-0.51	1.89	0.07	0.59	11.18	11.18						
1991	1.14	1.13	2.24	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13
1992	2.59	1.67	1.24	1.21	1.12	2.26	1.41	0.07	-2.35	-1.88	-0.66	0.43	7.24	34.62						
1993	0.54	0.58	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15
1994	2.15	1.36	1.82	0.20	-1.17	0.16	1.32	-1.74	0.09	-0.09	0.66	3.05	8.03	71.61						
1995	2.64	1.95	2.17	2.17	2.17	2.17	2.17	2.17	2.17	2.17	2.17	2.17	2.17	2.17	2.17	2.17	2.17	2.17	2.17	2.17
1996	4.20	1.63	2.56	3.35	3.12	0.04	1.42	2.27	2.14	0.23	0.69	1.17	25.90	162.07						
1997	2.33	1.83	0.70	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13	1.13
1998	3.79	2.77	0.74	2.03	1.36	-1.30	-2.03	-3.61	0.81	5.14	4.35	2.11	17.18	288.55						
1999	0.96	2.42	1.29	4.72	2.78	2.25	2.78	0.05	0.45	2.23	3.38	3.56	33.25	449.75						
2000	4.13	4.45	2.61	2.68	2.27	3.19	2.89	1.99	0.18	2.30	0.58	3.17	36.22	605.22						
2001	4.84	1.12	1.14	2.52	0.82	10.57	0.04	3.33	-1.39	2.01	1.48	1.07	15.38	713.67						
2002	-0.15	0.19	1.96	0.60	0.96	0.67	1.72	0.54	0.11	0.11	0.61	1.19	8.91	786.15						
2003	0.54	0.54	0.50	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.16	1.16
2004	2.02	2.32	0.41	1.69	0.98	0.29	0.66	0.19	1.27	0.86	1.92	2.42	16.32	1,045.51						
2005	0.94	1.28	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95
2006	2.84	1.39	1.62	1.70	0.20	0.66	0.92	0.85	0.16	1.90	1.77	1.66	17.12	1,393.88						
2007	1.83	1.11	1.07	1.98	1.18	1.06	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
2008	0.33	1.60	-0.95	0.17	1.79	0.85	-0.64	-0.03	-4.94	-0.85	-0.04	-0.63	-3.50	1,499.30						
2009	3.18	0.94	0.37	1.18	2.11	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05

Past performance is not indicative of future results.

<sup>1</sup> Returns from 1999 through 2008 include net gains from "hot issues" or "new issues."

<sup>2</sup> This return number reflects a net charge of 1.82% for the firm's settlement of certain governmental claims relating to mutual fund trading. Generally Accepted Accounting Principles ("GAAP") require that this settlement be treated as a 2003 event even though it will be borne entirely by pre-2004 investors. Those shareholders who invested in International subsequent to December 31, 2003, and therefore did not incur any charges relating to the Mutual Fund Investigation, realized a return for 1.56% for the month and 13.48% for the year.

<sup>3</sup> The 2008 return includes a GAAP reserve of -2.51% relating to a write off of the exposure relating to the Lehman bankruptcy. We continue to monitor the situation with the various Lehman entities and the trustees and administrators. Any subsequent recoveries from Lehman will be credited to those accounts who were investors in September 2008 (or their assignee), whether or not they have subsequently redeemed.

\*Estimated

Returns are based on amounts invested as of January 1st and are net of expenses and the Incentive Allocation, if applicable. 2009 Returns are based on amounts invested as of January 2009 and assume that the limited partner has been an investor since January 1, 2008 without any withdrawals. 2009 returns reflect an Incentive Allocation after recovery of investors' high water mark. The computation of returns for an investor may vary based on the timing of capital transactions.

## **EXHIBIT 12**

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Est/Conf	MTD	Cum	QTD	YTD	Deal Vol	Firm AUM
Oct-09	est	3.3%	8527.0%	3.3%	27.3%	6,186	15,723
Sep-09	est	1.8%	8251.4%	6.3%	23.2%	5,902	15,214
Aug-09	est	2.6%	8105.8%			5,730	14,878
Jul-09	est	1.8%	7897.9%			5,581	14,497
Jun-09	conf	3.7%	7756.5%	11.8%	15.9%	5,924	14,734
May-09	est	4.3%	7476.6%			5,596	14,100
Apr-09	est	3.4%	7164.3%			5,360	13,514
Mar-09	conf	1.9%	6925.4%	3.7%	3.7%	5,178	13,367
Feb-09	est	-0.9%	6796.9%			4,997	13,037
Jan-09	est	2.7%	6859.6%			5,034	13,147
Dec-08	conf	0.2%	6676.6%	-9.2%	-3.1%	5,388	13,326
Nov-08	est	-4.8%	6660.4%			5,361	13,384
Oct-08	conf	-4.8%	7001.3%			5,167	13,259
Sep-08	conf	-1.3%	7001.3%	6.7%		4,713	11,475
Aug-08	est	0.6%	7460.3%			4,809	11,652
Jul-08	est	5.1%	7460.3%			4,773	11,564
Jun-08	conf	-0.2%	7453.0%	8.0%		4,486	10,780
May-08	est	1.1%	7453.0%			4,483	10,776
Apr-08	est	0.8%	7453.0%			4,428	10,642
Mar-08	conf	1.1%	7327.9%	6.2%	6.2%	4,286	10,556
Feb-08	est	2.9%	7245.8%			4,248	10,348
Jan-08	est	2.1%	7038.8%			4,121	10,040
Dec-07	conf	0.5%	6891.9%	7.0%	32.1%	4,216	10,030
Nov-07	est	4.2%	6856.5%			4,154	9,839
Oct-07	est	2.2%	6576.1%			3,988	9,436
Sep-07	conf	0.7%	6432.4%	7.0%	23.4%	3,713	8,738
Aug-07	est	1.1%	6384.7%			3,534	8,516
Jul-07	est	5.1%	6314.1%			3,491	8,411
Jun-07	conf	4.6%	6002.9%	6.3%	15.3%	3,416	8,113
May-07	est	1.4%	5734.4%			3,246	7,729
Apr-07	est	8.2%	5653.8%			3,195	7,610
Mar-07	conf	2.1%	5642.3%	8.5%	8.5%	3,184	7,602
Feb-07	est	4.1%	5525.7%			3,087	7,405
Jan-07	est	2.1%	5304.1%			2,961	7,103

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Est./Conf	MTD	Cum	QTD	YTD	Fund ACUM	Firm ACUM
Dec-06	conf	0.4%	5199.0%	9.0%	17.1%	3,034	7,193
Nov-06	est	1.4%	5189.6%			2,966	7,103
Oct-06	est	1.1%	5096.9%			2,920	6,993
Sep-06	conf	9.1%	5040.3%	3.7%	13.7%	2,883	6,925
Aug-06	est	0.3%	4883.9%			2,783	6,696
Jul-06	est	0.2%	4869.0%			2,770	6,666
Jun-06	conf	3.0%	4859.1%	5.0%	9.7%	2,677	6,248
May-06	est	0.9%	4716.1%			2,596	6,057
Apr-06	est	1.1%	4673.1%			2,568	5,993
Mar-06	conf	0.9%	4621.2%	4.5%	4.5%	2,536	5,942
Feb-06	est	1.4%	4578.7%			2,497	5,868
Jan-06	est	2.1%	4514.1%			2,459	5,779
Dec-05	conf	0.8%	4419.2%	2.5%	12.7%	2,450	5,699
Nov-05	est	1.2%	4355.3%			2,411	5,638
Oct-05	est	0.5%	4341.3%			2,378	5,561
Sep-05	conf	0.9%	4283.3%	2.2%	5.9%	2,368	5,530
Aug-05	est	2.1%	4223.7%			2,307	5,406
Jul-05	est	1.1%	4136.7%			2,255	5,285
Jun-05	conf	1.2%	4090.3%	1.3%	4.5%	1,919	4,546
May-05	est	-0.1%	4042.0%			1,911	4,503
Apr-05	est	0.2%	4046.2%			1,910	4,500
Mar-05	conf	1.2%	4037.9%	3.2%	3.2%	1,880	4,485
Feb-05	est	1.3%	3987.2%			1,848	4,417
Jan-05	est	0.6%	3934.7%			1,821	4,353
Dec-04	conf	0.7%	3910.6%	4.3%	13.2%	1,807	4,321
Nov-04	est	2.4%	3881.5%			1,797	4,298
Oct-04	est	1.1%	3788.2%			1,752	4,189
Sep-04	conf	1.1%	3745.9%	2.8%	8.5%	1,730	4,192
Aug-04	est	0.5%	3702.2%			1,707	4,139
Jul-04	est	1.1%	3683.3%			1,696	4,112
Jun-04	conf	1.7%	3642.1%	2.5%	5.6%	1,694	4,112
May-04	est	0.4%	3580.2%			1,664	4,036
Apr-04	est	0.4%	3565.5%			1,654	4,013
Mar-04	conf	1.3%	3550.9%	3.0%	3.0%	1,645	3,991

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Est/Conf	MTD	Cum	QTD	YTD	Fund ACM	Fund ACAL
Feb-04	est	0.5%	3504.0%			1,621	3,992
Jan-04	est	1.2%	3486.0%			1,610	3,906
Dec-03	conf	0.3%	3443.5%	3.2%	14.2%	1,580	3,744
Nov-03	est	1.6%	3431.5%			1,572	3,725
Oct-03	est	1.2%	3375.9%			1,545	3,661
Sep-03	conf	2.0%	3334.7%	3.6%	10.7%	1,524	3,567
Aug-03	est	1.0%	3267.7%			1,492	3,492
Jul-03	est	0.6%	3234.4%			1,475	3,452
Jun-03	conf	1.1%	3214.5%	4.1%	6.8%	1,437	3,361
May-03	est	1.4%	3179.6%			1,419	3,322
Apr-03	est	1.6%	3134.4%			1,397	3,271
Mar-03	conf	0.1%	3083.4%	2.6%	2.6%	1,359	3,167
Feb-03	est	0.9%	3081.2%			1,356	3,156
Jan-03	est	1.6%	3052.0%			1,341	3,122
Dec-02	conf	1.4%	3003.3%	3.2%	3.2%	1,293	3,036
Nov-02	est	0.1%	2997.7%			1,273	2,994
Oct-02	est	0.6%	2926.4%			1,260	2,962
Sep-02	conf	0.0%	2908.4%	0.1%	3.4%	1,232	2,866
Aug-02	est	-0.6%	2907.8%			1,232	2,866
Jul-02	est	0.7%	2925.9%			1,239	2,883
Jun-02	conf	-1.3%	2904.9%	0.2%	3.3%	1,158	2,712
May-02	est	0.4%	2943.1%			1,173	2,748
Apr-02	est	1.1%	2930.9%			1,167	2,733
Mar-02	conf	0.6%	2898.0%	3.0%	3.0%	1,122	2,643
Feb-02	est	0.6%	2880.2%			1,113	2,621
Jan-02	est	1.8%	2862.4%			1,105	2,602
Dec-01	conf	0.1%	2810.1%	1.6%	8.3%	1,014	2,314
Nov-01	est	0.3%	2806.9%			1,018	2,322
Oct-01	est	1.2%	2798.2%			1,016	2,318
Sep-01	conf	-1.4%	2763.9%	0.8%	6.6%	1,001	2,239
Aug-01	est	1.2%	2803.4%			1,013	2,266
Jul-01	est	1.0%	2769.0%			999	2,235
Jun-01	conf	1.1%	2740.6%	2.1%	5.7%	977	2,159
May-01	est	1.0%	2710.9%			966	2,135

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Disposition	MTD	YTD	QTD	YTD	End AUM	Start AUM
Apr-01	est	0.0%	2683.0%			955	2,111
Mar-01	conf	1.0%	2683.0%	3.6%	3.6%	931	1,973
Feb-01	est	1.5%	2654.8%			920	1,950
Jan-01	est	1.0%	2614.1%			905	1,918
Dec-00	conf	0.0%	2587.2%	1.5%	24.3%	832	1,734
Nov-00	est	0.5%	2586.3%			831	1,731
Oct-00	est	1.0%	2572.9%			825	1,719
Sep-00	conf	5.5%	2346.5%	5.5%	22.4%	807	1,660
Aug-00	est	1.0%	2458.2%			781	1,604
Jul-00	est	1.0%	2432.8%			772	1,585
Jun-00	conf	1.1%	2407.8%	5.1%	16.0%	740	1,519
May-00	est	1.0%	2381.4%			732	1,501
Apr-00	est	3.0%	2356.9%			724	1,484
Mar-00	conf	1.6%	2322.3%	10.4%		682	1,400
Feb-00	est	5.5%	2248.3%			670	1,375
Jan-00	est	0.9%	2242.2%			635	1,302
Dec-99	conf	0.6%	2061.4%	18.1%		625	1,305
Nov-99	est	1.0%	2048.9%			620	1,294
Oct-99	est	0.0%	2042.3%			613	1,279
Sep-99	conf	2.0%	2027.7%	5.0%	16.2%	612	1,271
Aug-99	est	1.0%	1986.6%			599	1,245
Jul-99	est	2.0%	1966.0%			592	1,230
Jun-99	conf	0.7%	1925.5%	4.3%	10.6%	585	1,225
May-99	est	2.0%	1911.1%			580	1,214
Apr-99	est	1.5%	1871.6%			568	1,189
Mar-99	conf	3.0%	1842.5%	6.1%	6.1%	558	1,181
Feb-99	est	1.0%	1785.8%			539	1,141
Jan-99	est	2.0%	1767.1%			534	1,130
Dec-98	conf	-3.6%	1730.5%	-4.5%	-7.0%	669	1,393
Nov-98	est	1.0%	1798.0%			693	1,446
Oct-98	est	-2.0%	1779.2%			686	1,432
Sep-98	conf	-2.7%	1817.5%	-7.5%	-2.6%	700	1,438
Aug-98	est	-4.0%	1869.7%			728	1,493
Jul-98	est	-1.0%	1951.8%			758	1,555

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Est. Comp	MTD	Cum.	QTD	YTD	End ACUM	First ACUM
Jun-98	conf	-0.6%	1972.5%	1.4%	5.3%	747	1,545
May-98	est	1.0%	1986.0%			748	1,547
Apr-98	est	1.0%	1965.3%			740	1,531
Mar-98	conf	3.4%	1944.9%	3.9%	3.9%	734	1,471
Feb-98	est	1.0%	1878.0%			709	1,417
Jan-98	est	-0.5%	1858.4%			702	1,403
Dec-97	conf	0.5%	1868.2%	2.5%	12.1%	681	1,310
Nov-97	est	1.0%	1858.2%			674	1,299
Oct-97	est	1.0%	1838.8%			668	1,287
Sep-97	conf	2.6%	1819.6%	4.7%	9.3%	661	1,224
Aug-97	est	1.0%	1770.4%			642	1,187
Jul-97	est	1.0%	1751.9%			635	1,175
Jun-97	conf	1.1%	1733.6%	1.6%	4.4%	629	1,077
May-97	est	0.5%	1705.2%			623	1,064
Apr-97	est	0.0%	1704.1%			620	1,058
Mar-97	conf	1.1%	1691.1%	2.7%		617	1,017
Feb-97	est	1.0%	1691.2%			610	1,006
Jan-97	est	1.0%	1678.5%			604	995
Dec-96	conf	1.5%	1656.3%	3.0%	19.0%	591	905
Nov-96	est	0.0%	1630.7%			583	891
Oct-96	est	1.5%	1630.7%			583	891
Sep-96	conf	1.5%	1605.1%	3.5%	15.5%	571	824
Aug-96	est	1.0%	1579.9%			562	809
Jul-96	est	1.0%	1563.2%			556	801
Jun-96	conf	3.1%	1546.8%	5.2%	11.6%	564	760
May-96	est	1.0%	1497.6%			547	737
Apr-96	est	1.0%	1481.8%			542	729
Mar-96	conf	3.0%	1466.1%	6.1%	6.1%	533	700
Feb-96	est	1.0%	1420.6%			518	678
Jan-96	est	2.0%	1405.6%			513	672
Dec-95	conf	3.0%	1376.1%	4.1%	18.3%	528	676
Nov-95	est	1.0%	1332.7%			518	656
Oct-95	est	0.0%	1318.5%			508	650
Sep-95	conf	3.2%	1318.5%	6.3%	13.6%	505	643



**Elliott Associates, LP Performance**  
(net of all fees)

Month	Est/Conf	MTD	Cum	QTD	YTD	End AUM	End AUM
Aug-95	est	2.0%	1274.1%			488	621
Jul-95	est	1.0%	1247.2%			478	609
Jun-95	conf	2.4%	1233.9%	5.0%	6.9%	554	642
May-95	est	1.0%	1202.2%			541	627
Apr-95	est	1.5%	1189.3%			536	621
Mar-95	conf	0.8%	1170.3%	1.8%	1.8%	526	608
Feb-95	est	0.5%	1160.7%			520	600
Jan-95	est	0.5%	1154.4%			517	597
Dec-94	conf	-1.0%	1148.2%	-2.5%	0.0%	578	657
Nov-94	est	-0.3%	1161.2%			587	587
Oct-94	est	-1.0%	1167.5%			590	590
Sep-94	conf	0.2%	1180.3%	1.7%	2.6%	588	588
Aug-94	est	1.0%	1177.7%			595	595
Jul-94	est	0.5%	1172.0%			589	589
Jun-94	conf	-0.9%	1158.9%	0.9%		569	569
May-94	est	0.5%	1163.5%			575	575
Apr-94	est	0.5%	1170.7%			578	578
Mar-94	conf	-0.2%	1170.3%	1.8%	1.8%	569	569
Feb-94	est	0.5%	1166.9%			573	573
Jan-94	est	1.5%	1166.9%			570	570
Dec-93	conf	2.6%	1148.2%	4.6%	21.6%	470	470
Nov-93	est	1.0%	1116.8%			459	459
Oct-93	est	1.0%	1104.7%			455	455
Sep-93	conf	0.8%	1092.8%	1.8%	16.2%	450	450
Aug-93	est	1.0%	1083.6%			449	449
Jul-93	est	0.0%	1071.9%			444	444
Jun-93	conf	2.6%	1071.9%	8.3%	14.1%	416	416
May-93	est	2.5%	1042.7%			407	407
Apr-93	est	3.0%	1014.9%			397	397
Mar-93	conf	1.8%	982.4%	5.4%	5.4%	385	385
Feb-93	est	1.5%	963.1%			380	380
Jan-93	est	2.0%	947.4%			374	374
Dec-92	conf	1.6%	926.8%	3.2%	15.1%	375	375
Nov-92	est	0.5%	910.4%			370	370

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Est/Conf	MTD	Cum	QTD	YTD	Prod QUM	Prod ACUM
Oct-92	est	1.0%	905.3%			368	368
Sep-92	conf	1.7%	895.4%	2.7%	11.6%	364	364
Aug-92	est	0.0%	878.5%			360	360
Jul-92	est	1.0%	878.5%			360	360
Jun-92	conf	1.3%	868.8%	3.3%	8.6%	346	346
May-92	est	1.0%	856.3%			342	342
Apr-92	est	1.0%	846.8%			339	339
Mar-92	conf	2.0%	837.5%	5.1%	5.1%	336	336
Feb-92	est	1.5%	819.0%			330	330
Jan-92	est	1.5%	805.4%			325	325
Dec-91	conf	0.2%	792.0%	0.2%	12.4%	320	320
Nov-91	est	-1.0%	790.3%			320	320
Oct-91	est	1.0%	799.2%			323	323
Sep-91	conf	2.4%	769.7%	12.2%		320	320
Aug-91	est	1.0%	769.7%			315	315
Jul-91	est	1.0%	769.7%			312	312
Jun-91	conf	0.4%	761.1%	8.5%		323	323
May-91	est	1.0%	757.9%			322	322
Apr-91	est	1.0%	744.9%			319	319
Mar-91	conf	2.4%	741.0%	6.0%	6.0%	316	316
Feb-91	est	1.5%	721.4%			309	309
Jan-91	est	2.0%	709.2%			305	305
Dec-90	conf	0.9%	693.4%	0.9%	13.4%	295	295
Nov-90	est	1.0%	685.9%			292	292
Oct-90	est	-1.0%	678.1%			290	290
Sep-90	conf	1.4%	686.0%	4.0%	12.3%	293	293
Aug-90	est	1.0%	674.8%			289	289
Jul-90	est	1.5%	667.1%			286	286
Jun-90	conf	1.5%	655.8%	5.0%	8.0%	282	282
May-90	est	2.0%	644.9%			278	278
Apr-90	est	1.5%	630.3%			273	273
Mar-90	conf	1.3%	619.5%	2.8%	2.8%	271	271
Feb-90	est	0.5%	610.4%			268	268
Jan-90	est	1.0%	606.9%			267	267

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Est/Conf	MTD	Cum	QTD	YTD	End ALUM	Firm ALUM
Dec-89	conf	1.7%	599.9%	5.3%	23.8%	244	244
Nov-89	est	2.0%	587.9%			240	240
Oct-89	est	1.5%	574.4%			235	235
Sep-89	conf	1.0%	561.5%	4.6%	17.6%	233	233
Aug-89	est	1.5%	557.7%			231	231
Jul-89	est	2.0%	547.9%			227	227
Jun-89	conf	2.2%	535.2%	4.7%	12.4%	219	219
May-89	est	1.5%	521.7%			214	214
Apr-89	est	1.0%	512.5%			211	211
Mar-89	conf	2.6%	506.4%	7.3%	7.3%	210	210
Feb-89	est	2.5%	490.9%			205	205
Jan-89	est	2.0%	476.5%			200	200
Dec-88	conf	0.3%	465.2%	0.3%	13.4%	233	233
Nov-88	est	0.0%	462.3%			233	233
Oct-88	est	0.0%	463.4%			233	233
Sep-88	conf	0.5%	464.1%	0.5%	23.1%	234	234
Aug-88	est	0.5%	460.1%			233	233
Jul-88	est	0.5%	457.2%			232	232
Jun-88	conf	2.2%	450.4%	5.8%	11.3%	224	224
May-88	est	1.5%	442.6%			220	220
Apr-88	est	2.0%	434.6%			217	217
Mar-88	conf	1.6%	424.1%	5.2%	5.2%	213	213
Feb-88	est	2.0%	415.8%			210	210
Jan-88	est	1.5%	405.7%			206	206
Dec-87	conf	0.0%	398.2%	-3.5%	6.7%	213	213
Nov-87	est	1.0%	398.0%			214	214
Oct-87	est	-4.5%	393.0%			212	212
Sep-87	conf	1.1%	416.3%	3.6%	10.5%	220	220
Aug-87	est	1.0%	410.9%			218	218
Jul-87	est	1.5%	405.8%			216	216
Jun-87	conf	1.1%	398.3%	2.6%	6.7%	208	208
May-87	est	1.0%	393.0%			207	207
Apr-87	est	0.5%	388.1%			205	205
Mar-87	conf	1.4%	385.7%	4.0%	4.0%	206	206

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Estimate	MTD	Plan	QTD	YTD	Yend ACUM	Yend ACUM
Feb-87	est	1.0%	378.8%			204	204
Jan-87	est	1.8%	374.0%			202	202
Dec-86	conf	1.2%	367.0%	3.7%	10.7%	200	200
Nov-86	est	1.5%	361.7%			198	198
Oct-86	est	1.0%	354.9%			195	195
Sep-86	conf	-0.7%	350.4%	-0.7%	6.8%	171	171
Aug-86	est	0.0%	353.7%			172	172
Jul-86	est	0.0%	353.7%			172	172
Jun-86	conf	1.0%	353.7%	3.0%	7.6%	173	173
May-86	est	1.0%	349.3%			171	171
Apr-86	est	1.0%	344.9%			169	169
Mar-86	conf	1.9%	340.4%	4.4%	4.4%	151	151
Feb-86	est	1.0%	332.3%			149	149
Jan-86	est	1.5%	331.7%			147	147
Dec-85	conf	1.5%	331.7%	1.0%	2.5%	134	134
Nov-85	est	1.5%	331.7%			133	133
Oct-85	est	1.0%	309.4%			131	131
Sep-85	conf	1.7%	305.3%	4.2%	17.7%	123	123
Aug-85	est	1.0%	299.8%			121	121
Jul-85	est	1.5%	294.7%			120	120
Jun-85	conf	2.4%	288.9%	7.0%	12.9%	112	112
May-85	est	2.5%	279.9%			110	110
Apr-85	est	2.0%	270.6%			107	107
Mar-85	conf	1.9%	263.3%	5.5%	5.5%	104	104
Feb-85	est	1.5%	256.4%			102	102
Jan-85	est	2.0%	251.2%			100	100
Dec-84	conf	1.6%	244.3%	4.1%	16.5%	92	92
Nov-84	est	1.5%	239.0%			91	91
Oct-84	est	1.0%	234.0%			90	90
Sep-84	conf	1.4%	230.7%	4.0%	11.8%	86	86
Aug-84	est	1.0%	226.0%			85	85
Jul-84	est	1.5%	222.8%			84	84
Jun-84	conf	1.2%	218.0%	2.7%	7.6%	80	80
May-84	est	1.0%	214.3%			79	79

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Period	MTD	Cum	OTD	ATD	End ALIVE	End ALIVE
Apr-84	est	0.5%	211.2%			79	79
Mar-84	conf	1.2%	209.7%	4.7%	4.7%	77	77
Feb-84	est	2.0%	206.1%			76	76
Jan-84	est	1.5%	200.1%			75	75
Dec-83	conf	1.0%	195.6%	3.6%	22.1%	59	59
Nov-83	est	1.0%	192.6%			59	59
Oct-83	est	1.5%	189.7%			58	58
Sep-83	conf	1.9%	185.4%	5.5%	17.9%	52	52
Aug-83	est	2.0%	180.2%			52	52
Jul-83	est	1.5%	174.7%			51	51
Jun-83	conf	1.7%	170.7%	5.3%	11.8%	37	37
May-83	est	1.5%	166.2%			37	37
Apr-83	est	2.0%	162.3%			36	36
Mar-83	conf	2.6%	159.3%	6.2%		32	32
Feb-83	est	2.0%	150.7%			31	31
Jan-83	est	1.5%	142.1%			31	31
Dec-82	conf	2.1%	142.1%	17.6%		28	28
Nov-82	est	1.5%	137.1%			27	27
Oct-82	est	2.0%	135.6%			27	27
Sep-82	conf	2.0%	129.0%	6.7%	11.2%	24	24
Aug-82	est	2.5%	124.5%			23	23
Jul-82	est	2.0%	119.0%			23	23
Jun-82	conf	1.4%	114.7%	4.0%	4.3%	22	22
May-82	est	1.0%	111.7%			22	22
Apr-82	est	1.5%	109.6%			21	21
Mar-82	conf	0.3%	106.5%	0.3%	0.3%	21	21
Feb-82	est	0.0%	105.9%			21	21
Jan-82	est	0.0%	105.9%			21	21
Dec-81	conf	3.2%	105.9%	9.5%	23.4%	19	19
Nov-81	est	2.5%	99.5%			19	19
Oct-81	est	3.5%	94.6%			18	18
Sep-81	conf	0.1%	88.0%	0.6%	12.7%	16	16
Aug-81	est	0.5%	87.9%			16	16
Jul-81	est	0.0%	87.0%			16	16

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Est/Conf	MTD	Cum	QTD	YTD	Period M/Y	Period ACUM
Jun-81	conf	1.1%	87.0%	4.7%	12.1%	15	15
May-81	est	2.0%	84.9%			15	15
Apr-81	est	1.5%	81.3%			15	15
Mar-81	conf	2.4%	78.6%	7.1%	7.1%	14	14
Feb-81	est	2.0%	74.4%			13	13
Jan-81	est	2.5%	71.0%			13	13
Dec-80	conf	1.1%	66.8%	3.2%	22.6%	12	12
Nov-80	est	1.5%	64.9%			12	12
Oct-80	est	0.5%	62.5%			12	12
Sep-80	conf	1.5%	61.7%	5.1%	18.9%	10	10
Aug-80	est	2.0%	59.3%			10	10
Jul-80	est	1.5%	56.2%			10	10
Jun-80	conf	2.8%	53.9%	9.6%	13.2%	7	7
May-80	est	3.5%				7	7
Apr-80	est	3.0%				7	7
Mar-80	conf					7	7
Feb-80	est	1.0%				6	6
Jan-80	est	1.0%				6	6
Dec-79	conf	1.0%		2.5%	16.6%	6	6
Nov-79	est	0.5%				6	6
Oct-79	est	1.0%				6	6
Sep-79	conf	1.4%		4.0%	13.8%	5	5
Aug-79	est	1.5%				5	5
Jul-79	est	1.0%				5	5
Jun-79	conf	0.8%		3.3%	9.4%	5	5
May-79	est	1.5%				4	4
Apr-79	est	1.0%				4	4
Mar-79	conf	2.3%		5.9%	5.9%	4	4
Feb-79	est	2.0%				4	4
Jan-79	est	1.5%				4	4
Dec-78	conf	0.0%		0.0%	9.9%	4	4
Nov-78	est	0.0%				4	4
Oct-78	est	0.0%				4	4
Sep-78	conf	1.1%		3.1%	9.9%	3	3

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Est/Conf	MTD	Cum	STD	STD	Fund AUM	Firm AUM
Aug-78	est	1.0%	15.3%			3	3
Jul-78	est	1.0%	14.2%			3	3
Jun-78	conf	2.2%	13.1%	4.8%	6.5%	3	3
May-78	est	1.0%	10.5%			3	3
Apr-78	est	1.5%	9.5%			3	3
Mar-78	conf	0.7%	7.9%	1.7%	1.7%	2	2
Feb-78	est	0.5%	7.2%			2	2
Jan-78	est	0.5%	6.7%			2	2
Dec-77	conf	0.7%	6.1%	2.2%	6.1%	2	2
Nov-77	est	0.5%	5.4%			2	2
Oct-77	est	1.0%	4.9%			2	2
Sep-77	conf	0.2%	3.9%	1.7%	3.9%	2	2
Aug-77	est	0.5%	3.7%			2	2
Jul-77	est	0.0%				2	2
Jun-77	conf	0.9%	3.2%	3.2%		2	2
May-77	est	0.5%				2	2
Apr-77	est	1.0%	0.4%			2	2
Mar-77	conf	-0.2%	-0.2%	-0.2%	-0.2%	1	1
Feb-77	est	0.0%	0.0%			1	1
Feb-77	est	0.0%	0.0%			1	1

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Estimate	MTD	YTD	QTD	YTD	Fixed Assets	Total Assets
Oct-09	est	3.3%	8527.0%	3.3%	27.3%	6,186	15,723
Sep-09	est	1.8%	8251.4%	6.3%	23.2%	5,902	15,214
Aug-09	est	2.6%	8105.8%			5,730	14,878
Jul-09	est	1.8%	7897.9%			5,581	14,497
Jun-09	conf	3.7%	7756.5%	11.8%	15.9%	5,924	14,734
May-09	est	4.3%	7476.6%			5,596	14,100
Apr-09	est	3.4%	7164.3%			5,360	13,514
Mar-09	conf	1.9%	6925.4%	3.7%	3.7%	5,178	13,367
Feb-09	est	-0.9%	6796.9%			4,997	13,037
Jan-09	est	2.7%	6859.6%			5,034	13,147
Dec-08	conf	0.2%	6676.6%	-9.2%	-3.1%	5,388	13,326
Nov-08	est	-4.8%	6660.4%			5,361	13,384
Oct-08	conf	-4.8%	7001.3%			5,167	13,259
Sep-08	conf	-1.3%	7177.2%	6.7%		4,713	11,475
Aug-08	est	0.6%	7460.2%			4,809	11,652
Jul-08	est	5.1%	7453.0%			4,773	11,564
Jun-08	conf	-0.2%	7453.0%	8.0%		4,486	10,780
May-08	est	1.1%	7489.7%			4,483	10,776
Apr-08	est	0.8%	7366.8%			4,428	10,642
Mar-08	conf	1.1%	7327.9%	6.2%	6.2%	4,386	10,556
Feb-08	est	2.9%	7245.8%			4,248	10,348
Jan-08	est	2.1%	7038.8%			4,121	10,040
Dec-07	conf	0.5%	6891.9%	7.0%	32.1%	4,216	10,030
Nov-07	est	4.2%	6856.5%			4,154	9,839
Oct-07	est	2.2%	6576.1%			3,988	9,436
Sep-07	conf	0.7%	6432.4%	7.0%	23.4%	3,713	8,738
Aug-07	est	1.1%	6384.7%			3,534	8,516
Jul-07	est	5.1%	6314.1%			3,491	8,411
Jun-07	conf	4.6%	6002.9%	6.3%	15.3%	3,416	8,113
May-07	est	1.4%	5734.4%			3,246	7,729
Apr-07	est	0.2%	5653.8%			3,195	7,610
Mar-07	conf	2.1%	5642.3%	8.5%	8.5%	3,184	7,602
Feb-07	est	4.1%	5525.7%			3,087	7,405
Jan-07	est	2.1%	5304.1%			2,961	7,103



**Elliott Associates, LP Performance**  
(net of all fees)

Month	Est/Conf	MTD	Cum	QTD	YTD	Fund AUM	Firm AUM
Dec-06	conf	0.4%	5193.0%	3.0%	17.1%	3,034	7,193
Nov-06	est	1.4%	5169.6%			2,966	7,103
Oct-06	est	1.1%	5096.9%			2,920	6,993
Sep-06	conf	9.1%	5040.3%	3.7%	13.7%	2,883	6,925
Aug-06	est	0.3%	4883.9%			2,783	6,696
Jul-06	est	0.2%	4869.0%			2,770	6,666
Jun-06	conf	3.0%	4859.1%	5.0%	9.7%	2,677	6,248
May-06	est	0.9%	4716.1%			2,596	6,057
Apr-06	est	1.1%	4673.1%			2,568	5,993
Mar-06	conf	0.9%	4621.2%	4.5%	4.5%	2,336	5,942
Feb-06	est	1.4%	4578.7%			2,497	5,868
Jan-06	est	2.1%	4514.1%			2,459	5,779
Dec-05	conf	0.8%	4419.2%	2.5%	12.7%	2,450	5,699
Nov-05	est	1.2%	4381.3%			2,411	5,638
Oct-05	est	0.5%	4341.3%			2,378	5,561
Sep-05	conf	0.9%	4283.3%	1.1%	5.9%	2,363	5,530
Aug-05	est	2.1%	4223.7%			2,307	5,406
Jul-05	est	1.1%	4136.7%			2,255	5,285
Jun-05	conf	1.2%	4050.1%	1.3%	4.5%	1,919	4,546
May-05	est	-0.1%	4042.0%			1,911	4,503
Apr-05	est	0.2%	4046.2%			1,910	4,500
Mar-05	conf	1.2%	4037.9%	3.2%	3.2%	1,880	4,485
Feb-05	est	1.3%	3987.2%			1,848	4,417
Jan-05	est	0.6%	3934.7%			1,821	4,353
Dec-04	conf	0.7%	3910.6%	4.3%	13.2%	1,807	4,321
Nov-04	est	2.4%	3881.5%			1,797	4,296
Oct-04	est	1.1%	3788.2%			1,752	4,189
Sep-04	conf	1.1%	3745.9%	2.8%	8.5%	1,730	4,192
Aug-04	est	0.5%	3702.2%			1,707	4,139
Jul-04	est	1.7%	3683.3%			1,696	4,112
Jun-04	conf	1.7%	3642.1%	2.5%	5.6%	1,694	4,112
May-04	est	0.4%	3580.2%			1,664	4,036
Apr-04	est	0.4%	3565.5%			1,654	4,013
Mar-04	conf	1.3%	3550.9%	3.0%	3.0%	1,645	3,991

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Position	MTD	Cum	MTD	MTD	Cum	Cum
						ACUM	ACUM
Feb-04	est	0.5%	3504.0%			1,421	3,992
Jan-04	est	1.2%	3486.0%			1,610	3,906
Dec-03	conf	0.3%	3443.5%	3.2%	14.2%	1,580	3,744
Nov-03	est	1.6%	3431.5%			1,572	3,725
Oct-03	est	1.2%	3373.9%			1,545	3,661
Sep-03	conf	2.0%	3334.7%	3.6%	10.7%	1,524	3,567
Aug-03	est	1.0%	3267.7%			1,492	3,492
Jul-03	est	0.6%	3234.4%			1,475	3,452
Jun-03	conf	1.1%	3214.5%	4.1%	6.8%	1,437	3,361
May-03	est	1.4%	3179.6%			1,419	3,322
Apr-03	est	1.6%	3134.4%			1,397	3,271
Mar-03	conf	0.1%	3083.4%	2.6%	2.6%	1,359	3,167
Feb-03	est	0.9%	3081.2%			1,356	3,156
Jan-03	est	1.6%	3062.1%			1,341	3,122
Dec-02	conf	1.4%	3003.2%	3.2%		1,293	3,036
Nov-02	est	1.3%	2997.7%			1,273	2,994
Oct-02	est	0.6%	2926.4%			1,260	2,962
Sep-02	conf	0.0%	2888.4%	0.1%	3.4%	1,232	2,866
Aug-02	est	-0.6%	2966.3%			1,232	2,866
Jul-02	est	0.7%	2925.9%			1,239	2,883
Jun-02	conf	1.3%	2904.9%	0.2%	3.3%	1,158	2,712
May-02	est	0.4%	2943.1%			1,173	2,748
Apr-02	est	1.1%	2930.9%			1,167	2,733
Mar-02	conf	0.6%	2898.0%	3.0%	3.0%	1,122	2,643
Feb-02	est	0.6%	2880.2%			1,113	2,621
Jan-02	est	1.8%	2862.4%			1,105	2,602
Dec-01	conf	0.1%	2810.1%	1.6%	8.3%	1,014	2,314
Nov-01	est	0.3%	2806.9%			1,018	2,322
Oct-01	est	1.2%	2798.2%			1,016	2,318
Sep-01	conf	-1.4%	2763.9%	0.8%	6.6%	1,001	2,239
Aug-01	est	1.2%	2803.4%			1,013	2,266
Jul-01	est	1.0%	2769.0%			999	2,235
Jun-01	conf	1.1%	2740.6%	2.1%	5.7%	977	2,159
May-01	est	1.0%	2710.9%			966	2,135

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Dis Comp	YTD	Cum	YTD	YTD	YTD	YTD
Apr-01	est	0.0%	2683.0%			955	2,111
Mar-01	conf	1.0%	2683.0%	3.6%	3.6%	931	1,973
Feb-01	est	1.5%	2654.8%			920	1,950
Jan-01	est	1.0%	2614.1%			905	1,918
Dec-00	conf	0.0%	2587.2%	1.5%	24.3%	832	1,734
Nov-00	est	0.5%	2586.3%			831	1,731
Oct-00	est	1.0%	2572.9%			825	1,719
Sep-00	conf	3.5%	2546.5%	5.5%	22.4%	807	1,660
Aug-00	est	1.0%	2458.2%			781	1,604
Jul-00	est	1.0%	2432.8%			772	1,588
Jun-00	conf	1.1%	2407.8%	5.1%	16.0%	740	1,519
May-00	est	1.0%	2381.4%			732	1,501
Apr-00	est	3.0%	2356.9%			724	1,484
Mar-00	conf	1.6%	2332.3%	10.4%		662	1,400
Feb-00	est	5.5%	2248.8%			670	1,375
Jan-00	est	1.0%	2032.2%			635	1,302
Dec-99	conf	0.6%	2061.4%	18.1%		625	1,305
Nov-99	est	1.0%	2048.9%			620	1,294
Oct-99	est	0.0%	2023.3%			613	1,279
Sep-99	conf	2.0%	2027.7%	5.0%	16.2%	612	1,271
Aug-99	est	1.0%	1986.6%			599	1,245
Jul-99	est	2.0%	1966.0%			592	1,230
Jun-99	conf	0.7%	1925.5%	4.3%	10.6%	585	1,223
May-99	est	2.0%	1911.1%			580	1,214
Apr-99	est	1.5%	1871.6%			568	1,189
Mar-99	conf	3.0%	1842.5%	6.1%	6.1%	558	1,181
Feb-99	est	1.0%	1785.8%			539	1,141
Jan-99	est	2.0%	1767.1%			534	1,130
Dec-98	conf	-3.6%	1730.5%	4.5%	-7.0%	669	1,393
Nov-98	est	1.0%	1798.0%			693	1,446
Oct-98	est	-2.0%	1779.2%			686	1,432
Sep-98	conf	-2.7%	1817.5%	-7.5%	-2.6%	700	1,438
Aug-98	est	-4.0%	1869.7%			728	1,493
Jul-98	est	-1.0%	1951.8%			758	1,555

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Estimate	MTD	QTD	YTD	Fund ALM	Firm ALM	
Jun-98	conf	-0.6%	1972.5%	1.4%	5.3%	747	1,545
May-98	est	1.0%	1986.0%			748	1,547
Apr-98	est	1.0%	1965.9%			740	1,531
Mar-98	conf	3.4%	1944.9%	3.9%	3.9%	734	1,471
Feb-98	est	1.0%	1878.0%			709	1,417
Jan-98	est	-0.5%	1858.4%			702	1,403
Dec-97	conf	0.5%	1868.2%	2.5%	12.1%	681	1,310
Nov-97	est	1.0%	1858.2%			674	1,299
Oct-97	est	1.0%	1838.2%			668	1,287
Sep-97	conf	2.6%	1819.6%	4.7%	9.3%	661	1,224
Aug-97	est	1.0%	1770.4%			642	1,187
Jul-97	est	1.0%	1751.9%			635	1,175
Jun-97	conf	1.1%	1733.6%	1.6%	4.4%	629	1,077
May-97	est	0.5%	1704.1%			623	1,064
Apr-97	est	0.0%	1704.1%			620	1,058
Mar-97	conf	0.1%	1691.1%	2.7%		617	1,017
Feb-97	est	1.0%	1691.1%			610	1,006
Jan-97	est	1.0%	1673.5%			604	995
Dec-96	conf	1.5%	1655.7%	3.0%	19.0%	591	905
Nov-96	est	0.0%	1630.7%			583	891
Oct-96	est	1.5%	1630.7%			583	891
Sep-96	conf	1.5%	1605.1%	3.5%	15.5%	571	824
Aug-96	est	1.0%	1579.9%			562	809
Jul-96	est	1.0%	1563.2%			556	801
Jun-96	conf	3.1%	1546.8%	5.2%	11.6%	564	760
May-96	est	1.0%	1497.6%			547	737
Apr-96	est	1.0%	1481.8%			542	729
Mar-96	conf	3.0%	1466.1%	6.1%	6.1%	533	700
Feb-96	est	1.0%	1420.6%			518	678
Jan-96	est	2.0%	1405.6%			513	672
Dec-95	conf	3.0%	1376.1%	4.1%	18.3%	528	676
Nov-95	est	1.0%	1332.7%			513	656
Oct-95	est	0.0%	1318.5%			508	650
Sep-95	conf	3.2%	1318.5%	6.3%	13.6%	505	643

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Calc Method	MTD	Cum	QTD	YTD	YTD AUM	YTD AUM
Aug-95	est	2.0%	1274.1%			488	621
Jul-95	est	1.0%	1247.2%			478	609
Jun-95	conf	2.4%	1233.9%	5.0%	6.9%	554	642
May-95	est	1.0%	1202.2%			541	627
Apr-95	est	1.5%	1189.3%			536	621
Mar-95	conf	0.8%	1170.3%	1.8%	1.8%	526	608
Feb-95	est	0.5%	1160.7%			520	600
Jan-95	est	0.5%	1154.4%			517	597
Dec-94	conf	-1.0%	1148.2%	-2.5%	0.0%	579	657
Nov-94	est	-0.5%	1161.2%			587	587
Oct-94	est	-1.0%	1167.5%			590	590
Sep-94	conf	0.2%	1180.3%	1.7%	2.6%	588	588
Aug-94	est	1.0%	1177.7%			595	595
Jul-94	est	0.5%	1165.1%			589	589
Jun-94	conf	-0.9%	1158.4%	-0.9%	0.0%	569	569
May-94	est	0.5%	1155.5%			575	575
Apr-94	est	0.5%	1176.7%			578	578
Mar-94	conf	-0.2%	1170.3%	1.8%	1.8%	569	569
Feb-94	est	0.5%	1165.1%			573	573
Jan-94	est	1.5%	1166.9%			570	570
Dec-93	conf	2.6%	1148.2%	4.6%	21.6%	470	470
Nov-93	est	1.0%	1116.8%			459	459
Oct-93	est	1.0%	1104.7%			455	455
Sep-93	conf	0.8%	1092.8%	1.8%	16.2%	450	450
Aug-93	est	1.0%	1083.6%			449	449
Jul-93	est	0.0%	1071.9%			444	444
Jun-93	conf	2.6%	1071.9%	8.3%	14.1%	416	416
May-93	est	2.5%	1042.7%			407	407
Apr-93	est	3.0%	1014.9%			397	397
Mar-93	conf	1.8%	982.4%	5.4%	5.4%	365	385
Feb-93	est	1.5%	963.1%			380	380
Jan-93	est	2.0%	947.4%			374	374
Dec-92	conf	1.6%	926.8%	3.2%	15.1%	375	375
Nov-92	est	0.5%	910.4%			370	370

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Est/Conf	MTD	Cum	QTD	YTD	Cur ACUM	Prior ACUM
Oct-92	est	1.0%	905.3%			368	368
Sep-92	conf	1.7%	895.4%	2.7%	11.6%	364	364
Aug-92	est	0.0%	878.5%			360	360
Jul-92	est	1.0%	878.5%			360	360
Jun-92	conf	1.3%	868.8%	3.3%	8.6%	346	346
May-92	est	1.0%	856.3%			342	342
Apr-92	est	1.0%	846.8%			339	339
Mar-92	conf	2.0%	837.5%	5.1%	5.1%	336	336
Feb-92	est	1.5%	819.0%			330	330
Jan-92	est	1.5%	805.4%			325	325
Dec-91	conf	0.2%	792.0%	0.2%	12.4%	320	320
Nov-91	est	-1.0%	790.3%			320	320
Oct-91	est	1.0%	799.2%			323	323
Sep-91	conf	2.4%	799.2%	12.2%		320	320
Aug-91	est	1.0%	769.7%			315	315
Jul-91	est	1.0%	769.7%			312	312
Jun-91	conf	0.4%	761.3%	8.5%		323	323
May-91	est	1.0%	757.9%			322	322
Apr-91	est	1.0%	740.1%			319	319
Mar-91	conf	2.4%	741.0%	6.0%	6.0%	316	316
Feb-91	est	1.5%	721.4%			309	309
Jan-91	est	2.0%	709.2%			305	305
Dec-90	conf	0.9%	693.4%	0.9%	13.4%	295	295
Nov-90	est	1.0%	685.9%			292	292
Oct-90	est	-1.0%	678.1%			290	290
Sep-90	conf	1.4%	686.0%	4.0%	12.3%	293	293
Aug-90	est	1.0%	674.8%			289	289
Jul-90	est	1.5%	667.1%			286	286
Jun-90	conf	1.5%	655.8%	5.0%	8.0%	282	282
May-90	est	2.0%	644.9%			278	278
Apr-90	est	1.5%	630.3%			273	273
Mar-90	conf	1.3%	619.5%	2.8%	2.8%	271	271
Feb-90	est	0.5%	610.4%			268	268
Jan-90	est	1.0%	606.9%			267	267

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Exec Conf	MTD	YTD	QTD	LTQ	YTD	YTD
Dec-89	conf	1.7%	599.9%	5.3%	23.8%	244	244
Nov-89	est	2.0%	587.9%			240	240
Oct-89	est	1.5%	574.4%			235	235
Sep-89	conf	1.0%	564.5%	4.6%	17.6%	233	233
Aug-89	est	1.8%	557.7%			231	231
Jul-89	est	2.0%	547.9%			227	227
Jun-89	conf	2.2%	535.2%	4.7%	12.4%	219	219
May-89	est	1.5%	521.7%			214	214
Apr-89	est	1.0%	512.5%			211	211
Mar-89	conf	2.6%	506.4%	7.3%	7.3%	210	210
Feb-89	est	2.5%	490.9%			205	205
Jan-89	est	2.0%	476.5%			200	200
Dec-88	conf	0.3%	465.2%	0.3%	13.4%	233	233
Nov-88	est	0.0%	463.4%			233	233
Oct-88	est	0.0%	463.4%			233	233
Sep-88	conf	0.6%	463.4%	0.6%	43.1%	234	234
Aug-88	est	0.5%	460.1%			233	233
Jul-88	est	0.5%	457.3%			232	232
Jun-88	conf	2.2%	453.3%	5.8%	11.3%	224	224
May-88	est	1.5%	442.6%			220	220
Apr-88	est	2.0%	434.6%			217	217
Mar-88	conf	1.6%	424.1%	5.2%	5.2%	213	213
Feb-88	est	2.0%	415.8%			210	210
Jan-88	est	1.5%	405.7%			206	206
Dec-87	conf	0.0%	398.2%	-3.5%	6.7%	213	213
Nov-87	est	1.0%	398.0%			214	214
Oct-87	est	-4.5%	393.0%			212	212
Sep-87	conf	1.1%	416.3%	3.6%	10.5%	220	220
Aug-87	est	1.0%	410.9%			218	218
Jul-87	est	1.5%	405.8%			216	216
Jun-87	conf	1.1%	398.3%	2.6%	6.7%	208	208
May-87	est	1.0%	393.0%			207	207
Apr-87	est	0.5%	388.1%			205	205
Mar-87	conf	1.4%	385.7%	4.0%	4.0%	206	206



**Elliott Associates, LP Performance**  
(net of all fees)

Month	Est/Conf	MTD	Qtr	QTD	YTD	End COM	End CAL
Feb-87	est	1.0%	378.8%			204	204
Jan-87	est	1.5%	374.0%			202	202
Dec-86	conf	1.2%	367.0%	3.7%	10.7%	200	200
Nov-86	est	1.5%	361.7%			198	198
Oct-86	est	1.0%	354.9%			195	195
Sep-86	conf	-0.7%	350.4%	-0.7%	6.8%	171	171
Aug-86	est	0.0%	353.7%			172	172
Jul-86	est	0.0%	353.7%			172	172
Jun-86	conf	1.0%	353.7%	3.0%	7.6%	173	173
May-86	est	1.0%	349.3%			171	171
Apr-86	est	1.0%	344.9%			169	169
Mar-86	conf	1.9%	340.4%	4.4%	4.4%	151	151
Feb-86	est	1.0%	332.3%			149	149
Jan-86	est	1.5%	328.1%			147	147
Dec-85	conf	1.5%	321.7%	1.0%	2.3%	134	134
Nov-85	est	1.5%	315.1%			133	133
Oct-85	est	1.0%	309.1%			131	131
Sep-85	conf	1.7%	305.3%	4.2%	17.7%	123	123
Aug-85	est	1.0%	296.6%			121	121
Jul-85	est	1.5%	294.7%			120	120
Jun-85	conf	2.4%	288.9%	7.0%	12.9%	112	112
May-85	est	2.5%	279.9%			110	110
Apr-85	est	2.0%	270.6%			107	107
Mar-85	conf	1.9%	263.3%	5.5%	5.5%	104	104
Feb-85	est	1.5%	256.4%			102	102
Jan-85	est	2.0%	251.2%			100	100
Dec-84	conf	1.6%	244.3%	4.1%	16.5%	92	92
Nov-84	est	1.5%	239.0%			91	91
Oct-84	est	1.0%	234.0%			90	90
Sep-84	conf	1.4%	230.7%	4.0%	11.8%	86	86
Aug-84	est	1.0%	226.0%			85	85
Jul-84	est	1.5%	222.8%			84	84
Jun-84	conf	1.2%	218.0%	2.7%	7.6%	80	80
May-84	est	1.0%	214.3%			79	79



**Elliott Associates, LP Performance**  
(net of all fees)

Month	Estimate	MTD	YTD	QTD	YTD	YTD	YTD
Apr-84	est	0.5%	211.2%			79	79
Mar-84	conf	1.2%	209.7%	4.7%	4.7%	77	77
Feb-84	est	2.0%	206.1%			76	76
Jan-84	est	1.5%	200.1%			75	75
Dec-83	conf	1.0%	195.6%	3.6%	22.1%	59	59
Nov-83	est	1.0%	192.6%			59	59
Oct-83	est	1.5%	189.7%			58	58
Sep-83	conf	1.9%	185.4%	5.5%	17.9%	52	52
Aug-83	est	2.0%	180.2%			52	52
Jul-83	est	1.5%	174.7%			51	51
Jun-83	conf	1.7%	170.7%	5.3%	11.8%	37	37
May-83	est	1.5%	166.2%			37	37
Apr-83	est	2.0%	162.3%			36	36
Mar-83	conf	2.6%	158.2%	6.2%		32	32
Feb-83	est	2.0%	150.7%			31	31
Jan-83	est	1.5%	147.8%			31	31
Dec-82	conf	2.1%	142.8%	17.6%		28	28
Nov-82	est	1.5%	139.1%			27	27
Oct-82	est	2.0%	135.0%			27	27
Sep-82	conf	2.0%	129.0%	6.7%	11.2%	24	24
Aug-82	est	2.5%	124.5%			23	23
Jul-82	est	2.0%	119.0%			23	23
Jun-82	conf	1.4%	114.7%	4.0%	4.3%	22	22
May-82	est	1.0%	111.7%			22	22
Apr-82	est	1.5%	109.6%			21	21
Mar-82	conf	0.3%	106.5%	0.3%	0.3%	21	21
Feb-82	est	0.0%	105.9%			21	21
Jan-82	est	0.0%	105.9%			21	21
Dec-81	conf	3.2%	105.9%	9.5%	23.4%	19	19
Nov-81	est	2.5%	99.5%			19	19
Oct-81	est	3.5%	94.6%			18	18
Sep-81	conf	0.1%	88.0%	0.6%	12.7%	16	16
Aug-81	est	0.5%	87.9%			16	16
Jul-81	est	0.0%	87.0%			16	16

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Estimate	MTD	Cum	QTD	YTD	Fixed ALM	Fixed ALM
Jun-81	conf	1.1%	87.0%	4.7%	12.1%	15	15
May-81	est	2.0%	84.9%			15	15
Apr-81	est	1.5%	81.3%			15	15
Mar-81	conf	2.4%	78.6%	7.1%	7.1%	14	14
Feb-81	est	2.0%	74.4%			13	13
Jan-81	est	2.5%	71.0%			13	13
Dec-80	conf	1.1%	66.8%	3.2%	22.6%	12	12
Nov-80	est	1.5%	64.9%			12	12
Oct-80	est	0.5%	62.5%			12	12
Sep-80	conf	1.5%	61.7%	5.1%	18.9%	10	10
Aug-80	est	2.0%	59.3%			10	10
Jul-80	est	1.5%	56.2%			10	10
Jun-80	conf	2.8%	53.9%	9.6%	13.1%	7	7
May-80	est	3.5%				7	7
Apr-80	est	3.0%	44.6%			7	7
Mar-80	conf		41.6%	5.2%		7	7
Feb-80	est	1.0%	38.8%			6	6
Jan-80	est	1.0%	37.4%			6	6
Dec-79	conf	1.0%	36.0%	2.5%	16.6%	6	6
Nov-79	est	0.5%	34.7%			6	6
Oct-79	est	1.0%	34.0%			6	6
Sep-79	conf	1.4%	32.7%	4.0%	13.8%	5	5
Aug-79	est	1.5%	30.8%			5	5
Jul-79	est	1.0%	28.9%			5	5
Jun-79	conf	0.8%	27.6%	3.3%	9.4%	5	5
May-79	est	1.5%	26.6%			4	4
Apr-79	est	1.0%	24.7%			4	4
Mar-79	conf	2.3%	23.5%	5.9%	5.9%	4	4
Feb-79	est	2.0%	20.7%			4	4
Jan-79	est	1.5%	18.4%			4	4
Dec-78	conf	0.0%	16.6%	0.0%	9.9%	4	4
Nov-78	est	0.0%	16.6%			4	4
Oct-78	est	0.0%	16.6%			4	4
Sep-78	conf	1.1%	16.6%	3.1%	9.9%	3	3

**Elliott Associates, LP Performance**  
(net of all fees)

Month	Legend	YTD	Qtr	YTD	YTD	YTD	YTD
Aug-78	est	1.0%	15.3%			3	3
Jul-78	est	1.0%	14.2%			3	3
Jun-78	conf	2.2%	13.1%	4.8%	6.5%	3	3
May-78	est	1.0%	10.6%			3	3
Apr-78	est	1.5%	9.9%			3	3
Mar-78	conf	0.7%	7.9%	1.7%	1.7%	2	2
Feb-78	est	0.5%	7.2%			2	2
Jan-78	est	0.5%	6.7%			2	2
Dec-77	conf	0.7%	6.1%	2.2%	6.1%	2	2
Nov-77	est	0.5%	5.4%			2	2
Oct-77	est	1.0%	4.9%			2	2
Sep-77	conf	0.2%	3.9%	0.7%	3.9%	2	2
Aug-77	est	0.5%	3.7%			2	2
Jul-77	est	0.0%				2	2
Jun-77	conf	0.9%	3.2%	3.4%		2	2
May-77	est	1.5%	2.5%			2	2
Apr-77	est	1.0%	0.4%			2	2
Mar-77	conf	-0.2%	0.2%	-0.2%	-0.2%	1	1
Feb-77	est	0.0%	0.0%			1	1
Feb-77	est	0.0%	0.0%			1	1

## **EXHIBIT 13**

SAC CAPITAL INTERNATIONAL (rest of all fees)													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	YTD
1996	4.0%	3.3%	4.7%	5.5%	3.5%	3.5%	-0.3%	-0.4%	2.8%	1.6%	3.6%	3.8%	41.8%
1997	2.0%	2.5%	2.5%	4.3%	5.3%	5.3%	3.1%	3.8%	5.1%	5.5%	1.7%	0.9%	42.9%
1998	2.2%	3.9%	4.0%	3.1%	2.8%	2.8%	0.2%	3.3%	-2.3%	8.5%	8.3%	3.3%	50.3%
1999	8.8%	2.1%	6.0%	9.0%	5.6%	5.6%	2.3%	4.9%	1.7%	3.3%	3.6%	5.3%	60.8%
2000	6.4%	6.4%	7.1%	3.6%	3.7%	3.7%	5.8%	4.6%	2.9%	3.4%	5.9%	2.8%	71.8%
2001	6.1%	2.8%	3.9%	0.2%	2.3%	2.3%	0.8%	2.3%	2.5%	1.2%	2.2%	1.4%	38.3%
2002	1.8%	0.1%	0.5%	3.7%	0.4%	0.4%	1.0%	3.4%	0.5%	1.2%	-2.1%	-0.6%	9.8%
2003	1.6%	0.8%	0.5%	1.5%	1.9%	1.9%	0.1%	2.6%	1.4%	0.7%	1.7%	1.3%	17.7%
2004	1.9%	3.4%	2.6%	3.5%	1.0%	1.0%	2.8%	1.1%	4.1%	3.8%	6.7%	5.0%	49.9%
2005	1.3%	4.3%	2.0%	-0.4%	1.9%	1.9%	4.0%	2.1%	2.7%	1.8%	-0.8%	3.6%	28.1%
2006	4.9%	2.7%	4.0%	2.7%	-1.3%	1.4%	2.1%	1.4%	2.5%	1.3%	4.7%	5.5%	38.6%
2007	3.2%	1.2%	3.3%	4.0%	4.9%	4.9%	-0.4%	-3.2%	-2.8%	3.0%	4.0%	-1.1%	17.8%
2008	-6.9%	4.8%	-3.4%	4.0%	4.2%	4.2%	-0.1%	0.3%	-0.8%	-7.6%	-12.3%	-1.6%	-18.9%
2009	3.7%	3.3%	3.6%	-0.8%	3.5%	3.5%	2.1%	1.6%	1.9%				28.3%
											TOTAL		4456%

## **EXHIBIT 14**

**From:** [Tulchin, Matthew T](#)  
**To:** [Kitchen, David E.](#); [Powers, Marc](#); [Colombo, Louis](#); [neil.steiner@dechert.com](mailto:neil.steiner@dechert.com); [jonathan.perry@dechert.com](mailto:jonathan.perry@dechert.com); [lgothoffer@reedsmith.com](mailto:lgothoffer@reedsmith.com); [claffey@reedsmith.com](mailto:claffey@reedsmith.com); [Hirschfield, Marc E.](#)  
**Cc:** [Pitofsky, David](#)  
**Subject:** First Set of Document Requests to Madoff Trustee.pdf - Adobe Acrobat Professional  
**Date:** Friday, January 14, 2011 9:16:30 PM  
**Attachments:** [First Set of Document Requests to Madoff Trustee.pdf](#)

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Counsel:

On behalf of David B. Pitofsky, Receiver for Ascot Partners, L.P., attached is Defendant Ascot Partners' First Set of Requests for Documents and Things. As stated during the parties' December 21, 2010 Meet and Confer, we do not possess any information to disclose at this time.

Respectfully,

Matthew Tulchin  
Goodwin Procter LLP  
The New York Times Building  
620 Eighth Avenue  
New York, NY. 10018-1405  
T: 212-459-7252  
F: 212-355-3333  
[mtulchin@goodwinprocter.com](mailto:mtulchin@goodwinprocter.com)  
[www.goodwinprocter.com](http://www.goodwinprocter.com)

\*\*\*\*\*

**IRS CIRCULAR 230 DISCLOSURE:**

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## **EXHIBIT 15**

Sadis & Goldberg, LLP  
551 Fifth Avenue, 21<sup>st</sup> Floor  
New York, NY 10176  
Telephone: (212) 947-3793  
Facsimile: (212) 947-3796  
Douglas R. Hirsch  
Email: [dhirsch@sglawyers.com](mailto:dhirsch@sglawyers.com)  
Jennifer Rossan  
Email: [jrossan@sglawyers.com](mailto:jrossan@sglawyers.com)

*Attorneys for Ascot Fund Limited*

**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.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,  
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,  
GABRIEL CAPITAL CORPORATION,

Defendants.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-1182 (BRL)

**ASCOT FUND LIMITED'S INITIAL DISCLOSURES**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure as made applicable to this adversary proceeding by Rule 7026 of the Federal Rules of Bankruptcy Procedure, Ascot Fund Limited ("Ascot Fund") by and through its counsel Sadis & Goldberg LLP, hereby provides the following initial disclosures.

These disclosures are made without waiver of, and with preservation of the right to raise and/or fully address the following:

1. All issues as to competency, relevancy, materiality, privilege and admissibility of matters disclosed herein, and the subject matter thereof, as evidence for any purpose in this action or subsequent actions;
2. The right to object to any matters disclosed herein, or the subject matter thereof, on any ground, throughout this and/or any other action;
3. The right to object on any ground at any time to a demand or a request for further disclosure of matters identified herein, including, but not limited to the forms of discovery allowed by the Federal Rules of Civil Procedure or other discovery proceedings involving or relating to the subject matter of this controversy; and
4. The right at any time to revise, correct, add to, supplement or clarify any of the disclosures contained herein.

To the extent that any matters disclosed by Ascot Fund herein have been disclosed inadvertently, and such matters otherwise fall within the scope of a privilege, Ascot Fund shall not be deemed to have waived such privilege as to any such disclosure or the information contained therein. Likewise, Ascot Fund shall not be deemed to have waived its right to such privilege as to any other matter that may arise during the course of this litigation or any subsequent proceeding.

Ascot Fund's disclosures represent a good faith effort to identify information called for by Rule 26 of the Federal Rules of Civil Procedure. However, these disclosures should not be

construed as constituting all of the facts, evidence, or other information that may exist, or that may eventually be established, in support of Ascot Fund's defenses that have been and may be asserted in this action. Ascot Fund reserves its right to supplement its disclosures to the extent required by Rule 26(e).

- A. Rule 26(a)(1)(A)(i). The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

The following individuals are likely to have discoverable information. Unless otherwise noted, Ascot Fund is unaware of their current addresses and telephone numbers. Ascot Fund reserves its right to supplement this list as other individuals and/or entities become known, and/or as different subjects become relevant.

At the present time, Ascot Fund identifies the following:

1. Don Seymour  
DMS Offshore Investment Services  
dms House, 20 Genesis Close  
P.O. Box 314  
Grand Cayman KY1-1104  
ph: 1-345-749-2586
  2. Aldo Ghisletta  
DMS Offshore Investment Services  
dms House, 20 Genesis Close  
P.O. Box 314  
Grand Cayman KY1-1104  
ph: 1-345-749-2586
- B. Rule 26(a)(1)(A)(ii). A copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

At the present time, Ascot Fund identifies the following documents, electronically

stored information, or tangible things in the possession of Ascot Fund's counsel that contain information relevant to the matter in controversy:

1. Investment Advisory Agreement between Ascot Fund Limited and Ariel Management Corporation dated February 20, 1992;
  2. Termination Agreement between Gabriel Capital Corporation and Ascot Fund Limited dated December 19, 2002;
  3. Ascot Fund Limited Articles of Association;
  4. Ascot Fund Offering Prospectus 2002;
  5. Ascot Fund Offering Memorandum 2006;
  6. Exhibit E to the Declaration of Douglas R. Hirsch in Support of Ascot Fund Limited's Motion to Dismiss the Third Amended Complaint and to Sever, dated December 20, 2013.
- C. Rule 26(a)(1)(A)(iii). A computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.
- Not applicable.
- D. Rule 26(a)(1)(A)(iv). For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

To Ascot Fund's knowledge, there are no insurance agreements under which an insurance business may be liable to satisfy all or part of a possible judgment in the instant action, or to indemnify or reimburse for payments made to satisfy the judgment.

Dated: January 13, 2014  
New York, New York

SADIS & GOLDBERG LLP

By: /s/ Jennifer Rossan

Douglas R. Hirsch

Jennifer Rossan

551 Fifth Avenue 21st Floor

New York, New York 10176

Tel. No.: (212) 947-3793

Fax No.: (212) 947-3796

dhirsch@sglawyers.com

jrossan@sglawyers.com

*Attorneys for Ascot Fund Limited*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served this 10<sup>th</sup> day of January, 2014 by electronic mail upon the following:

BAKER & HOSTETLER LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Tel.: (212) 589-4200  
Fax: (212) 589-4201  
Lan Hoang  
Edward J. Jacobs  
Brian W. Song  
Sarah Jane T.C. Truong  
lhoang@bakerlaw.com  
ejacobs@bakerlaw.com  
bsong@bakerlaw.com  
struong@bakerlaw.com

*Attorneys for Plaintiff Irving H. Picard  
Trustee for the Liquidation of Bernard  
L. Madoff Investment Securities*

DECHERT LLP  
1095 Avenue of the Americas  
New York, New York 100363  
Tel.: (212) 698-3500  
Fax: (212) 698-3599  
Andrew J. Levander  
Neil A. Steiner  
Diane N. Princ  
andrew.levander@dechert.com  
neil.steiner@dechert.com  
diane.princ@dechert.com

*Attorneys for Defendants J. Ezra Merkin  
and Gabriel Capital Corporation*

NORTON ROSE FULBRIGHT

666 Fifth Avenue

New York, New York 10103

Tel.: (212) 318-3342

Fax: (212) 318-3400

Judith A. Archer

David L. Barrack

Jami Vibbert

judith.archer@nortonrosefulbright.com

david.barrack@nortonrosefulbright.com

jami.vibbert@nortonrosefulbright.com

*Attorneys for Defendant Ascot Partners, L.P.*

REED SMITH LLP

599 Lexington Avenue

New York, New York 10022

Tel.: (212) 521-5400

Fax: (212) 521-5450

James C. McCarroll

Jordan W. Siev

Michael J. Venditto

Casey D. Laffey

jmccarroll@reedsmith.com

jsiev@reedsmith.com

mvenditto@reedsmith.com

claffey@reedsmith.com

*Attorneys for Bart M. Schwartz, as Receiver of Defendants Ariel Fund  
Limited and Gabriel Capital, L.P.*

Dated: New York, New York  
January 14, 2014

/s/ Jennifer Rossan

Jennifer Rossan



## **EXHIBIT 16**

DECHERT LLP  
1095 Avenue of the Americas  
New York, New York 10036  
Tel: (212) 698-3500  
Fax: (212) 698-3599  
Andrew J. Levander  
andrew.levander@dechert.com  
Gary J. Mennitt  
gary.mennitt@dechert.com  
Neil A. Steiner  
neil.steiner@dechert.com  
Jonathan D. Perry  
jonathan.perry@dechert.com

*Attorneys for Defendants J. Ezra Merkin  
and Gabriel Capital Corporation*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
In re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Debtor.

SIPA LIQUIDATION

No. 08-01789 (BRL)

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

Plaintiff,

v.

Adv. Proc. No. 09-01182 (BRL)

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,  
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,  
GABRIEL CAPITAL CORPORATION,

Defendants.  
----- X

**INITIAL DISCLOSURE STATEMENT OF DEFENDANTS  
J. EZRA MERKIN AND GABRIEL CAPITAL CORPORATION**

Defendants J.Ezra Merkin and Gabriel Capital Corporation ("Defendants"), by and through their undersigned attorneys, Dechert LLP, hereby provide the following Initial Disclosure Statement pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, which is made applicable to this adversary proceeding by Rule 7026 of the Federal Rules of Bankruptcy Procedure.

**INITIAL DISCLOSURE QUALIFICATIONS**

1. This Initial Disclosure Statement is made based upon information presently known to Defendants and is given without prejudice to producing discovery or data, information or documents as are: (i) subsequently discovered; (ii) subsequently determined to be relevant for any purpose; or (iii) subsequently determined to have been omitted from these disclosures.
2. Defendants hereby expressly reserve the right at any time to revise and/or supplement this Initial Disclosure Statement and the information and documents provided pursuant to Defendants' initial disclosure obligations.
3. Defendants hereby expressly reserve all objections to the use for any purpose of this Initial Disclosure Statement or any of the information and documents referenced herein in this case or any other case or proceeding.

**INITIAL DISCLOSURES PURSUANT TO RULE 26(a)(1)(A)**

- (i) **[T]he name, and if known, the address and telephone number of each individual likely to have discoverable information -- along with the subjects of that information -- that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.**

Subject to and without waiving the Initial Disclosure Qualifications, Defendants hereby identify the following individuals as likely to have discoverable information that Defendants may use to support their defenses and such individuals' areas of knowledge:

<u>Name</u>	<u>Contact Information</u>	<u>Subject</u>
J. Ezra Merkin	c/o Andrew J. Levander, Esq. Dechert LLP 1095 Avenue of the Americas New York, NY 10036-6797 (212) 698-3500	Communications between BLMIS/Madoff and Defendants; the Defendant Funds' BLMIS accounts, and their contributions to and withdrawals from their BLMIS accounts; investments in and redemptions from the Defendant Funds; Defendants' due diligence concerning BLMIS/Madoff; Defendants' lack of knowledge of the BLMIS fraud; the purported red flags indicating fraud identified in the Second Amended Complaint; that the Defendant Funds took the Transfers in good faith; communications with the Defendant Funds' investors concerning the Defendant Funds' investments with BLMIS/Madoff; Defendants' receipt of any portion of the Transfers
Michael Autera	c/o Andrew J. Levander , Esq. Dechert LLP 1095 Avenue of the Americas New York, NY 10036-6797 (212) 698-3500	Communications between BLMIS/Madoff and Defendants; the Defendant Funds' BLMIS accounts, and their contributions to and withdrawals from their BLMIS accounts; investments in and redemptions from the Defendant Funds; Defendants' due diligence concerning BLMIS; Defendants' lack of knowledge of the BLMIS fraud; the purported red flags indicating fraud identified in the Second Amended Complaint; that the Defendant Funds took the Transfers in good faith; communications with the Defendant Funds' investors concerning the Defendant Funds' investments with BLMIS/Madoff; Defendants' receipt of any portion of the Transfers

Employees of BDO Seidman LLP, including, without limitation, Robert Castro, Irina Gershengoren and Richard Lanigan	c/o Ira G. Greenberg, Esq. Edwards Angell Palmer & Dodge LLP 750 Lexington Avenue 8 <sup>th</sup> Floor New York, NY 10022	Auditing of the Defendant Funds' investments with BLMIS
Employees of Union Bancaire Privee and/or UBP Asset Management LLC, including Roman Igolnikov, John B. Levitt, Xinyu Liu, Lauri Martin and Paul Olin	30 Rockefeller Plaza New York, NY 10112 (212) 218-6750  c/o Wachtell, Lipton, Rosen & Katz 51 West 52 <sup>nd</sup> Street New York, NY 10019	Due diligence concerning BLMIS
Reichmuth & Co., including Christof Reichmuth and Patrick Erne	Rutligasse 1 CH-6000 Lucerne 7 +41 41 249 49 29	Due diligence concerning BLMIS
Michael Matlin	Unknown	Due diligence concerning BLMIS
Employees and former employees of the United States Securities and Exchange Commission	Unknown	Examinations and investigations of BLMIS
Irving H. Picard	c/o Baker & Hostetler LLP 45 Rockefeller Plaza New York, NY 10111	The allegations of the Second Amended Complaint, the assets and liabilities of BLMIS, claims submitted in this SIPC liquidation and other adversary proceedings filed by Picard in this SIPC liquidation
Bernard L. Madoff	Butner Federal Correctional Complex Butner, NC 27509	BLMIS's efforts to conceal the fraud and mislead any person or entity who attempted to inquire, investigate or examine BLMIS

Peter B. Madoff	c/o Lankler Siffert & Wohl, LLP 500 Fifth Avenue 33d Floor New York, NY 10110	Knowledge, or lack thereof, of BLMIS's fraud
Andrew H. Madoff	c/o Paul, Weiss, Rifkind, Wharton & Garrison, LLP 1285 Avenue of the Americas New York, NY 10019	Knowledge, or lack thereof, of BLMIS's fraud
Shana D. Madoff	c/o Smith Valliere PLLC 509 Madison Avenue New York, NY 10022	Knowledge, or lack thereof, of BLMIS's fraud
Frank DiPascali	Unknown	BLMIS's efforts to conceal the fraud and mislead any person or entity who attempted to inquire, investigate or examine BLMIS
Annette Bongiorno	Unknown	BLMIS's efforts to conceal the fraud and mislead any person or entity who attempted to inquire, investigate or examine BLMIS
Joann Crupi	Unknown	BLMIS's efforts to conceal the fraud and mislead any person or entity who attempted to inquire, investigate or examine BLMIS
Jerome O'Hara	Unknown	BLMIS's efforts to conceal the fraud and mislead any person or entity who attempted to inquire, investigate or examine BLMIS
George Perez	Unknown	BLMIS's efforts to conceal the fraud and mislead any person or entity who attempted to inquire, investigate or examine BLMIS

BLMIS employees and former employees, other than those identified above, whose specific identities will be determined based on further discovery	Unknown	Knowledge, or lack thereof, of BLMIS's fraud; BLMIS's efforts to conceal the fraud and mislead any person or entity who attempted to inquire, investigate or examine BLMIS; knowledge of the purported red flags identified in the Second Amended Complaint; inquiries, investigations or audits concerning BLMIS, and BLMIS's responses thereto
BLMIS customers and their employees, whose specific identities will be determined based on further discovery	Unknown	Knowledge, or lack thereof, of BLMIS's fraud; knowledge of the purported red flags identified in the Second Amended Complaint; deposits to and withdrawals from their BLMIS accounts; inquiries, investigations or audits concerning BLMIS, and BLMIS's responses thereto

- (ii) **[A] copy – or a description by category and location -- of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.**

Subject to and without waiving the Initial Disclosure Qualifications, Defendants GCC and Merkin hereby state that they have in their possession, custody or control the following categories of documents that they may use to support their claims and defenses, other than for use solely as impeachment. All of the documents described below are in the possession of Gabriel Capital Corporation, c/o Dechert LLP, 1095 Avenue of the Americas, New York, NY 10036:

1. Documents constituting or reflecting communications between BLMIS or Madoff (as those terms are defined in the Second Amended Complaint) and Defendants.
2. Documents constituting or concerning contracts or agreements, including trading authorization agreements, between BLMIS or Madoff and Defendants.
3. Documents concerning the Defendant Funds' (as that term is defined in the Second Amended Complaint) BLMIS accounts.
4. Documents concerning the Defendant Funds' contributions to and withdrawals from their BLMIS accounts.
5. Documents concerning the Transfers (as that term is defined in the Second Amended Complaint).
6. Documents concerning Defendants' due diligence with regard to BLMIS and Madoff.
7. Records of BDO Seidman LLP concerning its audits of Defendant Funds' investments with BLMIS.
8. Documents concerning the trading activity reported by BLMIS, including databases containing such information and reports generated from such databases.
9. Documents evidencing or concerning that Defendants did not have knowledge of the BLMIS fraud.
10. Documents concerning the purported red flags identified in the Second Amended Complaint.
11. Documents evidencing that the Defendant Funds took the Transfers in good faith.
12. Documents concerning the investments in and redemptions from the Defendant Funds.



13. Documents evidencing or concerning communications with the Defendant Funds' investors with regard to BLMIS.

14. Offering documents and governing documents concerning the Defendant Funds, including subscription documents, offering memoranda, prospectuses, partnership agreements, and investment advisory agreements for the Defendant Funds.

15. Other documents concerning BLMIS.

- (iii) **[A] computation of each category of damages claimed by the disclosing party – who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.**

Not applicable.

- (iv) **[F]or inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.**

Not applicable.

Dated: New York, New York  
January 14, 2011

DECHERT LLP

By: 

Andrew J. Levander  
Gary J. Mennitt  
Neil A. Steiner  
Jonathan D. Perry  
1095 Avenue of the Americas  
New York, New York 10036  
(212) 698-3500  
andrew.levander@dechert.com  
gary.mennitt@dechert.com  
neil.steiner@dechert.com  
jonathan.perry@dechert.com

*Attorneys for Defendants J. Ezra Merkin  
and Gabriel Capital Corporation*

**CERTIFICATE OF SERVICE**

I, Jonathan D. Perry, hereby certify:

I am over eighteen (18) years of age. I am associated with Dechert LLP, counsel for Defendants J. Ezra Merkin and Gabriel Capital Corporation. On January 14, 2011, I caused a true and correct copy of the foregoing *Initial Disclosure Statement of Defendants J. Ezra Merkin and Gabriel Capital Corporation* to be served upon the following attorneys by electronic mail as indicated below:

Attorneys for Plaintiff Irving H. Picard, Esq.,  
Trustee for the SIPA Liquidation of Bernard L. Madoff Investment Securities LLC

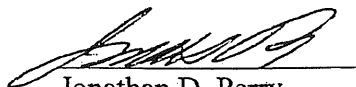
David J. Sheehan, Esq.  
Marc E. Hirschfield, Esq.  
Marc D. Powers, Esq.  
Louis Colombo, Esq.  
David E. Kitchen, Esq.  
Baker & Hostetler LLP  
dsheehan@bakerlaw.com  
mhirschfield@bakerlaw.com  
mpowers@bakerlaw.com  
lcolombo@bakerlaw.com  
dkitchen@bakerlaw.com

Attorneys for Defendants Ariel Fund Ltd. and Gabriel Capital, L.P.

Lance Gotthoffer, Esq.  
James C. McCarroll, Esq.  
Reed Smith LLP  
lgotthoffer@reedsmith.com  
mccarroll@reedsmith.com

Attorneys for Defendant Ascot Partners, L.P.

Matthew T. Tulchin, Esq.  
David Pitofsky, Esq.  
Goodwin Procter LLP  
mtulchin@goodwinprocter.com  
dpitofsky@goodwinprocter.com

  
Jonathan D. Perry

## **EXHIBIT 17**

**Baker & Hostetler LLP**

45 Rockefeller Plaza New York, NY 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

David J. Sheehan

Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)

Marc E. Hirschfield

Email: [mhirschfield@bakerlaw.com](mailto:mhirschfield@bakerlaw.com)

Marc D. Powers

Email: [mpowers@bakerlaw.com](mailto:mpowers@bakerlaw.com)

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

**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.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,  
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,  
GABRIEL CAPITAL CORPORATION,

Defendants.

SIPA LIQUIDATION

No. 08-01789 (BRL)

Adv. Pro. No. 09-1182 (BRL)

**TRUSTEE IRVING H. PICARD'S FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS, INTERROGATORIES, AND REQUESTS FOR ADMISSION  
TO DEFENDANTS J. EZRA MERKIN AND GABRIEL CAPITAL CORPORATION**

Pursuant to Rules 33, 34, and 36 of the Federal Rules of Civil Procedure and Rules 7033,  
7034, and 7036 of the Federal Rules of Bankruptcy Procedure, Irving H. Picard, Esq. (the  
"Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment

Securities LLC ("BLMIS"), hereby submits the following requests for production of documents, interrogatories, and requests for admission to Defendants J. Ezra Merkin and Gabriel Capital Corporation ("Merkin" and "GCC" or "Defendants"). The Trustee requests that Defendants provide written responses and documents, as well as a privilege log, no later than thirty days from the date on which it receives service of these requests.

### **DEFINITIONS**

1. The definitions contained in Civil Rule 26.3 of the Local Rules of the United States District Court for the Southern and Eastern Districts of New York, as adopted in Rule 7026-1 of the Local Bankruptcy Rules for the Southern District of New York, are hereby incorporated by reference, as supplemented herein.

2. "Applicable Period" means the period between and including the date on which the Defendant first opened an account with, or managed by, BLMIS, through the present.

3. "Ariel" means Ariel Fund, Ltd.

4. "Ascot" means Ascot Partners, L.P. and/or Ascot Fund, Ltd.

5. "BLMIS" means Bernard L. Madoff Investment Securities, LLC.

6. "BLMIS Affiliates" means all persons or entities affiliated with BLMIS, including its officers, directors, employees, partners, and its corporate parents, affiliates and subsidiaries, and their employees, and any and all related entities including without limitation Madoff Securities International LLC; Madoff Securities International, Ltd.; Madoff Energy Holdings LLC; Madoff Brokerage and Trading Technologies LLC; Northern Waters LLC; BCC II LLC; 4th & Forty LLC; Angler Capital Partners; Urban Angler LLC; Davin Capital LP; Rogge Capital Management; P&C Restaurants; Underpar LLC; Abtech Industries Inc.; Stemline Therapeutics; Blow Styling Salon LLC; Massage NYC; Conglomerate Gas Resources LLC; AHM Ventures LLC; 916 SE 12 Street LLC; Nehst Media LLC; Primex Holdings LLC;

ExchangeLab; PetRx; BLM Air Charter LLC; Madoff Family LLC; The Madoff Family Foundation; Abel Automatics Inc.; Abel Holdings LLC; Essex Realty Development LLC; The Schlichter Foundation and its representatives and employees; and Bernard L. Madoff and any and all relatives, related entities and individuals including without limitation, Ruth Madoff; Peter Madoff; Sondra Madoff/Wiener; Marvin Wiener; Charles Wiener; Marion Madoff; Shana Madoff/Swanson/Skoller; Andrew Madoff; Deborah Madoff/West; Mark Madoff; Jennifer Madoff/Stevens; Stephanie Madoff; Alec Madoff; Henry A. Madoff; Jeff M. Madoff; Sonya Madoff; Madoff Family Foundation; Gertrude E. Alpern; Lewis Alpern; The Paul Alpern Residuary Trust; Gertrude Alpern; Leonard Alpern; Minette Alpern Trust; Eileen Alpern; Jonathan Alpern Trust; Jonathan Alpern; Amanda Alpern Trust; Robert Roman; Joan Roman; Amy Luria Partners LLC; John (Joan) J. Fisher Partners; Trust of Gladys C. Luria and Robert Luria Partners.

7. The term "Clients" refers to general partners of Defendants and other entities or individuals, including investors, who invested any funds in Defendants, which funds were subsequently invested through BLMIS.

8. "Complaint" means the second amended complaint filed by the Trustee in this adversary proceeding.

9. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise). "Communication" includes any transmittal or receipt of information, whether by chance or prearranged, formal or informal, oral or portrayed in any "document," and specifically includes: (a) conversations, meetings and discussions in person; (b) conversations, meetings and discussions by telephone or through telephonic messages; and (c) written and electronic correspondence, including communications by email.

10. The term “concerning” means relating to, referring to, describing, evidencing or constituting. “Concerning” includes directly or indirectly, in whole or in part, relating to, describing, reflecting, evidencing, embodying, constituting or referencing.

11. “Debt” means liability on a claim, as defined in 11 U.S.C. § 101(12).

12. “Defendant” means each of the defendants named in this action, as well as any group of two or more defendants, including any parent, subsidiary, affiliate, division, predecessor, successor, principal, member, officer, director, shareholder, manager, employee, agent or representative thereof and all owners, members and managers thereof.

13. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

14. “Gabriel” means Gabriel Capital, L.P.

15. “GCC” means Gabriel Capital Corporation.

16. “Filing Date” means December 11, 2008.

17. “Identify” when used with reference to a person, means to give, to the extent known, the person’s full name, present or last known address, telephone number, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

18. “Identify,” “identity,” and “identification,” when used with reference to an occasion or instance on which an event, act, or omission occurred, mean to state the date and



place of such occasion or instance, to describe the nature of the event, act, or omission, and to provide the identification of such person involved in any way in such event, act, or omission.

19. “Identify,” “identity,” and “identification,” when used in reference to a payment or to a transfer of property, means to set forth:

(a) If the payment or transfer was completed in the course of a single day, state the date of that day;

(b) If the payment or other transfer was not completed in the course of a single day, state:

(i) The date the transferor sent the property to the transferee/recipient;  
and

(ii) The date the transferee received the property;

(c) The method of payment or other transfer (*i.e.*, check, cash, cashier’s check, wire transfer, etc.);

(d) If the payment or other transfer was by check, state:

(i) The date of the check;

(ii) The amount of the check;

(iii) The payor of the check;

(iv) The payee of the check;

(v) The endorser of the check; and

(vi) The date the check was cashed or deposited.

20. The term “Management Entity” means any person or entity that provides management, administrative or advisory services to a Fund or which organizes or sponsors a Fund.

21. "Merkin" means J. Ezra Merkin.
22. "Madoff" means Bernard L. Madoff.
23. "Person" means any natural person or any business, not-for-profit, legal, governmental or other incorporated or unincorporated entity, association, fund, organization or group.
24. "Preference Period" means the period between and including September 12, 2008 and December 11, 2008.
25. "Preference Period Transfer" and "Preference Period Transfers" mean any Transfer or Transfers to Defendants listed on Exhibit B of the Complaint that occurred during the Preference Period.
26. "Six Year Transfer" and "Six Year Transfers" mean any Transfer or Transfers to Defendants listed on Exhibit B of the Complaint that occurred during the period between and including December 11, 2002 and December 11, 2008.
27. "Subsequent Transfers" means any Transfers made by BLMIS to the Defendants Ascot, Ariel or Gabriel during the Applicable Period that were subsequently transferred to or credited to Gabriel Capital Corporation or J. Ezra Merkin in connection with their providing services to Defendant. "Subsequent Transfers" includes any payment or payments made by or through Ascot, Ariel or Gabriel to GCC or Merkin, including, but not limited to any funds, property or thing of value, during the Applicable Period.
28. "Transfer" and "Transfers" mean any payment or payments made by BLMIS to any Defendant during the Applicable Period, including, but not limited to, any funds, property, or other value conveyed to any Defendant by check, wire transfer, debit, credit to its account, the return of property, or by any other means during the Applicable Period, by BLMIS.

29. “Two Year Transfer” and “Two Year Transfers” mean any Transfer or Transfers to Defendants listed on Exhibit B of the Complaint that occurred during the period between and including December 11, 2006 and December 11, 2008.

30. For all purposes herein, spelling, grammar, syntax, abbreviations, idioms and proper nouns shall be construed and interpreted to give proper meaning and consistency to its context.

31. The following rules of construction apply to these Requests:

- (a) “Any” and “all” shall be deemed to include the other;
- (b) “And” and “Or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests all responses that might otherwise be construed to be outside of its scope;
- (c) “All” and “Each” shall be construed as all and each;
- (d) The singular form of any word includes the plural and *vice versa*; and
- (e) Reference to any person that is not a natural person and is not otherwise defined herein refers to and includes any parent, subsidiary, affiliate, division, branch, agency, representative office, predecessor, successor, principal, member, director, officer, shareholder, manager, employee, attorney-in-fact, attorney, nominee, agent, or representative of such person.

**INSTRUCTIONS FOR DOCUMENT REQUESTS**

1. All documents shall be identified by the request(s) to which they are primarily responsive.
2. Produce all documents and all other materials described below in your actual or constructive possession or custody, or subject to your control, including in possession, custody or control of current and former employee, wherever those documents and materials are held, including on personal computers, PDAs, wireless devices or electronic mail systems such as Gmail, Yahoo or the equivalent.
3. Produce all documents maintained on paper, electronically stored information, electronic mail and instant messaging platforms regardless of whether the electronic mail or instant messaging platform operates on your own server or Bloomberg or Reuters or similar servers and platforms. Produce all documents, computerized data or content stored on electromagnetic media even if they are designated as drafts or as deleted. Produce all voicemail messages, audio files, all e-mail messages including without limitation web-based email messages such as Gmail messages, text messages, and all other formats including but not limited to word processing, electronic spreadsheets, images, databases, Intranet system data, Internet system data, telephone or cellular telephone calling records, or data compilations.
4. Produce all "metadata" which includes but is not limited to all document properties, imbedded codes, links, and descriptions of the document's source as stored in the ordinary course of business.
5. Produce the original of each document requested together with all non-identical copies and drafts of that document. If the original of a document cannot be located, a copy should be produced in lieu thereof and should be legible and bound or stapled in the same

manner as the original. Identical copies of documents stored in distinct locations should be produced. Multiple versions of documents, an e-mail or its attachment(s) distributed to multiple recipients, or any other non-identical copy of a document are separate documents within the meaning of this instruction.

6. Documents not otherwise responsive to these Requests should be produced if such documents mention, discuss, refer to, explain or concern one or more documents that are called for by these Requests, if such documents are attached to, enclosed with or accompany documents called for by these Requests or if such documents constitute routing slips, transmittal memoranda or letters, comments, evaluations or similar materials.

7. Documents attached to each other should not be separated; separate documents should not be attached to each other.

8. Documents should include all exhibits or appendices which are referenced in, attached to, included or are a part of the requested documents. Include all related content including but not limited to attachments to documents, linked documents and appended documents as well as descriptions of each document's organization such as custodians, files, etc.

9. If any document is withheld from production due to an assertion of the attorney-client privilege, the work product doctrine or any other privilege or protection against production, you must identify each such document in a manner sufficient to permit the Trustee to evaluate the claimed privilege or protection. At a minimum, such identification shall include, as to each document: (a) its date; (b) its author; (c) all persons or entities known to have been furnished the document or copies of the document, or informed of its substance; (d) a description of the subject matter; and (e) the privilege or protection claimed.

10. You should produce the original of each document requested. If the original of a document cannot be located or it is unreasonable to produce the original, a fair and accurate copy should be produced in lieu thereof.

11. With respect to each document to which an objection as to production is made, state the following:

- (a) Nature of the document;
- (b) Date of the document;
- (c) Name and title of the person(s) to whom the document was addressed and copied;
- (d) Name and title of the person(s) who prepared and/or sent the document;
- (e) General subject matter of the document;
- (f) All documents referred to or accompanying such documents;
- (g) Number of pages in the document; and
- (h) Specific ground on which the objection is made.

12. No part of any request shall be left unanswered merely because an objection has been interposed to another part of the request.

13. If an objection is made to any request or part thereof under the Federal Rules of Bankruptcy Procedure 7034, the objection shall state with specificity all grounds for that objection.

14. If a request is objected to as unduly burdensome, you shall (i) indicate the nature of the burden involved in providing the response requested; and (ii) set forth a proposal as to a less burden-incurring response that would provide responsive information.

15. All requests herein incorporate Fed. R. Bankr. P. 7026-7037, Fed. R. Civ. P. 26-37, and Local Civil Rules for the United States Bankruptcy Court Southern District of New York 7026-7037.

16. To the extent a document sought herein was at one time, but is no longer, in your actual or constructive possession or custody, or subject to your control, state whether it: (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred to others, and/or (iv) has been otherwise disposed of. In each instance, identify the document; state the time period during which it was maintained; state the circumstance surrounding authorization for such disposition thereof and the date thereof; identify each person having knowledge of the circumstances of the disposition thereof; and identify each person who had possession, custody, or control of the document, to whom it was available, or who had knowledge of the document and/or the contents thereof. Documents prepared prior to, but which relate or refer to, the time period covered by these documents are to be identified and produced.

17. If the response to a Document Request is based upon information and belief, set forth the sources of the information and the grounds of the belief.

18. All requests herein implicitly seek responses concerning the subject matter of the requests, and each request shall be interpreted so as to encompass the liberal scope of discovery set forth in the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure, and you are expected to provide any supplementary answers, immediately, in compliance with Fed. R. Bankr. P. 7026.

19. If a document requested has already been produced in paper format for the Securities Exchange Commission under the series GCC-SEC 0000001 – 260255, or has already been produced for the New York Attorney General in paper format under the series GCC-NYAG 0000960 – 276295, it does not need to be produced again unless it exists in an electronic version, in which case you are to produce the electronic version.

20. To the extent that any Defendant may have documents concerning the other Defendants that are responsive to any discovery below, Defendant is to produce those documents.

#### **MANNER OF PRODUCTION**

1. All documents and their metadata portrayed on electronic or electro-magnetic media shall be produced in the form or forms in which the documents are stored in the ordinary course of business, retaining all reasonably accessible metadata, but so as to be in a reasonably usable form enabling, through reasonably modest effort, the requesting party to fairly, accurately and completely access, search, and display and comprehend the documents' contents.

2. All documents and their metadata that have been fairly and accurately portrayed within a commercially available document review database including but not limited to litigation support databases shall be produced within that database or in a format that can be directly loaded into such database. Even after producing documents in the document review database format, the documents' originals or their fair and accurate representations shall be preserved as they exist in the ordinary course of business.

3. Documents and their metadata portrayed in the ordinary course of business within commercial, off-the-shelf e-mail systems including without limitation Microsoft



Exchange™, Outlook™, Lotus Notes™ or IBM Groupwise™ shall be produced in their native format, or in the alternative, in readily accessible industry-standard formats that fairly, accurately and completely represent such documents.

4. Documents and their metadata portrayed in structured electronic databases or files (excluding e-mail) shall be produced in a format that enables programmatic management of those documents and their importation into a database. The documents must be accompanied with reasonably detailed, clear and focused documentation explaining the documents' content and format including but not limited to a data dictionary and data diagrams. Examples of acceptable formats include: (a) XML format file(s) but only if provided with definitive file(s), table(s) and field level schemas; (b) Microsoft SQL database(s) but only if provided with definitive file(s), table(s) and field level schemas; (c) Access database(s) but only if provided with definitive file(s), table(s), and fields level schemas; (d) fixed or variable length ASCII delimited files but only if provided with definitive file(s), tables(s) and field level schemas.

5. Documents and their metadata portrayed in unstructured files generated by commercially available software system excluding e-mails and structured electronic databases such as word processing, spreadsheet, image files, text files shall be produced as those files were stored in the ordinary course of business.

6. Documents and their metadata portrayed on paper or in an industry-standard image format shall be produced in image format (200 – 300 bpi in group 3 TIF format or in TIF format). In addition, the relationships among the images shall be described with respect to how the images relate to one another (as to document and attachment boundaries, folder

boundaries, and other groupings) using industry-standard or other reasonably usable electronic data load files which shall be accompanied with reasonably detailed, clear and focused documentation explaining the load files' content. In addition, the text of the documents generated at the time the document or subsequently generated through industry-standard Optical Character Recognition (OCR) technology shall be produced in a format that is reasonably usable. In addition, all available descriptions of the documents' properties shall be produced in a reasonably accessible data description file along with reasonably detailed, clear and focused documentation explaining such file's contents.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. All documents concerning Defendants' bank accounts or brokerage accounts regardless of which institution the account is maintained in, including operating accounts, accounts holding Defendants' money, and accounts maintained by Defendants for any other purpose and including monthly statements, account numbers, account holders, signatories, present and historical account balance information, incoming and outgoing wire transfer records, copies of checks deposited, copies of checks drawn, records reflecting cash activity, account opening documents, account closing documents and account background.

#### **RESPONSE:**

2. All organizational documents of (i) Defendants, (ii) of any other fund that is affiliated with, or otherwise related to Defendants through common or affiliated management or otherwise, and (iii) any Management Entity of Defendants or of any other fund described in

clause (ii) of this item, including but not limited to articles of incorporation, limited or general partnership agreements, subscription agreements, limited liability company or trust agreements, memoranda of association and articles of association or any document with an equivalent function, in each as originally constituted and as amended or otherwise modified through the date of your response.

**RESPONSE:**

3. All prospectuses, offering memoranda, private placement memoranda or other similar offering or presentation material, including but not limited to term sheets, brochures, power point presentations and marketing or executive summaries, provided to Defendants' Clients or prospective Clients.

**RESPONSE:**

4. All pitch books, advertisements, website information on services or investments, one-on-one presentations, pamphlets, brochures, performance records, and any other promotional and/or marketing materials furnished to existing and/or prospective Clients for each investment strategy or mandate using or permitting an investment through BLMIS.

**RESPONSE:**

5. All investment advisory or management contracts or similar agreements provided to Defendants' Clients or prospective Clients or which govern the provision of services by a Management Entity to Defendants or any affiliated or related fund.

**RESPONSE:**

6. All account opening documents provided to Defendants' Clients or prospective Clients.

**RESPONSE:**

7. All disclosures provided to prospective or existing Defendants' Clients concerning Defendants' investment strategies or performance or that of Defendants' Management Entities not encompassed within Request No. 4 above.

**RESPONSE:**

8. All documents concerning the due diligence process used by Defendants to oversee investments of sub-advisers or unaffiliated managers used by Defendants.

**RESPONSE:**

9. Documents sufficient to identify all of Defendants' Clients and individuals associated with the Defendants' Clients during the Relevant Period, including their names and addresses, and information sufficient to identify which of Defendants' related entities each Client maintained a relationship with or was an investor in, and when.

**RESPONSE:**

10. A copy of Defendants' financial statements, including but not limited to audited annual statements, unaudited quarterly and other interim statements, including all related footnotes, schedules and exhibits.

**RESPONSE:**

11. All documents concerning Defendants' selection of BLMIS as an asset manager for Defendants.

**RESPONSE:**

12. All agreements, account opening documentation, offering documents or other legal documents executed between Defendants and BLMIS, including but not limited to sub-

advisory and/or solicitation agreements, investment contracts, subscription agreements and limited partnership agreements.

**RESPONSE:**

13. Records of all services provided to Defendants, directly or indirectly, by BLMIS, and records of all services provided to BLMIS, directly or indirectly, by Defendants.

**RESPONSE:**

14. All documents concerning any and all investments made by Defendants and/or Defendants' Clients and/or on behalf of Defendants' Clients through BLMIS, by account and name of Defendants or Defendants' Clients.

**RESPONSE:**

15. All tax returns prepared for Defendants whether filed, unfilled or in draft form, and all supporting schedules and workpapers, journal entries and trial balances.

**RESPONSE:**

16. All documents concerning communications between Defendants and BLMIS or BLMIS Affiliates.

**RESPONSE:**

17. All documents concerning meetings between Defendants and Madoff or any employee of BLMIS, including, but not limited to, meetings during which other persons were also present.

**RESPONSE:**

18. All documents concerning any refusal by Madoff to personally meet with Defendants or any of Defendants' Clients regarding their BLMIS account(s) or investments made through BLMIS.

**RESPONSE:**

19. All documents concerning any instructions given to Defendants or Defendants' Clients not to contact Madoff or BLMIS.

**RESPONSE:**

20. All documents that reflect Defendants' official names, the types of entities they are, the dates on which they were established as that type of entity, the state or country under whose laws the entity was formed, their business addresses, their principal places of business, and the names and addresses of their registered agents in the State of New York.

**RESPONSE:**

21. All documents that identify each account any Defendant ever held with BLMIS, including, but not limited to, the date the account was opened, the person or persons who opened the account, the persons affiliated with BLMIS involved in opening the account, and the size of the initial deposit.

**RESPONSE:**

22. All documents concerning Merkin's position as a general partner of Ascot and/or Gabriel.

**RESPONSE:**



23. All documents concerning Merkin's ability to control and direct the affairs of the Defendant Funds.

**RESPONSE:**

24. All documents concerning Merkin's social or personal relationship with Madoff.

**RESPONSE:**

25. All documents concerning any Preference Period Transfer.

**RESPONSE:**

26. All documents concerning BLMIS's or BLMIS Affiliates' financial condition, solvency, or ability to timely pay its debts during the Applicable Period.

**RESPONSE:**

27. All documents concerning any actual or proposed requests for redemption or withdrawal by Defendants from any account held by, or managed by, BLMIS or BLMIS Affiliates during the Applicable Period, and/or all documents evidencing the terms of payment of each request and the date BLMIS or BLMIS Affiliates made payment(s) on each request.

**RESPONSE:**

28. All documents concerning the means and terms of payment of any redemption or withdrawal by Defendants from any account held by, or managed by, BLMIS or BLMIS Affiliates.

**RESPONSE:**

29. All documents concerning transfers by Defendants to BLMIS or BLMIS Affiliates, or transfers by BLMIS or BLMIS Affiliates to Defendants during the Applicable Period.

**RESPONSE:**

30. All documents concerning how Defendants used, disbursed, or further transferred any Preference Period Transfer.

**RESPONSE:**

31. All documents concerning how Defendants used, disbursed, or further transferred any Two Year Transfer.

**RESPONSE:**

32. All documents concerning how Defendants used, disbursed, or further transferred any Six Year Transfer.

**RESPONSE:**

33. All documents concerning any actual or proposed withdrawal of funds, or redemptions of shares or partnerships interests, by one of Defendants' investors, partners, customers, or clients during the Applicable Period.

**RESPONSE:**

34. All documents concerning Defendants' bank accounts or brokerage accounts in which any funds or other consideration was received and/or transferred from and/or provided by BLMIS, regardless of in which institution the account is maintained, including, without limitation, operating accounts, accounts holding Defendants' Clients' money or securities, and accounts maintained by Defendants for any other purpose. This request shall include any and all monthly statements, account numbers, account holders, signatories, present and historical account balance information, incoming and outgoing wire transfer records, copies of checks deposited, copies of checks drawn, records reflecting cash activity, account opening documents, account closing documents and account background.

**RESPONSE:**

35. All documents concerning any assertion by Defendants that any Preference Period Transfer was made in payment of a debt incurred by BLMIS in the ordinary course of business or financial affairs of BLMIS and Defendants, within the meaning of 11 U.S.C. § 547(c).

**RESPONSE:**

36. All documents concerning any assertion by Defendants that any Preference Period Transfer was made in the ordinary course of business or financial affairs of BLMIS and Defendants, within the meaning of 11 U.S.C. § 547(c).

**RESPONSE:**

37. All documents concerning any assertion by Defendants that any Preference Period Transfer was made according to ordinary business terms, within the meaning of 11 U.S.C. § 547(c).

**RESPONSE:**

38. All documents concerning any assertion by Defendants that Defendants gave “new value” to BLMIS, within the meaning of 11 U.S.C. § 547(c).

**RESPONSE:**

39. All documents that reflect each Transfer, including, but not limited to, the date of the Transfer, the amount of the Transfer, the account name and account number for the account the funds were transferred from, the account name and account number for the account the funds were transferred to, the method of transfer (wire, check, etc.), and the reason for the Transfer.

**RESPONSE:**

40. All documents that reflect each Subsequent Transfer, including, but not limited to, the date of the Subsequent Transfer, the amount of the Subsequent Transfer, the account name and account number for the account the funds were transferred from, the account name

and account number for the account the funds were transferred to, the method of transfer (wire, check, etc.), and the reason for the Subsequent Transfer.

**RESPONSE:**

41. All documents that reflect each instance in which any Defendant transferred money to BLMIS, including, but not limited to, the date of the Transfer, the amount of the Transfer, the account name and account number for the account the funds were transferred from, the account name and account number for the account the funds were transferred to, the method of transfer (wire, check, etc.), and the reason for the Transfer.

**RESPONSE:**

42. All documents relating to Defendants' due diligence (whether by itself or through third parties) of BLMIS or BLMIS Affiliates, including the dates and results of on-site visits, the names/titles of individuals who made the on-site visits; verification of compliance procedures; review of custody arrangements, prime brokerage agreements between BLMIS or BLMIS Affiliates and any entity, DVP/RVP agreements, side letters; determinations of the identity of auditor(s), reasons for any change in auditor, confirmation letters received from auditors; review of audited and/or unaudited financial statements; determination of the identity of BLMIS or BLMIS Affiliates legal counsel, identity of any third party service provider; and documents describing BLMIS's or BLMIS Affiliates' management structure including any

description of how much time Madoff devotes or devoted to the investment advisory business.

**RESPONSE:**

43. All documents concerning any communication between Defendants and any other person concerning BLMIS or BLMIS Affiliates.

**RESPONSE:**

44. All documents concerning any potential illegality in the operations of BLMIS or BLMIS's Affiliates.

**RESPONSE:**

45. All documents concerning the feasibility of BLMIS's or BLMIS Affiliates' returns on investments, including the consistency of returns or volatility of returns.

**RESPONSE:**

46. All documents concerning any account ever maintained by any Defendant with BLMIS or BLMIS Affiliates.

**RESPONSE:**

47. All documents concerning any communication between Defendants and any other person concerning any of BLMIS's or BLMIS Affiliates' accountants, auditors, accounting firms, or auditing firms, including, but not limited, to David G. Friehling or Friehling & Horowitz, CPAs, P.C.

**RESPONSE:**

48. All documents concerning any of BLMIS's or BLMIS Affiliates' accountants, auditors, accounting firms, or auditing firms, including, but not limited to, David G. Friehling or Friehling & Horowitz, CPAs, P.C.

**RESPONSE:**

49. All documents concerning any comparison between the performance of accounts with, or managed by, BLMIS or BLMIS Affiliates, on behalf of Defendants and the performance of accounts with, or managed by, BLMIS or BLMIS Affiliates for any other person.

**RESPONSE:**

50. All documents concerning any comparison between the performance of accounts with, or managed by, BLMIS or BLMIS Affiliates, on behalf of Defendants and the



performance Defendants obtained from other investments not managed by BLMIS or BLMIS Affiliates.

**RESPONSE:**

51. All documents concerning the investment decisions of the Defendants during the Applicable Period.

**RESPONSE:**

52. All documents concerning the delegation of investment decisions of Defendants to BLMIS, BLMIS's Affiliates, or any other entity during the Applicable Period.

**RESPONSE:**

53. All documents concerning any decision not to inform Defendants' Clients that BLMIS managed any funds or accounts on behalf of Defendants, including any instructions concerning the issue from BLMIS or BLMIS Affiliates.

**RESPONSE:**

54. All documents concerning the investment strategies of Defendants, including but not limited to options arbitrage, during the Applicable Period.

**RESPONSE:**

55. All documents and communications concerning BLMIS's investment strategy and performance.

**RESPONSE:**

56. All documents concerning the consistency of returns purportedly achieved by BLMIS or BLMIS's Affiliates during the Applicable Period.

**RESPONSE:**

57. All documents concerning any knowledge by Defendants that BLMIS self-cleared trades.

**RESPONSE:**

58. All documents concerning the liquidity of assets under the control of BLMIS or BLMIS Affiliates during the Applicable Period.

**RESPONSE:**

59. All documents concerning the volume of assets managed by BLMIS or BLMIS Affiliates during the Applicable Period.

**RESPONSE:**

60. All documents concerning any and all management fees, administrative fees, or performance fees paid to any person or entity, including Merkin and GCC, on account of any monies invested by or through Defendants in an account with, or managed through, BLMIS or BLMIS Affiliates.

**RESPONSE:**

61. All documents concerning the delegation of authority by the Defendants concerning investing their assets.

**RESPONSE:**

62. All documents concerning the authority of the board of directors of any of the Defendants to determine where assets should be invested.

**RESPONSE:**

63. All documents concerning any direction ever given by the board of directors of any Defendant concerning where assets should be invested.

**RESPONSE:**

64. All documents concerning BDO Seidman, LLP, BDO Binder, BDO Tortuga, or any of their affiliates.

**RESPONSE:**

65. All communications between Defendants and BDO Seidman, LLP, BDO Binder, BDO Tortuga, or any of their affiliates.

**RESPONSE:**

66. All documents concerning the deferment of any and all management fees, administrative fees, or performance fees paid to any person, or entity, including Merkin and GCC, as a result of any monies invested by or through Defendants in an account with, or managed through, BLMIS or BLMIS Affiliates.

**RESPONSE:**

67. All documents concerning any investigation of BLMIS or BLMIS Affiliates by any government agency or official, including, but not limited to, the Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the National Association of Securities Dealers.

**RESPONSE:**

68. All documents concerning any communication between Defendants and any government agency or official, including, but not limited to, the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or the National Association of Securities Dealers, concerning BLMIS or BLMIS Affiliates.

**RESPONSE:**

69. All documents concerning BLMIS's Form 13F filings with the Securities and Exchange Commission.

**RESPONSE:**

70. All documents concerning the article in the May 7, 2001 issue of *Barron's*, entitled "Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks investors to keep mum."

**RESPONSE:**

71. All documents concerning the article in the December 16, 1992 issue of the *Wall Street Journal*, entitled, "Wall Street Mystery Features a Big Board Rival."

**RESPONSE:**

72. All documents concerning the May 2001 MAR/Hedge newsletter entitled, "Madoff Tops Charts; Skeptics Ask How."

**RESPONSE:**

73. All documents concerning any inquiry received by Defendants from any other person or entity concerning BLMIS or BLMIS's Affiliates.

**RESPONSE:**

74. All documents concerning any due diligence on BLMIS or BLMIS Affiliates performed by Société Générale, Goldman Sachs, Citigroup, Morgan Stanley, Merrill Lynch, Credit Suisse or any other person or entity not affiliated with Defendants.

**RESPONSE:**

75. All documents concerning Defendants' standard policies and procedures for conducting due diligence on potential investments.

**RESPONSE:**

76. All documents concerning any inquiry, investigation or due diligence conducted by Defendants on any investment or potential investment in an entity other than BLMIS or BLMIS's Affiliates.

**RESPONSE:**

77. All documents concerning any opinions, research, advice, or warnings concerning investments with BLMIS or BLMIS Affiliates, or any fund with accounts with, or managed by, BLMIS or BLMIS Affiliates, from any person, including, but not limited to, Credit Suisse, Aksia, LLC, Albourne Partners, Acorn Partners, Simon Fludgate, Simon Ruddick, or Robert Rosenkranz, James Hedges, Laura Goldman, Howard Wohl, Lawrence Simon, or Ivy Asset Management.

**RESPONSE:**

78. All documents concerning any communication with Victor Teicher about BLMIS or BLMIS's Affiliates.

**RESPONSE:**

79. All documents concerning any communication with Andrew Gordon about BLMIS or BLMIS's Affiliates.

**RESPONSE:**

80. All documents concerning any communication between Defendants and UBP about BLMIS or BLMIS's Affiliates.

**RESPONSE:**

81. All documents concerning any arbitration proceedings or litigation involving the Defendants and concerning investments made by or through Defendants with BLMIS or BLMIS Affiliates, including any deposition transcripts (including exhibits), hearing transcripts, witness statements taken or given by Defendants or produced in discovery, and final rulings or judgments and including the arbitration proceedings involving Noel M. Wiederhorn, MD and the Defendants or involving the Sandalwood Debt Funds and the Defendants.

**RESPONSE:**

82. All documents concerning the commission or fee structure under which BLMIS was compensated for managing monies entrusted to it by the Defendants.



**RESPONSE:**

83. All documents concerning the Defendants' knowledge of the total volume of options in existence for the options that BLMIS purported to have purchased on Defendants' behalf.

**RESPONSE:**

84. All documents concerning any counterparties involved in the options that BLMIS purported to have purchased on Defendants' behalf.

**RESPONSE:**

85. All documents concerning BLMIS's purported practice of placing from time to time all of the assets entrusted to him by the Defendants into United States Treasuries.

**RESPONSE:**

86. All documents concerning any attempt made by Defendants or any third party to duplicate, simulate, or replicate the purported investment strategy employed by BLMIS.

**RESPONSE:**

87. All documents concerning Defendants' knowledge of BLMIS's purported ability to market time or of BLMIS's purported use of market timing strategies in carrying out his investment strategy on behalf of Defendants.

**RESPONSE:**

88. All documents concerning Defendants' knowledge of the person(s) who purportedly aided BLMIS in carrying out its investment strategy on behalf of Defendants.

**RESPONSE:**

89. All documents concerning the conversation between Madoff and Merkin, as transcribed within documents produced to the New York Attorney General and bearing the bates numbers GCC-NYAG 0052308 through 0052317.

**RESPONSE:**

90. All documents concerning the investment of funds for Yeshiva University.

**RESPONSE:**

91. All documents concerning the Gift of Life Foundation.

**RESPONSE:**

92. All documents concerning the Picower Foundation, Jeffry Picower, or Barbara Picower.

**RESPONSE:**

93. All documents concerning Ruth Madoff or the Alpern family.

**RESPONSE:**

94. All documents concerning investments by Hermann Merkin with Madoff, BLMIS or BLMIS Affiliates.

**RESPONSE:**

95. All documents concerning any interactions or relationships between Hermann Merkin and Madoff.

**RESPONSE:**

96. All documents concerning the investment firm Avellino and Bienes, or the principals of said firm, Michael Bienes and Frank Avellino.

**RESPONSE:**

97. All documents concerning Eric Dillon or Silver Creek Investments.

**RESPONSE:**

98. All documents concerning Ben Heller.

**RESPONSE:**

99. All documents concerning Leon Levy.

**RESPONSE:**

100. All documents concerning Jack Nash.

**RESPONSE:**

101. All documents concerning Joshua Nash.

**RESPONSE:**

102. All documents concerning Roman Igolnikov.

**RESPONSE:**

103. All documents concerning Mark Kenyon.

**RESPONSE:**

104. All documents concerning Noel Levine.

**RESPONSE:**

105. All documents concerning Leon Meyers.

**RESPONSE:**

106. All documents concerning Ralph Sinsheimer.

**RESPONSE:**

107. All documents concerning Victor Teicher.

**RESPONSE:**

108. All documents concerning Burton Weinstein.

**RESPONSE:**

109. All documents concerning Mortimer Zuckerman.

**RESPONSE:**

110. All documents concerning Richard Hirsch.

**RESPONSE:**

111. All documents concerning Noel Weiderhorn.

**RESPONSE:**

112. All documents concerning Peter Stamos.

**RESPONSE:**

113. All documents concerning Sonja Kohn or Bank Medici.

**RESPONSE:**

114. All documents concerning Fairfield Greenwich Group or any of its principals or employees.

**RESPONSE:**

115. All documents concerning Tremont Group Holdings or any of its principals or employees.

**RESPONSE:**

116. All documents concerning Patrick Littaye or Access International Advisors.

**RESPONSE:**

117. All documents concerning Stephan Feinberg and BLMIS or Madoff.

**RESPONSE:**

118. All documents concerning Joel or Sanford Ehrenkranz.

**RESPONSE:**

119. All documents concerning Laura Goldman or LSG Capital.

**RESPONSE:**

120. All documents concerning Daniel Gottlieb or the Howard Gottlieb Family Foundation.

**RESPONSE:**

121. All documents concerning Harry Markopoulos.

**RESPONSE:**

122. All documents concerning Howard Wohl, Lawrence Simon, or Ivy Asset Management.

**RESPONSE:**

123. All documents concerning John (Launny) Steffens, Jason Lee Orchard, Greg Ho or Spring Mountain Capital.

**RESPONSE:**



124. All documents concerning the affirmative defenses asserted in the Answers to the Complaint.

**RESPONSE:**

125. All reports, summaries, or other documents prepared, reviewed, or relied upon by Defendants in connection with the defense of the claims asserted in the Complaint.

**RESPONSE:**

126. All documents Defendants reviewed or consulted in preparing responses to the Requests for Admission set forth below.

**RESPONSE:**

127. All documents Defendants reviewed or consulted in preparing answers to the Interrogatories set forth below.

**RESPONSE:**

128. All documents concerning any facts set forth in Defendants' responses to the Interrogatories set forth below.

**RESPONSE:**

129. To the extent not called for in other document requests, all documents concerning communications concerning Madoff or BLMIS or BLMIS Affiliates.

**RESPONSE:**

130. To the extent not called for in other document requests, all documents concerning Madoff or BLMIS or BLMIS Affiliates.

**RESPONSE:**

131. To the extent not called for in other document requests, all documents concerning the Defendants' accounts and/or the nominee or beneficial owners of those accounts.

**RESPONSE:**

132. To the extent not previously requested, all documents identified in the Defendants' Initial Disclosures.

**RESPONSE:**

133. To the extent not previously requested, all documents in the Defendants' possession that are in a category identified in the Defendants' Initial Disclosures.

**RESPONSE:**

134. All documents concerning the Microsoft Quickbooks database utilized by Defendants, including the database itself as presently constituted and as constituted in Defendants' previous production to the plaintiff in the action *New York University v. Ariel, et al.*, 08-dv-603803.

**RESPONSE:**

135. All documents concerning any Beth Din proceedings involving Defendants.

**RESPONSE:**

136. All documents concerning any allegations of fraud against any investment advisor including but not limited to Bayou Group and Lancelot Investment Management.

**RESPONSE:**

137. All documents received by Defendants in connection with any legal proceedings relating to BLMIS or BLMIS's Affiliates.

**RESPONSE:**

138. All documents concerning Defendants' affirmative defenses of laches, waiver, estoppel, judicial estoppel, or unclean hands.

**RESPONSE:**

139. All documents concerning any activities of governmental and regulatory bodies with respect to Madoff, BLMIS or BLMIS Affiliates that were known by Defendants prior to the Filing Date.

**RESPONSE:**

140. All documents concerning Defendants' affirmative defenses of good faith.

**RESPONSE:**

141. All documents concerning Defendants' affirmative defenses of *in pari delicto*.

**RESPONSE:**

142. All documents concerning Defendants' affirmative defenses that the Transfers to Defendants by BLMIS were made for the benefit of a redemption request by one or more investor(s) in the Defendant Funds.

**RESPONSE:**

143. All documents concerning Defendants' affirmative defenses that the Transfers to Defendants by BLMIS were made for the benefit of a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency.

**RESPONSE:**

**INSTRUCTIONS FOR INTERROGATORIES**

1. If a response to an Interrogatory is based upon information and belief, set forth the source of the information and the grounds for the belief.
2. If you claim any ambiguity in an Interrogatory, or in the related definition or instruction, you must respond to the Interrogatory and set forth your interpretation of the claimed ambiguous language.
3. If you refuse to provide a response to an Interrogatory due to an assertion of attorney-client privilege, the work product doctrine or any other privilege, you response

should include a statement of the basis for the claim sufficient for the Trustee to evaluate the claimed privilege or protection.

4. If you cannot provide a complete answer to a particular Interrogatory, the Interrogatory should be answered to the extent possible and an explanation should be provided as to why only a partial answer is given.

5. If you discover that a response is incomplete or incorrect, you must, in a timely manner, supplement or correct such response in accordance with Rule 7026 of the Federal Rules of Bankruptcy Procedure and Rule 26(e) of the Federal Rules of Civil Procedure.

6. "Identify" and "identity" shall have the same meanings as in Definitions Nos. 17, 18 and 19 above.

#### **INTERROGATORIES**

1. Identify each person who was involved in answering these discovery requests and explain each person's role in answering these discovery requests.

#### **ANSWER:**

2. Provide the name, last known address, position(s), duties, and dates of employment for any and all employees of Defendants during the Applicable Period.

#### **ANSWER:**

3. Identify all person(s) with knowledge of the Transfers or the Subsequent Transfers and the transactions relating thereto.

**ANSWER:**

4. Identify each person ever employed by or associated with Defendants who has given a statement or a deposition in any litigation or arbitration concerning Defendants' investments with BLMIS, specifying the matter in which the statement or deposition was given.

**ANSWER:**

5. Identify each person who conducted or assisted in conducting any investigation or due diligence on BLMIS or BLMIS's Affiliates or any other entity on behalf of Defendants.

**ANSWER:**

6. Identify all persons present at any meeting attended by Defendants where either Madoff or Frank DiPascali was also present.

**ANSWER:**

7. Identify each person involved in the preservation or retention of Defendants' records, including electronic records, since December 2008, specifying the role he played.

**ANSWER:**

8. Identify the location and custodian of each computer (or other device upon which electronic information has been stored) utilized by Defendants to communicate concerning BLMIS or BLMIS's Affiliates, or to store information concerning Defendants' investments with BLMIS or BLMIS's Affiliates.

**ANSWER:**

9. If your response to any of the Requests for Admission below is anything other than an unqualified admission, specify those persons who have knowledge of the facts upon which you base your refusal to admit and identify all documents upon which you base your refusal to admit.

**ANSWER:**

**REQUESTS FOR ADMISSION**

1. Admit that, with regard to BLMIS, the filing date under SIPA § 78III(7)(B) is December 11, 2008.



**RESPONSE:**

2. Admit that each Preference Period Transfer listed on Exhibit B to the Complaint constitutes a transfer of interest of BLMIS in property within the meaning of section 101(54) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3).

**RESPONSE:**

3. Admit that each Preference Period Transfer was to or for the benefit of Defendant Ascot.

**RESPONSE:**

4. Admit that each Preference Period Transfer was made while BLMIS was insolvent.

**RESPONSE:**

5. Admit that Defendants did not, prior to the Filing Date, routinely review account statements and/or trade confirmations from BLMIS to ensure the trades listed on the statements and/or confirmations were exercised at prices that were within the daily price range for such securities traded in the market on the date listed on the account statements and/or trade confirmations.

**RESPONSE:**

6. Admit that Defendants did not, prior to the Filing Date, routinely review account statements and/or trade confirmations from BLMIS to ensure the trades listed on the statements and/or confirmations were exercised on dates when the market was operating.

**RESPONSE:**

7. Admit that Defendants did not, prior to the Filing Date, routinely review account statements and/or trade confirmations from BLMIS to ensure the volume of trades listed on the account statements and/or trade confirmations for any particular security was reasonable based on the volume of trades in that security made by the entire market on a particular date.

**RESPONSE:**

8. Admit that Defendants did not, prior to the Filing Date, routinely review account statements and/or trade confirmations from BLMIS to ensure the volume of options traded for any particular security listed on the account statements and/or trade confirmations was not greater than the volume of options traded for that particular security by the entire options market on the same date.

**RESPONSE:**

9. Admit that neither Defendants, nor any other person retained by Defendants, conducted an audit of BLMIS prior to the Filing Date.

**RESPONSE:**

10. Admit that Defendants did not, prior to the Filing Date, match any trade confirmations provided by BLMIS with actual trades executed through any domestic or foreign public exchange.

**RESPONSE:**

11. Admit that Defendants did not, prior to the Filing Date, take any action to determine whether the accounting firm of Friehling & Horowitz had been subject to peer review by the American Institute of Certified Public Accountants at any time after 1993.

**RESPONSE:**

12. Admit that Defendants did not, prior to the Filing Date, take any action to determine whether the actual volume of options trades on any specific day during the Applicable Period was sufficient to allow BLMIS to execute its strategy.

**RESPONSE:**

13. Admit that BLMIS never permitted Defendants to have real-time electronic access to BLMIS's trades of securities on behalf of the Defendants.

**RESPONSE:**

14. Admit that BLMIS routinely sent Defendants paper trade confirmations via United States mail.

**RESPONSE:**

15. Admit that BLMIS told Defendants that BLMIS utilized an automated order and execution process for the split-strike strategy.

**RESPONSE:**

16. Admit that Defendants typically did not receive trade confirmations from BLMIS until three to five days after a trade had been entered.

**RESPONSE:**

17. Admit that the trade confirmations Defendants received from BLMIS did not contain the prices at which a security was bought or sold, but rather contained weighted average prices of a group of securities supposedly bought and sold during the day.

**RESPONSE:**

18. Admit that, prior to the Filing Date, Defendants never reviewed BLMIS's Form 13F filings.

**RESPONSE:**

19. Admit that at all times between December 11, 2002 and the date receivers for the Defendants Ariel, Gabriel and Ascot were appointed, Merkin had ultimate responsibility for the investment decisions made by Ariel, Gabriel and Ascot.

**RESPONSE:**

20. Admit that at all times during the Applicable Period, Merkin had ultimate responsibility for the investment decisions made by Ariel, Gabriel and Ascot.

**RESPONSE:**

Date: January 14, 2011

Respectfully submitted,

Of Counsel:

Louis A. Colombo  
Joseph F. Hutchinson, Jr.  
Kelly S. Burgan  
David E. Kitchen  
Baker & Hostetler LLP  
1900 East Ninth Street, Suite 3200  
Cleveland, Ohio 44114-3485  
Telephone: (216) 632-0200  
Facsimile: (216) 696-0740  
Louis A. Colombo  
Email: [lcolumbo@bakerlaw.com](mailto:lcolumbo@bakerlaw.com)  
Joseph F. Hutchinson, Jr.  
Email: [jhutchinson@bakerlaw.com](mailto:jhutchinson@bakerlaw.com)  
Kelly S. Burgan  
Email: [kburgan@bakerlaw.com](mailto:kburgan@bakerlaw.com)  
David E. Kitchen  
Email: [dkitchen@bakerlaw.com](mailto:dkitchen@bakerlaw.com)

/s/ Marc E. Hirshfield

Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)  
Marc E. Hirschfield  
Email: [mhirschfield@bakerlaw.com](mailto:mhirshfield@bakerlaw.com)

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

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served this 14<sup>th</sup> day of January, 2011 by electronic mail upon the following:

Counsel to Defendants J. Ezra Merkin and Gabriel Capital Corporation

Neil A. Steiner, Esq.  
Andrew J. Levander, Esq.  
Jonathan D. Perry, Esq.  
Gary J. Mennit, Esq.  
Steven A. Engel, Esq.  
Dechert LLP  
Email: [neil.steiner@dechert.com](mailto:neil.steiner@dechert.com)  
Email: [Andrew.levander@dechert.com](mailto:Andrew.levander@dechert.com)  
Email: [jonathan.perry@dechert.com](mailto:jonathan.perry@dechert.com)  
Email: [gary.mennitt@dechert.com](mailto:gary.mennitt@dechert.com)  
Email: [steven.engel@dechert.com](mailto:steven.engel@dechert.com)

Counsel to Gabriel Capital, L.P. and Ariel Fund Limited

Howard Schiffman, Esq.  
Eric Bensky, Esq.  
Schulte Roth & Zabel LLP  
Email: [howard.schiffman@srz.com](mailto:howard.schiffman@srz.com)  
Email: [eric.bensky@srz.com](mailto:eric.bensky@srz.com)

Counsel to Bart M. Schwartz, Receiver of Gabriel Capital, L.P. and Ariel Fund Limited

Lance Gotthoffer, Esq.  
James C. McCarroll, Esq.  
Reed Smith LLP  
Email: [lgotthoffer@reedsmith.com](mailto:lgotthoffer@reedsmith.com)  
Email: [mccarroll@reedsmith.com](mailto:mccarroll@reedsmith.com)

Counsel to Ascot Partners, L.P. and David B. Pitofsky, Receiver for Ascot Partners, L.P.

Matthew T. Tulchin, Esq.  
David Pitofsky, Esq.  
Goodwin Procter  
Email: [mtulchin@goodwinprocter.com](mailto:mtulchin@goodwinprocter.com)  
Email: [dpitofsky@goodwinprocter.com](mailto:dpitofsky@goodwinprocter.com)

/s/ David E. Kitchen

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





## **EXHIBIT 18**

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

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

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

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,  
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,  
GABRIEL CAPITAL CORPORATION,

Defendants.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01182 (BRL)

**SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS OF  
DOCUMENTS TO DEFENDANTS J. EZRA MERKIN AND GABRIEL CAPITAL  
CORPORATION**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 7034 of the Federal Rules of Bankruptcy Procedure, Irving H. Picard, Esq. (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS"), hereby submits the following requests for production of documents to Defendants J. Ezra Merkin and Gabriel Capital Corporation ("GCC" and "Merkin" or "Defendants"). The Trustee requests that

Defendant provide written responses and documents, as well as a privilege log, no later than thirty days from the date on which it receives service of these requests.

### **DEFINITIONS**

1. The definitions contained in Civil Rule 26.3 of the Local Rules of the United States District Court for the Southern and Eastern Districts of New York, as adopted in Rule 7026-1 of the Local Bankruptcy Rules for the Southern District of New York, are hereby incorporated by reference.
2. “Applicable Period” means the period between and including the date on which the Defendant first opened an account with, or managed by, the Debtor, through the present.
3. “Ariel” means Ariel Fund, Ltd.
4. “Ascot” means Ascot Partners, L.P. and/or Ascot Fund, Ltd.
5. “BLMIS” refers to Bernard L. Madoff Investment Securities LLC and any and all related entities, including without limitation: Abtech Industries Inc.; BLM Air Charter LLC; Blumenfeld Development Group; BREA Associates LLC; Cohmad, Cohn, Delaire & Madoff, Inc.; Delta Fund I, L.P.; Madoff Brokerage & Trading Technologies LLC; Madoff Energy Holdings LLC; Madoff Energy III LLC; Madoff Energy IV LLC; Madoff Energy LLC; Madoff Family LLC (a/k/a Madoff Family Fund LLC); Madoff Realty LLC/Madoff Realty Associates/Madoff Realty Trust; Madoff Securities International Ltd.; Madoff Technologies LLC; Primex Holdings LLC; Realty Associates Madoff II; The Madoff Family Foundation (f/k/a Bernard L. and Ruth Madoff Foundation); Yacht Bull Corp (registered by Campbell Corporate Services LTD); Bernard Madoff; Ruth Madoff; Andrew Madoff; Mark Madoff; Peter Madoff; Marion Madoff; Shana Madoff (also Skoller or Swanson); Roger Madoff; Annette Bongiorno; Jo Ann “Jodi” Crupi; Eric Lipkin; Irwin Lipkin; Frank DiPascali; Erin Reardon; David Kugel; Belle Jones; and Darlene Concepcion.

6. “Complaint” means the operative complaint filed by the Trustee in this adversary proceeding.

7. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise). “Communication” includes any transmittal or receipt of information, whether by chance or prearranged, formal or informal, oral or portrayed in any “document,” and specifically includes: (a) conversations, meetings and discussions in person; (b) conversations, meetings and discussions by telephone or through telephonic messages; and (c) written and electronic correspondence, including communications by email.

8. “Concerning” means relating to, referring to, describing, evidencing or constituting. “Concerning” includes, directly or indirectly, in whole or in part, relating to, describing, reflecting, evidencing, embodying, constituting or referencing.

9. “Defendants” mean each or all defendants in this action, as well as any group of two or more defendants.

10. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

11. “Gabriel” means Gabriel Capital, L.P.

12. “GCC” means Gabriel Capital Corporation.

13. “Merkin” means J. Ezra Merkin.

14. “Person” means any natural person or any business, not-for-profit, legal, governmental or other incorporated or unincorporated entity, association, fund, organization or group.

15. For all purposes herein, spelling, grammar, syntax, abbreviations, idioms and proper nouns shall be construed and interpreted to give proper meaning and consistency to its context.

16. The following rules of construction apply to these Requests:

(a) “Any” and “all” shall be deemed to include the other;

(b) “And” and “Or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests all responses that might otherwise be construed to be outside of its scope;

(c) “All” and “Each” shall be construed as “all and each”; and

(d) The singular form of any word includes the plural and *vice versa*.

17. Reference to any person that is not a natural person and is not otherwise defined herein refers to and includes any parent, subsidiary, affiliate, division, branch, agency, representative office, predecessor, successor, principal, member, director, officer, shareholder, manager, employee, attorney-in-fact, attorney, nominee, agent or representative of such person.

### **INSTRUCTIONS**

1. All documents shall be identified by the request(s) to which they are primarily responsive or be produced as they are maintained in the usual course of business.

2. Produce all documents and all other materials described below in your actual or constructive possession, custody, or control, including in the possession, custody or control of a current or former employee, wherever those documents and materials are maintained, including on personal computers, PDAs, wireless devices or web-based mail systems such as Gmail, Yahoo or the equivalent.

3. Produce all documents maintained on paper, electronically stored information, electronic mail and instant messaging platforms regardless of whether the electronic mail or



instant messaging platform operates on your own server or Bloomberg or Reuters or similar servers and platforms. Produce all documents, computerized data or content stored on electromagnetic media even if they are designated as drafts or as deleted. Produce all voicemail messages, audio files, all e-mail messages, text messages and all other formats, including, but not limited to, word processing, electronic spreadsheets, images, databases, digital photocopier memory and any other memory storage devices such as fax machines or scanners, Intranet system data, Internet system data, telephone or cellular telephone calling records or data compilations.

4. Produce the original of each document requested together with all non-identical copies and drafts of that document. If the original of a document cannot be located, a copy should be produced in lieu thereof and should be legible and bound or stapled in the same manner as the original. Multiple versions of documents, an e-mail or its attachment(s) distributed to multiple recipients or any other non-identical copy of a document are separate documents within the meaning of this instruction.

5. Documents not otherwise responsive to these Requests should be produced if such documents mention, discuss, refer to, explain or concern one or more documents that are called for by these Requests, if such documents are attached to, enclosed with or accompany documents called for by these Requests or if such documents constitute routing slips, transmittal memoranda or letters, comments, evaluations or similar materials.

6. Documents attached to each other should not be separated; separate documents should not be attached to each other.

7. Documents should include all exhibits or appendices which are referenced in, attached to, included or are a part of the requested documents. Include all related content,

including, but not limited to, attachments to documents, linked documents and appended documents, as well as descriptions of each document's organization such as custodians, files, etc.

8. You should produce the original of each document requested. If the original of a document cannot be located or it is unreasonable to produce the original, a fair and accurate copy should be produced in lieu thereof.

9. If a request calls for information concerning a Transfer or Subsequent Transfer, redemption or withdrawal, please include documents that reflect the account name and number for the account the funds were transferred from and to, method of transfer (i.e., wire, check, etc.), date of, amount and the reason for the Transfer or Subsequent Transfer, redemption or withdrawal.

10. If any document, or any part thereof, is not produced based on a claim of attorney-client privilege, work-product protection or any other privilege, then in answer to such request or part thereof, for each such document:

- (a) Identify the type, title and subject matter of the document;
- (b) State the place, date and manner of preparation of the document;
- (c) Identify the author, addressee(s) and recipient(s) of the document; and
- (d) State the nature of the legal privilege and the factual basis for the claim.

11. With respect to each document to which an objection as to production is made, state the following:

- (a) Nature of the document;
- (b) Date of the document;
- (c) Name and title of the person(s) to whom the document was addressed and

copied;

- (d) Name and title of the person(s) who prepared and/or sent the document;
- (e) General subject matter of the document;
- (f) All documents referred to or accompanying such documents;
- (g) Number of pages in the document; and
- (h) Specific ground on which the objection is made.

12. No part of any request shall be left unanswered merely because an objection has been interposed to another part of the request.

13. If an objection is made to any request or part thereof under the Federal Rules of Bankruptcy Procedure 7034, the objection shall state with specificity all grounds for that objection.

14. If a request is objected to as unduly burdensome, you shall (i) indicate the nature of the burden involved in providing the response requested; and (ii) set forth a proposal as to a less burden-incurring response that would provide responsive information.

15. All requests herein incorporate Fed. R. Bankr. P. 7026-7037, Fed. R. Civ. P. 26-37 and Local Civil Rules for the United States Bankruptcy Court Southern District of New York 7026-7037.

16. To the extent a document sought herein was at one time, but is no longer, in your actual or constructive possession, custody, or control, state whether it: (i) is missing or lost; (ii) has been destroyed; (iii) has been transferred to others; and/or (iv) has been otherwise disposed of. In each instance, identify the document; state the time period during which it was maintained; state the circumstance surrounding authorization for such disposition thereof and the date thereof; identify each person having knowledge of the circumstances of the disposition thereof; and identify each person who had possession, custody or control of the document, to



whom it was available or who had knowledge of the document and/or the contents thereof. Documents prepared prior to, but which relate or refer to, the time period covered by these documents are to be identified and produced.

### **MANNER OF PRODUCTION**

Before a production is made that deviates from the instructions provided below, please contact undersigned counsel.

All documents produced to the Trustee shall be provided in single-page 300 dpi-resolution group IV TIF format (“tiff”) format as specified below, along with appropriately formatted industry-standard database load files, and accompanied by true and correct copies or representations of unaltered attendant metadata. Where documents are produced in tiff format, each document shall be produced along with a multi-page, document-level searchable text file (“searchable text”) as rendered by an industry-standard text extraction program in the case of electronic originals, or by an industry-standard Optical Character Recognition (“ocr”) program in the case of scanned paper documents. Searchable text of documents shall not be produced as fielded data within the “.dat file” as described below.

#### **1. Database load files and production media structure**

Database load files shall consist of: (1) a comma-delimited values (“.dat”) file containing: production document identifier information, data designed to preserve “parent and child” relationships within document “families”, reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper documents), custodian or document source information, as well as native file loading/linking information (where applicable); and (2) an Opticon (“.opt”) file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named “Data”, images shall be provided within a root level “Images” folder

containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level "Text" folder.

2. Electronic documents and data, generally

Documents and other responsive data or materials created, stored, or displayed on electronic or electro-magnetic media shall be produced in the order in which the documents are or were stored in the ordinary course of business, including all reasonably accessible metadata, custodian or document source information, and searchable text as to allow the Trustee through a reasonable and modest effort, to fairly, accurately and completely access, search and display, comprehend and assess the documents' true and original content.

3. Emails and attachments, and other email account-related documents

All documents and accompanying metadata created and/or stored in the ordinary course of business within commercial, off-the-shelf e-mail systems including but not limited to Microsoft Exchange™, Lotus Notes™ or Novell Groupwise™ shall be produced in tiff format, accompanying metadata, and searchable text files or, alternately, in a format that fairly, accurately, and completely represents each document in such a manner as to make the document(s) reasonably useable, manageable, and comprehensible by the Trustee.

4. Documents and data created or stored in or by structured electronic databases

With the exclusion of email and email account-related documents and data, all documents and accompanying metadata created and/or stored in structured electronic databases or files shall be produced in a format that enables the Trustee to reasonably manage and import those documents into a useable, coherent database. The documents must be accompanied with reasonably detailed, clear and focused documentation explaining the documents' content and format

including but not limited to data dictionaries and diagrams. Some acceptable formats, if and only if provided with definitive file(s), table(s) and field level schemas include:

- (a) XML format file(s);
- (b) Microsoft SQL database(s);
- (c) Access database(s); and/or
- (d) fixed or variable length ASCII delimited files.

5. Spreadsheets, multimedia, and non-standard file types

All documents generated or stored in software such as Microsoft Excel or other commercially available spreadsheet programs, as well as any multimedia files such as audio or video, shall be produced in their native format, along with an accompanying placeholder image in tiff format indicating a native file has been produced. A “Nativelink” entry shall be included in the .dat load file indicating the relative file path to each native file on the production media. To the extent the party has other file types that do not readily or easily and accurately convert to tiff and searchable text, the party may elect to produce those files in native format subject to the other requirements listed herein. Native files may be produced within a separate root-level folder structure on deliverable media entitled “Natives”.

6. “Other” electronic documents

All other documents and accompanying metadata and embedded data created or stored in unstructured files generated by commercially available software systems (excluding e-mails, structured electronic databases, spreadsheets, or multimedia) such as but not limited to word processing (such as Microsoft Word), image files (such as Adobe .pdf files, and other formats),

and text files shall be produced in tiff and searchable text format in the order the files are or were stored in the ordinary course of business.

7. Paper documents

Documents originally created or stored on paper shall be produced in tiff format. Relationships between documents shall be identified within the Relativity .dat file utilizing document identifier numbers to express parent document/child attachment boundaries, folder boundaries, and other groupings. In addition, the searchable text of each document shall be provided as a multi-page text file as provided for by these instructions.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. All bank statements for accounts held by, or for the benefit of, GCC during the Applicable Period.

**RESPONSE:**

2. All bank statements for accounts held by, or for the benefit of, Merkin during the Applicable Period.

**RESPONSE:**

3. All bank statements for accounts held by, or for the benefit of, Ariel during the Applicable Period.

**RESPONSE:**

4. All bank statements for accounts held by, or for the benefit of, Gabriel during the Applicable Period.

**RESPONSE:**

5. All bank statements for accounts held by, or for the benefit of, Ascot during the Applicable Period.

**RESPONSE:**

6. All documents sufficient to identify all transfers to or from GCC during the Applicable Period.

**RESPONSE:**

7. All documents sufficient to identify all transfers to or from Merkin during the Applicable Period.

**RESPONSE:**

8. All documents sufficient to identify all transfers to or from Ariel during the Applicable Period.

**RESPONSE:**

9. All documents sufficient to identify all transfers to or from Gabriel during the Applicable Period.



**RESPONSE:**

10. All documents sufficient to identify all transfers to or from Ascot during the Applicable Period.

**RESPONSE:**

11. All audio recordings or transcripts of telephonic communications between Merkin and any Person concerning BLMIS.

**RESPONSE:**

12. All audio recordings or transcripts of telephonic communications between Merkin and any Person concerning investments or possible investments in Ariel, Ascot or Gabriel.

**RESPONSE:**

13. All audio recordings or transcripts of telephonic communications in the possession of GCC or Merkin concerning BLMIS.

**RESPONSE:**

14. To the extent not already produced, all document productions made to the New York Attorney General (“NYAG”).

**RESPONSE:**

15. All subpoenas or document requests served on Defendants by the NYAG, including, but not limited to, those referenced in the July 15, 2011 letter to Marc Powers from Neil Steiner.

**RESPONSE:**

16. The Defendants’ responses and objections to all subpoenas or document requests served on Defendants by the NYAG.

**RESPONSE:**

17. The Defendants’ responses and objections to all subpoenas or document requests served on Defendants by the Securities and Exchange Commission.

**RESPONSE:**

18. The full list of search terms utilized by Defendants to identify and produce documents responsive to subpoenas or document requests served by the NYAG, as referenced in Neil Steiner's September 1, 2011 letter to counsel for the Trustee.

**RESPONSE:**



Date: January 13, 2012

Respectfully submitted,



Of Counsel:

Louis A. Colombo  
Kelly S. Burgan  
David E. Kitchen  
Ruth E. Hartman  
Maritza Nelson  
Baker & Hostetler LLP  
1900 East Ninth Street, Suite 3200  
Cleveland, Ohio 44114-3485  
Telephone: (216) 632-0200  
Facsimile: (216) 696-0740  
Louis A. Colombo  
Email: lcolombo@bakerlaw.com  
Kelly S. Burgan  
Email: kburgan@bakerlaw.com  
David E. Kitchen  
Email: dkitchen@bakerlaw.com  
Ruth E. hartman  
Email: rhartman@bakerlaw.com  
Maritza Nelson  
mnelson@bakerlaw.com

Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: dsheehan@bakerlaw.com  
Marc D. Powers  
Email: mpowers@bakerlaw.com  
Edward J. Jacobs  
Email: ejacobs@bakerlaw.com  
*Attorneys for Irving H. Picard, Esq.,  
Trustee for the SIPA Liquidation of Bernard L.  
Madoff Investment Securities LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served this 13<sup>th</sup> day of January, 2012 by electronic mail upon the following:

Counsel to Defendants J. Ezra Merkin and Gabriel Capital Corporation

Neil A. Steiner, Esq.  
Andrew J. Levander, Esq.  
Katherine Stroker, Esq.  
Dechert LLP  
Email: neil.steiner@dechert.com  
Email: andrew.levander@dechert.com  
Email: katherine.stroker@dechert.com

Counsel to Bart M. Schwartz, Receiver of Gabriel Capital, L.P. and Ariel Fund Limited

Lance Gotthoffer, Esq.  
Casey Lafferty, Esq.  
Reed Smith LLP  
Email: lgotthoffer@reedsmith.com  
Email: mccarroll@reedsmith.com

Counsel to Ascot Partners, L.P. and David B. Pitofsky, Receiver for Ascot Partners, L.P.

David Pitofsky, Esq.  
Kimberlee A. Malaska, Esq.  
Goodwin Procter  
Email: dpitofsky@goodwinprocter.com  
Email: kmalaska@goodwinprocter.com

/s/ Edward Jacobs  
*An Attorney for Irving H. Picard, Esq., Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and Bernard L. Madoff*

## **EXHIBIT 19**

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

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

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

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,  
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,  
GABRIEL CAPITAL CORPORATION,

Defendants.

Adv. Pro. No. 09-01182 (BRL)

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**TRUSTEE'S FOURTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO  
DEFENDANTS J. EZRA MERKIN AND GABRIEL CAPITAL CORPORATION**

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**PLEASE TAKE NOTICE** that pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to this adversary proceeding pursuant to Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Civil Rules of

the United States District Court for the Southern District of New York and this Court (the “Local Rules”), Irving H. Picard, Trustee (the “Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) pursuant to the Securities Investment Protection Act (“SIPA”), and the estate of Bernard L. Madoff, hereby requests that Defendants J. Ezra Merkin and Gabriel Capital Corporation (“Merkin” and “GCC” or “Defendants”) produce Documents responsive to the document requests set forth herein, and deliver the same to the office of Baker Hostetler LLP, c/o Edward J. Jacobs, Esq., 45 Rockefeller Plaza, New York, New York 10111 within 30 days hereof.

### **DEFINITIONS**

1. The rules of construction and definitions in Local Rule 26.3, as adopted in Rule 7026-1 of the Bankruptcy Rules, are hereby incorporated by reference. All defined terms, including those defined in Local Rule 26.3, are capitalized herein.
2. “Account” means the BLMIS Account(s) set forth on Exhibit A to the Complaint and/or any other BLMIS account in which any Defendant has or had any interest in any capacity, whether individually or as a fiduciary and whether directly or indirectly.
3. “Applicable Period” means the period between and including the date on which the Defendant first opened an account with, or managed by, the Debtor, through the present.
4. “Ariel” means Ariel Fund, Ltd.
5. “Ascot” means Ascot Partners, L.P. and/or Ascot Fund, Ltd.
6. “BLMIS” means Bernard L. Madoff Investment Securities LLC, Madoff Securities International Ltd. (“MSIL”), Madoff Securities International LLC, Bernard L. Madoff, Ruth Madoff, and all affiliated Persons and entities, including, but not limited to, any officers, directors, agents, representatives, employees, partners, parent companies, subsidiaries,

predecessor or successor and related entities, and affiliates of the above specifically identified Persons and entities.

7. “Complaint” means the complaint filed by the Trustee in this adversary proceeding.

8. “Defendant(s)” means and includes each or all defendants in this action, as well as any group of two or more defendants, including Merkin, Gabriel, Ariel, Ascot, and GCC, and any of their officers, directors, employees, partners, corporate parents, subsidiaries or affiliates.

9. “Defendant Funds” means Gabriel, Ariel, and Ascot.

10. “Gabriel” means Gabriel Capital, L.P.

11. “GCC” means Gabriel Capital Corporation.

12. “Merkin” means J. Ezra Merkin.

13. “Net Asset Value” means gross assets less gross liabilities attributable to a class or series of shares of any of the Defendants Funds as of a particular date of determination.

14. “NYAG” means the New York State Attorney General.

15. “NYAG Action” means them matter of *The People of the State of New York v. J. Ezra Merkin, et al.*, Index No. 450879/2009.

16. “NYAG Settlement” means the settlement, which was announced on June 25, 2012 by the NYAG, in the NYAG Action.

17. “Subsequent Transfer” means any Transfer of Customer Property (as defined by SIPA §78III(4)) conveyed, transmitted, paid and/or remitted by any Defendant to another person, or any Transfer of Customer Property conveyed to another person or entity prior to being transferred to any Defendant.

18. “Transfer(s)” means any conveyance, transmittal, disposition, remittance, payment or payments made by BLMIS during the Applicable Period to, or on behalf of, any Defendant, including, but not limited to, any cash, funds, property, or other value conveyed by check, wire transfer, debit, credit to an account, the return of property, withdrawal from the Account, or by any other manner as set forth under section 101(54) of the Bankruptcy Code or section 270 of the New York Debtor & Creditor Law. *See* 11 U.S.C. § 101(54); N.Y. DEBT. & CRED. Law § 270. “Transfer” also includes, but is not limited to, payments or conveyances of value by BLMIS to any third parties, including intermediaries, for the benefit of Defendants.

19. “You” or “Your” means and includes Merkin or GCC in any capacity or anyone acting on Merkin or GCC’s behalf, including any predecessor-in-interest.

20. For all purposes herein, spelling, grammar, syntax, abbreviations, idioms, and proper nouns shall be construed and interpreted according to their context to give proper meaning and consistency to the request for Documents.

21. Reference to any Person that is not a natural Person and is not otherwise defined herein refers to and includes any parent, subsidiary, affiliate, division, branch, agency, representative office, predecessor, successor, principal, member, director, officer, shareholder, manager, employee, attorney-in-fact, attorney, nominee, agent, or representative of such Person.

### **INSTRUCTIONS**

Federal Rules 26-37, made applicable to this proceeding pursuant to the Bankruptcy Rules, are hereby incorporated by reference and apply to each of the following instructions:

1. All Documents shall be identified by the request(s) to which they are primarily responsive or be produced as they are maintained in the usual course of business.

2. Produce all Documents and all other materials described below in Your actual or constructive possession, custody, or control, including in the possession, custody, or control of a

current or former employee, wherever those Documents and materials are maintained, including on personal computers, PDAs, wireless devices, or web-based email systems such as Gmail, Yahoo, etc.

3. You must produce all Documents in Your custody or control, whether maintained in electronic or paper form and whether located on hardware owned and maintained by You or hardware owned and/or maintained by a third Party that stores data on Your behalf. You must produce all such Documents even if they were deleted or in draft form. Without limitation, hardware where such data may be stored includes servers; desktop, laptop, or tablet computers; cell and smart phones; PDA devices; scanners, fax machines, and copying machines; and mobile storage devices, such as thumb or external hard drives. Electronically stored Documents include any computerized data or content stored on electromagnetic media. Without limitation, types of electronically stored Documents include email, voicemail, and instant messages, intranet and internet system data, telephone and cellular telephone calling records, data compilations, spreadsheets, word processing documents, images, databases, digital photocopier memory and any other information stored in memory storage devices.

4. Produce the original or duplicate, as such terms are defined by Rule 1001 of the Federal Rules of Evidence, of each Document requested together with all non-identical copies and drafts of that Document. If a duplicate is produced, it should be legible and bound or stapled in the same manner as the original.

5. Documents not otherwise responsive to these Requests should be produced: (i) if such Documents mention, discuss, refer to, explain, or concern one or more Documents that are called for by these Requests; (ii) if such Documents are attached to, enclosed with, or accompany Documents called for by these Requests; or (iii) if such Documents constitute routing slips,



transmittal memoranda or letters, comments, evaluations, or similar materials.

6. Documents attached to each other should not be separated; separate Documents should not be attached to each other.

7. Documents should include all exhibits, appendices, linked Documents, or otherwise appended Documents that are referenced in, attached to, included with, or are a part of the requested Documents.

8. If a request calls for information Concerning a Transfer, Subsequent Transfer, redemption, or withdrawal from a BLMIS account, include Documents that reflect the account name and number for the account the funds were transferred from and to, method of transfer (i.e., wire, check, etc.), date of, amount and the reason for the Transfer, Subsequent Transfer, redemption, or withdrawal.

9. If any Document, or any part thereof, is not produced based on a claim of attorney-client privilege, work-product protection, or any other privilege, then in answer to such request or part thereof, for each such Document:

- a. Identify the type, title and subject matter of the Document;
- b. state the place, date, and manner of preparation of the Document;
- c. Identify all authors, addressees, and recipients of the Document, including information about such Persons to assess the privilege asserted; and
- d. Identify the legal privilege(s) and the factual basis for the claim.

10. Documents should not contain redactions unless such redactions are made to protect information subject to the attorney-client privilege and/or work product doctrine. In the event any Documents are produced with redactions, a log setting forth the information requested in Instruction 9 above must be provided.

11. To the extent a Document sought herein was at one time, but is no longer, in Your actual or constructive possession, custody, or control, state whether it: (i) is missing or lost; (ii) has been destroyed; (iii) has been transferred to others; and/or (iv) has been otherwise disposed of. In each instance, Identify the Document, state the time period during which it was maintained, state the circumstance surrounding authorization for such disposition thereof and the date thereof, Identify each Person having knowledge of the circumstances of the disposition thereof, and Identify each Person who had possession, custody, or control of the Document, to whom it was available or who had knowledge of the Document and/or the contents thereof. Documents prepared prior to, but that relate or refer to, the time period covered by these Document Requests are to be identified and produced.

#### **MANNER OF PRODUCTION**

All documents produced to the Trustee shall be provided in accordance with and pursuant to the Protocol Governing the Production of Records, attached hereto as Schedule A.

#### **REQUESTS FOR PRODUCTION**

1. All documents concerning Raanan Agus and Yeshiva University and/or the Ramaz School.
2. All documents concerning Randy Yanker and Lehman Brothers and/or BLMIS.
3. All documents concerning Maurice Maertens and/or New York University, including, but not limited to, New York University's actual or potential investment with BLMIS and/or the Defendant Funds.
4. All documents concerning New York University Law School, including, but not limited to, New York University Law School's actual or potential investment with BLMIS and/or the Defendant Funds.

5. All documents concerning the Max Planck Endowment Foundation, including, but not limited to, the Max Planck Endowment Foundation's actual or potential investment with BLMIS and/or the Defendant Funds.

6. All documents concerning Joseph Sprung and/or JBS Financial Services, including, but not limited to, Joseph Sprung and/or JBS Financial Services's actual or potential investment with BLMIS and/or the Defendant Funds.

7. All documents concerning William Scalzulli and/or Kraft Group, including, but not limited to, Kraft Group's actual or potential investment with BLMIS and/or the Defendant Funds.

8. All documents concerning Arthur Fried and any actual or potential investment by Avi Chai in a fund owned, managed and/or controlled by Merkin, GCC and/or BLMIS.

9. All documents concerning Arthur Fried and any actual or potential investment by Keren Keshert in a fund owned, managed and/or controlled by Merkin, GCC and/or BLMIS.

10. All documents concerning Avi Chai and its actual or potential investment in a fund owned, managed and/or controlled by Merkin, GCC and/or BLMIS.

11. All documents concerning Keren Keshert and its actual or potential investment in a fund owned, managed and/or controlled by Merkin, GCC and/or BLMIS.

12. All documents concerning Shelby White and any actual or potential investment by the Leon Levy Foundation in a fund owned, managed and/or controlled by Merkin, GCC and/or BLMIS.

13. All documents concerning John Bernstein and any actual or potential investment by the Leon Levy Foundation in a fund owned, managed and/or controlled by Merkin, GCC and/or BLMIS.

14. All documents concerning the Leon Levy Foundation and its actual or potential investment in a fund owned, managed and/or controlled by Merkin, GCC and/or BLMIS.
15. All documents concerning Patrick Erne.
16. All documents concerning Christof Reichmuth.
17. All documents concerning Reichmuth & Co., including, but not limited to, any actual or potential investment by Reichmuth & Co. in a fund owned, managed and/or controlled by Merkin, GCC and/or BLMIS.
18. All documents concerning Union Bancaire Privée.
19. All documents concerning Albourne Partners.
20. All documents concerning Cambridge Associates.
21. All documents concerning Charles Sherman.
22. All documents concerning Brendan McCarthy.
23. All documents concerning Suzanne Kleeblatt.
24. All documents concerning James Mnookin.
25. All documents concerning Concord Management.
26. All documents concerning Michael Matlin.
27. All documents concerning Michael Mahagan.
28. All documents concerning Ryan Gold.
29. All documents concerning Geraldine Fabrikant.
30. All documents concerning Donald Sussman.
31. To the extent not already produced, all documents concerning any arbitration proceeding or litigation involving the Defendants and concerning investments made by or through Defendants with BLMIS, including any pleadings, court filings, deposition transcripts

(including exhibits), transcripts, expert reports (including exhibits), witness statements taken or given by Defendants or produced in discovery, and final rulings or judgments.

32. All documents received by Defendants in connection with any legal proceeding or arbitration related to BLMIS.

33. All documents evidencing or reflecting any investor's knowledge of Gabriel, Ariel or Ascot's exposure to BLMIS.

34. All documents evidencing or reflecting any Defendant Fund investor or potential investors who questioned the investment in BLMIS or sought information regarding the investment in BLMIS.

35. All documents concerning any alleged deferred compensation owed to Mr. Merkin by the Defendant Funds.

36. All documents concerning the winding down, after December 11, 2008, of any of the Defendant Funds' assets.

37. All documents concerning any audit or investigation conducted by any Person of any of the Defendants' assets including, but not limited to, any of the underlying documents considered in connection with the NYAG Settlement.

38. All documents detailing and/or verifying Mr. Merkin's assets that were provided by Mr. Merkin to the NYAG.

39. All documents that were considered in preparing any documents provided to the NYAG detailing and/or verifying Mr. Merkin's assets.

40. All investor statements issued by the Defendants to investors of the Defendant Funds.

41. All documents concerning any transfers by and between accounts held by Defendants at BLMIS.

42. All documents concerning any transfers by and between bank accounts held by the Defendant Funds.

43. All documents concerning any loan by and between any Defendant, including, but not limited to, loans reflected in Defendant GCC's Quick Books records.

44. All documents concerning any loan extended to any investors and repayments received by any Defendant, including, but not limited to loans reflected in Defendants' document production to the NYAG.

45. To the extent not already produced, all documents concerning the Net Asset Value of the Defendant Funds.

46. To the extent not produced, all documents supporting and/or negative any claim or defense in the litigation.

Date: New York, New York  
April 12, 2013

Respectfully submitted,

/s/ Edward J. Jacobs  
Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: dsheehan@bakerlaw.com  
Lan Hoang  
Email: lhoang@bakerlaw.com  
Edward J. Jacobs  
Email: ejacobs@bakerlaw.com

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

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served this 12th day of April, 2013 by electronic mail upon the following:

Counsel to Defendants J. Ezra Merkin and Gabriel Capital Corporation

Neil A. Steiner, Esq.

Kristina Moon, Esq.

Dechert LLP

Email: neil.steiner@dechert.com

Email: kristina.moon@dechert.com

Counsel to Bart M. Schwartz, Receiver of Gabriel Capital, L.P. and Ariel Fund Limited

Casey Laffey, Esq.

Jordan W. Siev, Esq.

Reed Smith LLP

Email: claffey@reedsmith.com

Email: jsiev@reedsmith.com

Counsel to Ascot Partners, L.P. and David B. Pitofsky, Receiver for Ascot Partners, L.P.

Daniel M. Glosband, Esq.

Joseph Schwartz, Esq.

Goodwin Procter LLP

Email: dglosband@goodwinprocter.com

Email: jschwartz@goodwinprocter.com

/s/ Edward J. Jacobs

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

**Schedule A: Protocol Governing the Production of Records**

I. Locations of Electronically Stored Information (“ESI”):

A. You shall identify and search the following locations for potentially relevant ESI:

1. Network Servers
  - a. Shared Drives on network servers
  - b. Personal Drives on network servers
2. Computers (including desktops, laptops, home computers)
3. PDAs (including blackberries, iPhones, other smartphones)
4. Email (both work and personal) on Email Servers and Computers
  - a. Email boxes in their entirety (including, Inboxes, Sent Folders, Subfolders)
  - b. Archives
5. Intranet
6. Document Management Systems (e.g., iManage, FileSite, Sharepoint)
7. CDs/DVDs/Flash Drives/External Drives
8. Voicemail Systems
9. Copy machines and scanners
10. Instant Message Programs

II. Location(s) of Hard Copy Records

- A. You shall identify and search the following locations for potentially relevant hard copy records.
1. Employee Offices (including home offices)
  2. On-site Record Storage Facilities
  3. Off-site Record Storage Facilities

III. Backups

- A. You shall identify backup programs/software, if any, in use since January 1, 2008. You shall also provide the procedures for backups and whether any backups have been overwritten or restored. Procedures may include:



**Schedule A: Protocol Governing the Production of Records**

1. Who performs the backups?
2. How often is the backup procedure performed?
3. Are full or incremental backups created?
4. How long are backups retained? Is there a backup rotation schedule?
5. What medium is the backup stored on?
6. Where are the backups maintained?
7. Are the backups indexed? Are they searchable?
8. How do You keep track of the existing backups? Are there schedules or a database of existing backups?
9. Have the policy/procedures changed since January 1, 2008?
10. Whether any email server backups have been destroyed or overwritten since January 1, 2008?
11. Whether an employee has ever asked for emails to be restored because they were inadvertently deleted (and if so, whether the emails were restored)?
12. What steps are necessary to restore the email box of a specific employee as of a particular date and time, including costs involved?

**IV. Manner of Production Generally**

- A. All documents produced to the Trustee shall be provided in either native file ("native") or single-page 300 dpi-resolution group IV TIF format ("TIFF") as specified below, along with appropriately formatted industry-standard database load files, and accompanied by true and correct copies or representations of unaltered attendant metadata. Where documents are produced in TIFF format, each document shall be produced along with a multi-page, document-level searchable text file ("searchable text") as rendered by an industry-standard text extraction program in the case of electronic originals, or by an industry-standard Optical Character Recognition ("OCR") program in the case of scanned paper documents. Searchable text of documents shall not be produced as fielded data within the ".dat file" as described below. In addition to the fielded data to be provided as set forth below, the ".dat file" shall contain a field identifying if a document has been designated "confidential."

**Schedule A: Protocol Governing the Production of Records**V. Production Formats of Electronic Records

Documents and other responsive data or materials created, stored, or displayed on electronic or electro-magnetic media shall be produced in the order in which the documents are or were stored in the ordinary course of business, including all reasonably accessible metadata, custodian or document source information, and searchable text as to allow the Trustee through a reasonable and modest effort, to fairly, accurately and completely access, search and display, comprehend and assess the documents' true and original content.

All responsive electronically stored information ("ESI") shall be produced in the following formats:

A. TIFFs.

1. All images shall be delivered as single-page 300 dpi-resolution group IV TIF format. Image file names should not contain spaces.

B. Unique IDs.

1. Each image should have a unique file name and should be named with the Bates number assigned to it.

C. Text File.

1. Extracted full text in the form of multipage .txt files shall be provided. Text from redacted pages will be produced in optical character recognition ("OCR") format rather than extracted text.

D. Parent-Child Relationship.

1. Parent-child relationships (the association between an attachment and its parent record) should be preserved and produced.

E. Database Load Files and Production Media Structure.

1. Database load files shall consist of: (1) a comma-delimited values (".dat") file containing: production document identifier information, data designed to preserve "parent and child" relationships within document "families," reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper documents), custodian or document source information, as well as native file loading/linking information (where applicable); and (2) an Opticon (".opt") file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named "Data," images shall be provided within a root level "Images" folder containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level "Text" folder.

**Schedule A: Protocol Governing the Production of Records**

F. Metadata.

1. You shall provide all metadata fields including, but not limited to, those set forth in the below metadata fields for emails and records that were originally created using common, off-the-shelf software (e.g., Microsoft Word, Microsoft PowerPoint, Microsoft Excel, Adobe PDF), whether attached to an email or created and produced as a stand-alone document.
2. Metadata Fields.
  - a. Custodian
  - b. Beginning Bates Number
  - c. Ending Bates Number
  - d. Beginning Attachment Bates Number
  - e. Ending Attachment Bates Number
  - f. Record Type
  - g. Sent Date
  - h. Sent Time
  - i. Create Date
  - j. Create Time
  - k. Last Modified Date
  - l. Last Modified Time
  - m. Parent Folder
  - n. Author
  - o. To
  - p. From
  - q. CC
  - r. BCC
  - s. Subject/Title
  - t. Original Source

**Schedule A: Protocol Governing the Production of Records**

- u. Native Path
- v. File Extension
- w. File Name
- x. File Size
- y. MD5Hash

**G. Emails and Attachments, and Other Email Account-Related Documents.**

1. All documents and accompanying metadata created and/or stored in the ordinary course of business within commercial, off-the-shelf e-mail systems including but not limited to Microsoft Exchange™, Lotus Notes™ or Novell Groupwise™ shall be produced in TIFF format, accompanying metadata, and searchable text files or, alternately, in a format that fairly, accurately, and completely represents each document in such a manner as to make the document(s) reasonably useable, manageable, and comprehensible by the Trustee.

**H. Documents and Data Created or Stored in or by Structured Electronic Databases.**

1. With the exclusion of email and email account-related documents and data, all documents and accompanying metadata created and/or stored in structured electronic databases or files shall be produced in a format that enables the Trustee to reasonably manage and import those documents into a useable, coherent database. The documents must be accompanied with reasonably detailed, clear and focused documentation explaining the documents' content and format including but not limited to data dictionaries and diagrams. Some acceptable formats, if and only if provided with definitive file(s), table(s) and field level schemas include:
  - a. XML format file(s);
  - b. Microsoft SQL database(s);
  - c. Access database(s); and/or
  - d. fixed or variable length ASCII delimited files.

**I. Spreadsheets, Multimedia, and Non-Standard File Types.**

1. All documents generated or stored in software such as Microsoft Excel or other commercially available spreadsheet programs, as well as any multimedia files such as audio or video, shall be produced in their native format, along with an accompanying placeholder image in tiff format indicating a native file has been produced. A "Nativelink" entry shall be

**Schedule A: Protocol Governing the Production of Records**

included in the .dat load file indicating the relative file path to each native file on the production media. To the extent the party has other file types that do not readily or easily and accurately convert to tiff and searchable text, the party may elect to produce those files in native format subject to the other requirements listed herein. Native files may be produced within a separate root-level folder structure on deliverable media entitled "Natives."

2. To the extent spreadsheets are being redacted, you shall produce the spreadsheets as redacted in TIFF format. Where necessary, the parties will negotiate in good faith productions in native format of redacted spreadsheets where production in TIFF format is impracticable

J. "Other" Electronic Documents.

1. All other documents and accompanying metadata and embedded data created or stored in unstructured files generated by commercially available software systems (excluding e-mails, structured electronic databases, spreadsheets, or multimedia) such as but not limited to word processing (such as Microsoft Word), image files (such as Adobe .pdf files, and other formats), and text files shall be produced in tiff and searchable text format in the order the files are or were stored in the ordinary course of business.

VI. Production Format of Hard Copy Records

Documents originally created or stored on paper shall be produced in TIFF format. Relationships between documents shall be identified within the .dat file utilizing document identifier numbers to express parent document/child attachment boundaries, folder boundaries, and other groupings. In addition, the searchable text of each document shall be provided as a multi-page text file as provided for by these instructions.

All responsive hard copy records shall be produced in the following formats:

A. TIFFs.

1. All images shall be delivered as single-page 300 dpi-resolution group IV TIF format. Image file names should not contain spaces.

B. Unique IDs.

1. Each image should have a unique file name and should be named with the Bates number assigned to it.

C. OCR.

1. High-quality multipage OCR text shall be provided.

D. Database Load Files.

**Schedule A: Protocol Governing the Production of Records**

1. Database load files shall consist of: (1) a comma-delimited values (".dat") file containing: production document identifier information, data designed to preserve "parent and child" relationships within document "families", reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper documents), custodian or document source information, as well as native file loading/linking information (where applicable); and (2) an Opticon (".opt") file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named "Data," images shall be provided within a root level "Images" folder containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level "Text" folder.

E. Unitizing of Records.

1. In scanning hard copy records, distinct records shall not be merged into a single record, and single records shall not be split into multiple records.

F. Parent-Child Relationship.

1. Parent-child relationships (the association between an attachment and its parent record) should be preserved and produced.

G. Objective Coding Fields.

1. The following objective coding fields should be provided:
  - a. Beginning Bates Number
  - b. Ending Bates Number
  - c. Beginning Attachment Bates Number
  - d. Ending Attachment Bates Number
  - e. Source/Custodian

H. Objective Coding Format

1. Fields should be Pipe (|) delimited.
2. String values within the file should be enclosed with Carats (^).
3. Multiple entries in a field should have a semi-colon (;) delimiter.
4. The first line should contain metadata headers and below the first line there should be exactly only one line for each record.
5. Each field row must contain the same amount of fields as the header row.

## **EXHIBIT 20**

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

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

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

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,  
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,  
GABRIEL CAPITAL CORPORATION,

Defendants.

Adv. Pro. No. 09-01182 (BRL)

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**TRUSTEE'S FOURTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO  
DEFENDANTS ASCOT PARTNERS, L.P.**

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**PLEASE TAKE NOTICE** that pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to this adversary proceeding pursuant to Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Civil Rules of



the United States District Court for the Southern District of New York and this Court (the “Local Rules”), Irving H. Picard, Trustee (the “Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) pursuant to the Securities Investment Protection Act (“SIPA”), and the estate of Bernard L. Madoff, hereby requests that Defendants J. Ezra Merkin and Gabriel Capital Corporation (“Merkin” and “GCC” or “Defendants”) produce Documents responsive to the document requests set forth herein, and deliver the same to the office of Baker Hostetler LLP, c/o Edward J. Jacobs, Esq., 45 Rockefeller Plaza, New York, New York 10111 within 30 days hereof.

### **DEFINITIONS**

1. The rules of construction and definitions in Local Rule 26.3, as adopted in Rule 7026-1 of the Bankruptcy Rules, are hereby incorporated by reference. All defined terms, including those defined in Local Rule 26.3, are capitalized herein.
2. “Account” means the BLMIS Account(s) set forth on Exhibit A to the Complaint and/or any other BLMIS account in which any Defendant has or had any interest in any capacity, whether individually or as a fiduciary and whether directly or indirectly.
3. “Applicable Period” means the period between and including the date on which the Defendant first opened an account with, or managed by, the Debtor, through the present.
4. “Ariel” means Ariel Fund, Ltd.
5. “Ascot” means Ascot Partners, L.P. and/or Ascot Fund, Ltd.
6. “BLMIS” means Bernard L. Madoff Investment Securities LLC, Madoff Securities International Ltd. (“MSIL”), Madoff Securities International LLC, Bernard L. Madoff, Ruth Madoff, and all affiliated Persons and entities, including, but not limited to, any officers, directors, agents, representatives, employees, partners, parent companies, subsidiaries,

predecessor or successor and related entities, and affiliates of the above specifically identified Persons and entities.

7. “Complaint” means the complaint filed by the Trustee in this adversary proceeding.

8. “Defendant(s)” means and includes each or all defendants in this action, as well as any group of two or more defendants, including Merkin, Gabriel, Ariel, Ascot, and GCC, and any of their officers, directors, employees, partners, corporate parents, subsidiaries or affiliates.

9. “Defendant Funds” means Gabriel, Ariel, and Ascot.

10. “Gabriel” means Gabriel Capital, L.P.

11. “GCC” means Gabriel Capital Corporation.

12. “Merkin” means J. Ezra Merkin.

13. “Net Asset Value” means gross assets less gross liabilities attributable to a class or series of shares of any of the Defendants Funds as of a particular date of determination.

14. “NYAG” means the New York State Attorney General.

15. “NYAG Action” means them matter of *The People of the State of New York v. J. Ezra Merkin, et al.*, Index No. 450879/2009.

16. “NYAG Settlement” means the settlement, which was announced on June 25, 2012 by the NYAG, in the NYAG Action.

17. “Subsequent Transfer” means any Transfer of Customer Property (as defined by SIPA §78III(4)) conveyed, transmitted, paid and/or remitted by any Defendant to another person, or any Transfer of Customer Property conveyed to another person or entity prior to being transferred to any Defendant.

18. “Transfer(s)” means any conveyance, transmittal, disposition, remittance, payment or payments made by BLMIS during the Applicable Period to, or on behalf of, any Defendant, including, but not limited to, any cash, funds, property, or other value conveyed by check, wire transfer, debit, credit to an account, the return of property, withdrawal from the Account, or by any other manner as set forth under section 101(54) of the Bankruptcy Code or section 270 of the New York Debtor & Creditor Law. *See* 11 U.S.C. § 101(54); N.Y. DEBT. & CRED. Law § 270. “Transfer” also includes, but is not limited to, payments or conveyances of value by BLMIS to any third parties, including intermediaries, for the benefit of Defendants.

19. “You” or “Your” means and includes Ascot Partners, L.P. and/or Ascot Fund, Ltd. in any capacity or anyone acting on Ascot’s behalf, including any predecessor-in-interest.

20. For all purposes herein, spelling, grammar, syntax, abbreviations, idioms, and proper nouns shall be construed and interpreted according to their context to give proper meaning and consistency to the request for Documents.

21. Reference to any Person that is not a natural Person and is not otherwise defined herein refers to and includes any parent, subsidiary, affiliate, division, branch, agency, representative office, predecessor, successor, principal, member, director, officer, shareholder, manager, employee, attorney-in-fact, attorney, nominee, agent, or representative of such Person.

### **INSTRUCTIONS**

Federal Rules 26-37, made applicable to this proceeding pursuant to the Bankruptcy Rules, are hereby incorporated by reference and apply to each of the following instructions:

1. All Documents shall be identified by the request(s) to which they are primarily responsive or be produced as they are maintained in the usual course of business.

2. Produce all Documents and all other materials described below in Your actual or constructive possession, custody, or control, including in the possession, custody, or control of a

current or former employee, wherever those Documents and materials are maintained, including on personal computers, PDAs, wireless devices, or web-based email systems such as Gmail, Yahoo, etc.

3. You must produce all Documents in Your custody or control, whether maintained in electronic or paper form and whether located on hardware owned and maintained by You or hardware owned and/or maintained by a third Party that stores data on Your behalf. You must produce all such Documents even if they were deleted or in draft form. Without limitation, hardware where such data may be stored includes servers; desktop, laptop, or tablet computers; cell and smart phones; PDA devices; scanners, fax machines, and copying machines; and mobile storage devices, such as thumb or external hard drives. Electronically stored Documents include any computerized data or content stored on electromagnetic media. Without limitation, types of electronically stored Documents include email, voicemail, and instant messages, intranet and internet system data, telephone and cellular telephone calling records, data compilations, spreadsheets, word processing documents, images, databases, digital photocopier memory and any other information stored in memory storage devices.

4. Produce the original or duplicate, as such terms are defined by Rule 1001 of the Federal Rules of Evidence, of each Document requested together with all non-identical copies and drafts of that Document. If a duplicate is produced, it should be legible and bound or stapled in the same manner as the original.

5. Documents not otherwise responsive to these Requests should be produced: (i) if such Documents mention, discuss, refer to, explain, or concern one or more Documents that are called for by these Requests; (ii) if such Documents are attached to, enclosed with, or accompany Documents called for by these Requests; or (iii) if such Documents constitute routing slips,

transmittal memoranda or letters, comments, evaluations, or similar materials.

6. Documents attached to each other should not be separated; separate Documents should not be attached to each other.

7. Documents should include all exhibits, appendices, linked Documents, or otherwise appended Documents that are referenced in, attached to, included with, or are a part of the requested Documents.

8. If a request calls for information Concerning a Transfer, Subsequent Transfer, redemption, or withdrawal from a BLMIS account, include Documents that reflect the account name and number for the account the funds were transferred from and to, method of transfer (i.e., wire, check, etc.), date of, amount and the reason for the Transfer, Subsequent Transfer, redemption, or withdrawal.

9. If any Document, or any part thereof, is not produced based on a claim of attorney-client privilege, work-product protection, or any other privilege, then in answer to such request or part thereof, for each such Document:

- a. Identify the type, title and subject matter of the Document;
- b. state the place, date, and manner of preparation of the Document;
- c. Identify all authors, addressees, and recipients of the Document, including information about such Persons to assess the privilege asserted; and
- d. Identify the legal privilege(s) and the factual basis for the claim.

10. Documents should not contain redactions unless such redactions are made to protect information subject to the attorney-client privilege and/or work product doctrine. In the event any Documents are produced with redactions, a log setting forth the information requested in Instruction 9 above must be provided.

11. To the extent a Document sought herein was at one time, but is no longer, in Your actual or constructive possession, custody, or control, state whether it: (i) is missing or lost; (ii) has been destroyed; (iii) has been transferred to others; and/or (iv) has been otherwise disposed of. In each instance, Identify the Document, state the time period during which it was maintained, state the circumstance surrounding authorization for such disposition thereof and the date thereof, Identify each Person having knowledge of the circumstances of the disposition thereof, and Identify each Person who had possession, custody, or control of the Document, to whom it was available or who had knowledge of the Document and/or the contents thereof. Documents prepared prior to, but that relate or refer to, the time period covered by these Document Requests are to be identified and produced.

#### **MANNER OF PRODUCTION**

All documents produced to the Trustee shall be provided in accordance with and pursuant to the Protocol Governing the Production of Records, attached hereto as Schedule A.

#### **REQUESTS FOR PRODUCTION**

1. All documents received by Defendants in connection with any legal proceeding or arbitration related to BLMIS.
2. All documents evidencing or reflecting any investor's knowledge of Gabriel, Ariel or Ascot's exposure to BLMIS.
3. All documents evidencing or reflecting any Defendant Fund investor or potential investors who questioned the investment in BLMIS or sought information regarding the investment in BLMIS.
4. All documents concerning any alleged deferred compensation owed to Mr. Merkin by the Defendant Funds.

5. All documents concerning the winding down, after December 11, 2008, of any of the Defendant Funds' assets.

6. All documents concerning any audit or investigation conducted by any Person of any of the Defendants' assets including, but not limited to, any of the underlying documents considered in connection with the NYAG Settlement.

7. All documents detailing and/or verifying Mr. Merkin's assets that were provided by Mr. Merkin to the NYAG.

8. All documents that were considered in preparing any documents provided to the NYAG detailing and/or verifying Mr. Merkin's assets.

9. All investor statements issued by the Defendants to investors of the Defendant Funds.

10. To the extent not already produced, all documents concerning the Net Asset Value of the Defendant Funds.

11. To the extent not produced, all documents supporting and/or negating any claim or defense in the litigation.

Date: New York, New York  
June 3, 2013

Respectfully submitted,

/s/ Edward J. Jacobs

Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: dsheehan@bakerlaw.com  
Lan Hoang  
Email: lhoang@bakerlaw.com  
Edward J. Jacobs  
Email: ejacobs@bakerlaw.com

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



**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served this 3rd day of June, 2013 by electronic mail upon the following:

Counsel to Defendants J. Ezra Merkin and Gabriel Capital Corporation

Neil A. Steiner, Esq.

Kristina Moon, Esq.

Dechert LLP

Email: neil.steiner@dechert.com

Email: kristina.moon@dechert.com

Counsel to Bart M. Schwartz, Receiver of Gabriel Capital, L.P. and Ariel Fund Limited

Casey Laffey, Esq.

Jordan W. Siev, Esq.

Reed Smith LLP

Email: claffey@reedsmith.com

Email: jsiev@reedsmith.com

Counsel to Ascot Partners, L.P. and Ralph C. Dawson, Receiver for Ascot Partners, L.P.

David L. Barrack, Esq.

Judith A. Archer, Esq.

Jami Mills Vibbert, Esq.

Fulbright & Jaworski LLP

Email: dbarrack@fulbright.com

Email: jarcher@fulbright.com

Email: jvibbert@fulbright.com

/s/ Edward J. Jacobs

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

**Schedule A: Protocol Governing Production of Documents**

I. Locations of Electronically Stored Information (“ESI”):

A. You shall identify and search the following locations for potentially relevant ESI:

1. Network Servers
  - a. Shared Drives on network servers
  - b. Personal Drives on network servers
2. Computers (including desktops, laptops, home computers)
3. PDAs (including blackberries, iPhones, other smartphones)
4. Email (both work and personal) on Email Servers and Computers
  - a. Email boxes in their entirety (including, Inboxes, Sent Folders, Subfolders)
  - b. Archives
5. Intranet
6. Document Management Systems (e.g., iManage, FileSite, Sharepoint)
7. CDs/DVDs/Flash Drives/External Drives
8. Voicemail Systems
9. Copy machines and scanners
10. Instant Message Programs

II. Location(s) of Hard Copy Records

- A. You shall identify and search the following locations for potentially relevant hard copy records.
1. Employee Offices (including home offices)
  2. On-site Record Storage Facilities
  3. Off-site Record Storage Facilities

III. Backups

A. You shall identify backup programs/software, if any, in use since January 1, 2008. You shall also provide the procedures for backups and whether any backups have been overwritten or restored. Procedures may include:

1. Who performs the backups?
2. How often is the backup procedure performed?
3. Are full or incremental backups created?
4. How long are backups retained? Is there a backup rotation schedule?
5. What medium is the backup stored on?
6. Where are the backups maintained?
7. Are the backups indexed? Are they searchable?
8. How do You keep track of the existing backups? Are there schedules or a database of existing backups?
9. Have the policy/procedures changed since January 1, 2008?
10. Whether any email server backups have been destroyed or overwritten since January 1, 2008?
11. Whether an employee has ever asked for emails to be restored because they were inadvertently deleted (and if so, whether the emails were restored)?
12. What steps are necessary to restore the email box of a specific employee as of a particular date and time, including costs involved?

IV. Manner of Production Generally

A. All documents produced to the Trustee shall be provided in either native file ("native") or single-page 300 dpi-resolution group IV TIF format ("TIFF") as specified below, along with appropriately formatted industry-standard database load files, and accompanied by true and correct copies or representations of unaltered attendant metadata. Where documents are produced in TIFF format, each document shall be produced along with a multi-page, document-level searchable text file ("searchable text") as rendered by an industry-standard text extraction program in the case of electronic originals, or by an industry-standard Optical Character Recognition ("OCR") program in the case of scanned paper documents. Searchable text of documents shall not be produced as fielded data within the ".dat file" as described below. In addition to the fielded data to be provided as set forth below, the ".dat file" shall contain a field identifying if a document has been designated "confidential."

V. Production Formats of Electronic Records

Documents and other responsive data or materials created, stored, or displayed on electronic or electro-magnetic media shall be produced in the order in which the documents are or were stored in the ordinary course of business, including all reasonably accessible metadata, custodian or document source information, and searchable text as to allow the Trustee through a reasonable and modest effort, to fairly, accurately and completely access, search and display, comprehend and assess the documents' true and original content.

All responsive electronically stored information ("ESI") shall be produced in the following formats:

A. TIFFs.

1. All images shall be delivered as single-page 300 dpi-resolution group IV TIF format. Image file names should not contain spaces.

B. Unique IDs.

1. Each image should have a unique file name and should be named with the Bates number assigned to it.

C. Text File.

1. Extracted full text in the form of multipage .txt files shall be provided. Text from redacted pages will be produced in optical character recognition ("OCR") format rather than extracted text.

D. Parent-Child Relationship.

1. Parent-child relationships (the association between an attachment and its parent record) should be preserved and produced.

E. Database Load Files and Production Media Structure.

1. Database load files shall consist of: (1) a comma-delimited values (".dat") file containing: production document identifier information, data designed to preserve "parent and child" relationships within document "families," reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper documents), custodian or document source information, as well as native file loading/linking information (where applicable); and (2) an Opticon (".opt") file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named "Data," images shall be provided within a root level "Images" folder containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level "Text" folder.

F. Metadata.

1. You shall provide all metadata fields including, but not limited to, those set forth in the below metadata fields for emails and records that were originally created using common, off-the-shelf software (e.g., Microsoft Word, Microsoft PowerPoint, Microsoft Excel, Adobe PDF), whether attached to an email or created and produced as a stand-alone document.
2. Metadata Fields.
  - a. Custodian
  - b. Beginning Bates Number
  - c. Ending Bates Number
  - d. Beginning Attachment Bates Number
  - e. Ending Attachment Bates Number
  - f. Record Type
  - g. Sent Date
  - h. Sent Time
  - i. Create Date
  - j. Create Time
  - k. Last Modified Date
  - l. Last Modified Time
  - m. Parent Folder
  - n. Author
  - o. To
  - p. From
  - q. CC
  - r. BCC
  - s. Subject/Title
  - t. Original Source

- u. Native Path
- v. File Extension
- w. File Name
- x. File Size
- y. MD5Hash

G. Emails and Attachments, and Other Email Account-Related Documents.

1. All documents and accompanying metadata created and/or stored in the ordinary course of business within commercial, off-the-shelf e-mail systems including but not limited to Microsoft Exchange™, Lotus Notes™ or Novell Groupwise™ shall be produced in TIFF format, accompanying metadata, and searchable text files or, alternately, in a format that fairly, accurately, and completely represents each document in such a manner as to make the document(s) reasonably useable, manageable, and comprehensible by the Trustee.

H. Documents and Data Created or Stored in or by Structured Electronic Databases.

1. With the exclusion of email and email account-related documents and data, all documents and accompanying metadata created and/or stored in structured electronic databases or files shall be produced in a format that enables the Trustee to reasonably manage and import those documents into a useable, coherent database. The documents must be accompanied with reasonably detailed, clear and focused documentation explaining the documents' content and format including but not limited to data dictionaries and diagrams. Some acceptable formats, if and only if provided with definitive file(s), table(s) and field level schemas include:
  - a. XML format file(s);
  - b. Microsoft SQL database(s);
  - c. Access database(s); and/or
  - d. fixed or variable length ASCII delimited files.

I. Spreadsheets, Multimedia, and Non-Standard File Types.

1. All documents generated or stored in software such as Microsoft Excel or other commercially available spreadsheet programs, as well as any multimedia files such as audio or video, shall be produced in their native format, along with an accompanying placeholder image in tiff format indicating a native file has been produced. A "Nativelink" entry shall be

included in the .dat load file indicating the relative file path to each native file on the production media. To the extent the party has other file types that do not readily or easily and accurately convert to tiff and searchable text, the party may elect to produce those files in native format subject to the other requirements listed herein. Native files may be produced within a separate root-level folder structure on deliverable media entitled "Natives."

2. To the extent spreadsheets are being redacted, you shall produce the spreadsheets as redacted in TIFF format. Where necessary, the parties will negotiate in good faith productions in native format of redacted spreadsheets where production in TIFF format is impracticable

J. "Other" Electronic Documents.

1. All other documents and accompanying metadata and embedded data created or stored in unstructured files generated by commercially available software systems (excluding e-mails, structured electronic databases, spreadsheets, or multimedia) such as but not limited to word processing (such as Microsoft Word), image files (such as Adobe .pdf files, and other formats), and text files shall be produced in tiff and searchable text format in the order the files are or were stored in the ordinary course of business.

VI. Production Format of Hard Copy Records

Documents originally created or stored on paper shall be produced in TIFF format. Relationships between documents shall be identified within the .dat file utilizing document identifier numbers to express parent document/child attachment boundaries, folder boundaries, and other groupings. In addition, the searchable text of each document shall be provided as a multi-page text file as provided for by these instructions.

All responsive hard copy records shall be produced in the following formats:

A. TIFFs.

1. All images shall be delivered as single-page 300 dpi-resolution group IV TIF format. Image file names should not contain spaces.

B. Unique IDs.

1. Each image should have a unique file name and should be named with the Bates number assigned to it.

C. OCR.

1. High-quality multipage OCR text shall be provided.

D. Database Load Files.

1. Database load files shall consist of: (1) a comma-delimited values (".dat") file containing: production document identifier information, data designed to preserve "parent and child" relationships within document "families", reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper documents), custodian or document source information, as well as native file loading/linking information (where applicable); and (2) an Opticon (".opt") file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named "Data," images shall be provided within a root level "Images" folder containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level "Text" folder.

E. Unitizing of Records.

1. In scanning hard copy records, distinct records shall not be merged into a single record, and single records shall not be split into multiple records.

F. Parent-Child Relationship.

1. Parent-child relationships (the association between an attachment and its parent record) should be preserved and produced.

G. Objective Coding Fields.

1. The following objective coding fields should be provided:
  - a. Beginning Bates Number
  - b. Ending Bates Number
  - c. Beginning Attachment Bates Number
  - d. Ending Attachment Bates Number
  - e. Source/Custodian

H. Objective Coding Format

1. Fields should be Pipe (|) delimited.
2. String values within the file should be enclosed with Carats (^).
3. Multiple entries in a field should have a semi-colon (;) delimiter.
4. The first line should contain metadata headers and below the first line there should be exactly only one line for each record.
5. Each field row must contain the same amount of fields as the header row.