

ATTACHMENT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,
Debtor,

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

SIPA LIQUIDATION

(Substantively Consolidated)

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

Plaintiff,

Adv. Pro. No. 09-01239 (LGB)

v.

FAIRFIELD INVESTMENT FUND LIMITED,
STABLE FUND, FAIRFIELD GREENWICH
LIMITED, FAIRFIELD GREENWICH
(BERMUDA), LTD., FAIRFIELD GREENWICH
ADVISORS LLC, FAIRFIELD INTERNATIONAL
MANAGERS, INC., THE ESTATE OF WALTER
M. NOEL JR., MONICA NOEL, in her capacity as
Executor of the Estate of Walter M. Noel, Jr.,
JEFFREY TUCKER, ANDRES PIEDRAHITA,
AMIT VIJAYVERGIYA, PHILIP TOUB, CORINA
NOEL PIEDRAHITA, FAIRFIELD GREENWICH
CAPITAL PARTNERS and SHARE
MANAGEMENT LLC,

Defendants.

**INITIAL EXPERT REPORT OF
AMY B. HIRSCH**

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1. I have been retained by Baker & Hostetler, LLP, counsel for Irving H. Picard, Trustee (“Trustee”) for the substantively consolidated Securities Investor Protection Act (“SIPA”) liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”)¹ and the Chapter 7 estate of Bernard L. Madoff (“Madoff”).² This report is offered pursuant to Federal Rule of Civil Procedure 26(a)(2). My curriculum vitae and a list of court and deposition appearances as required by Federal Rule of Civil Procedure 26 are attached to this report as **Appendix I**.
2. I have been asked to opine on whether the contemporaneous documents and information in the possession of the Defendants, as well as contemporaneous publicly available information, showed that BLMIS was not trading securities during the time Fairfield Sentry Limited (“Fairfield Sentry”), Greenwich Sentry, L.P. (“GS”), Greenwich Sentry Partners, L.P. (“GSP”), Fairfield Sigma Limited (“Fairfield Sigma”) and Fairfield Lambda Limited (“Fairfield Lambda”), collectively referred to herein as the “Sentry Funds,” were invested with BLMIS. The approach I took was as if I were conducting due diligence and risk analysis, in a similar manner as represented by FGG (defined below), using the contemporaneous documentation and information available to FGG, as well as my experience as a financial industry professional.
3. I am being compensated at a rate of \$535 per hour, plus expenses. My compensation is not contingent upon my opinions, the testimony I intend to offer in this case, or the outcome of this litigation.

I. Summary of Opinions

4. Fairfield Greenwich Group (“FGG”), a collective of several entities defined below, had a

¹ Throughout this report “BLMIS” will refer to the Investment Advisory business (the “IA Business”) of BLMIS. There was also a market making and proprietary trading business of BLMIS, which will collectively be referred to as the “Proprietary Trading Business.” If I am referring to the Proprietary Trading Business I will explicitly indicate as such.

² Kroll, LLC, a global advisor in the areas of valuation, corporate finance, investigations, disputes, cyber security, compliance and regulatory matters, and other governance-related issues (“Kroll”), was retained to assist me in the preparation of this report. Employees of Kroll worked under my direct supervision in the preparation of work supporting my opinions contained herein.

mutually beneficial relationship with BLMIS and Madoff – they all profited significantly. The Sentry Funds were specifically created to invest in a strategy referred to as a split-strike conversion strategy (“SSC”) purportedly³ managed by BLMIS under the direct control of Madoff. From its inception as a firm, FGG contributed significantly to BLMIS’s assets under management (“AUM”). Over their history, the Sentry Funds invested approximately \$4.7 billion dollars with BLMIS.⁴ From inception until at least 2003, when FGG started diversifying, FGG was essentially a marketing arm for BLMIS⁵ and was highly reliant upon the fees generated by the Sentry Funds through its investment with BLMIS. From 2002 through 2008, FGG received fees totaling over \$800 million from Fairfield Sentry alone.⁶

5. FGG represented that they had a sophisticated due diligence process, assessing both qualitative and quantitative risk, and risk management processes and procedures in place to oversee its investors’ investments. In due diligence, the single most important task is verifying that the information you receive is true and accurate; the mantra of due diligence professionals is “trust but verify.” If you are unable to verify the information, you cannot trust it. The importance of thorough due diligence cannot be overstated, as it is the first line of defense against fraud. Risk management and continuous and reactive due diligence are the next lines of defense. Fiduciaries responsible for due diligence and risk management must look at the totality of facts and flags throughout the life of an investment. Based on my due diligence and risk analysis review of the documents available to FGG, I found direct evidence that trading was not taking place in the

³ Any discussion of the BLMIS SSC strategy, BLMIS trading activities, positions, or returns in the Fairfield BLMIS Accounts are assumed herein to be purported.

⁴ The cash additions into the Fairfield BLMIS Accounts are reflected on the BLMIS customer statements. *See* Settled Cash table, StorQM Customer Statements, Customer Ledgers.

⁵ *See, e.g.*, Figure 15; Fairfield Sentry Limited Confidential Private Placement Memorandum, July 1, 2003 [SECSEV2137283-350 at -303].

⁶ Fairfield Sentry Limited financial statement, year ended December 31, 2002 [BBVSAA0000389-412 at -399]; Fairfield Sentry Limited financial statement, year ended December 31, 2003 [BBVSAA0000329-354 at -337]; Fairfield Sentry Limited financial statement, year ended December 31, 2004 [BBVSAA0000302-328 at -310]; Fairfield Sentry Limited financial statement, year ended December 31, 2005 [BBVSAA0000278-301 at -286]; Fairfield Sentry Limited financial statement, year ended December 31, 2006 [BBVSAA0000798-817 at -807]; Fairfield Sentry Limited financial statement, year ended December 31, 2007 and 2006 [BBVSAA0001131-159 at -141]; Fairfield Sentry Limited financial statement, January 1, 2008 to June 30, 2008 [HSBSAE0000301-366 at -310].

Fairfield BLMIS Accounts (defined below) as early as 1997, if not earlier. Documents reflecting a lack of trading were coupled with FGG's acknowledgement of risks of fraud.⁷

6. FGG had almost two decades of documents and information showing impossible trading and improbable returns – meaning trades that could never happen in the market and returns that were inconsistent with the purported strategy. The documents and information in FGG's possession over its 18-year relationship with BLMIS, including the extraordinary number of red flags tied to unusual performance in the Fairfield BLMIS Accounts (defined below), performance that was uncoupled from the asset it was supposed to be highly correlated to under the purported strategy, confirmed the lack of trading. Incredibly, the documents and information in FGG's possession also showed conduct on the part of FGG's management to deflect investor and third-party questions about BLMIS and Madoff, to hinder an SEC inquiry into BLMIS and Madoff, and to prevent completion of certain due diligence that further confirmed the lack of trading at BLMIS.
7. Based on my professional experience, it is my opinion that the only reasonable conclusion is that the contemporaneous documents and information maintained by FGG along with publicly available information, showed that no trading was taking place in the Fairfield BLMIS Accounts, that BLMIS was not trading as it represented to investors, and that numerous other red flags cumulatively confirmed that BLMIS was not trading securities.
8. A complete list of the documents I considered in connection with this report is included as **Appendix II**. To the extent that additional information becomes available, I reserve the right to amend or supplement my opinions.

⁷ See, e.g., Amit Vijayvergiya's Notebook, February 2006 – May 2006 [FGG00098291-391 at -375 / SECSEL0001209-309 at -293] ("Big concern is [operational] risks/fraud"); Amit Vijayvergiya's Notebook, March 2007- September 2008 [FGG00103249-251 at -251 / SECSEV0099433-435 at -345] ("Risk 2 *BLM fraudulent (tickets etc?)").

II. Qualifications

A. Industry Experience

9. I am currently the sole owner and CEO/CIO of Paradigm Consulting Services, LLC, providing comprehensive due diligence services to institutional investors, investment management consulting, and litigation support and expert witness services. I have held this position since 1996.
10. I have 45 years of experience in alternative investments in managing fund-of-fund assets (over \$1 billion in assets at peak), operational and general due diligence of hedge funds, Commodity Trading Advisers⁸ (“CTAs”), and private equity, advising significant institutional investors, asset raising, and compliance. Regarding alternative investments, I have decades of experience managing a hedge fund/alternative investment consultancy firm known for its comprehensive understanding of alternative investment strategies, due diligence expertise, risk management guidance, and qualitative and quantitative monitoring of funds.
11. My experience also includes structuring and restructuring hedge funds and fund-of-funds, implementing new policies, procedures, and documentation for hedge funds, and creating operational and general due diligence plans for investors. My firm has advised sophisticated investors such as AIG Investment Management, Ontario Teachers’ Pension Plan, Banque Pictet & Cie fund-of-funds, and Howard Hughes Medical Institute, for which we conducted a full fund-of-funds search and due diligence.
12. I have conducted operational, qualitative, and quantitative due diligence on hundreds of private funds including hedge funds, managed futures managers, and private equity on behalf of large institutional investors such as pension plans, insurance companies, foundations, fund-of-funds, family offices (i.e., multi-family pooled structures and single-family structures created for investment purposes), and brokerage houses.
13. Further details of my specific experience are set forth in my curriculum vitae attached

⁸ The terms “advisor” and “adviser” are used interchangeably in the industry.

hereto as **Appendix I**.

14. I am a frequent speaker at alternative investment conferences, have been invited as a hedge fund expert to speak at the Syracuse University MBA program, the MBA Hedge Fund Program at Columbia University, and established courses for finance professionals.
15. I received a Bachelor of Arts Degree, cum laude, in economics from Fordham University, and received additional finance and management training in my various professional roles.

B. BLMIS Related Due Diligence Experience

16. In 1995, I was asked to conduct due diligence on behalf of a client on Gabriel Capital Corporation (“GCC”) and the Ariel Fund, which had investments with BLMIS. I sent a letter to Mr. Ezra Merkin, the investment manager, requesting certain documents in advance of a scheduled meeting. The letter requested the following documents: all Ariel Fund weekly and monthly performance numbers; the assets under management since the inception of the fund; audited financials; all marketing materials; a list of appropriate registrations for GCC; a list of key personnel, including their responsibilities and brief backgrounds; a copy of historical Ariel Fund letters sent to investors; a list of brokers; a description of GCC as a “firm” (e.g., organizational charts and ownership); and the identity of and contact information for Ariel Fund’s administrator, custodian, auditor, prime broker, and attorney. Mr. Merkin did not send the documents as requested in advance of the meeting. During the meeting, I again requested the documents and attempted to discuss Ariel Fund’s strategy, but Mr. Merkin was reluctant to share much information. As a result of the meeting and the inability to receive the requested documents and information, I recommended that the client fully redeem their investment.
17. In 2003, I conducted due diligence on behalf of a client, an investor in Tremont Advisers’ American Master Broad Market Prime Fund, L.P. (“Tremont”). This fund had a significant concentration of its investment with BLMIS and Madoff was identified as the sub-manager by Tremont, but there was no mention of BLMIS in the documents of the fund. Based on my due diligence, I raised concerns regarding lack of transparency, lack of sufficient volume relative to the amount of assets that Madoff purported to manage,

lack of ability to verify the administrator, custodian, auditor, prime broker, and attorney, and industry skepticism of BLMIS's returns and operations. I therefore recommended that my client fully redeem its investment in Tremont.

III. Definitions

18. In **Appendix III** hereto, I have itemized and defined industry terminology referred to throughout this report.

IV. Applicable Standards and Guidelines

19. In 1993, long before mandatory SEC registration and regulations were imposed on hedge funds, the Association for Investment Management and Research ("AIMR"), now known as the CFA Institute,⁹ created guidelines titled Performance Presentation Standards, referred to as AIMR-PPS. The primary mission of AIMR was to implement a standard code of conduct of ethics, best practices guidelines, and a standard method for calculating and presenting investment performance. The guidelines included specific guidance on disclosures to investors, investor rights, and investment manager ethics. These standards help ensure all investment professionals place "the interests of clients above their own personal interests."¹⁰ In my experience, the AIMR standards were utilized by most hedge funds starting in the early to mid-1990s.
20. Since at least 1999, AIMR has required its members, and recommended that non-members, "disclose to the client where the assets are to be maintained, as well as where or when they are moved [and] separate the client's assets from any other party's assets, including the member's own."¹¹ As noted above, AIMR changed its name to the CFA Institute, which governs professionals with a Chartered Financial Analyst ("CFA") designation.

⁹ See Investment Executive, *AIMR changes name to CFA Institute* (May 10, 2004) [PUBLIC0706622].

¹⁰ See CFA Institute Code of Ethics and Standards of Professional Conduct, effective January 1, 2006 [PUBLIC0707003].

¹¹ See *Standards of Practice Handbook*, Association for Investment Management and Research at 96-97 (8th ed. 1999) [PUBLIC0709401-404 at -404]; see also *Standards of Practice Handbook*, CFA Institute at 85-86 (11th ed. 2014) [PUBLIC0706704].

21. In 1995, AIMR recognized the need for one globally accepted set of standards for the presentation of investment performance, formally endorsing the Global Investment Performance Standards (“GIPS”) on February 19, 1999, a set of rigorous investment performance measurement standards, and recognized around the world to ensure full and fair disclosure of performance results and information necessary to enable potential investors to compare investment firms.¹² In 2006, the AIMR-PPS standards were merged into GIPS.¹³
22. In addition to GIPS, investment managers are guided by the Asset Manager Code of Professional Conduct (“Code of Conduct”), which outlines the ethical and professional responsibilities of firms that manage assets on behalf of clients, whether the assets are managed as separate accounts or pooled funds.¹⁴ The Code of Conduct was introduced in 2004 and formally adopted by the CFA Centre for Financial Market Integrity in 2005.¹⁵ GIPS guidelines and the Code of Conduct apply to investment managers and investment advisors regardless of whether they are registered with the SEC.¹⁶
23. The Code of Conduct sets forth the framework for all asset managers to provide services in a fair and professional manner and to fully disclose key elements of those services to clients, regardless of whether individual managers are required to register or comply with applicable securities laws or regulations. Even unregistered hedge fund managers are

¹² See *AIMR Performance Presentation Standards (AIMR-PPS)*, CFA Institute (2001) [PUBLIC0703101-145 at -106].

¹³ *History of the GIPS Standards*, Performance Measurement Solutions, (available at: <https://www.performancemeasurementsolutions.com/history>) (last accessed August 21, 2025).

¹⁴ See *Asset Manager Code of Professional Conduct*, CFA Institute, (2d. ed. 2010) [PUBLIC0706676].

¹⁵ See *Code of Conduct*, Exposure Draft, European Corporate Governance Institute (Nov. 2004), [PUBLIC0706648]; See also CFA Institute, *Asset Manager Code of Professional Conduct* (2005) [PUBLIC0706624]; *From Practice to Profession*, CFA Institute (2007) [PUBLIC0707017].

¹⁶ See *AIMR-PPS Standards* at 8-9; see also *Code of Conduct*. In December 2004, the SEC issued a rule change that required most hedge fund advisers to register by February 1, 2006 as investment advisers under the Investment Advisers Act of 1940. The requirement applied to firms managing in excess of \$25 million with more than 15 investors, and subjected them to additional reporting and compliance regulations. Among other things, the rule change emphasizes that advisers have a fiduciary duty to manage clients’ portfolios in the best interest of their clients, particularly to fully disclose any material conflicts and to seek best execution for client transactions. *Registration Under the Advisers Act of Certain Hedge Fund Advisers*, 17 CFR §§ 275, 279 (2004) [PUBLIC0706346-356]. The prohibitions and disclosures are consistent with the mandates of GIPS and the Code of Conduct. See also *supra*, Sec. IV, Applicable Standards and Guidelines.

encouraged to adopt the Code of Conduct and implement its provisions to ensure fair dealing and integrity, and to promote self-regulation.¹⁷

24. Any professional with a CFA designation, or candidates pursuing such designation, must follow the duty and care standard, which states that members and candidates must:¹⁸

- Exercise diligence, independence, and thoroughness in analyzing investments, making investment recommendations, and taking investment actions.
- Have a reasonable and adequate basis, supported by appropriate research and investigation, for any investment analysis, recommendation, or action.

25. The GARP Code of Conduct (“Code”),¹⁹ sets forth principles of professional conduct for Global Association of Risk Professionals (“GARP”), Financial Risk Management (“FRM[®]”) and Energy Risk Professional (“ERP[®]”) certifications and other GARP certification and diploma holders and candidates, GARP’s Board of Trustees, its Regional Directors, GARP Committee Members and GARP’s staff (hereinafter collectively referred to as “GARP Members”) in support of the advancement of the financial risk management profession. These principles promote the highest levels of ethical conduct and disclosure and provide direction and support for both the individual practitioner and the risk management profession. The code includes, but is not limited to the following principles:²⁰

- *GARP Members shall act with honesty, integrity, and competence to fulfill the risk professional’s responsibilities and to uphold the reputation of the risk management profession. GARP Members must avoid disguised contrivances in assessments, measurements and processes that are intended to provide business advantage at the expense of honesty and truthfulness.*
- *GARP Members have a responsibility to promote the interests of all relevant constituencies and will not knowingly perform risk management services directly or indirectly involving an actual or potential conflict of interest unless full disclosure has been provided to all affected parties of any actual or apparent*

¹⁷ See Alicia Licata, *Calculating and Reporting Performance – the Self-Regulatory Approach*, The Alternative Investment Management Association Limited Journal 1-3 (June 2004) [PUBLIC0706667].

¹⁸ See CFA Institute, *Code of Ethics and Standards of Professional Conduct* (2024) [PUBLIC0706359].

¹⁹ GARP Code of Conduct [PUBLIC0706998].

²⁰ GARP Code of Conduct [PUBLIC0706998].

conflict of interest. Where conflicts are unavoidable GARP Members commit to their full disclosure and management.

- *GARP Members will take all reasonable precautionary measures to prevent intentional and unintentional disclosure of confidential information.*

26. Generally Accepted Practices for GARP members include:²¹

- *Shall execute all services with diligence and perform all work in a manner that is independent from interested parties. GARP Members should collect, analyze and distribute risk information with the highest level of professional objectivity.*
- *Shall be familiar with current generally accepted risk management practices and shall clearly indicate any departure from their use.*
- *Shall ensure that communications include factual data and do not contain false information.*
- *Shall make a distinction between fact and opinion in the presentation of analysis and recommendations.*

27. The foregoing industry standards and guidelines were applicable to FGG.

V. Background

28. FGG presented itself to investors as a hedge fund manager (investment manager) of the Sentry Funds. In order to appreciate the difference between the typical industry fund and firm structures and the FGG firm and fund structures, it is necessary to explain the most typical structures first.

A. Overview of Typical Fund Structures

1. Hedge Funds

29. The term “hedge fund” refers to an investment vehicle. While there is no standard definition or structure for a hedge fund, hedge funds are open to a limited type of investor and undertake a broader range of investment activities than compared to a traditional long-only fund, which holds highly liquid securities but has limited tools to hedge risks

²¹ GARP Code of Conduct [PUBLIC0706998].

and exposures.²²

30. Fund managers (investment managers) and investment advisors have their own investment strategy and style that determines the types of investments, and the investment process used. They can choose from a broad array of investments along the capital structure in equities, bonds, commodities, derivatives, futures, and cash products.
31. The fund's governing and organizational documents, particularly the partnership agreement, offering memorandum, or prospectus (collectively, the "Governing Documents") codify the permitted strategies.²³ The fund's strategy and risks should be detailed in the fund's marketing material.²⁴

2. Onshore Hedge Fund

32. U.S. domiciled investors typically invest in a domestic or onshore hedge fund, usually formed as a limited liability company, a limited partnership, or a sole proprietorship.²⁵
33. **Figure 1** illustrates the structure of a typical domestic hedge fund formed as a limited partnership and the associated vendors or responsible entities.

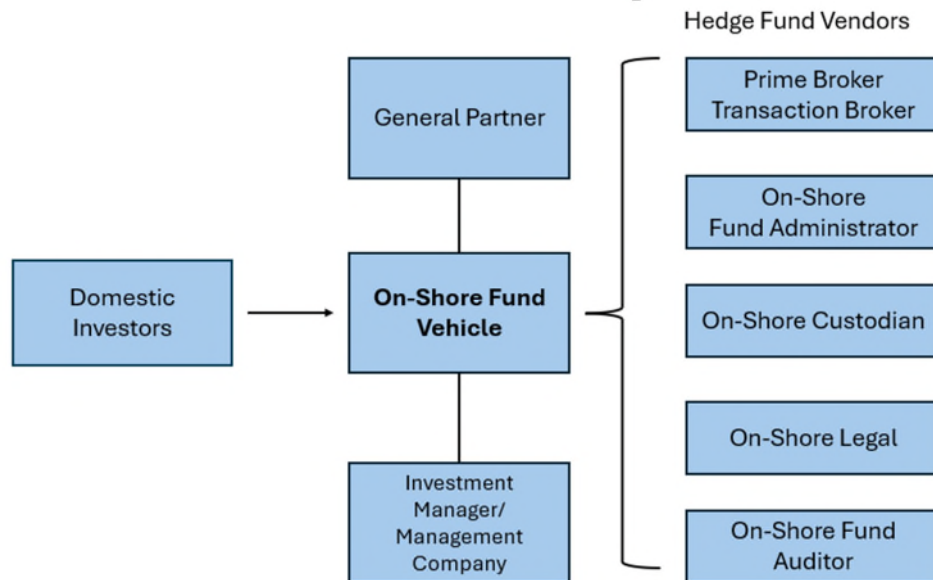
²² See Joseph G. Nicholas, *Investing in Hedge Funds: Strategies for the New Market Place* 24, 50-51 (1st ed. 1999) [PUBLIC0709048]; See also *SEC Investor Bulletin*, Hedge Funds, SEC Pub. No. 139 (2/13) [PUBLIC0707981].

²³ See Joseph G. Nicholas, *Investing in Hedge Funds: Strategies for the New Market Place* 24, 48-51 (1st ed. 1999) [PUBLIC0709048].

²⁴ See *Navigating the Regulation of Hedge Fund Marketing*, Managed Funds Association Reporter, 2, March/April 2008 [PUBLIC0708153].

²⁵ See Francois-Serge Lhabitant, *Handbook of Hedge Funds*, 85-88 and 109-110 (2007) [PUBLIC0707314-967 at -415-418 and -439-440].

Figure 1: Structure of a Typical Domestic Hedge Fund formed as a Limited Partnership

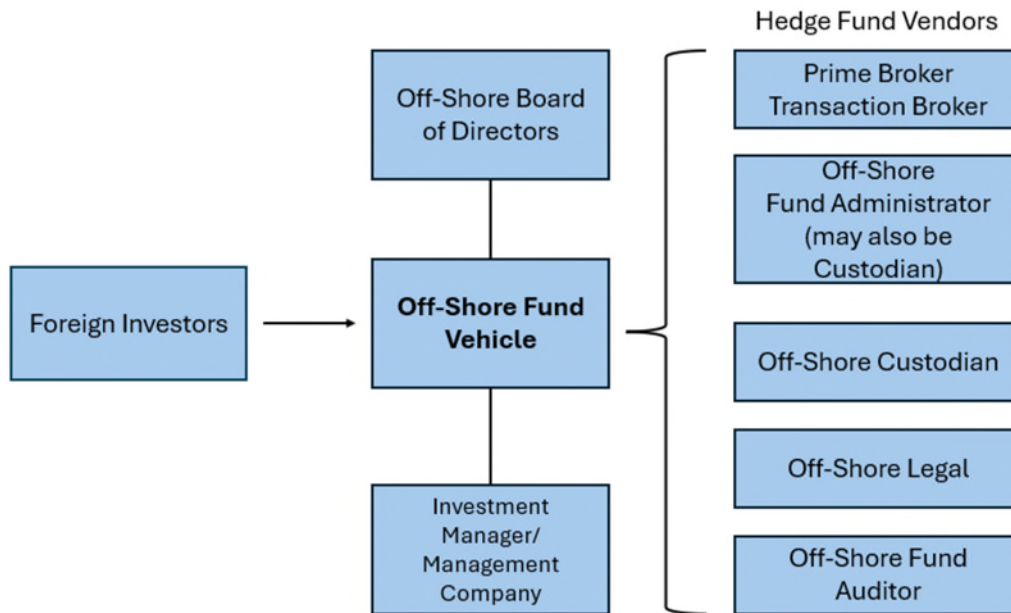


3. Offshore Hedge Fund

34. Non-U.S. residents typically invest in foreign or offshore hedge funds, often domiciled in countries such as the Cayman Islands, Bermuda, Ireland, or Luxembourg. These jurisdictions offer greater confidentiality, limited reporting responsibilities, and a benign level of taxes.²⁶
35. **Figure 2** illustrates the structure of a typical offshore hedge fund and the associated vendors or responsible entities.

²⁶ See Francois-Serge Lhabitant, *Handbook of Hedge Funds*, 85-88 (2007) [PUBLIC0707314-967 at 439-440].

Figure 2: Structure of a Typical Offshore Hedge Fund

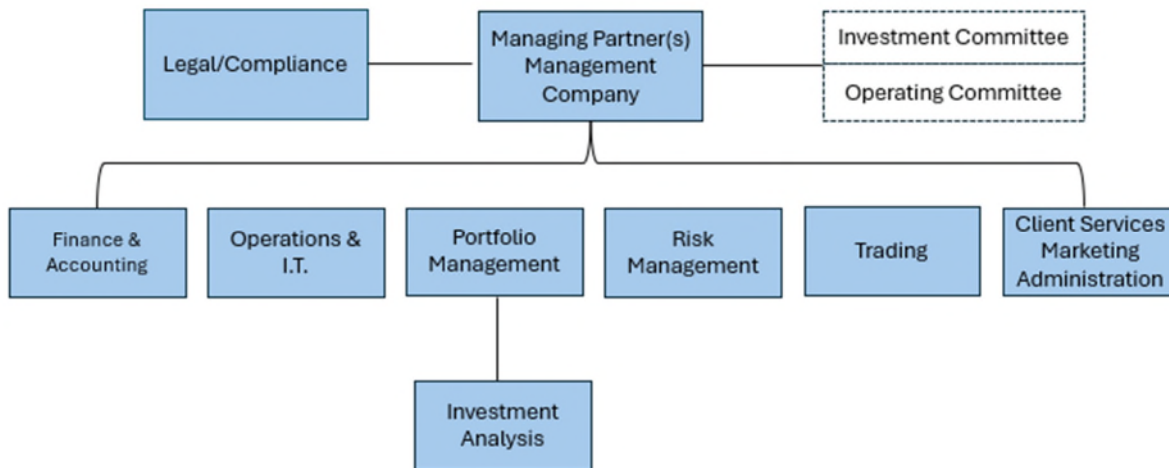


B. Investment Management Company

36. An investment management company oversees the hedge fund or the fund-of-funds consistent with the Governing Documents and goals of the fund.²⁷
37. **Figure 3** illustrates the typical structure of a hedge fund investment management company. In contrast to the typical structure of an investment management company, FGG delegated the portfolio management of the Sentry Funds to BLMIS.

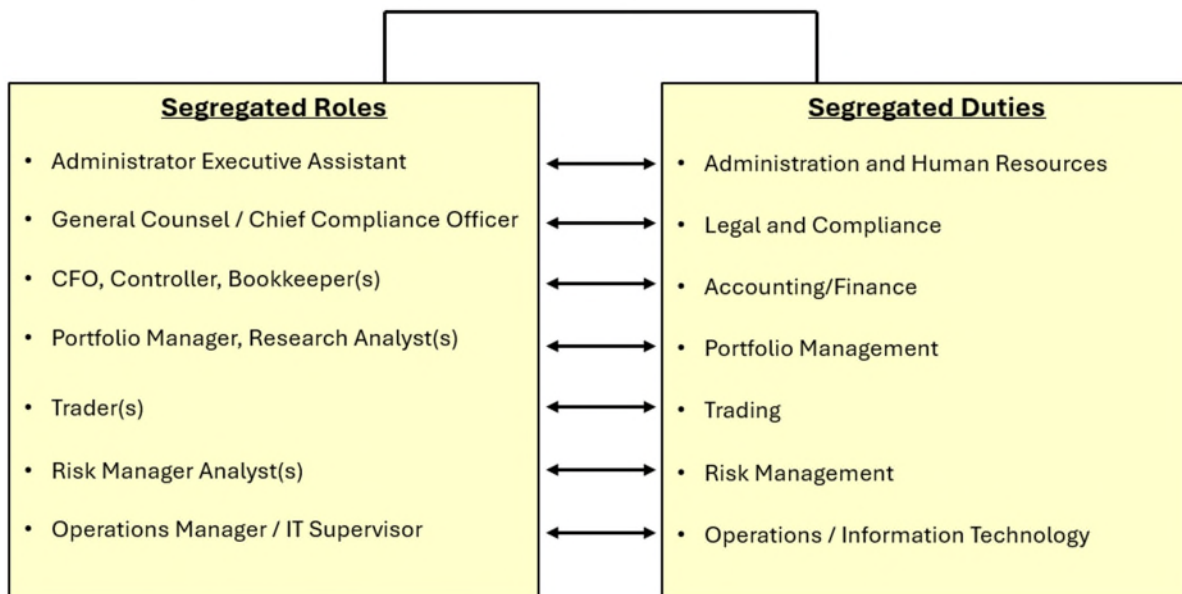
²⁷ See Stefano Lavinio, *The Hedge Fund Handbook: A Definitive Guide for Analyzing and Evaluating Alternative Investments*, 157 (2000) [PUBLIC0709053].

Figure 3: Typical Structure of Hedge Fund Investment Management Company



38. Each department within a management company has a segregated role, which carries with it certain duties and authority. **Figure 4** illustrates the typical organization and separation of roles within an investment management company.

Figure 4: Segregation of Roles and Duties within an Investment Management Company Under the Supervision of the Managing Partner(s)



39. The purpose of segregated roles is to ensure checks and balances, and to reduce fraud risk within the management company and the fund. For example, in the accounting and

finance department, there should be multiple levels of authority pertaining to transfer of investor funds, check-writing, and banking. These types of controls should be in place to safeguard investor assets, and to mitigate the risk of fraud.²⁸ Again, FGG did not perform the portfolio management or trading roles for the Sentry Funds' SSC strategy, and instead delegated these roles to BLMIS.

C. History & Structure of Fairfield Greenwich Group

40. In 1983, Walter M. Noel, Jr., a private bank executive,²⁹ established a consulting firm, Walter Noel Associates, to advise offshore clients in connection with their investments in U.S. based alternative assets.³⁰ As described in a 2008 FGG marketing presentation, "Mr. Noel began by placing money primarily with independent money managers, there being at the time few offshore hedge fund equivalents to the U.S. based limited partnerships popular with wealthy American investors."³¹
41. In 1987, Jeffrey Tucker, a former SEC attorney, who had been practicing law for seventeen years, became a minority partner of Fred Kolber & Co., a fund management business.³² That business, which leased office space from Noel, was owned by Fred Kolber ("Kolber"), who had been a client of Tucker's law firm.³³

²⁸ See Richard Horwitz, *Hedge Fund Risk Fundamentals: Solving the Risk Management and Transparency Challenge* 104-107 (2004) [PUBLIC0708175-475 at -299-302]; See also *Sound Practices for Hedge Fund Managers at Chapter 4: Trading and Business Operations*, p. 1, 9 (2009) [PUBLIC0708512-789].

²⁹ Fairfield Sentry Limited Confidential Private Placement Memorandum, July 1, 2003 [FAIRFIELD_01675807-874 at -817-818 / SECSEV2137283-350 at -293-294].

³⁰ The Fairfield Greenwich Group History, Philosophy, Organization, March 11, 2003 [FG-01358694-698 at -695]; Fairfield Greenwich Group, Fairfield Sentry Fund Ltd. (B Shares), October 13, 2002 [FAIRFIELD_00041027-061 at -031]; Fairfield Sentry Limited Due Diligence Questionnaire, April 2008 [FG-00018264-300 at -266]; FGG AIMA DDQ, May 21, 2007 [FG-00061450-487 at -453]; Anwar Deposition of Walter Noel, June 12, 2013 [FG-00011761-836 at -765] ("Noel Anwar Dep., 6/12/13"). Walter Noel Associates "eventually became Fairfield Greenwich Group."

³¹ FGG, *The Firm and its Capabilities*, September 2008 [FG-02383234-262 at -236 / SECSEV0040051-079 at -053].

³² Fairfield Greenwich Group, Fairfield Sentry Fund Ltd. (B Shares), October 13, 2002 [FAIRFIELD_00041027-061 at -031]; Fairfield Sentry Limited Due Diligence Questionnaire, April 2008 [FG-00018264-300 at -266]; FGG AIMA DDQ, May 21, 2007 [FG-00061450-487 at -454].

³³ Fairfield Greenwich Group, Fairfield Sentry Fund Ltd. (B Shares), October 13, 2002 [FAIRFIELD_00041027-061 at -031]; Fairfield Sentry Limited Due Diligence Questionnaire, April 2008 [FG-00018264-300 at -266]; FGG AIMA DDQ, May 21, 2007 [FG-00061450-487 at -454].

42. In 1987, Kolber and Tucker launched the Greenwich Options Fund (“GOF”), a domestic hedge fund.³⁴ By this time, Kolber had built a successful business managing his own money in a variety of hedge and arbitrage strategies.³⁵ GOF marked Kolber’s entry into the money management business as he sought a product in which passive investors could participate in his trading activities—market-making in equity and equity index options using a market neutral posture in most positions.³⁶
43. In 1988, Noel, Kolber and Tucker created Fairfield Investment Fund, Ltd. (“FIFL”) an offshore counterpart of GOF.³⁷ The growth of assets in the funds and the changes being experienced in the equity options markets, i.e., declining liquidity, and the increasing influence of the professionals, necessitated a reduction of assets in GOF and FIFL.³⁸ Afterwards, Noel and Tucker “sought and received a mandate from their clients to outsource the management of a portion of the funds” because combined, the two funds commanded too much capital to continue to employ a purely market-neutral strategy.³⁹ They set out to find “alternative/non-traditional managers” to manage a portion of the funds’ capital, one of whom was Madoff. In 1989, Tucker was introduced to Madoff and

³⁴ Fairfield Greenwich Group, Fairfield Sentry Fund Ltd. (B Shares), October 13, 2002 [FAIRFIELD_00041027-061 at -031]; the Fairfield Greenwich Group History, Philosophy, Organization, March 11, 2003 [FG-01358694-698 at -695]; Fairfield Sentry Limited Due Diligence Questionnaire, April 2008 [FG-00018264-300 at -266]; FGG AIMA DDQ, May 21, 2007 [FG-00061450-487 at -454].

³⁵ Fairfield Greenwich Group, Fairfield Sentry Fund Ltd. (B Shares), October 13, 2002 [FAIRFIELD_00041027-061 at -031]; Fairfield Sentry Limited Due Diligence Questionnaire, April 2008 [FG-00018264-300 at -266]; FGG AIMA DDQ, May 21, 2007 [FG-00061450-487 at -454].

³⁶ Fairfield Greenwich Group, Fairfield Sentry Fund Ltd. (B Shares), October 13, 2002 [FAIRFIELD_00041027-061 at -031]; Fairfield Sentry Limited Due Diligence Questionnaire, April 2008 [FG-00018264-300 at -266]; FGG AIMA DDQ, May 21, 2007 [FG-00061450-487 at -454].

³⁷ Fairfield Greenwich Group, Fairfield Sentry Fund Ltd. (B Shares), October 13, 2002 [FAIRFIELD_00041027-061 at -031]; Fairfield Sentry Limited Due Diligence Questionnaire, April 2008 [FG-00018264-300 at -266]; FGG AIMA DDQ, May 21, 2007 [FG-00061450-487 at -454]; Fairfield Greenwich (Bermuda) Ltd. Investment Manager Information [10-03800_09-01239_TUCCAA0000260-261 at -260].

³⁸ The Fairfield Greenwich Group History, Philosophy, Organization, March 11, 2003 [FG-01358694-698 at -696]; Fairfield Sentry Limited Due Diligence Questionnaire, April 2008 [FG-00018264-300 at -266]; FGG AIMA DDQ, May 21, 2007 [FG-00061450-487 at -454].

³⁹ Fairfield Greenwich Group, Fairfield Sentry Fund Ltd. (B Shares), October 13, 2002 [FAIRFIELD_00041027-061 at -031]; Fairfield Sentry Limited Due Diligence Questionnaire, April 2008 [FG-00018264-300 at -266]; FGG AIMA DDQ, May 21, 2007 [FG-00061450-487 at -454]; Fairfield Greenwich (Bermuda) Ltd. Investment Manager Information [10-03800_09-01239_TUCCAA0000260-261 at -260].

BLMIS by his father-in-law.⁴⁰ This relationship became the basis for the Sentry Funds. FGG's first investment was through an entity called Fairfield Strategies LTD. by way of a "test" investment in July 1989 of \$1.5 million in the SSC strategy run by BLMIS.⁴¹ In November 1990, Fairfield Sentry opened its first BLMIS account with a \$4.355 million deposit.⁴² Noel and Tucker offered shares of Fairfield Sentry to non-U.S. taxpayers at a minimum initial investment of \$100,000, and under Fairfield Sentry's offering memorandum, the fund's investment manager was to invest no less than 95% of the fund's assets through BLMIS.⁴³ Noel and Tucker formed FGG and Kolber's firm became a "marketing agent."⁴⁴

44. In 1997, FGG merged with Littlestone Associates of New York City ("Littlestone"). Following the merger, Littlestone's principal, Andres Piedrahita, "established a London office for the UK subsidiary" of FGG, "and became the third partner in the Fairfield Greenwich Group, in addition to Walter Noel and Jeffrey Tucker."⁴⁵ This increased the

⁴⁰ The Fairfield Greenwich Group History, Philosophy, Organization, March 11, 2003 [FG-01358694-698 at -696]; Deposition of Jeffrey Tucker, January 28, 2025, 52:24-53:9 [10-03800_09-01239_TUCCAA0000001-259 at -052-053] ("Tucker Dep., 1/28/25") (testifying he was introduced to Madoff in late 1988 or early 1989); Tucker Anwar Dep., 6/27/13, Ex. 2, 50:17-51:14 [FG-00010732-930 at -745] (testifying he was introduced to Madoff by his father-in-law in late 1988 or early 1989); MSD Deposition of Walter Noel, February 11, 2009, 25:9-16 [FGG00105548-665 / SECSEL0003261-378] ("Noel MSD Dep., 2/11/09") (testifying he first met Madoff in 1989).

⁴¹ Tucker Dep., 1/28/25, 61:17-24 (explaining FGG made a test investment with BLMIS); Noel MSD Dep., 2/11/09, 27:6-28:22, 30:12-31:10. (testifying that "Fairfield International" invested \$1.5 million into BLMIS in July 1989), however BLMIS Account 1FN011, which was opened with a deposit of \$1.5 million in July 1989, was held in the name of Fairfield Strategies LTD. [MADTB02389403]; [MADTB02389404-410]; [MADTB02389411-419]; [MADTB02389420]; July 11, 1989 BLMIS Customer Statement [MF00048070]. Fairfield Strategies LTD. then invested an additional \$1 million around January 1990. January 31, 1990 BLMIS Customer Statement [MF00021975].

⁴² Customer Statements for BLMIS Account 1FN012, dated November 30, 1990, Accounts 1-00328-3-0 [MF00032627] and 1-00328-4-0 [MF00032628-629]. In May 1992, accounts 1-00328-3-0 and 1-00328-4-0 became known as 1FN012-3 and 1FN012-4, respectively. The "New Balance" within the April 1992 customer statement ties to the "Balance Forward" in the May 1992 customer statements for the respective accounts; Noel MSD Dep., 2/11/09, 30:21-31:10.

⁴³ Fairfield Sentry Limited Confidential Private Placement Memorandum, July 1, 2003 [SECSEV2137283-350 at -286, -297, -303].

⁴⁴ Fairfield Greenwich Group, Fairfield Sentry Fund Ltd. (B Shares), October 13, 2002 [FAIRFIELD_00041027-061 at -034]; FGG AIMA DDQ, June 2005 [FAIRFIELD_00248331-342 at -334].

⁴⁵ Fairfield Greenwich Group, Fairfield Sentry Fund Ltd. (B Shares), October 13, 2002 [FAIRFIELD_00041027-061 at -032]; Fairfield Sentry Limited Due Diligence Questionnaire, April 2008 [FG-00018264-300 at -266-267]; *see also* SECSEV0061747/ FGG00065591 (1/22/2009 list of FGG owner/partners and percentages); FGG AIMA DDQ, May 21, 2007 [FG-00061450-487 at -454].

marketing capability of FGG, as Piedrahita (also Noel's son-in-law) had extensive contacts in South America.⁴⁶

45. The Sentry Funds' assets grew rapidly and enabled FGG to diversify into other products. By mid-2007, FGG had over 100 employees; offices in New York, London, and Bermuda; representative offices in the U.S., Europe, Latin America, and Asia, a joint venture in Singapore; and client and firm assets under management of over \$15 billion.⁴⁷
46. Of the approximately \$15 billion under management, a high of over \$7 billion was invested with BLMIS in 2008.⁴⁸
47. The acronym FGG was used to refer to a number of affiliated entities, including both domestic and foreign corporations, general partnerships, limited partnerships, trusts, and limited liability companies.⁴⁹ Internally, the entities were managed by the same small group of individuals, as shown in **Figure 7**. The profits earned by the myriad of FGG entities were distributed to individuals and entities based upon their "partnership" percentages in FGG.⁵⁰

1. Fairfield Entities

48. FGG represented its basic entity structure on January 1, 2002 as the following:

⁴⁶ Anwar Deposition of Andres Piedrahita, June 5, 2013, 23:25-24:15 [FG-00009536-648 at-542] ("Piedrahita Anwar Dep., 6/5/13").

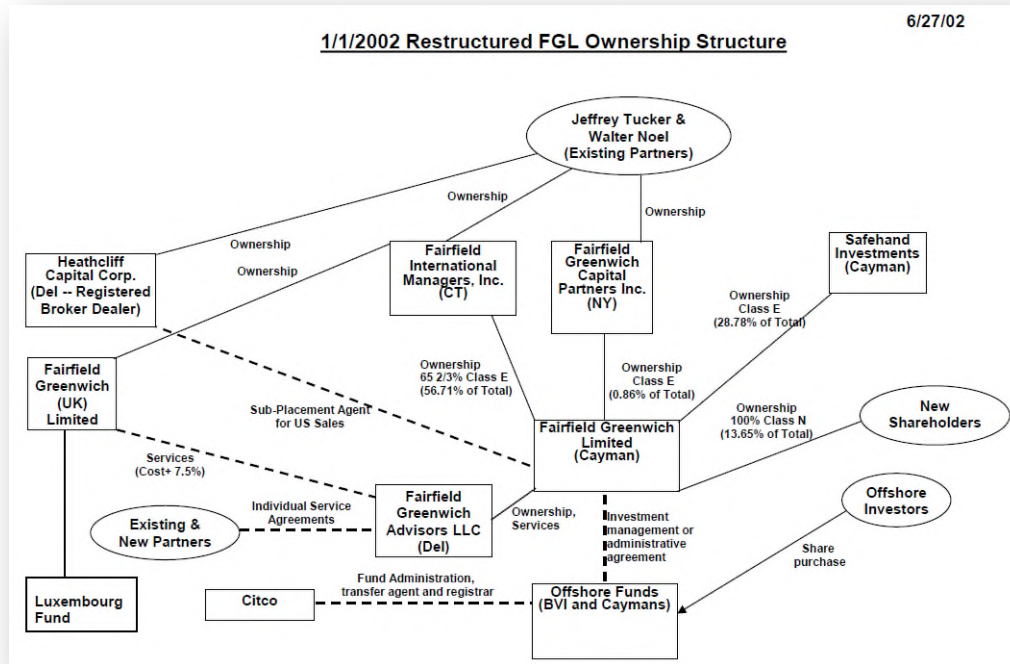
⁴⁷ Fairfield Greenwich Group Firm Profile and Capabilities, July 2007 [FAIRFIELD_00004134-182 at -137].

⁴⁸ Fairfield Sentry Limited, May 2008 [FAIRFIELD_01679055-083 at -068].

⁴⁹ Deposition of Dan Lipton, January 23, 2025, 26:22-27:7, 45:2-48:17 [10-03800_09-01239_LIPCAA00000001-396 at -026-027, -045-048] ("Lipton Dep., 1/23/25"). "FGG" is used herein to refer to all of the entities and individuals collectively. Fairfield Greenwich Group Firm Profile and Capabilities, July 2007 [FAIRFIELD_00004134-182 at -137].

⁵⁰ FGG Beneficial Owners/Partners as of January 22, 2009 [FGG00065591 / SECSEV0061747]; Jeffrey Slocum & Associates, Inc. Investment Manager Request for Information from FGG, April 15, 2004 [SECSEV0600235-264 at -245 / FGGE000022712-741 at -722 (¶ I. explains comp structure in which "Partners share in the profits of the firm as a whole")].

Figure 5: FGG Entity Structure⁵¹



49. Fairfield International Managers (“FIM”) was incorporated in Delaware on January 4, 1988 and was owned by Noel, Tucker, Ed Berman, and Kolber.⁵² Noel and Tucker subsequently bought Ed Berman’s and Kolber’s interest.⁵³ From November 15, 1990 through December 31, 1997, FIM was Fairfield Sentry’s investment manager.⁵⁴ FIM, owned jointly by Tucker and Noel, was part owner of Fairfield Greenwich Limited.⁵⁵

⁵¹ Restructured FGL Ownership Structure as of January 1, 2002 [FG-05783925].

⁵² Delaware Department of State: Division of Corporations, FIM Entity Search [PUBLIC0594952]; Email from Jeffrey Tucker to Kim Huynh, January 9, 2008, RE: Questions on firm history [FAIRFIELD_00340058-059 at -058]. Though operating in Connecticut, FIM was incorporated in Delaware and listed as a foreign corporation in Connecticut’s records.

⁵³ Email from Jeffrey Tucker to Kim Huynh, January 9, 2008, RE: Questions on firm history [FAIRFIELD_00340058-059 at -058]; Fairfield Greenwich Group Corporate Structure (as of July 1, 2003) [FAIRFIELD_00113627]; Fairfield Greenwich Limited Ownership (as of April 2008) [FG-03986254].

⁵⁴ Resolution of the Sole Director of Fairfield Sentry Limited, November 26, 1990 [FAIRFIELD_01885670]; Investment Management Agreement, November 15, 1990 [FAIRFIELD_01675523-530]; Fairfield Sentry Information Memorandum, July 1, 2000 [PUBLIC0707005].

⁵⁵ January 1, 2002 Restructured FGL Ownership Structure [FG-05783925]; Fairfield Greenwich Group Corporate Structure (as of January 1, 2004) [FAIRFIELD_00479994]; Corporate Ownership Statement, November 14, 2013, ECF No. 143; Fairfield Greenwich Limited Ownership (as of April 2008) [FG-03986254]; Fairfield

50. Fairfield Greenwich Limited (“FGL”) was incorporated in Ireland on October 23, 1997.⁵⁶ From January 1, 1998 to December 31, 2001, FGL Ireland served as the investment manager to Fairfield Sentry, Fairfield Sigma, and Fairfield Lambda.⁵⁷
51. FGL was reorganized in the Cayman Islands on October 24, 2001.⁵⁸ Thereafter, from January 1, 2002 to June 30, 2003, FGL Cayman served as the investment manager to Fairfield Sentry, Fairfield Sigma, and Fairfield Lambda.⁵⁹
52. Prior to 2002, FGL was owned by Noel, Tucker, and Piedrahita. In 2002, ownership of FGL was expanded to include ten other employee partners.⁶⁰
53. Fairfield Greenwich Capital Partners, Inc. was owned by Noel and Tucker⁶¹ and incorporated in Delaware on October 20, 1992.⁶² Fairfield Greenwich Capital Partners

Greenwich Limited Ownership, as of April 2008 [FG-03986254]; Fairfield Firm Ownership, Officers, and Directors notes [FGGE000394217 / SECSEV0971740].

⁵⁶ Fairfield Sentry Information Memorandum, July 1, 2000 [PUBLIC0707005].

⁵⁷ Fairfield Sentry Limited Unanimous Written Consent of the Board of Directors, December 1, 2001 [ANWAR-CFSE-00868743-759]; Investment Management Agreement, December 31, 2001 [ANWAR-CCI-00074996-002]; Investment Management Agreement, December 31, 2001 [ANWAR-CFSE-00365996-002 at -002]; Fairfield Sigma Limited Unanimous Written Consent of the Board of Directors, December 1, 2001 [ANWAR-C-ESI-00462831-836]; Investment Management Agreement, December 31, 2001 [ANWAR-C-ESI-00462824-830 at -830].

⁵⁸ Fairfield Greenwich Limited Certificate of Incorporation [FAIRFIELD_00416690-720 at -691].

⁵⁹ Fairfield Sentry Limited Unanimous Written Consent of the Board of Directors, December 1, 2001 [ANWAR-CFSE-00868743-759]; Investment Management Agreement, December 31, 2001 [ANWAR-CCI-00074996-002]; Amended and Restated Investment Management Agreement, October 1, 2002 [SECSCM0003972-005 at -991-997]; Fairfield Sentry Limited Written Resolution of the Directors, June 26, 2003, [FAIRFIELD_01885624-627]; Fairfield Sigma Limited Unanimous Written Consent of the Board of Directors, December 1, 2001 [ANWAR-C-ESI-00462831-836]; Investment Management Agreement, December 31, 2001 [ANWAR-CFSE-00365996-002]; Fairfield Sigma Limited Written Resolution of the Directors, June 26, 2003 [ANWAR-CFSE-00387139-203 at -180-183]; Investment Management Agreement, December 31, 2001 [ANWAR-C-ESI-00462824-830]; Fairfield Lambda Limited Written Resolution of the Directors, June 26, 2003 [FG-05904867-870].

⁶⁰ Firm Profile and Capabilities Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -205].

⁶¹ January 1, 2002 Restructured FGL Ownership Structure [FG-05783925]; Fairfield Greenwich Group Corporate Structure (as of July 1, 2003) [FAIRFIELD_00113627]; Fairfield Greenwich Limited Ownership (as of April 2008) [FG-03986254].

⁶² State of Delaware Certificate of Dissolution, December 31, 2024 [PUBLIC0705586-87 at -87]. Note that FGG Partners was noted as “(NY)” in **Figure 5** above.

was part owner of FGL.⁶³

54. Safehand Investments was incorporated in the Cayman Islands on November 6, 2001.⁶⁴ Safehand Investments is wholly owned by RD Trust, the grantor of RD Trust is Piedrahita and the beneficiaries are the Piedrahita family.⁶⁵ Safehand Investments was part owner of FGL.⁶⁶
55. Fairfield Greenwich Advisors LLC was incorporated in Delaware on December 12, 2001.⁶⁷ Fairfield Greenwich Advisors LLC served as manager to nearly all the Fairfield Funds except for the Sentry Funds and Fairfield Greenwich Fund (Luxembourg).⁶⁸ It provided certain administrative and back-office support to the Sentry Funds.⁶⁹
56. Fairfield Greenwich (UK) Limited was incorporated in 1997 in United Kingdom.⁷⁰ Fairfield Greenwich (UK) Limited served as the investment manager of Fairfield Greenwich Fund (Luxembourg) and acted as the marketing arm of FGG in the European Union.⁷¹
57. Fairfield Heathcliff Capital LLC was incorporated in Delaware on November 19, 1990. Fairfield Heathcliff Capital served as a placement agent for various FGG funds, including

⁶³ January 1, 2002 Restructured FGL Ownership Structure [FG-05783925]; Fairfield Greenwich Group Corporate Structure (as of July 1, 2003) [FAIRFIELD_00113627]; Fairfield Greenwich Group Corporate Structure (as of January 1, 2004) [FAIRFIELD_00479994]; Fairfield Greenwich Limited Ownership (as of April 2008) [FG-03986254].

⁶⁴ Certificate of Incorporation, November 6, 2001 [FG-01369276-340 at -288].

⁶⁵ Lenz & Staehelin Letter to Swiss Federal Banking Commission, June 27, 2008 [FG-01369276-340 at -282]; Fairfield Greenwich Limited Ownership (as of April 2008) [FG-03986254].

⁶⁶ January 1, 2002 Restructured FGL Ownership Structure [FG-05783925]; Fairfield Greenwich Group Corporate Structure (as of January 1, 2004) [FAIRFIELD_00479994]; Corporate Ownership Statement, November 14, 2013, ECF No. 143; Fairfield Greenwich Limited Ownership (as of April 2008) [FG-03986254].

⁶⁷ Certificate of Formation of Fairfield Greenwich Advisors, LLC, December 12, 2001 [FAIRFIELD_00416721-722].

⁶⁸ Lenz & Staehelin Letter to Swiss Federal Banking Commission, June 27, 2008 [FG-01369276-340 at -279].

⁶⁹ Fund Operations Policies and Procedures Manual, August 2003 [FAIRFIELD_01633832-844 at -834]; Fund Operations Policies and Procedures Manual, November 2006 [FAIRFIELD_01622331-342 at -333].

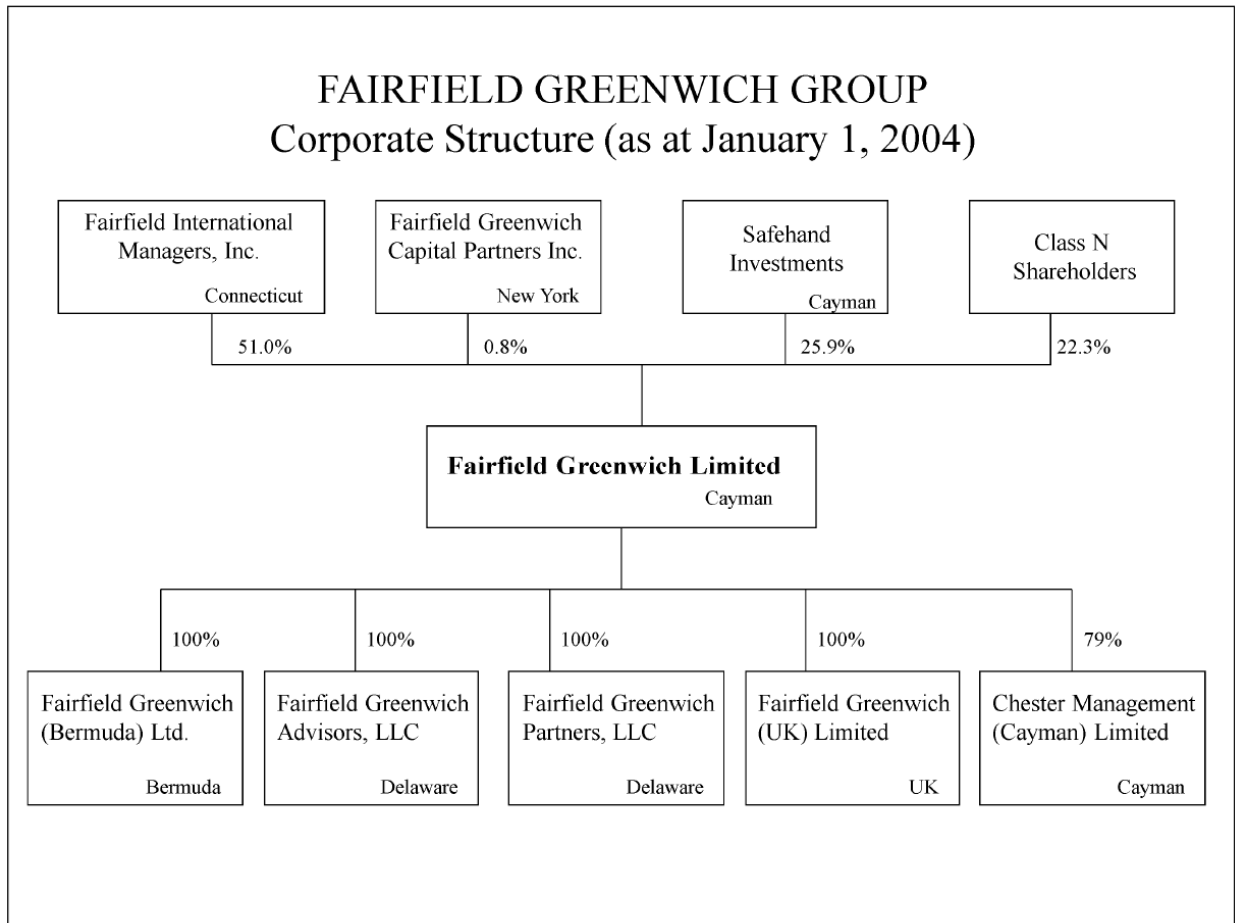
⁷⁰ Lenz & Staehelin Letter to Swiss Federal Banking Commission, June 27, 2008 [FG-01369276-340 at -279].

⁷¹ Lenz & Staehelin Letter to Swiss Federal Banking Commission, June 27, 2008 [FG-01369276-340 at -279].

GS and GSP.⁷²

58. FGG represented its basic entity structure as of January 1, 2004, as follows:

Figure 6: FGG Entity Structure⁷³



59. Defendant Fairfield Greenwich Bermuda Ltd (“FGBL”) was an exempted company incorporated in Bermuda on June 13, 2003.⁷⁴

⁷² Email from Suthasini Ferguson to Anthony Murray Re: Template Compliance Certificate, August 3, 2007 [ANWAR-C-ESI-00829217-222 at -218]; Fairfield Greenwich Advisors LLC Form ADV [ANWAR-C-ESI-00023944-957 at -954]; Greenwich Sentry Partners, L.P., Confidential Offering Memorandum, August 2006 [ANWAR-C-ESI-00171030-114 at -046]; Greenwich Sentry, L.P., Confidential Offering Memorandum, August 2006 [ANWAR-C-ESI-00197737-822 at -754].

⁷³ Fairfield Greenwich Group Corporate Structure (as of January 1, 2004) [FAIRFIELD_00479994].

⁷⁴ Certificate of Incorporation [FG-00574847-880 at 847].

60. On July 1, 2003, FGBL replaced FGL Cayman as the investment manager to Fairfield Sentry, Fairfield Sigma, and Fairfield Lambda.⁷⁵
61. According to internal FGG emails, FGG created FGBL at the direction of Madoff, in order to avoid regulatory scrutiny.⁷⁶ However, FGG portrayed the decision as tax-driven, and went so far as to conceal the true purpose from their own salesforce.⁷⁷
62. Fairfield Greenwich Partners LLC was incorporated in Delaware on August 19, 2003.⁷⁸
63. Chester Management (Cayman) Limited was incorporated in the Cayman Islands in 2003

⁷⁵ Investment Management Agreement, July 1, 2003 [ANWAR-C-ESI-00147351-360]; Investment Management Agreement, October 1, 2004 [ANWAR-CCI-00074985-994]; Fairfield Sentry Limited Written Resolution of the Directors, June 26, 2003 [FAIRFIELD_01885624-627]; Fairfield Sigma Limited Written Resolution of the Directors, June 26, 2003 [ANWAR-CFSE-00387139-203 at -180-183]; Investment Management Agreement, July 1, 2003 [ANWAR-C-ESI-00147343-350]; Investment Management Agreement, October 1, 2004 [ANWAR-C-ESI-00464055-062]; Fairfield Lambda Limited Written Resolution of the Directors, June 26, 2003 [FG-05904867-870]; Investment Management Agreement, July 1, 2003 [ANWAR-C-ESI-00147361-368]; Investment Management Agreement, October 1, 2004 [FG-00064129-135]. Note that pursuant to the MSD Consent Order, FGBL was investment manager for Sentry and Sigma until June 30, 2009. At the time of the filing of the MSD Consent Order in September 2009, FGBL was the investment manager for Lambda.

⁷⁶ *See, e.g.*, [FG-05808367] (April 2003 email from Dan Lipton to Operations Group, cc'd to Mark McKeefry, "In connection with Madoff's request to segregate the Sentry business from 'new co' business., FGG will be setting up a Bermudian office to be the investment advisor [sic] the Sentry business."); Memorandum from Rob Blum to Jeffrey Tucker, November 28, 2002, Re: If it is almost December, it must be time for FGG to restructure again [FG-05783921-924 at -921]; Deposition of Rob Blum, April 18, 2024, [10-03800_09-01239_BLUCAA0000001-377] ("Blum Dep., 4/18/24"), Blum Dep., 4/18/24, Ex. 31 [FAIRFIELD_01685291-292 at -291] (January 2003 email from Rob Blum RE: "FGG's Regulatory Future," stating "Now that Bernie has started marching us on the road to a restructuring of our business to protect Sentry from any uninformed regulatory scrutiny"). *See also* Email from Ron Thomann to Jeffrey Tucker and Cornelis Boele, Meeting Notes: LGT Capital Partners, July 2, 2003 [FG-01289302-303] ("While Muehlemann understood FGL's recent decision to assign its investment management agreement for Fairfield Sentry Limited to Fairfield Greenwich Bermuda he still has concerns that the move is an attempt by Madoff to avoid SEC scrutiny of his firm and market making activities."); *see also*, email re: "Re-reorg of FGL for Bernie Issues," January 15, 2003 [FG-08781589-590].

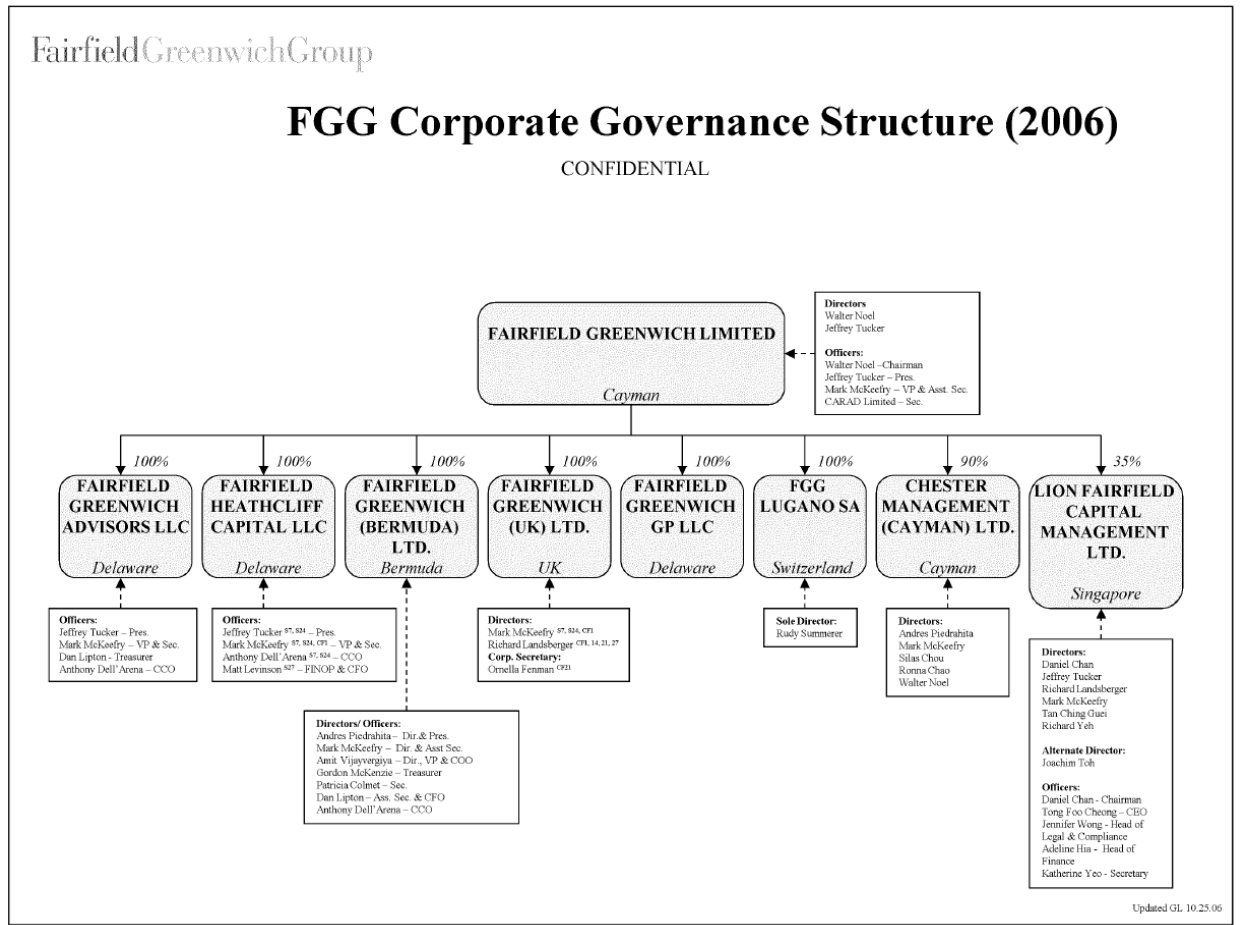
⁷⁷ *See* [SECSEV0579066 / FGGE000001543] (July 2003 email from Rob Blum discussing Sentry move to Bermuda, stating "guys, fyi, I am portraying this stuff as being tax driven, which resonates easily with a lot of people. I have heard lately that some amateur Madoff watchers/conspiracy theorists out there are making more of this Bermuda thing than that, and without being too obnoxious about it, we should steer the conversation to the tax-driven plane."); [FG-08773334-335 at -334] (June 2004 email to McKeefry and Tucker, in which Blum, after removing Vijayvergiya and Stephane Muuls from the email chain, stated "Lets keep this off line from the salesmen (and in this case the regulator's husband), please. as we discussed several months ago, this would be the likely demise of G Sentry and the US clients in F Sentry – Bernie has made his feelings clear." (reference to the regulator's husband is Vijayvergiya)); *see also* [SECSEV0669401-402 / FGGE000091878-879] regarding suspicions of potential investors regarding Madoff's reasoning for reorganization.

⁷⁸ Delaware Department of State: Division of Corporations, Entity Details – Fairfield Greenwich Partners, LLC, <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx>. (last visited August 22, 2025).

and served as investment manager to Chester Global Strategy Fund Ltd.⁷⁹

64. FGG represented its basic entity structure as of October 25, 2006 as follows:

Figure 7: FGG Entity Structure⁸⁰



65. Fairfield Greenwich GP LLC was incorporated in Delaware on September 18, 2006.⁸¹ It served as the general partner of Chester Global Strategy Fund, LP.⁸²

⁷⁹ Lenz & Staehelin Letter to Swiss Federal Banking Commission, June 27, 2008 [FG-01369276-340 at -279].

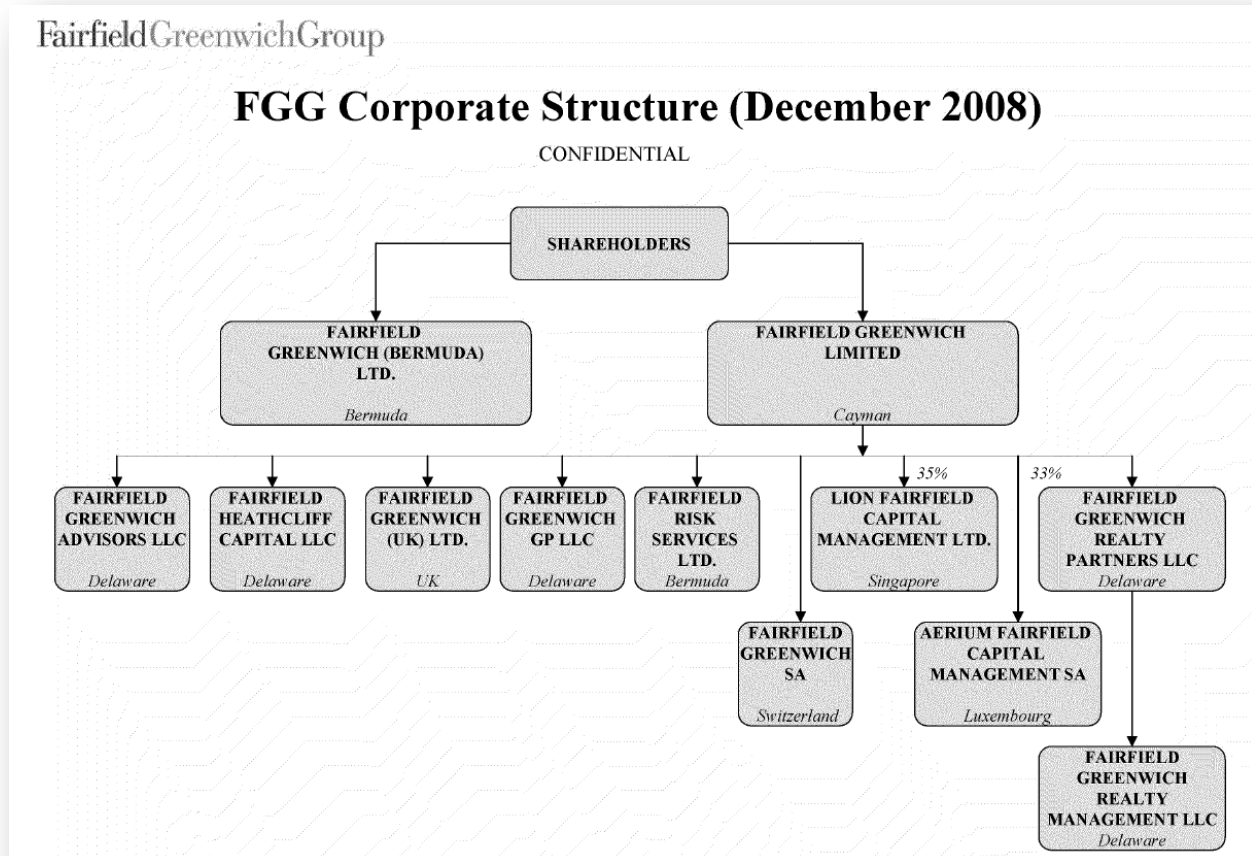
⁸⁰ FGG Corporate Governance Structure (2006), October 25, 2006 [FAIRFIELD_00470361]; *see also* Anwar Deposition of Daniel Lipton, May 14, 2013 [FG-00000904-1037 at -909] ("Lipton Anwar Dep., 5/14/13"); FGG Corporate Governance Structure (2007), Lipton Anwar Dep., 5/14/13, Ex. 9 [FG-00001160].

⁸¹ Delaware Certificate of Formation of Fairfield Greenwich GP, LLC, September 18, 2006 [FAIRFIELD_01098122-23].

⁸² Delaware Certificate of Limited Partnership of Chester Global Strategy Fund, LP [FAIRFIELD_01095014-017 at -015].

66. Lion Fairfield Capital Management Ltd. was incorporated in Cayman in 2004 and was a joint venture with Lion Capital Management Limited.⁸³ Lion Fairfield Capital served as the marketing arm of FGG in Singapore.⁸⁴
67. FGG represented its basic entity structure as of December 2008 as the following:

Figure 8: FGG Entity Structure⁸⁵



68. FGBL was, until December 31, 2007, a wholly owned subsidiary of FGL.⁸⁶ In 2007,

⁸³ Email from Jennifer Keeney to Mike Munns re: Fairfield Greenwich Group Conference Call, June 5, 2007 [SECSEV2110635-639 at -637]; Fairfield Greenwich Advisors LLC Form ADV [ANWAR-C-ESI-00023944-957 at -954].

⁸⁴ Lenz & Staehelin Letter to Swiss Federal Banking Commission, June 27, 2008 [FG-01369276-340 at -279].

⁸⁵ FGG Corporate Structure (December 2008) [FG-03982115]; *see also* [FGG00043292 / SECSEV0040203].

⁸⁶ Sentry Franchise Agreement, January 1, 2008 [FG-02744127-131].

ownership of FGBL was transferred from FGL to FGBL's shareholders.⁸⁷ The shareholders included FIM – co-owned by Noel and Tucker; Safehand Investment – owned exclusively by Piedrahita; and many of the other Management Defendants and Sales Defendants.⁸⁸

69. Fairfield Risk Services Ltd. was incorporated in Bermuda on December 10, 2007.⁸⁹

Fairfield Risk Services provided risk services to the funds managed by Fairfield Greenwich Advisors.⁹⁰ Fairfield Risk Services performed the risk oversight and compliance monitoring of Fairfield Sentry and related funds.⁹¹

70. Registrations and oversight at FGG were as follows:

- Fairfield Greenwich Advisors was registered with the SEC as an Investment Advisor in 2004;⁹²
- Fairfield Greenwich (Bermuda) Ltd. (previously defined as “FGBL”) was registered with the SEC as an Investment Advisor in 2006;⁹³
- Fairfield Greenwich (UK) Limited was licensed by the Financial Services Authority (“FSA”) and was authorized and regulated from October 1998 under the Investment Management Regulatory Organization which merged into the FSA in December 2001;⁹⁴
- Fairfield Heathcliff Capital, LLC., a wholly owned subsidiary of FGL was registered with the SEC as a broker-dealer and was a member of the NASD. (April 2001);⁹⁵

⁸⁷ Sentry Franchise Agreement, January 1, 2008 [FG-02744127-131].

⁸⁸ Fairfield Greenwich (Bermuda) Ltd., Transfer of Shares – effective 31 December, 2007 [ANWAR-CFSB-00000467].

⁸⁹ Certificate of Incorporation [FG-06469603].

⁹⁰ Services Agreement, January 1, 2008 [FG-02745188-192].

⁹¹ Email from Amit Vijayvergiya to Mami Hidaka Re: sentry Annual DD, July 11, 2008 [FG-02574483-493 at -483].

⁹² Fairfield Sentry DDQ, July 3, 2006 [FG-02903729-758 at -739]; Lenz & Staehelin Letter to Swiss Federal Banking Commission, June 27, 2008 [FG-01369276-340 at -281].

⁹³ Fairfield Sentry DDQ, July 3, 2006 [FG-02903729-758 at -739]; Lenz & Staehelin Letter to Swiss Federal Banking Commission, June 27, 2008 [FG-01369276-340 at -281].

⁹⁴ Fairfield Sentry DDQ, July 3, 2006 [FG-02903729-758 at -739]; Lenz & Staehelin Letter to Swiss Federal Banking Commission, June 27, 2008 [FG-01369276-340 at -281]; Fairfield Greenwich Group Corporate Structure (as of July 1, 2003) [FAIRFIELD_00113627].

⁹⁵ Fairfield Sentry DDQ, July 3, 2006 [FG-02903729-758 at -739].

- Fairfield Greenwich Limited (previously defined as “FGL”) was registered with the CFTC as a Commodity Pool Operator;⁹⁶ and
- In addition to entities regulated or registered with the SEC, FSA, CFTC, NFA, and NASD, certain entities operating in Singapore were regulated by the Monetary Authority of Singapore.⁹⁷

2. Fairfield Funds

71. Fairfield Sentry was a hedge fund that maintained accounts at BLMIS. The fund was incorporated as an International Business Company under the International Business Companies Act of the British Virgin Islands in October 1990.⁹⁸ Fairfield Sentry was a “professional mutual fund” as defined in the Mutual Funds Act, 1996 (as amended) of the British Virgin Islands.⁹⁹
72. Fairfield Sentry held four accounts with BLMIS: 1FN012, which was opened in November 1990; 1FN045, which was opened in October 1992; 1FN069, which was opened in January 1995; and 1FN070, which was opened in February 1995.¹⁰⁰ These accounts were still open when Madoff was arrested on December 11, 2008.
73. Greenwich Sentry, L.P. (“GS”) was a domestic hedge fund that maintained account number 1G0092 at BLMIS beginning in November 1992.¹⁰¹ 1G0092 was still open when

⁹⁶ Fairfield Sentry DDQ, July 3, 2006 [FG-02903729-758 at -739]; Lenz & Staehelin Letter to Swiss Federal Banking Commission, June 27, 2008 [FG-01369276-340 at -281]; Fairfield Greenwich Group Corporate Structure (as of July 1, 2003) [FAIRFIELD_00113627].

⁹⁷ Lenz & Staehelin Letter to Swiss Federal Banking Commission, June 27, 2008 [FG-01369276-340 at -281].

⁹⁸ Certificate of Incorporation, October 30, 1990 [FAIRFIELD_01710830].

⁹⁹ Certificate of Recognition of a Professional Mutual Fund [FAIRFIELD_01710831].

¹⁰⁰ BLMIS Option Agreement, Corporate Resolution, and Managed Account Agreement, November 9, 1990 [AMF00071578-614 at -609-613]; November 1990, Customer Statement, 1-FN012-3 (1-00328-3) [MF00032627]; November 1990, Customer Statement, 1-FN012-4 (1-00328-4) [MF00032628-629]; BLMIS Customer Agreement, 1-FN045-3 [AMF00074795-960 at -917-919]; October 1992, Customer Statement, 1-FN045-3 [MF00452828]; BLMIS Trading Authorization, Option Agreement, and Customer Agreement, April 7, 1994 [AMF00071618-648 at -642-648]; January 1995, Customer Statement, 1-FN069-4 [MF00223094-095]; February 1995, Customer Statement, 1-FN070-4 [MF00188649]. BLMIS accounts 1FN069 and 1FN070 held the options transactions for accounts 1FN012 and 1FN045, respectively.

¹⁰¹ BLMIS Trading Authorization, Option Agreement, and Customer Agreement, November 8, 2002 [MS00867860-915 at -860-865]; November 1992 Customer Statement, 1-G0092-3 [MF00450779]; November 1992 Customer Statement, 1-G0092-4 [MF00450780].

Madoff was arrested on December 11, 2008.¹⁰² GS was a limited partnership organized under the laws of the State of Delaware.¹⁰³

74. Greenwich Sentry Partners, L.P. (“GSP”) was a domestic hedge fund that maintained account number 1G0371 at BLMIS beginning in May 2006. 1G0371 was still open when Madoff was arrested on December 11, 2008.¹⁰⁴ GSP was a limited partnership organized under the laws of the State of Delaware in April 2006.¹⁰⁵ The six BLMIS accounts identified in the preceding paragraphs (1FN012, 1FN045, 1FN069, 1FN070, 1G0092, and 1G0371) are collectively referred to herein as the “Fairfield BLMIS Accounts.”
75. Fairfield Sigma is an (Eurodollar based) FGG fund wholly invested in Fairfield Sentry. The fund was initially organized on November 20, 1990 as “Fairfield Kenneth Limited” under the British Virgin Islands’ International Business Companies Act and began operations as Fairfield Sigma Limited in 1997.¹⁰⁶
76. Fairfield Sigma accepted investments in Euros, which it converted to U.S. Dollars and invested in Fairfield Sentry. Through its investment in Fairfield Sentry, Fairfield Sigma was an indirect investor in BLMIS.¹⁰⁷
77. Fairfield Lambda is a (Swiss Franc based) FGG fund wholly invested in Fairfield Sentry. The fund was organized on December 7, 1990 under the British Virgin Islands’

¹⁰² November 2008 Customer Statement, 1G0092-3, [MDPTPP03263111-127]; November 2008 Customer Statement, 1G0092-4 [MDPTPP03263128-129].

¹⁰³ GS was incorporated on December 27, 1990. *See* Ninth Amended and Restated Certificate of Limited Partnership of Greenwich Sentry, L.P. [FG-01880188-191 at -190]. The documents provided by FGG are conflicting as to the identification of the general partners prior to 1999. *See, e.g.*, Greenwich Sentry, L.P. Confidential Offering Memorandum, April 1, 2004 [FAIRFIELD_00576316-372 at -323-324]; Ninth Amended and Restated Certificate of Limited Partnership of Greenwich Sentry, L.P. [FG-01880188-191].

¹⁰⁴ Account opening documents for account 1-G-0371, April 21, 2006 [MS00869563-612 at -582-585]; Customer Statements for Account “1G0371,” May 31, 2006 [MDPTPP03442841-848]. Customer Statements for Account “1G0371,” November 30, 2008 [MDPTPP03443199-216].

¹⁰⁵ Certificate of Limited Partnership of Greenwich Sentry Partners, L.P. [ANWAR-CFSE-00378396] (FGBL served as the general partner of GSP since its inception).

¹⁰⁶ Certificate of Incorporation and Articles of Association [FG-05021456-463]. The fund was initially incorporated as Fairfield Kenneth Limited, but was changed to Fairfield Sigma Limited in 1997.

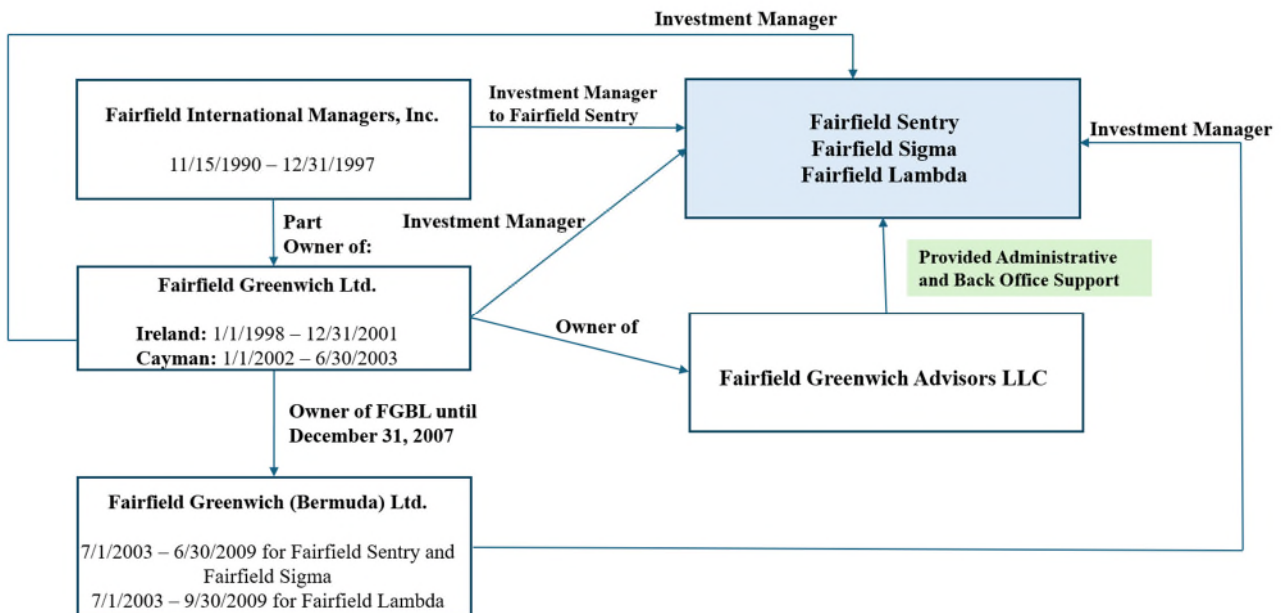
¹⁰⁷ Fairfield Sigma Limited Information Memorandum, October 29, 1999 [FAIRFIELD_01547278-316 at -288]; Fairfield Sigma Limited Letter Suspension of the Calculation of Net Asset Value, December 22, 2008 [FG-01488390-391 at -390].

International Business Companies Act and began operations in 1997.¹⁰⁸

78. Lambda accepted investments in Swiss francs, which it converted to U.S. Dollars and invested in Fairfield Sentry. Through its investment in Fairfield Sentry, Lambda was an indirect investor in BLMIS.¹⁰⁹

79. The overall relationship and structure of the Sentry Funds was as follows:

Figure 9: Overall Relationship and Structure of the Fairfield Sentry Funds¹¹⁰

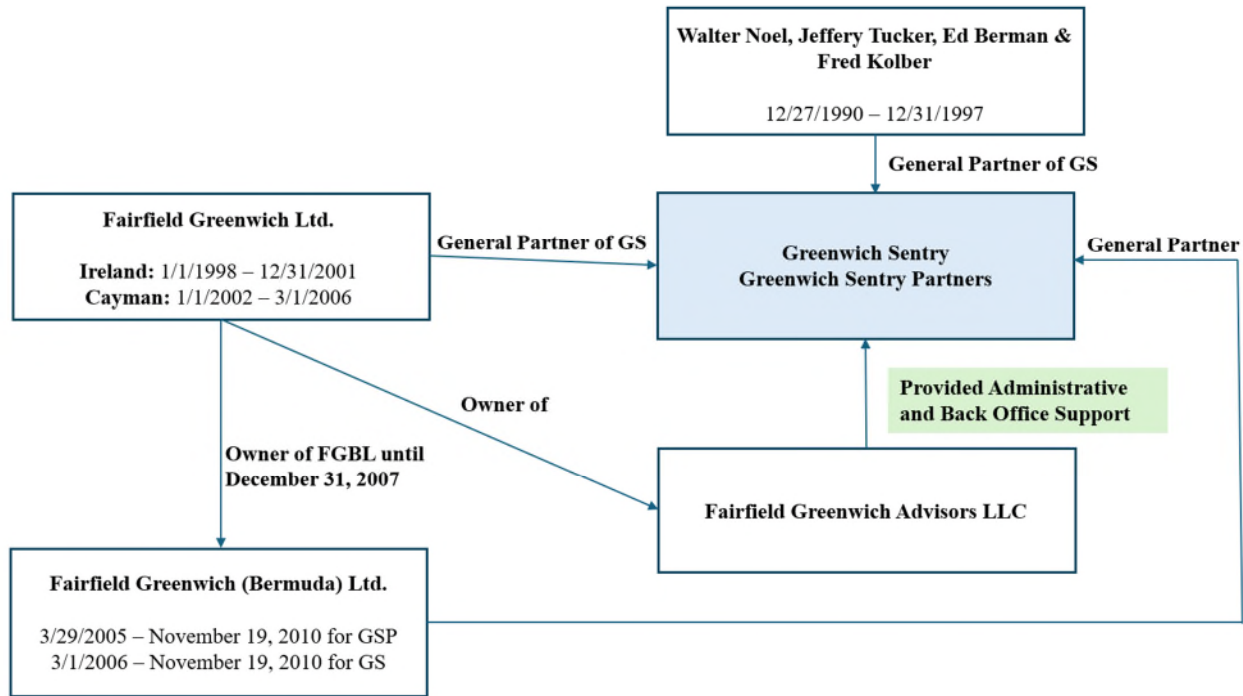


¹⁰⁸ Confidential Private Placement Memorandum Fairfield Lambda Limited, October 1, 2004 [FAIRFIELD_00023853-916 at -859, -862].

¹⁰⁹ Fairfield Lambda Information Memorandum, January 1, 1998 [FAIRFIELD_00531864-907 at -869]; Fairfield Lambda Limited Letter Suspension of the Calculation of Net Asset Value, December 22, 2008 [FG-01488392-393 at -392].

¹¹⁰ Resolution of the Sole Director of Fairfield Sentry Limited, November 26, 1990 [FAIRFIELD_01885670]; Investment Management Agreement, November 15, 1990 [FAIRFIELD_01675523-530]; Fairfield Sentry Information Memorandum, July 1, 2000 [PUBLIC0707005]; Fairfield Sentry Limited Unanimous Written Consent of the Board of Directors, December 1, 2001 [ANWAR-CFSE-00868743-759]; Investment Management Agreement, December 31, 2001 [ANWAR-CCI-00074996-002]; Investment Management Agreement, December 31, 2001 [ANWAR-CFSE-00365996-002 at -002]; Fairfield Sigma Limited Unanimous Written Consent of the Board of Directors, December 1, 2001 [ANWAR-C-ESI-00462831-836]; Investment Management Agreement, December 31, 2001 [ANWAR-C-ESI-00462824-830 at -830]; Amended and Restated Investment Management Agreement, October 1, 2002 [SECSCM0003972-005 at -991-997]; Fairfield Sentry Limited Written Resolution of the Directors, June 26, 2003, [FAIRFIELD_01885624-627]; Fairfield Sigma Limited Written Resolution of the Directors, June 26, 2003 [ANWAR-CFSE-00387139-203 at -180-183]; Fairfield Lambda Limited Written Resolution of the Directors, June 26, 2003 [FG-05904867-870]; Fund

Figure 10: Overall Relationship and Structure of the Greenwich Sentry Funds¹¹¹



80. With regards to FGG, the roles of investment manager and investment advisor were conflated. Based on the documentation, BLMIS was functioning as, and serving in the capacity of, an investment advisor for the Sentry Funds.¹¹² However, the role of asset verification still remained at FGBL as the investment manager of the Sentry Funds. Investors expressed confusion. In an email to Howard Greisman, FGG’s Chief

Operations Policies and Procedures Manual, August 2003 [FAIRFIELD_01633832-844 at -834]; Fund Operations Policies and Procedures Manual, November 2006 [FAIRFIELD_01622331-342 at -333]; Investment Management Agreement, July 1, 2003 [ANWAR-C-ESI-00147351-360]; Investment Management Agreement, October 1, 2004 [ANWAR-CCI-00074985-994]; Investment Management Agreement, July 1, 2003 [ANWAR-C-ESI-00147343-350]; Investment Management Agreement, October 1, 2004 [ANWAR-C-ESI-00464055-062]; Investment Management Agreement, July 1, 2003 [ANWAR-C-ESI-00147361-368]; Investment Management Agreement, October 1, 2004 [FG-00064129-135].

¹¹¹ Fund Operations Policies and Procedures Manual, August 2003 [FAIRFIELD_01633832-844 at -834]; Fund Operations Policies and Procedures Manual, November 2006 [FAIRFIELD_01622331-342 at -333].

¹¹² See, e.g., Fairfield Sentry Limited Information Memorandum, January 1, 1998 [FAIRFIELD_00368392-426 at -400-401] (“FGL has delegated the management of the Company’s investment activities to [BLMIS]”); Anwar Deposition of Mark McKeefry, June 19, 2013, 64:14-20, 381:12-15 [FG-00005440-591 at -456, -535] (“McKeefry Anwar Dep., 6/19/13”) (“Subsequent to these letters, there was an SEC investigation purportedly of Madoff’s status of whether he was acting as an advisor or broker-dealer. The SEC told me personally and firm that they thought Madoff was acting more as a manager.”).

Investment Officer, and Blum regarding an investor inquiry, Vijayvergiya states “[i]t seems that they may hold the view that FGBL, as Investment Manager of FSL, functions as a “true” hedge fund manager (in the Redstone sense of the word).”¹¹³

81. After Madoff was arrested, one investor wrote to FGG for clarification of Madoff’s role: “Your fact sheets state Fairfield Greenwich (Bermuda) Ltd being the investment manager, not BML [*sic*]. Neither does this information indicate Sentry is not managed and controlled by Fairfield Greenwich (Bermuda) Ltd but outsourced to a third party (BML). [*sic*] Clarification of information needed! . . . The split-strike strategy being implemented by BML [*sic*], not being outsourced to BML[*sic*]! Again clarification needed.”¹¹⁴

D. Fairfield Greenwich Group - Experienced Financial Professionals

82. The partners and management of FGG, as well as consultants hired by FGG, were highly experienced professionals with experience in finance and alternative investments. Each brought different training, educational background, skill sets and strengths to the firm.

1. Walter Noel

83. Noel was a founding partner of FGG and had decades of experience in the investment industry.¹¹⁵ Noel graduated from Vanderbilt University in 1952, received a Master of Arts in Economics from Harvard University in 1953, and graduated from Harvard Law School in 1959.¹¹⁶ He then joined the Management Services Division of Arthur D. Little Inc., an industrial and management consulting firm where he remained until 1972.¹¹⁷ He went on to a number of high-level positions in finance including President of Bahag

¹¹³ Deposition of Amit Vijayvergiya, January 30, 2025, 211:16-19 [10-03800_09-01239_VIJCAA0000001-348 at -211] (“Vijayvergiya Dep., 1/30/25”); Vijayvergiya Dep., 1/30/25, Ex. 15 [FAIRFIELD_01791571-576 at -571].

¹¹⁴ Email from Bleuler Mathias to Santiago Reyes, RE: Fairfield Sentry; response request, December 16, 2008 [SECSEV3017651-652 at -651].

¹¹⁵ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -276 / SECSEV1793790-876 at -865].

¹¹⁶ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -276 / SECSEV1793790-876 at -865].

¹¹⁷ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -759].

Banking Ltd., in Lausanne, Switzerland; Vice President of the International Private Banking Department of Citibank, N.A; and Senior Vice President of the International Private Banking Department of Chemical Bank.¹¹⁸ While at Chemical Bank he co-managed the development of its international private banking business.¹¹⁹ In 1983, Noel founded Walter Noel Associates, a “consulting firm to advise non-U.S. investors on opportunities in the U.S.,” which later “evolved into” Fairfield Greenwich Group.¹²⁰ Noel was a director or general partner for a variety of FGG funds, directed marketing activity, and created business opportunities for FGG.¹²¹

2. Jeffrey Tucker

84. Tucker was also a founding partner of FGG and a Managing Director.¹²² He had significant experience in regulatory issues. Tucker received his Bachelor of Arts degree from Syracuse University and his Juris Doctor degree from Brooklyn Law School.¹²³ Tucker was an attorney with the SEC for eight years which included three years as an Assistant Regional Administrator of the SEC’s New York regional office where he was responsible for approximately half of its enforcement program.¹²⁴ After leaving the SEC, he became a partner at the law firm Tucker, Globberman & Feinsand and specialized in securities and transactional matters with a principal focus on limited partnership offerings.¹²⁵

¹¹⁸ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -759].

¹¹⁹ The Fairfield Greenwich Group History, Philosophy, Organization, March 11, 2003 [FG-01358694-698 at -695]; Fairfield Greenwich Group, Fairfield Sentry Fund Ltd. (B Shares), October 13, 2002 [FAIRFIELD_00041027-061 at -031]; Fairfield Sentry Limited Due Diligence Questionnaire, April 2008 [FG-00018264-300 at -266]; FGG AIMA DDQ, May 21, 2007 [FG-00061450-487 at -454]; FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -276 / SECSEV1793790-876 at -865].

¹²⁰ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -204, -276 / FGGE001216267-353 at -270, -342 / SECSEV1793790-876 at -793, -865]. *See also*, Noel MSD Dep., 2/11/09, 14:8-14:20; Noel Anwar Dep., 6/12/13, 17:8-17:17.

¹²¹ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -276 / FGGE001216267-353 at -342 / SECSEV1793790-876 at -865].

¹²² Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -761].

¹²³ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -761].

¹²⁴ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -761].

¹²⁵ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -761].

85. Tucker then entered the securities industry as a general partner of Fred Kolber & Co., a registered broker dealer where he was responsible for the development and administration of the firm's private investment funds.¹²⁶ At FGG, Tucker was responsible for directing its business and operational areas and was a director or general partner for several of FGG's investment funds.¹²⁷

3. Andres Piedrahita

86. Piedrahita was the president of FGBL until September 5, 2008,¹²⁸ was "responsible for" FGG's European and Latin American activities, and had Latin American and European investor relationships with experience in money management.¹²⁹ After graduating from Boston University in 1981, Piedrahita worked for Guy Carpenter, a reinsurance broker, for a "couple of years."¹³⁰ "From then, [Piedrahita] went to a commodities firm called Balfour MacLaine, where [he] worked for about two years," after which he "moved to Prudential-Bache, where [he] was a broker and commodities broker for two to three years."¹³¹ He was then a Vice President with Shearson Lehman Hutton, specializing in money management consulting for non-U.S. institutions and individuals from 1987 to 1990.¹³² In 1991, Piedrahita formed the Littlestone Associates, Inc., "money management firm," where he was Director and President until 1997 when he merged Littlestone with FGG.¹³³ Piedrahita married Noel's daughter Corina in 1989.¹³⁴

¹²⁶ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -761].

¹²⁷ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -761].

¹²⁸ Deposition of Andres Piedrahita, February 6, 2025 [10-03800_09-01239_PIECAA0000001-269] ("Piedrahita Dep. 2/6/25"); Piedrahita Dep. 2/6/25, Exhibit 5 [ANWAR-CFSB-00000605-606].

¹²⁹ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -276 / SECSEV1793790-876 at -865]; Piedrahita Dep. 2/6/25, Exhibit 4 [ANWAR-CCI-00076181-250 at -193-194]; Piedrahita Anwar Dep., 6/5/13, 23:25-24:11.

¹³⁰ Piedrahita Dep. 2/6/25, 24:11-25:7.

¹³¹ Piedrahita Dep. 2/6/25, 24:11-25:7.

¹³² Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -760-761].

¹³³ Piedrahita Dep. 2/6/25, 24:11-25:7, 27:21-28:3. Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -761].

¹³⁴ Deposition of Corina Piedrahita, April 20, 2012, 13:7-12 [FG-00009734-809].

4. Amit Vijayvergiya

87. Vijayvergiya was a Managing Director of FGBL and Head of Risk Management.¹³⁵ Vijayvergiya received a Master's Degree in Business Administration from Schulich School of Business at York University, a Bachelor of Science in Statistics from the University of Manitoba and a Bachelor of Arts in Economics from the University of Western Ontario.¹³⁶ In 1994, he began his business career with a position in operations research at Canadian National Railways.¹³⁷ He was then "General Manager of LOM Asset Management ('LOM AM'), where he oversaw the management of \$160 million in assets. At LOM AM, Mr. Vijayvergiya structured and managed several multi-manager funds and served on the firm's management and investment committees."¹³⁸ He then managed MAV Hedge Advisors, a family office investing in traditional and alternative investment managers before joining FGG in Bermuda in 2003.¹³⁹ By 2004, he had over a decade of experience in asset management, risk management and operations research.¹⁴⁰
88. Vijayvergiya held the Chartered Financial Analyst designation and the Financial Risk Manager certification.¹⁴¹

5. Jennifer Keeney

89. Keeney was Managing Director, Head of Due Diligence at FGG from 2004 until around September 2008, when her title changed to Managing Director, Senior Analyst.¹⁴² Based out of FGG's New York office, Keeney had approximately a decade of experience in due

¹³⁵ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -279]; Private Placement Memorandum Fairfield Sentry Limited, August 14, 2006 [FAIRFIELD_00025861-921 at -876].

¹³⁶ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -762].

¹³⁷ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -762].

¹³⁸ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -762].

¹³⁹ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -762].

¹⁴⁰ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -279 / SECSEV1793790-876 at -868].

¹⁴¹ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -762].

¹⁴² Deposition of Jennifer Keeney, March 1, 2024, 32:22-33:3, 42:20-43:3 [10-03800_10-01239_KEECA0000001-325 at -032-033, -042-043] ("Keeney Dep., 3/1/24"); Keeney Dep., 3/1/24, Ex. 24 [SECSEV2089647-648].

diligence and equity research at the time she was hired by FGG.¹⁴³ Keeney graduated from Boston University with a Bachelor of Arts degree in International Relations in East Asian Studies and obtained a Master's Degree from Columbia University in International Finance & Business.¹⁴⁴ She then held the following positions prior to joining FGG: Equity Research Assistant at Standard Chartered Securities, Equity Research Assistant at Bear, Sterns & Co., and Director of Operational Due Diligence at Alpha Investment Management.¹⁴⁵

6. Mark McKeefry

90. McKeefry was a member of the FGG Executive Committee,¹⁴⁶ served as FGG's general counsel, and was well-versed in regulatory and compliance issues.¹⁴⁷ McKeefry received his Bachelor of Science degree from Carnegie Mellon University and his Juris Doctor degree from Fordham University.¹⁴⁸ He was admitted to the bars of California and New York.¹⁴⁹ Prior to attending law school, he was a professional engineer, licensed by the State of California as a civil engineer.¹⁵⁰ McKeefry "joined FGG in 2003, after eight years in private law practice in New York and California, where he advised broker-dealers and investment advisors on regulatory and compliance issues for onshore and offshore funds."¹⁵¹ He authored several articles on hedge fund compliance issues and

¹⁴³ Keeney Dep. 3/1/24, Ex. 3 [FG-03750348]; Jennifer Keeney LinkedIn Profile, <https://www.linkedin.com/in/jenniferkeeney> (last accessed August 8, 2025).

¹⁴⁴ Keeney Dep., 3/1/24, 22:24-23:13.

¹⁴⁵ Jennifer Keeney LinkedIn Profile (last accessed August 8, 2025). *See also*, Keeney Dep., 3/1/24, 29:13-32:21.

¹⁴⁶ Deposition of Mark McKeefry, February 5, 2025, 44:3-5 [10-03800 09-01239 MCKCAA0000001-258] ("McKeefry Dep., 2/5/25").

¹⁴⁷ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -278 / SECSEV1793790-876 at -867].

¹⁴⁸ McKeefry Anwar Dep., 6/19/13, [FG-00005440-591 at -445].

¹⁴⁹ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -278 / SECSEV1793790-876 at -867].

¹⁵⁰ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -278 / SECSEV1793790-876 at -867].

¹⁵¹ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -278 / SECSEV1793790-876 at -867].

investment advisor trading practices.¹⁵²

7. Daniel Lipton

91. Lipton was a partner in FGG and was its Chief Financial Officer responsible for all accounting and finance functions.¹⁵³ He had significant accounting and audit experience in alternative investments.¹⁵⁴ Lipton received his Bachelor of Arts degree in Economics from Tufts University and his Master of Business Administration in Accounting and Finance from New York University's Stern School of Business.¹⁵⁵ Prior to joining FGG in 2002, Lipton, a Certified Public Accountant, spent nine years with Ernst & Young where he was a Senior Manager in the Financial Services Assurance and Advisory Business Services Department.¹⁵⁶ At Ernst & Young, Lipton oversaw auditing and consulting engagements, specializing in alternative assets, private equity, venture capital, and domestic and offshore funds.¹⁵⁷ Lipton also taught seminars on financial products and hedge funds.¹⁵⁸

8. Yagil "Gil" Berman

92. Berman, a consultant to FGG, had decades of experience in the investment industry. Berman has a Bachelor of Arts degree in Mathematics from the University of California, Berkeley, and a Master of Business Administration degree from the University of California, Los Angeles Graduate School of Management.¹⁵⁹ Berman was a professional

¹⁵² FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -278 / SECSEV1793790-876 at -867].

¹⁵³ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -277 / SECSEV1793790-876 at -866].

¹⁵⁴ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -277 / SECSEV1793790-876 at -866].

¹⁵⁵ Lipton Anwar Dep., 5/14/13 20:20-24.

¹⁵⁶ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -277 / SECSEV1793790-876 at -866].

¹⁵⁷ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -277 / SECSEV1793790-876 at -866].

¹⁵⁸ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -277 / SECSEV1793790-876 at -866].

¹⁵⁹ Anwar Deposition of Gil Berman, June 20, 2013, 28:18-29:16 [10-03800_FGG_0022022-155 at -029] ("Berman Anwar Dep., 6/20/13").

options trader and member of the American Stock Exchange from 1983 to 1990, a self-employed financial consultant from 1990 through at least 2008, and a Registered Investment Adviser in Colorado and California since 2003.¹⁶⁰ In a deposition, Berman testified that he had experience trading an SSC strategy.¹⁶¹

93. Berman was a consultant to FGG from 1995 until December 2008.¹⁶² He was hired by FGG to provide monthly reports on the trading activity of Fairfield Sentry and Greenwich Sentry Fund (the “Berman Reports”).¹⁶³

VI. Opinion I: Fairfield was dependent on its significant investment with BLMIS

A. The Sentry Funds Were Established to Invest in BLMIS’s Split Strike Conversion Strategy.

94. In 1989, Tucker was introduced to Madoff and BLMIS by his father-in-law. This relationship became the basis for the Sentry Funds. As stated above, FGG’s first investment was through an entity called Fairfield International Fund by way of a “test” investment in July 1989 of \$1.5 million in the SSC strategy run by BLMIS. Prior to the investment at BLMIS, Tucker and Noel met with Madoff who explained the strategy and provided a purported track record.¹⁶⁴ In December 1990, Fairfield Sentry opened its first BLMIS account with a \$4.355 million deposit.¹⁶⁵
95. The SSC strategy is a real strategy used by traders and investors to protect the profit potential of a single asset or basket of assets while simultaneously mitigating potential losses. It is neither a market timing strategy nor a speculative strategy; it is simply a

¹⁶⁰ Berman Anwar Dep., 6/20/13, 18:5-23, 29:17-31:24, 33:3-17, 39:10-40:22, 226:11-13.

¹⁶¹ Berman Anwar Dep., 6/20/13, 109:12-110:21.

¹⁶² Berman Anwar Dep., 6/20/13, 38:17-39:7, 41:9-11, 48:11-50:19, 226:11-13.

¹⁶³ Berman Anwar Dep., 6/20/13, 40:23-41:4.

¹⁶⁴ Tucker Dep., 1/28/25, 53:13-55:7.

¹⁶⁵ See Customer Statement for Fairfield BLMIS Account 1FN012, dated November 30, 1990 [MF00032627] (1FN012-3 / 1-00328-3) and [MF00032628-629] (1FN012-4 / 1-00328-4). In May 1992, accounts 1-00328-3-0 and 1-00328-4-0 became known as 1FN012-3 and 1FN012-4, respectively. The “New Balance” within the April 1992 customer statement ties to the “Balance Forward” in the May 1992 customer statements for the respective accounts. April 1992, Customer Statement, 1-FN012-3 [MF00791685-686] and May 1992, Customer Statement, 1-FN012-3 [MF00463036-037]. See also Noel MSD Dep., 2/11/09, 30:21-31:10.

hedging strategy. The hedge of the equity basket will both limit downside risk as well as limit upside potential as indicated in **Figure 11** below.

96. At BLMIS, the SSC was initially purportedly executed as the purchase of a stock, the purchase of a put option on that stock, and the sale of a call option on that stock. FGG's BLMIS account statements reflect the SSC using individual stocks through 1991.¹⁶⁶ Beginning in December 1991, in the Fairfield BLMIS Accounts, the SSC was purportedly executed as the purchase of a basket of stocks, the purchase of a put option on the S&P100 Index, and the sale of a call option on the S&P100 Index.¹⁶⁷ The equity basket had to be at least 95% correlated to the S&P100 Index and have at least 75% of the market value of the S&P100 Index.¹⁶⁸
97. The SSC strategy is executed in a specific order to ensure that the option "collar" secures the equity basket properly. The first step is to purchase the equity basket. Step two is to purchase the put option(s). The last step is to sell a call option(s) to pay for the puts.¹⁶⁹
98. There are certain expectations of an SSC strategy. One of them is that the returns should be moving in the same direction as the underlying security or index. This means that the returns of the overall strategy should be correlated to the S&P 100 Index. Another expectation is regarding a hedge. The puts in an SSC strategy are meant to protect the downside of the equity position and for this you pay a premium. That premium is paid for mostly by the calls sold, which not only pays for the protection, but also limits the upside. Importantly, while the puts can protect the downside, they cannot magically turn a negative result into a positive result.
99. The following figure shows an excerpt from an FGG presentation describing the payout structure of the SSC strategy.

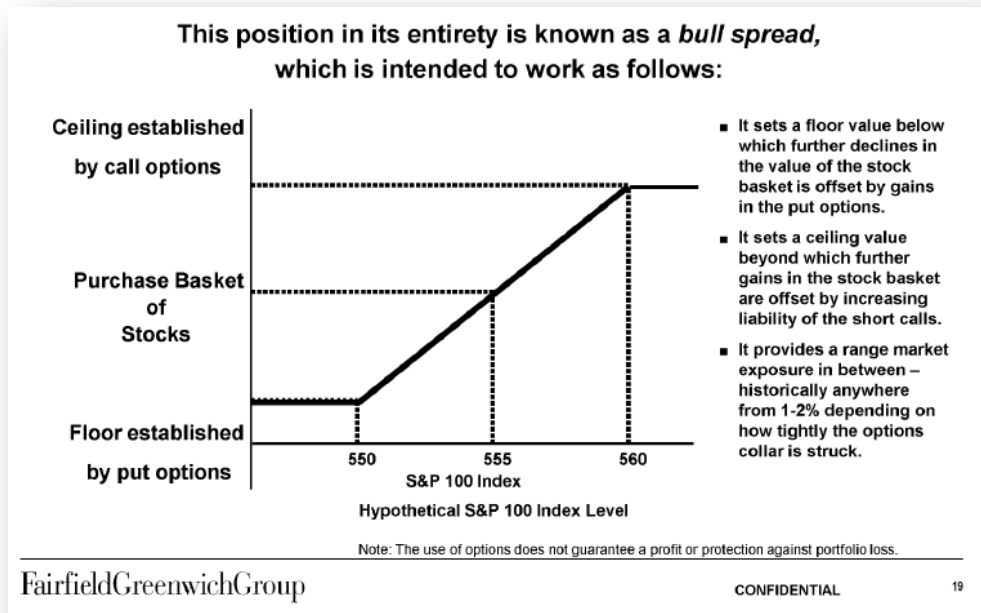
¹⁶⁶ See, e.g., November 1990, Customer Statement, 1-00328-4 (1-FN012-4) [MF00032628-629]; December 1990, Customer Statement, 1-00328-4 (1-FN012-4) [MF00024591]; November 1990, Customer Statement, 1-00389-4 (1-FN011-4) [MF00498535-536; December 1990, Customer Statement, 1-00389-4 (1-FN011-4) [MF00496698-700].

¹⁶⁷ See, e.g., Fairfield Sentry PPM, July 2003 [SECSEV2137283-350 at -297]; Fairfield Sentry Tearsheet, June 2006 [SECSEV0002239-240 at -239].

¹⁶⁸ Fairfield Sentry Fund Semi-Annual Update, October 22, 2003 [FAIRFIELD_00024253-257 at -253].

¹⁶⁹ See, e.g., Tucker Dep., 1/28/25, 68:19-69:02.

Figure 11: FGG Presentation Excerpt¹⁷⁰



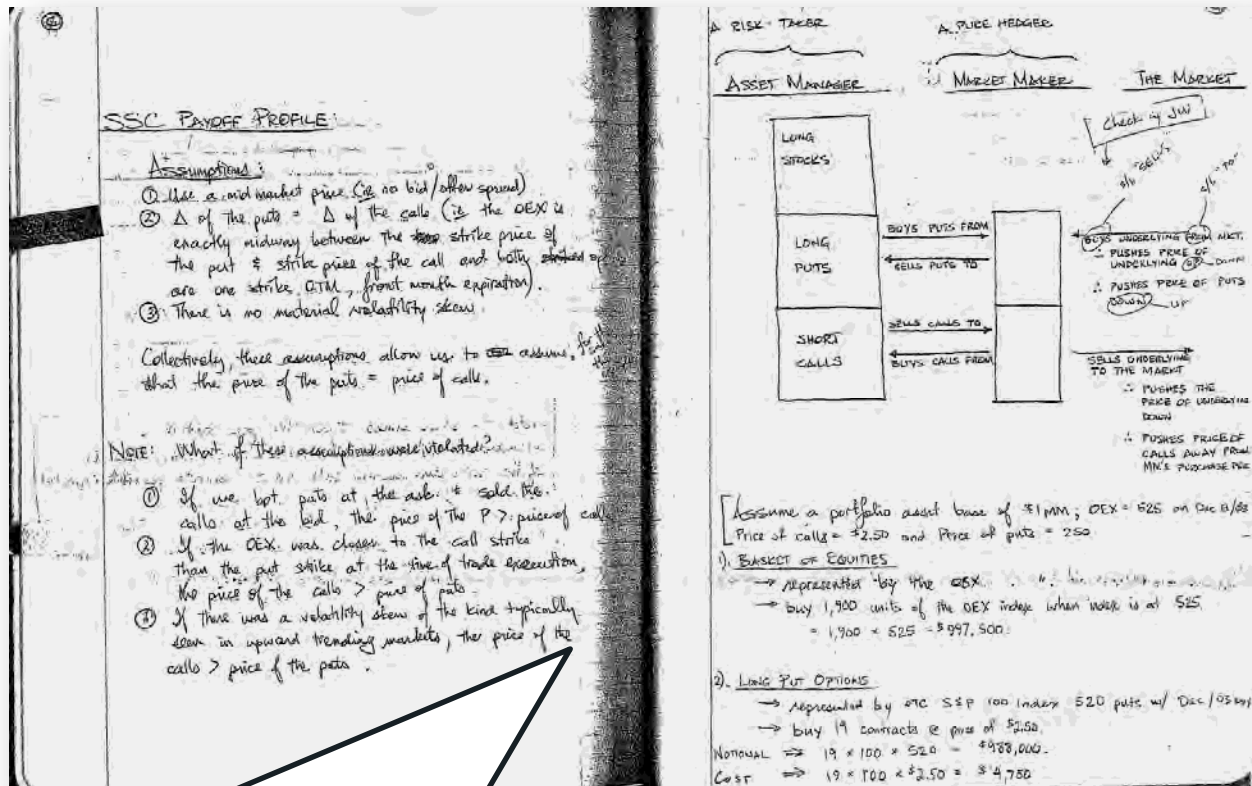
100. The SSC strategy is also described in handwritten notebooks kept by Vijayvergiya (FGG's risk manager) during his tenure with FGG. A total of 22 notebooks, dated June 2003 through December 2008, were made available to me.¹⁷¹ These notebooks included

¹⁷⁰ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -219 / SECSEV1793790-876 at -808].

¹⁷¹ Amit Vijayvergiya's Notebooks: June 2003 - August 2003 [FGG00092230-330 / SECSEL0000201-301]; August 2003 - December 2003 [FGG00092331-431 / SECSEL0000100-200]; December 2003 - April 2004 [FGG00092432-530 / SECSEL0000001-099]; May 2004 - July 2004 [FGG00092531-630 / SECSEL0000504-603]; July 2004 - September 2004 [FGG00092631-731 / SECSEL0000403-503]; October 2004 - January 2005 [FGG00092732-832 / SECSEL0000302-402]; January 2005 - April 2005 [FGG00092833-933 / SECSEL0000908-008]; April 2005 - June 2005 [FGG00092934-033 / SECSEL0000707-806]; June 2005 - August 2005 [FGG00097986-086 / SECSEL0001009-109]; August 2005 - December 2005 [FGG00098087-187 / SECSEL0000807-907]; December 2005 - February 2006 [FGG00098188-290 / SECSEL0000604-706]; February 2006 - May 2006 [FGG00098291-391 / SECSEL0001209-309]; May 2006 - September 2006 [FGG00098392-490 / SECSEL0001310-408]; September 2006 - November 2006 [FGG00098491-591 / SECSEL0001409-509]; November 2006 - February 2007 [FGG00098592-690 / SECSEL0001110-208]; February 2007 - April 2007 [FGG00098691-786 / SECSEL0001703-798]; April 2007 - July 2007 [FGG00098787-878 / SECSEL0001510-601]; August 2007 - October 2007 [FGG00098879-979 / SECSEL0001602-702]; October 2007 - December 2007 [FGG00098980-078 / SECSEL0001799-897]; February 2008 - June 2008 [FGG00099079-196 / SECSEL0001898-015]; June 2008 - November 2008 [FGG00099197-297 / SECSEL0002016-116]; November 2008 - December 2008 [FGG00099298-327 / SECSEL0002117-146]. I have not seen a notebook produced covering January 2008.

the following description of the SSC strategy:¹⁷²

Figure 12: Excerpt from Vijayvergiya's Notebook, December 2003 – April 2004¹⁷³



"Assume a portfolio asset base of \$1MM; OEX = 525 on Dec 8/03 Price of calls = \$2.50 and Price of puts = 250

1. Basket of Equities

- represented by the OEX.
- buy 1,900 units of the OEX index when index is at 525 = $1,900 \times 525 = \$997,500$.

2. Long Put Options

- represented by OTC S&P 100 Index 520 puts w/ Dec /03 exp
- buy 19 contracts @ price of \$2.50.
- Notional $\rightarrow 19 \times 100 \times 520 = \$988,000$
- Cost $\rightarrow 19 \times 100 \times \$2.50 = \$4,750$

¹⁷² Amit Vijayvergiya's Notebook, December 2003 - April 2004 [FGG00092432-530 at -435 / SECSEL0000001-099 at -004].

¹⁷³ Amit Vijayvergiya's Notebook, December 2003 - April 2004 [FGG00092432-530 at -435 / SECSEL0000001-099 at -004].

Figure 13: Excerpt from Vijayvergiya's Notebook, December 2003 – April 2004¹⁷⁴

3). SHORT CALL OPTIONS
→ represented by S&P 100 Index 530 Dec calls w/ Dec/03 exp
→ buy 19 contracts @ price of \$2.50
NOTIONAL ⇒ $-19 \times 100 \times 530 = \$1,007,000$
COST ⇒ $-19 \times 100 \times 2.00 = -\$3,800$ (ie an inflow)

3. Short Call Options

- represented by S&P 100 Index 530 Dec calls w/ Dec/03 exp
- buy 19 contracts @ price of \$2.50
Notional → $-19 \times 100 \times 530 = \$1,007,000$
Cost → $-19 \times 100 \times 2.00 = \$3,800$ (ie an inflow)

101. This shows FGG's risk manager's understanding of the strategy and shows how the notional value is calculated (number of contracts x 100 x strike price). This allows FGG to calculate how much volume would be needed to execute the strategy at BLMIS.

B. The Sentry Funds funneled billions of dollars into BLMIS

102. The Sentry Funds were established in 1990 for the sole purpose of investing in the SSC strategy.¹⁷⁵ At their inception in 1990, the Sentry Funds invested \$4.355 million with BLMIS,¹⁷⁶ with AUM increasing to a high of almost \$7.7 billion in August 2008.¹⁷⁷ At the beginning of December 2008, at the time of BLMIS's collapse, the Sentry Funds had

¹⁷⁴ [FGG00092432-530 at -436 / SECSEL0000001-099 at -005].

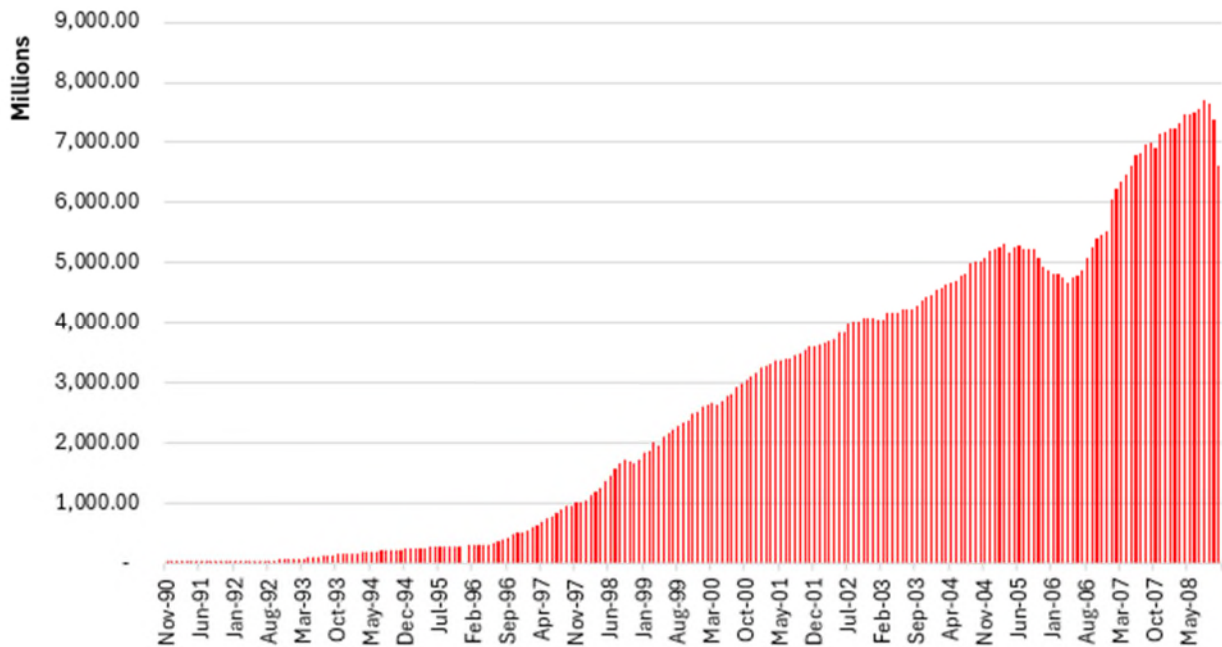
¹⁷⁵ Investment Management Agreement, November 15, 1990 [SECSCM0003972-4005 at -998-4005]. See also, Option Agreement, Corporate Resolution, and Managed Account Agreement [AMF00071578-614 at -609-613]. ("Madoff shall have full discretion and authority to manage the investment of the Account and shall use its best efforts to increase the value of the Account by causing the assets therein to be invested and reinvested in such-manner as Madoff considers appropriate.").

¹⁷⁶ Customer Statements for Account "1FN012," November 30, 1990, Accounts 1-00328-3-0 [MF00032627] and 1-00328-4-0 [MF00032628-629]. In May 1992, accounts 1-00328-3-0 and 1-00328-4-0 became known as 1FN012-3 and 1FN012-4, respectively. The "New Balance" within the April 1992 customer statement ties to the "Balance Forward" in the May 1992 customer statements for the respective accounts.

¹⁷⁷ Settled Cash table, StorQM Customer Statements.

\$6.3 billion invested with BLMIS.¹⁷⁸

Figure 14: AUM in Fairfield BLMIS Accounts¹⁷⁹



103. The Sentry Funds' increased investment with BLMIS coincided with the SEC's investigation in 1992 of Avellino & Bienes, an accounting firm that operated as an unregistered investment advisor that funneled funds into BLMIS. When Avellino & Bienes was publicly enjoined from operating as an unregistered investment company, Madoff was required to return money to Avellino & Bienes's investors.¹⁸⁰ In 1992, the Sentry Funds increased their investments with BLMIS, investing billions of dollars over time.

¹⁷⁸ Settled Cash table, StorQM Customer Statements.

¹⁷⁹ Settled Cash table, StorQM Customer Statements, Customer Ledgers.

¹⁸⁰ The SEC brought suit against Avellino & Bienes for the unlawful sale of unregistered securities related to their pooled accounts with BLMIS. Avellino & Bienes consented to judgment against it in that suit requiring return of its investors' funds from the BLMIS accounts. Complaint for Preliminary & Permanent Injunctive & Other Equitable Relief, SEC v. Avellino & Bienes, No. 92-CV-08314 (JES) (S.D.N.Y. Nov. 25, 1992) [PUBLIC0016607]; SEC News Digest, Issue 92-230 (Nov. 30, 1992) [PUBLIC0706335]; Final Judgment of Permanent Injunction and Other Equitable Relief and Consent Against Avellino & Bienes, Frank J. Avellino and Michael S. Bienes, SEC v. Avellino & Bienes, No. 92-CV-08314 (JES) (S.D.N.Y. Sept. 7, 1993) [SECSFA0004691-716]; *see also* Trustee's Report, Sept. 27, 1993 [SECSFA0003842].

104. The Sentry Funds and FGG benefitted from the relationship with BLMIS and Madoff. As early as 1998, the Sentry Funds were 90% of FGG's total assets. By 2003, Sentry assets as a percentage of firm assets declined to 73%, but net revenue from the Sentry products remained high at 80%. By July 2007, the Sentry Funds' assets as a percentage of FGG's total assets reduced to 45% yet net revenue from the Sentry Funds remained significant at 58% of total net revenue. Fees generated by the Sentry Funds remained important in running the FGG business and allowed FGG to diversify its non-BLMIS investment products.

Figure 15: Sentry AUM and Revenue as a Percentage of Total Firm¹⁸¹

End of Period	Sentry AUM (\$ in mm)	Total FGG AUM (\$ in mm)	Sentry AUM as % of Total FGG AUM	Sentry Net Revenue (\$ in mm)	Total FGG Net Revenue (\$ in mm)	Sentry Net Revenue as % of Total FGG Net Revenue
1998	\$ 1,732	\$ 1,932	90%	N/A	N/A	N/A
1999	\$ 2,465	\$ 2,665	92%	N/A	N/A	N/A
2000	\$ 3,158	\$ 3,514	90%	N/A	N/A	N/A
2001	\$ 3,653	\$ 4,433	82%	N/A	N/A	N/A
2002	\$ 4,170	\$ 5,128	81%	N/A	N/A	N/A
2003	\$ 4,572	\$ 6,282	73%	\$ 60.3	\$ 75.8	80%
2004	\$ 5,255	\$ 8,815	60%	\$ 70.7	\$ 108.4	65%
2005	\$ 5,013	\$ 9,379	53%	\$ 84.0	\$ 141.6	59%
2006	\$ 5,780	\$ 12,658	46%	\$ 136.7	\$ 200.1	68%
2007	\$ 7,149	\$ 16,000	45%	\$ 141.9	\$ 233.2	61%
October 2008	\$ 7,300	\$ 16,200	45%	N/A	N/A	N/A

105. As shown in **Figure 15**, Sentry's investments were important to FGG.

106. FGG and BLMIS had a close relationship, as indicated by the following:

- FGG noted that used their "[c]lose relationship" with managers to perform ongoing monitoring and due diligence;¹⁸²
- FGG noted that they "assured [Bernie] of our intention to notify him of any regulatory contacts regarding sentry;"¹⁸³

¹⁸¹ FGG Firm Profile, August 15, 2007 [FG-04904079-145 at -081-082]; 2007 Sentry AUM amount is from the FGG Management Report – Year End 2007 [SECSEV2916131-154 at -132]; Revenue amounts for 2007 YE are from Management Planning, Inc. (MPI) Document [FG-02863996-4030 at -4009]; Fairfield Greenwich Group, October 2008 Tearsheet [SECSEV0002270-272 at - 270-271].

¹⁸² FGG Firm Profile and Capabilities [FG-00004957-005 at -970].

¹⁸³ Email from Mark McKeefry to Rob Blum re: NASD Series 7 Tests, March 17, 2005 [McKeefry 6/19/2013 Dep. Ex. 24, FG-00005889-890 at -889].

- In an email to FGG personnel, Tucker states that “[b]eing responsive to [Madoff’s] questions is very important” and that the “kimono must always be open in the [FGG-BLMIS] relationship”).¹⁸⁴
- In an email to Banknord, Yanko della Schiava stated that “Amit explained the strategy to Max [of Banknord] and went into detail to describe our close relationship with the Madoff firm.”¹⁸⁵

VII. Opinion II: The documents and information available to FGG, including cumulative red flags, showed that there were no trades being executed in the Fairfield BLMIS Accounts and that BLMIS was not executing the trading strategy FGG and BLMIS presented to investors

A. Overview of Due Diligence

107. Due diligence encompasses a broad range of issues and procedures to evaluate a potential investment or an existing investment. Due diligence has been described in a variety of ways:¹⁸⁶

- “The investigation and evaluation of a management team's characteristics, investment philosophy, and terms and conditions prior to committing capital to the fund.”¹⁸⁷
- “Reasonable investigation conducted by the parties involved in preparing a disclosure document to form a basis for believing that the statements contained therein are true and that no material facts are omitted.”¹⁸⁸
- “The process whereby an investor investigates the attractiveness of an opportunity, assesses the quality of the management team, and assesses the key

¹⁸⁴ Email from Tucker re: notes from my conversation with Bernie this morning, November 15, 2008 [FAIRFIELD_01872830-831 at -830, Tucker Dep. Jan. 28, 2025, Ex. 10]; Tucker Dep. Jan. 28, 2025, 105:2 - 106:18.

¹⁸⁵ Email from Patrick Blake to Yanko della Schiava RE: Banknord meeting notes, February 24, 2004 [SECSEV0841846-848 at -847 / FGGE000264323-325 at -324]; *see also* FGANW005689355 (May 25, 2007 email from Charles Murphy to Vijayvergiya and Lipton noting “close relationship with Madoff”).

¹⁸⁶ Shane, Randy, (2008) Hedge Fund Due Diligence; Professional Tools to Investigate Hedge Fund Managers. Wiley Finance p.8-9 [PUBLIC0709061-400 at -087-088].

¹⁸⁷ Venture Economics, VE-Glossary, October 6, 2001 (last updated October 10, 2000) [PUBLIC0706408].

¹⁸⁸ Fidelity IPO Glossary, <https://www.fidelity.com/glossary/ipos>. (last visited August 22, 2025).

risks associated with an opportunity. Due diligence starts on initial inspection of an opportunity and ends when an investment is completed.”¹⁸⁹

108. Due diligence is not a one-meeting event; it is ongoing over the life of the investment. Roxanne M. Martino, a respected leader in alternative assets and finance¹⁹⁰ aptly described in the 1990s, the continuing obligation and process of due diligence:

*The due diligence process does not end when an investment is made. In fact, that is when it begins all over again. Due diligence must be ongoing - as well as evaluating potential managers, you must continually monitor and evaluate your current managers. In fact, we find that most of our time is spent performing ongoing due diligence. Personnel change, strategies change, markets change and managers' personal situations change. Any of these can have an effect, positive or negative, on the manager's ability to make money. It is an investor's mandate to be aware of these changes, judge their effects, and then decide what course of action is required, if any.*¹⁹¹

109. Ms. Martino also remarked on a well-known mantra of due diligence – trust but verify:

*Do your own work - do not rely on others' analysis. 'Cocktail chatter' can be a tool to gather information, but do not substitute this for thorough due diligence. You must also be critical of the 'halo effect'. Just because a well-known investor has made an allocation to a manager does not mean this manager is talented or appropriate for your portfolio, or even that that investor performed any due diligence at all. Your investment decisions should be based on information that you gathered.*¹⁹²

110. When managing a hedge fund or any other investment vehicle, an investment manager is faced with both tangible and intangible aspects of fulfilling fiduciary care. Unlike a brick-and-mortar company that has tangible, touchable inventory, investments in hedge

¹⁸⁹ Technology Venture Partners, Glossary [PUBLIC0709405-406 at -405].

¹⁹⁰ Ventas Board of Directors Profile, <https://ventasreit.com/who-we-are/board-of-directors/roxanne-martino> (last visited August 22, 2025).

¹⁹¹ Martino, Roxanne M. (1999) The Due Diligence Process, Chapter 27, *Evaluating and Implementing Hedge Fund Strategies* (2nd ed.) Lake, Ronald Ed. Euromoney Publications [PUBLIC0709040].

¹⁹² Martino, Roxanne M. (1999) The Due Diligence Process, Chapter 27, *Evaluating and Implementing Hedge Fund Strategies* (2nd ed.) Lake, Ronald Ed. Euromoney Publications [PUBLIC0709040] (*emphasis added*).

funds are maintained in the ether. Investment managers no longer maintain and transfer physical stock certificates or bond coupons. Most importantly, they must be vigilant in their due diligence and on-going risk management to have the best chance of avoiding fraud.

111. In a manufacturing company (as an example of brick-and-mortar), you can detect fraud in numerous, tangible ways—money missing from a bank account or petty cash, inventory missing from a warehouse, or diagrams of proprietary mechanical devices being used by a competitor. All of these are examples of obtaining actual knowledge of illicit conduct.
112. In hedge funds, there are also tangibles that can detect fraud. Relevant here, the fraud is that no securities were being traded. The tangible evidence of this includes (as discussed herein): trades that are simply not possible on an exchange, assets unaccounted for by an administrator or custodian, an auditor who could not possibly complete the work required due to inexperience or lack of staffing, and performance that is statistically impossible given the strategy. FGG had tangible evidence that BLMIS was not trading securities.
113. There is just as much, or more, intangible evidence of fraud. Red flags are just as important in money management as missing petty cash is in brick-and-mortar company management. For example, in the mid-1990s, I reviewed the Manhattan Investment Fund run by Michael Berger, who was a short seller. Short sellers bet that the asset they are trading will go down in price. The Manhattan Investment Fund's returns were incredibly positive in a raging bull market where assets kept rising. While the other short sellers in the industry such as David Rocker or Jim Chanos were losing money, Mr. Berger kept showing positive returns. I believed, along with my colleagues, that the Manhattan Investment Fund was falsifying their returns. This was ultimately shown to be the case.¹⁹³
114. As a fiduciary, it is my responsibility to assume that what I suspect (whether it is a glaring red flag or a rumor) is true until I prove otherwise. Unlike the legal presumption of innocent until proven guilty, a fiduciary must react to put the client first and assume

¹⁹³ SEC Litigation Release No. 17230, *COMMISSION OBTAINS \$20 MILLION JUDGMENT AGAINST MICHAEL W. BERGER IN HEDGE FUND FRAUD CASE*, November 13, 2001 [PUBLIC0708492].

guilty until proven innocent.

115. In my experience, the knowledge of a red flag – facts or circumstances that indicate risk associated with the investment opportunity – is the same as the knowledge that petty cash is missing. It is my job to identify and understand the cause of the red flag through a thorough investigation. Any single red flag requires follow-up. But when there are multiple red flags, a pattern emerges. It is my job to understand if there is a legitimate explanation for the pattern. My job is to keep track, verify, and decide to stay in or get out.

1. Due diligence in the investment industry from 1995 through 2008

116. Due diligence is a combination of investment and operational analyses of companies and investment products. As with all processes, it has evolved as the markets and participants evolved.
117. In the late 1990s and early 2000s, there was no dearth of information related to alternative investments and hedge funds available to due diligence professionals and investment managers in books such as:
- i. Lederman, Jess and Klein, Robert A. (1996) *Market Neutral; State of the Art Strategies for Every Market Environment*. McGraw Hill.
 - ii. Jaffer, Sohail, Ed. (1998) *Alternative Investment Strategies*. Institutional Investor
 - iii. Owen, James P. (2000) *The Prudent Investor's Guide to Hedge Funds; Profiting from Uncertainty & Volatility*. John Wiley & Sons.
 - iv. Lavinio, Stefano (2000) *The Hedge Fund Handbook; A Definitive Guide for Analyzing and Evaluating Alternative Investments*. McGraw Hill.
 - v. Nicholas, Joseph G. (2002) *Investing in Hedge Funds*. Bloomberg Press
 - vi. Lake, Ronald Ed. (2003) *Evaluating and Implementing Hedge Fund Strategies* 3rd ed. Euromoney Books.
 - vii. Nicholas, Joseph G. (2004) *Investing in Hedge Funds*. Euromoney Publications and Institutional Investor Books.
118. Due diligence is both quantitative and qualitative because it involves the analysis of

investment and trading capability as well as the analysis of operational capability. It is easy to say that hindsight is twenty-twenty, but due diligence is foresight and done, in part, to avoid investing in a fraud. Circa 1994, my former partners at Paradigm, LDC and I conducted comprehensive due diligence on behalf of sophisticated investors such as Howard Hughes Medical Institute, AIG Investment Group, and Banque Pictet & Cie's Alternative Investment Group and Fund-of-Funds. We considered all the parts of the firm and the trading strategy as one. It was critical to view each and every quantitative or qualitative red flag not just in isolation, but within an overall pattern.

119. In my experience, as well as industry customs and practices, investment managers have a fiduciary responsibility to react to every red flag both in isolation and in relation to all the cumulative red flags and anomalies that arise over the life of an investment. Furthermore, it is critical to insist on answers until you have verified that what you are being told is true. This requires third party verification. In addition, due diligence professionals use all data available during a review and after an investment is made. Most importantly, there can be no fear of terminating an investment for any reason.
120. Quantitative analysis is the process of collecting and evaluating measurable and verifiable economic and financial data to understand the behavior and performance of a business.¹⁹⁴ For example, by conducting factor analysis and correlation analysis, my firm had a very good sense of a fund's performance attribution whether that be by business sector, market index, or specific geography. The statistical analysis gave us a glimpse into performance and how *or if* it was achieved. On the other hand, qualitative analysis provided us with an understanding of aspects of the investment not found in the numbers themselves. This included, for example,
1. The structure of the firm and whether it properly supports the strategy and assets managed in both size and personnel;
 2. The thought process of the members of the firm and how they approach their responsibilities;

¹⁹⁴ Quantitative Analysis, CFI Education [PUBLIC0708168].

3. How the portfolio manager sources investment ideas, implements them, allocates trades, and ultimately closes the position;
 4. How the investment side of the business is supported by the operational side of the business;
 5. Identification of counterparties (brokers, trading partners, vendors) and their potential risks;
 6. How the risks of the portfolio and firm products are managed;
 7. How the accounting process works, how investor Net Asset Value (“NAV”) is calculated, and where there may be gaps in procedures or policies;
 8. How staff work or do not work together as a team, if the firm is cohesive or if silos exist; and
 9. Verification of performance track records, trading statements, and cash.
121. For example, having been trained in operations, including but not limited to, bookkeeping, cashiering, new accounts, wire and order, and compliance at Merrill Lynch in the early 1980s, and subsequently conducting branch office operational reviews, I learned it was critical to always “follow the money.” It did not matter if it was from the deposit to withdrawals for individuals or subscription to the NAV for fund investors. Following the money gave us an understanding of the safeguards in place, and enabled us to verify assets from our initial wire to our NAV when investing in a hedge fund. This is not to say that vendors such as administrators and custodians were not trustworthy, but rather it was our fiduciary duty to verify the safety of our client’s investment.
122. In my experience in branch support at Merrill Lynch, which included due diligence, concerns of fraud are at the forefront of examinations. “The Erisk Wheel of Misfortune” in **Figure 16** below, is from a book titled *Dealing With Financial Risk*¹⁹⁵ and demonstrates that by the early 2000s, due diligence professionals had seen many examples of fraud, and those frauds informed the industry approach to due diligence.
123. The Erisk Wheel of Misfortune in **Figure 16** identifies several financial blow-ups and

¹⁹⁵ Shirreff, David, *Dealing With Financial Risk*, The Economist in Association with Profile Books, Ltd, 2004, p.40-41 [PUBLIC0708796-9017 at -843-844].

frauds prior to the discovery of the BLMIS Ponzi scheme. For example, in 1991, Bank of Credit and Commerce International (“BCCI”) collapsed with liabilities of \$14 billion after an investigation found evidence of massive fraud.¹⁹⁶ In 1996, Morgan Grenfell dismissed Peter Young, a fund manager, for “‘gross misconduct’ amid an investigation into improper trading in three mutual funds.”¹⁹⁷ In 1998, Peter Young was charged with “conspiracy to defraud and offences under the 1986 Financial Services Act.”¹⁹⁸ In 2003, “the jury found that Mr. Young had planned to steal more than £350,000 from a fund under his management using a ‘golden bond’ investment he designed in secret to deceive his bosses.”¹⁹⁹ The significant losses resulting from these frauds were the results of failures in due diligence.

124. As an example of a blow-up, when Long-Term Capital Management collapsed in 1998, it was a huge call for better risk management and an understanding of probable risks versus possible risks, i.e., identifying risks that were more likely to occur and should be managed. *Dealing With Financial Risk* highlights some of the key risks identified from the Long-Term Capital Management collapse: unexpected correlation or the breakdown of correlation, i.e., where the connection between two coefficients is not as expected or the expected connection is faulty; the need for stress testing, i.e., whether the investment institution can withstand adverse economic conditions; the value of disclosure of information pertinent to the people, market, and trading results; transparency of the execution of the purported trading strategies; and the challenges of investing in star quality stocks, such as market volatility and overvaluation.²⁰⁰

¹⁹⁶ Reed, Betsy, Timeline: BCCI case, The Guardian, November 2, 2005 [PUBLIC0709018].

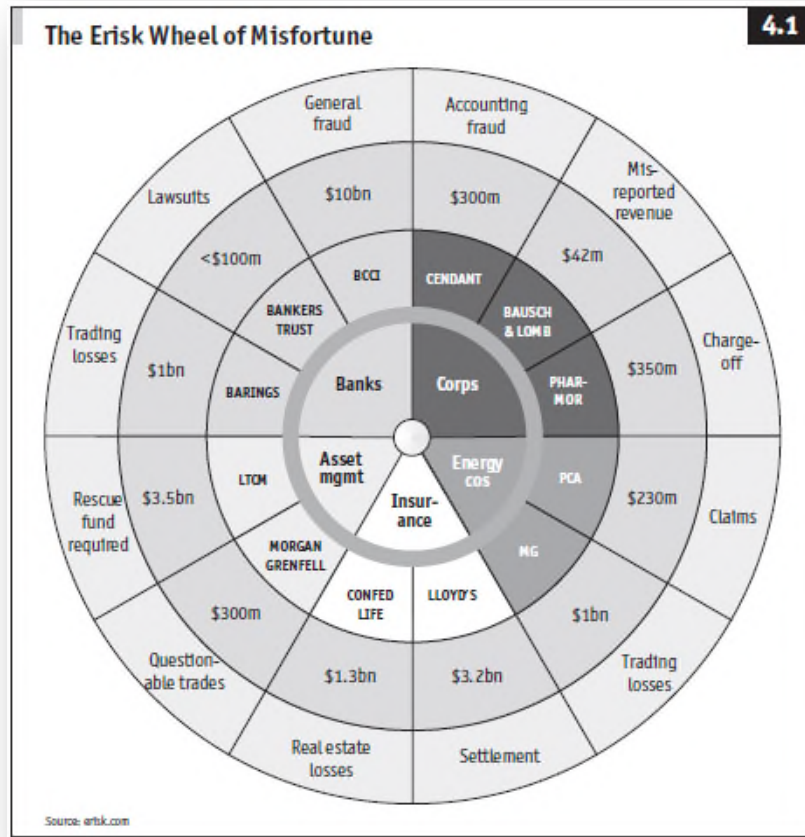
¹⁹⁷ The New York Times, Fund Manager Dismissed By Morgan Grenfell, September 19, 1996 [PUBLIC0707165].

¹⁹⁸ Andrew Garfield, The Independent, Peter Young charged with Morgan Grenfell fraud, October 20, 1998 [PUBLIC0708159].

¹⁹⁹ Bowers, Simon, *Jury finds that Young orchestrated fraud*, The Guardian, June 13, 2003 [PUBLIC0708150].

²⁰⁰ Shirreff, David, *Dealing With Financial Risk*, Chapter 15: *Lessons from the collapse of Long-Term Capital Management*, The Economist in Association with Profile Books, Ltd, 2004, p.136 [PUBLIC0708796-9017 at - 939].

Figure 16: Erisk Wheel of Misfortune²⁰¹



125. My firm, as well as others in the industry, including the institutions with whom I worked, have always had some steadfast rules regarding our fiduciary responsibility to our clients, as far back as 1996, including:

- We would not invest with an advisor who had custody of our assets;
- We would not invest in a strategy we could not understand;
- We did not invest in managers that promoted exclusivity; and
- We would not rely on the due diligence of others.

2. Due Diligence vs. Risk Management

126. Due diligence is pro-active and ongoing and dovetails with risk management, which is

²⁰¹ Shirreff, David, *Dealing With Financial Risk*, The Economist in Association with Profile Books, Ltd, 2004, p.40-41[PUBLIC0708796-9017 at -843-844].

also ongoing. It is important for the Head of Risk Management and the Head of Due Diligence to work in concert with each other. Risk management of hedge funds requires an understanding of the strategies employed, the market and operational risks associated with those strategies, methodologies to analyze those risks, and a strategy to mitigate those risks. While both use quantitative tools, risk management is heavily reliant on statistical analysis and many other quantitative tools and methods. In addition, risk management considers exogenous factors such as market activity and counterparty credit, among others.

127. Risk management is an essential aspect of portfolio management.²⁰² Risk management can take different forms depending upon the investment. I have had experience with risk management at different times in my career. At Merrill Lynch Futures, we managed margin call risk by ensuring we had access to a client's stock account and could transfer cash as needed or liquidate securities if necessary. That was how we would mitigate the risk of an unsecured debt. In managing a fund-of-funds, risk management started with our asset allocation and manager diversification. We diversified across different strategies, duration, and limited our total allocation to any one manager to under ten percent (10%), but we rarely got above a five percent (5%) allocation to any one manager. When a manager's positive performance pushed its position size in our portfolio above a certain percentage, we would place a partial redemption to scale back the risk. If a manager started to style drift (perform in a manner inconsistent with the stated strategy) or a rumor was circulated, we redeemed the manager to mitigate potential portfolio impact if we could not get a logical explanation. These are just a few examples of risk management, driven by the nature of the investment.
128. Risk management differs from due diligence and is responsible for mitigating portfolio risk and implementing a risk control plan should something occur that could damage the portfolio. Risk management examines risks relative to the fund's strategy, the market, and the portfolio as a whole.
129. Risk analysis and risk management are important at the trade level and the portfolio level.

²⁰² Portfolio management falls under the umbrella of investment management.

The CFA Institute makes a clear distinction between risk analysis and risk management.²⁰³

- **Risk Analysts**: Manipulate and interpret risk-related data, quantify potential risks, identify practices within the organization that contribute to increased financial risk, compile reports to communicate findings to stakeholders within the business, and collaborate with Risk Managers on reporting and evaluation techniques.²⁰⁴
- **Risk Managers**: “Develop plans to minimize and mitigate negative financial outcomes through a combination of project management and proposal development. . . . Risk Managers are experts on the regulatory and compliance standards in the financial field and draw on years of experience navigating risk-related scenarios. . . . Risk Manager roles typically require five to ten years of professional experience in the risk management field.”²⁰⁵

130. Changes in the portfolio metrics allow managers to assess and address unwanted risks that creep into the portfolio. RiskMetrics (“RM”) is an organization that provides “risk management and corporate governance products and services to participants in the global financial markets” and has historically been a tool used by hedge funds and portfolio managers to assist in managing the risk of their portfolio on a daily, weekly, and monthly basis.²⁰⁶
131. RM is only valuable as a risk management tool if the portfolio manager has discretion and can effect changes in the portfolio based on the information gleaned from a RM report. For example:

²⁰³ CFA Institute, *What are Risk Analysts & Risk Managers* [PUBLIC0709022] (“While Risk Analysts provide data that can help Risk Managers explore all possible solutions to minimize risk, Risk Managers have a greater degree of responsibility and accountability in how an organization moves forward with a risk management strategy.”).

²⁰⁴ CFA Institute, *What are Risk Analysts & Risk Managers* [PUBLIC0709022].

²⁰⁵ CFA Institute, *What are Risk Analysts & Risk Managers* [PUBLIC0709022].

²⁰⁶ RiskMetrics Group, Inc. Form 10-k, December 31, 2009, p.2 [PUBLIC0706416] (RM “enable[s] clients to better understand and manage the risks associated with their financial holdings, to provide greater transparency to their internal and external constituencies, to satisfy regulatory and reporting requirements and to make more informed investment decisions.”).

- if an unforeseen risk such as concentration or excessive correlation is identified in a hedge fund RM report, then hedge fund managers can mitigate that risk by adjusting the positions in the portfolio, or
- if the hedge fund has a benchmark (comparison of fund performance to peer group) and the RM report identifies a deviance from the benchmark due to certain factors, the hedge fund manager can adjust the portfolio to the target benchmark.

132. While FGG claimed to have discretion (therefore the ability to make adjustments based on RM reports), they did not use RM for risk management, but rather for risk monitoring (the process of identifying anomalies or risks that should not be taken and ensuring that the funds' risks are appropriate for the mandate). To that end, there is no evidence that these reports were useful, nor any evidence that FGG took action based on any RM report.

3. Reactive Due Diligence

133. An investment manager's duties do not cease after the initial investment. They involve consideration of and investigation into investor, third party or industry questions or issues regarding the particular investment – known as reactive due diligence. When managing money for others, the fiduciary care given to oversight and due diligence is of paramount importance. During the lifetime of an investment, it is important to maintain a skeptical mind when anomalies arise. These are potential red flags and should be treated as such. While initial due diligence is proactive, responding to anomalies and red flags is reactive. Every single anomaly and red flag has meaning. Whether there are one, three, or innumerable red flags, they cannot be ignored.

134. Industry blow-ups, rumors, and frauds prompt investment managers and due diligence professionals to react. Blow-ups in the industry require a reaction to ensure your portfolio does not have similar risks or risks you may have missed. During the life of FGG's investment with BLMIS, there were numerous blow-ups in the industry that had an impact on the due diligence process. These include:

- Long-Term Capital Management (1998):

- To control the risk of a global financial meltdown, the U.S. Government stepped in and negotiated an agreement for a bail-out by the dealers and banks.²⁰⁷
- The risk manager failed to recognize that there was a possibility of an event that could severely impact their highly levered portfolio.
- Manhattan Investment Fund Ltd. (2000):²⁰⁸
 - Michael Berger shorted technology and internet-related stocks from 1996 to at least 1999 while declaring huge profits, despite sustaining “huge” and consistent losses in reality.²⁰⁹
 - Berger falsified account statements to shareholders to hide the Manhattan Investment Fund’s losses.²¹⁰
 - Berger was fined over \$20 million.²¹¹
- Lipper Holdings, LLC (2006):²¹²
 - Portfolio manager Edward Strafaci intentionally overstated the value of the convertible bonds and convertible preferred stock in which the Funds were invested between at least 1998 and 2002.²¹³

²⁰⁷ U.S. Department of Treasury, Report of The President’s Working Group on Financial Markets, *Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management*, April 1999 [PUBLIC0707982].

²⁰⁸ SEC Litigation Release No. 16412, *SEC Charges Hedge Fund and Its Adviser With Fraud Emergency Relief Ordered*, January 19, 2000 [PUBLIC0708478]; CNN Money, *SEC charges hedge fund*, January 19, 2000, [PUBLIC0708476].

²⁰⁹ SEC Litigation Release No. 16412, *SEC Charges Hedge Fund and Its Adviser With Fraud Emergency Relief Ordered*, January 19, 2000 [PUBLIC0708478] Michael W. Berger, a hedge fund adviser, his hedge fund, Manhattan Investment Fund Ltd., and Manhattan Capital Management Inc., his investment adviser were charged with securities fraud.

²¹⁰ SEC Litigation Release No. 16412, *SEC Charges Hedge Fund and Its Adviser With Fraud Emergency Relief Ordered*, January 19, 2000 [PUBLIC0708478].

²¹¹ SEC Litigation Release No. 17193, *COURT ENTERS FINAL JUDGMENT AGAINST MANHATTAN CAPITAL MANAGEMENT, INC.*, October 16, 2001. *See also*, SEC Litigation Release No. 17230, *COMMISSION OBTAINS \$20 MILLION JUDGMENT AGAINST MICHAEL W. BERGER IN HEDGE FUND FRAUD CASE*, November 13, 2001 [PUBLIC0708480].

²¹² Administrative Proceeding - Order: Lawrence A. Stoler, CPA; File No. 3-12179; February 9, 2006 [PUBLIC0706602]; SEC Litigation Release, SEC v. Edward J. Strafaci, 03 CV 8524 (CSH) (S.D.N.Y.) [PUBLIC0708490]. Strafaci was also indicted for criminal charges based on the same actions.

²¹³ Administrative Proceeding - Order: Lawrence A. Stoler, CPA; File No. 3-12179; February 9, 2006 [PUBLIC0706602]. (“From at least 1998 until his resignation in January 2002, the Funds’ portfolio manager, Edward J. Strafaci (“Strafaci”) intentionally overstated the value of the convertible bonds and convertible preferred stock in which the Funds were invested.”).

- For example, in 2001, for Convertibles, the largest of the Funds, the partners' capital as reported in audited financials was overstated by approximately 49%.²¹⁴
 - The SEC charged Strafaci with fraud in connection with the valuation of the funds.
- Michael Lauer, Lancer Management Group, LLC, and Lancer Management Group II, LLC (2003):²¹⁵
 - Lauer over-inflated performance and net asset values of three hedge funds he controlled which claimed to have assets worth over \$1 billion dollars.²¹⁶
 - Lauer systematically manipulated the month-end closing prices of certain securities held by the funds, overstating the value of the funds holding in virtually worthless companies and provided unfounded valuation options to auditors to get audited financial statements.²¹⁷
- Bayou Funds (2005):²¹⁸

²¹⁴ Administrative Proceeding - Order: Lawrence A. Stoler, CPA; File No. 3-12179; February 9, 2006 [PUBLIC0706602].

²¹⁵ SEC Litigation Release No. 18226, *FEDERAL COURT ISSUES EMERGENCY ORDER FREEZING ASSETS OF PURPORTED BILLION DOLLAR HEDGE FUND GROUP; SEC ALLEGES MASSIVE OVERVALUATION AND MANIPULATION SCHEME*, July 10, 2003 [PUBLIC0708482]. *See also*, SEC Litigation Release No. 18247, *Federal Court Issues Preliminary Injunction Order Against Michael Lauer, Lancer Management Group, LLC, and Lancer Management Group II, LLC*, July 23, 2003 [PUBLIC0708485].

²¹⁶ SEC Litigation Release No. 18226, *FEDERAL COURT ISSUES EMERGENCY ORDER FREEZING ASSETS OF PURPORTED BILLION DOLLAR HEDGE FUND GROUP; SEC ALLEGES MASSIVE OVERVALUATION AND MANIPULATION SCHEME*, July 10, 2003 [PUBLIC0708482]. *See also*, SEC Litigation Release No. 18247, *Federal Court Issues Preliminary Injunction Order Against Michael Lauer, Lancer Management Group, LLC, and Lancer Management Group II, LLC*, July 23, 2003 [PUBLIC0708485].

²¹⁷ SEC Litigation Release No. 18226, *FEDERAL COURT ISSUES EMERGENCY ORDER FREEZING ASSETS OF PURPORTED BILLION DOLLAR HEDGE FUND GROUP; SEC ALLEGES MASSIVE OVERVALUATION AND MANIPULATION SCHEME*, July 10, 2003 [PUBLIC0708482]. *See also*, SEC Litigation Release No. 18247, *Federal Court Issues Preliminary Injunction Order Against Michael Lauer, Lancer Management Group, LLC, and Lancer Management Group II, LLC*, July 23, 2003 [PUBLIC0708485].

²¹⁸ SEC Litigation Release No. 19406, *SEC CHARGES SAMUEL ISRAEL III, DANIEL E. MARINO, BAYOU MANAGEMENT, AND BAYOU FUNDS FOR DEFRAUDING HEDGE FUND INVESTORS AND MISAPPROPRIATING INVESTOR ASSETS, Commission Seeks Freeze of Assets and Appointment of Receiver*, September 29, 2005 [PUBLIC0706546-548]. *See also*, Complaint for Injunctive and Other Equitable Relief, and for Civil Monetary Penalties Under the Commodity Exchange Act, Commodity Futures Trading Commission v. Bayou Management, LLC et al. No. 05 Civ. 8374 (S.D.N.Y. September 29, 2005), ECF No. 1 [PUBLIC0706549-573]; SEC Complaint v. SAMUEL ISRAEL III; DANIEL E. MARINO; BAYOU

- From 1996 through 2005, Samuel Israel and Daniel Marino “defrauded current investors, and attracted new investors, by grossly exaggerating the Funds’ performance to make it appear that the Funds were profitable and attractive investments, when in fact, the Funds had never posted a year-end profit.” Fabricated account statements, performance summaries, and audited financial statements.
- Created a fictitious accounting firm, Richmond-Fairfield Associates, to issue “independent” audit reports to support the fraudulent claims and results.
- Misappropriated investor funds and diverted their customers’ money into fraudulent investments, among other violations.
- Red Flags included:
 - Bayou had an affiliated broker-dealer;
 - Excessive concentration of duties;
 - Accelerated AUM growth;
 - Lack of independent auditor; and
 - Non-traditional management fee structure.
- The 2005 Bayou collapse highlighted the importance of people-related due diligence because there was a concentration of duties in the hands of very few people. Specifically, one of Bayou’s executives, Daniel Marino, was simultaneously the Chief Financial Officer and the Chief Operating Officer of Bayou Group.²¹⁹

135. As shown below, FGG’s due diligence process highlighted the Bayou fraud as a headline to avoid, “[Bayou] Duo Pleads Guilty to Fraud.” Furthermore, FGG put the Bayou fraud

MANAGEMENT, LLC; BAYOU ACCREDITED FUND, LLC; BAYOU AFFILIATES FUND, LLC; BAYOU NO LEVERAGE FUND, LLC; and BAYOU SUPERFUND, LLC, September 29, 2005, p.5 [PUBLIC0706574-589]; Gretchen Morgenson, Jenny Anderson and Geraldine Fabrikant, *Clues to a Hedge Fund’s Collapse*, The New York Times, September 17, 2005 [PUBLIC0703275-284].

²¹⁹ Complaint for Injunctive and Other Equitable Relief, and for Civil Monetary Penalties Under the Commodity Exchange Act, *Commodity Futures Trading Commission v. Bayou Management, LLC, et al.* No. 05 Civ. 8374 (S.D.N.Y. September 29, 2005), ECF No. 1, pp.4, 6, 13 [PUBLIC0706549].

“to the test” of their own due diligence process, stating actions they would have performed and items it would have revealed.²²⁰

136. The slide below, created by FGG, confirms my point that there were enough issues in the industry for any fiduciary to increase its due diligence processes and ensure that any red flag was reviewed and resolved. I agree with FGG’s due diligence advice – avoid becoming the fraud headline.

Figure 17: FGG Due Diligence – Headlines to Avoid²²¹



B. FGG’s Due Diligence

1. Fairfield Capabilities and Approach to Investment Management

137. In the many documents, emails, and presentations I reviewed, FGG presented itself as a sophisticated due diligence firm with vastly better insight than other investment managers or fund-of-fund managers.²²² As discussed herein, FGG presentations to investors and its website showcased FGG’s extensive capabilities, processes, and procedures. It is critical

²²⁰ FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -129, -139-140]. *See also*, Wall Street Journal, Bayou Duo Plead Guilty to Fraud, September 30, 2005 [PUBLIC0706590].

²²¹ FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -129]. Additional versions of this presentation, as of different dates, contained additional headlines listed. *See, e.g.*, Investment Process and Due Diligence Overview, January 2007 [FAIRFIELD_00104384-429 at -405]; Investment Process and Due Diligence Overview, September 2006, p.14 [FG-00244015-040 at -028].

²²² *See, e.g.*, Email chain between Dan Lipton, FGG’s Operations Group, John Wartman, Stephanie Ho, Mayya Molchan, and Nancy Ng, RE: Hedge Funds Still Failing at Risk Management – Good Article, December 13, 2002 [FAIRFIELD_01874276-278].

to note that at no time did FGG indicate in its presentations, responses to investors, or on its website that these capabilities, processes, and procedures did not apply to FGG's investments with BLMIS.²²³

Figure 18: FGG Investment Team Organization and Duties²²⁴



138. FGG acknowledged the importance of due diligence, the importance of the ability to obtain documents and information on the investment, and the ability to verify through third parties the information provided by the investment fund.

²²³ See, e.g., Fairfield Greenwich Group - Fairfield Greenwich Multi-Strategy Funds Presentation [FG-05210993-1022 at -997, -1000, -1005].

²²⁴ Investment Process and Due Diligence Overview, Single Manager Funds, March 2007 [FG-01930100-142 at -106]. See also, FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -127].

139. The following FGG presentations are examples of the sophisticated due diligence and risk management capabilities touted by FGG.²²⁵

140. **Figure 19** is a chart utilized by FGG to highlight their investment process and the level of due diligence and risk monitoring performed to ensure managers are compatible with FGG's investment philosophy, business model, and portfolio.

Figure 19: FGG Investment Process²²⁶

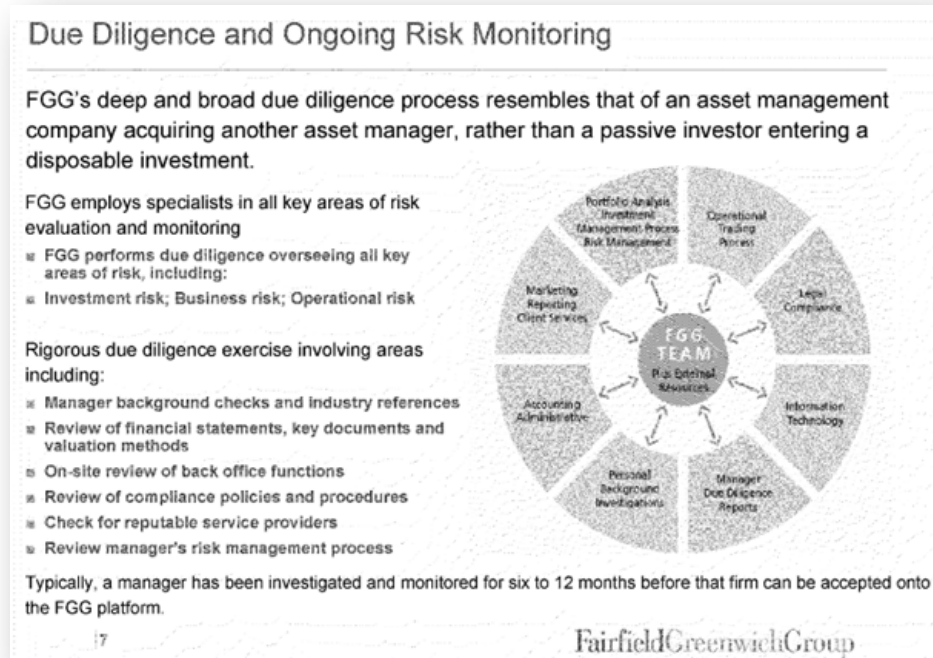


141. Another chart created by FGG, detailed in **Figure 20** below, illustrates FGG's "rigorous," "broad," and "deep" due diligence and ongoing risk monitoring process.

²²⁵ FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -128-140].

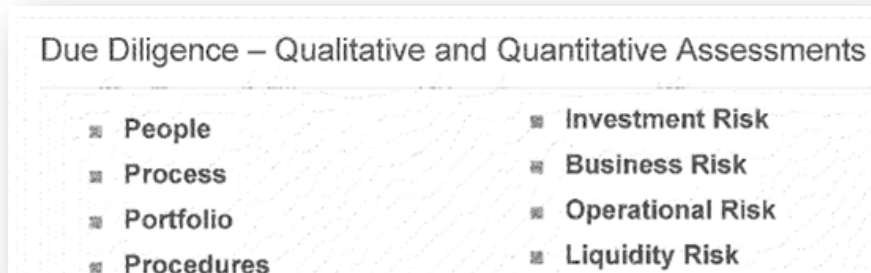
²²⁶ FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -128].

Figure 20: FGG Due Diligence and Ongoing Risk Monitoring²²⁷



142. Additionally, FGG noted in its presentation decks that due diligence is an important and necessary step in the investment process and is a combination of qualitative and quantitative assessments, as noted within **Figure 21**.

Figure 21: FGG Due Diligence – Qualitative and Quantitative Assessments²²⁸



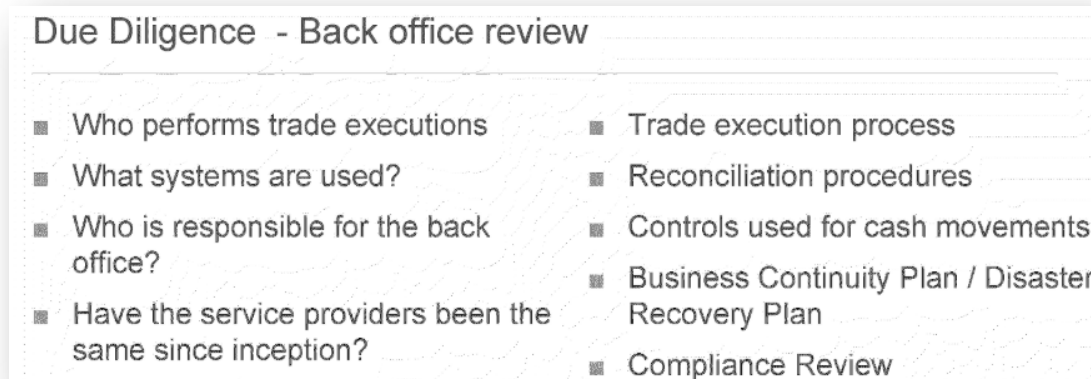
143. As seen in **Figure 22**, FGG's presentations regarding their due diligence process also

²²⁷ FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -130].

²²⁸ Investment Process and Risk Management Overview, January 2006 [FG-06132609-652 at -628-629]; FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -131].

included a review of the back office. In an earlier presentation, FGG listed the first three bullets on the left of **Figure 22** as items “FGG must know” and the first four bullets on the right of **Figure 22** as items “FGG must understand” to help eliminate or mitigate operational risks.

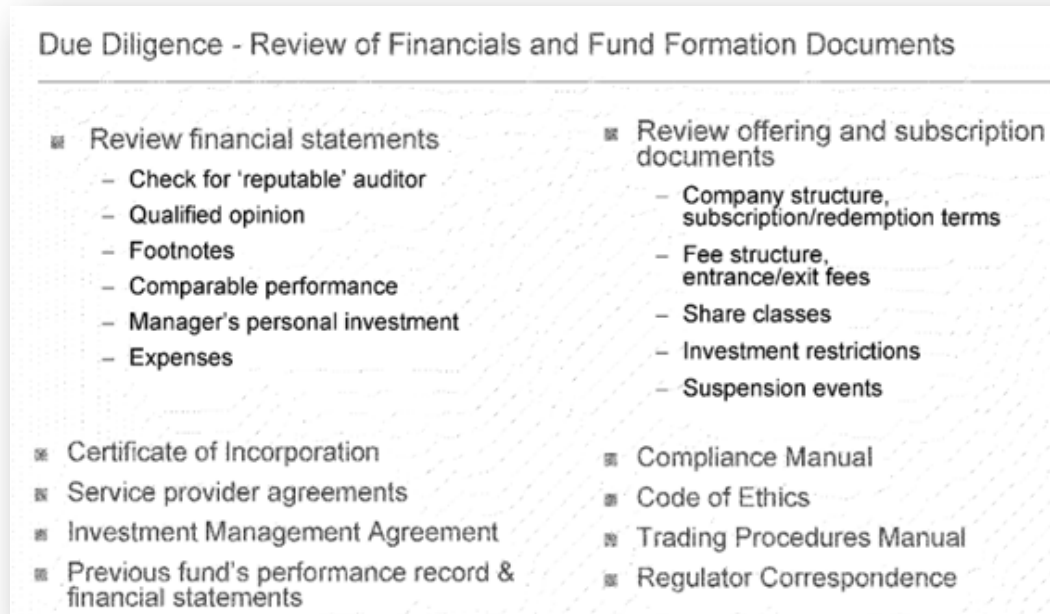
Figure 22: FGG Due Diligence – Back Office Review²²⁹



144. **Figure 23**, a slide from one of FGG’s presentations highlighted, their in-depth review of financial and fund formation documents during their due diligence process.

²²⁹ Investment Process and Risk Management Overview, January 2006 [FG-06132609-652 at -634-635]; FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -134].

Figure 23: FGG Due Diligence – Review of Financials and Fund Formation Documents²³⁰

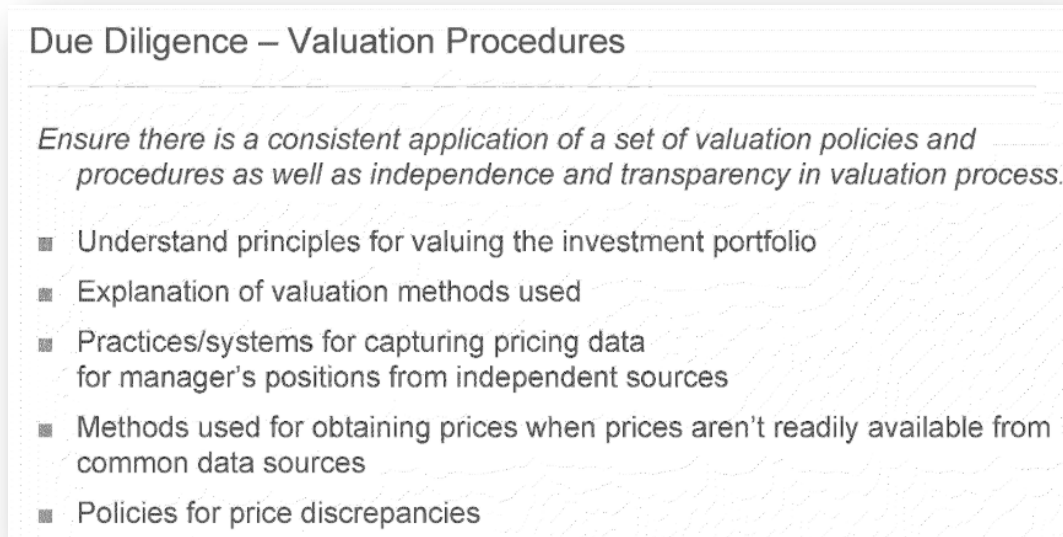


145. Additionally, as seen in **Figure 24**, FGG's slide discussed their due diligence process with regards to valuation procedures. In an earlier presentation, FGG listed the last four bullets within **Figure 24** as items "FGG must understand," noting that the valuation process "is another area which has spelled failure for many hedge fund managers."²³¹

²³⁰ FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -132].

²³¹ Investment Process and Risk Management Overview, January 2006 [FG-06132609-652 at -632-633].

Figure 24: FGG Due Diligence – Valuation Procedures²³²



146. As shown in **Figure 25**, FGG highlighted their due diligence of service providers, including auditors. In another one of FGG's presentations, they noted the importance of asking all service providers "if they have [been] working with the manager since inception. If not, why was there a change? Having conversations with the Service Providers often proves to be very valuable - they often know a great deal about the manager and its operations."²³³

²³² FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -133].

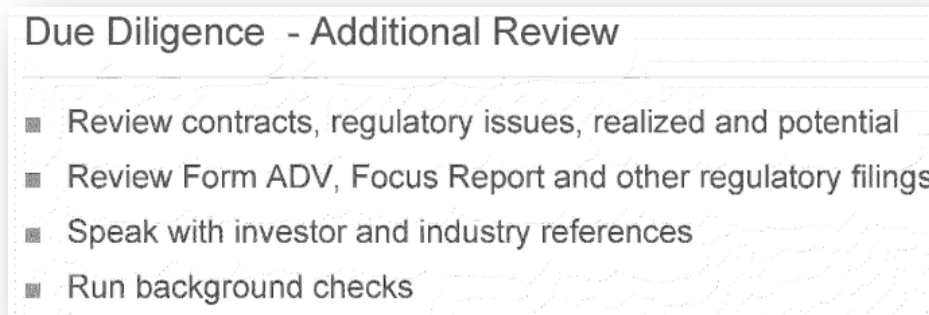
²³³ Investment Process and Risk Management Overview, January 2006 [FG-06132609-652 at -636-637].

Figure 25: FGG Due Diligence – Service Provider Review²³⁴



147. Within an earlier presentation, FGG explained that “[h]edge fund managers function within an ever more complex legal and regulatory landscape.”²³⁵ Due to this complex landscape, FGG highlighted the additional areas, including legal, compliance, and regulatory that their due diligence process dug into, as seen in **Figure 26**.

Figure 26: FGG Due Diligence – Additional Review²³⁶



148. As seen within FGG’s presentations, such as **Figure 27** below, FGG noted that a final report of their due diligence would address any exceptions or concerns found throughout the process. In an earlier presentation, FGG noted that “[t]he Final Report is a

²³⁴ FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -135].

²³⁵ Investment Process and Risk Management Overview, January 2006 [FG-06132609-652 at -638-639].

²³⁶ FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -136].

confidential document for research use only. It summarizes the review of [the] questionnaire, track record, financial statements, offering documents, backoffice infrastructure, asset verification, portfolio review, references, background check, [and] recommendation. It addresses any concerns that we brought to the manager's attention during the due diligence process, as well as corrective measures that have been taken or must be taken.”²³⁷

Figure 27: FGG Final Due Diligence Report²³⁸

FGG Final Due Diligence Report

☒ Addresses any exceptions/concerns found in due diligence

FairfieldGreenwichGroup
Due Diligence - Final Report
INTERNAL USE ONLY

Company Name: RAVEN ASSET MANAGEMENT, LLC	Investment Strategy: LONG/SHORT CREDIT
Fund Name(s): RAVEN CREDIT OPPORTUNITIES FUND	Due Diligence Date: JUNE 14, 2005
Manager Name(s): ALAN MARK, MURRAY KENNEY	Investment Date: JULY 1, 2005

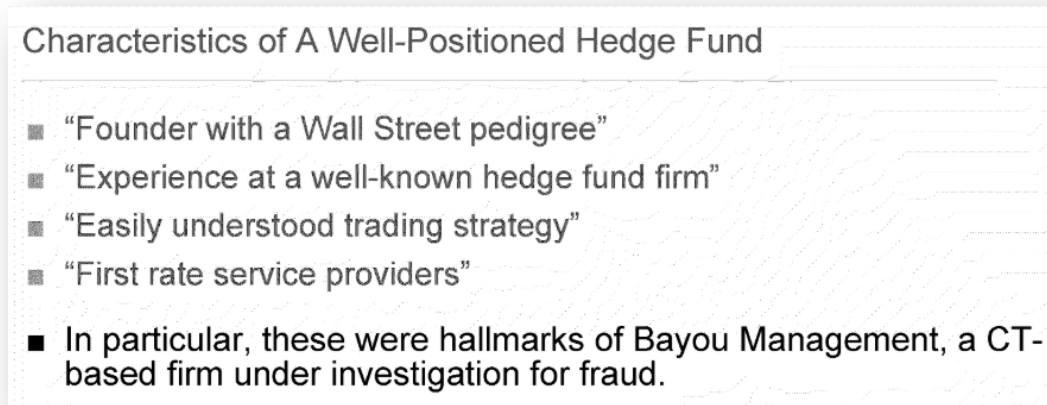
149. Further, as shown in **Figure 28** below, FGG highlighted several characteristics of a well-positioned hedge fund that they look for in a manager. In an earlier presentation, FGG explained that Bayou touted itself as having these traits and that “[f]or some firms, [that] is enough but [FGG] look[s] for other characteristics, such as: [s]trong risk management, [s]olid investment process, [m]odest relative leverage, [h]igh portfolio liquidity, [c]ompetitive previous track record, [e]stablished operational and compliance procedures,

²³⁷ Investment Process and Risk Management Overview, January 2006 [FG-06132609-652 at -640-641]. *See also*, FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -137].

²³⁸ FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -137].

*[d]aily transparency.”*²³⁹

Figure 28: FGG – Characteristics of a Well Positioned Hedge Fund²⁴⁰

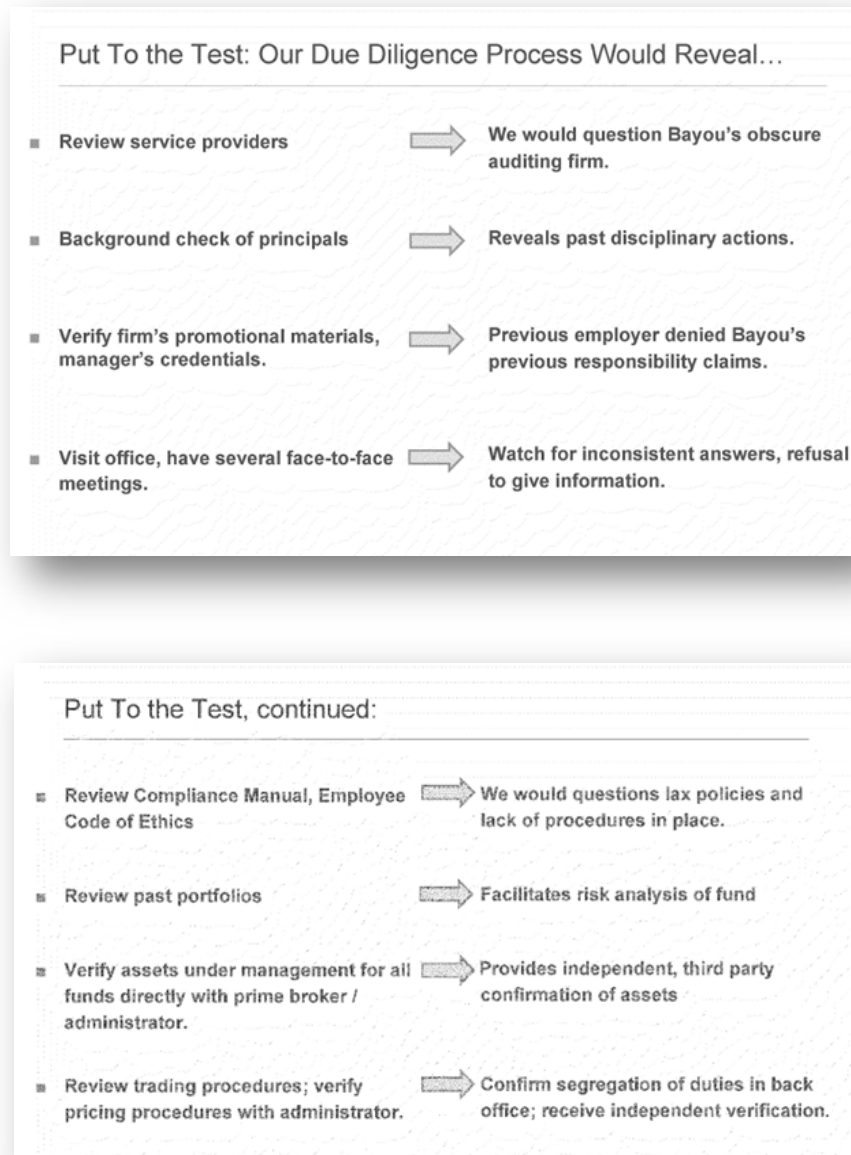


150. FGG used the Bayou fraud as an example to showcase their due diligence process and put it to the test within their presentations. As seen within **Figure 29** below, FGG highlighted what their due diligence process would have revealed if they were to have performed due diligence on the Bayou Funds.

²³⁹ Investment Process and Risk Management Overview, January 2006 [FG-06132609-652 at -642-643] (*emphasis added*).

²⁴⁰ FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -138].

Figure 29: FGG – “Our Due Diligence Process Would Reveal...”²⁴¹



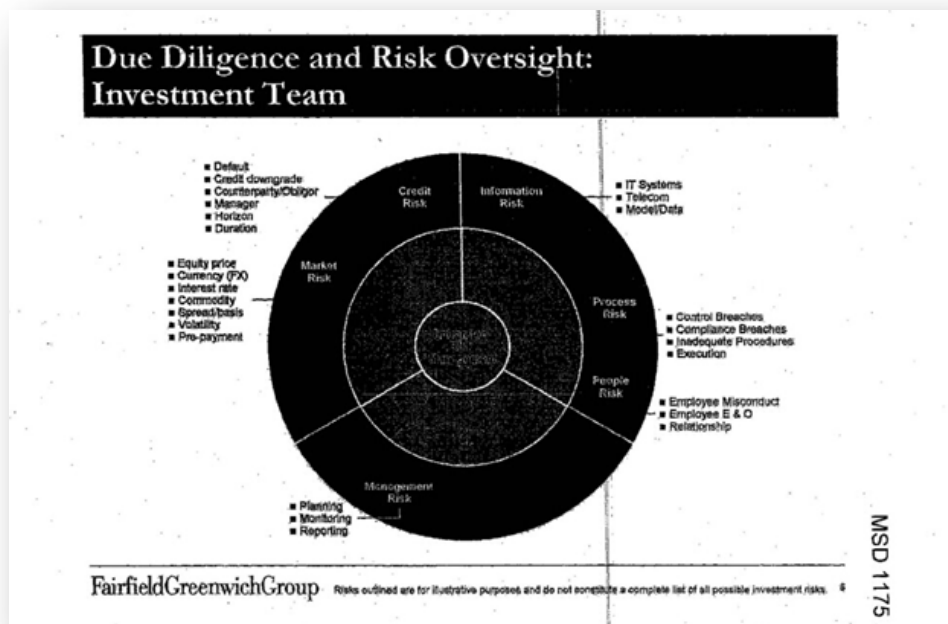
151. In a presentation,²⁴² written for Fiduciary Trust, dated December 2006, titled Ongoing Due Diligence and Risk Management, FGG presents the distinctions between due

²⁴¹ FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -139-140].

²⁴² Interview of Amit Vijayvergiya, Commonwealth of Massachusetts Office of the Secretary of the Commonwealth Securities Division in the Matter of Bernard L. Madoff Securities, LLC, March 6, 2009, Exhibit 2, FGG Presentation for Fiduciary Trust, Ongoing Due Diligence and Risk Management, December 2006 [SECSEL0002155 -511 at -442-459].

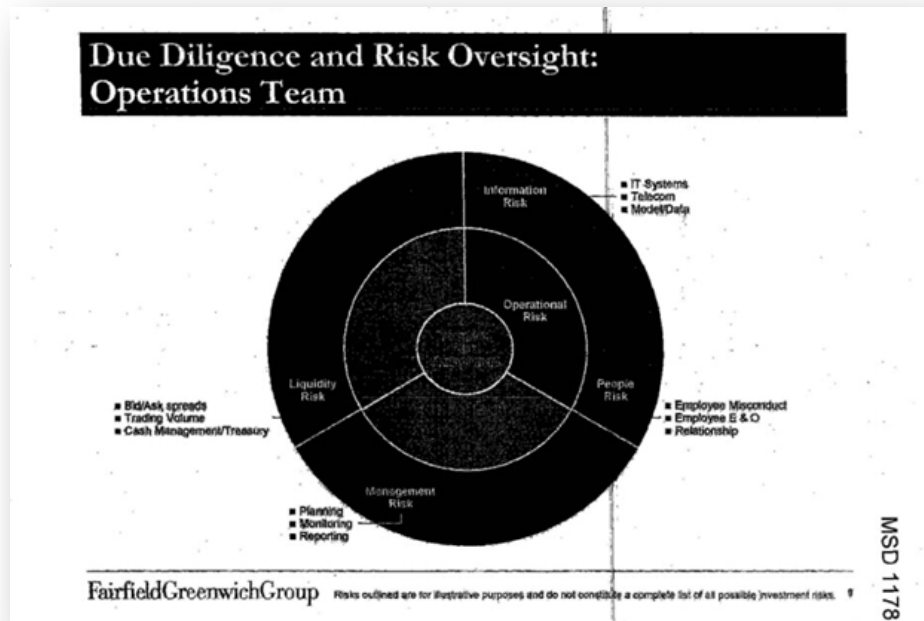
diligence and risk management. The examples chosen are illustrative of numerous similar representations found in email correspondence, due diligence questionnaires (“DDQs”), and other presentations.

Figure 30: Due Diligence and Risk Oversight – Investment Team²⁴³



²⁴³ Interview of Amit Vijayvergiya, Commonwealth of Massachusetts Office of the Secretary of the Commonwealth Securities Division in the Matter of Bernard L. Madoff Securities, LLC, March 6, 2009, Exhibit 2, FGG Presentation for Fiduciary Trust, Ongoing Due Diligence and Risk Management, December 2006 [SECSEL0002155 -511 at -447].

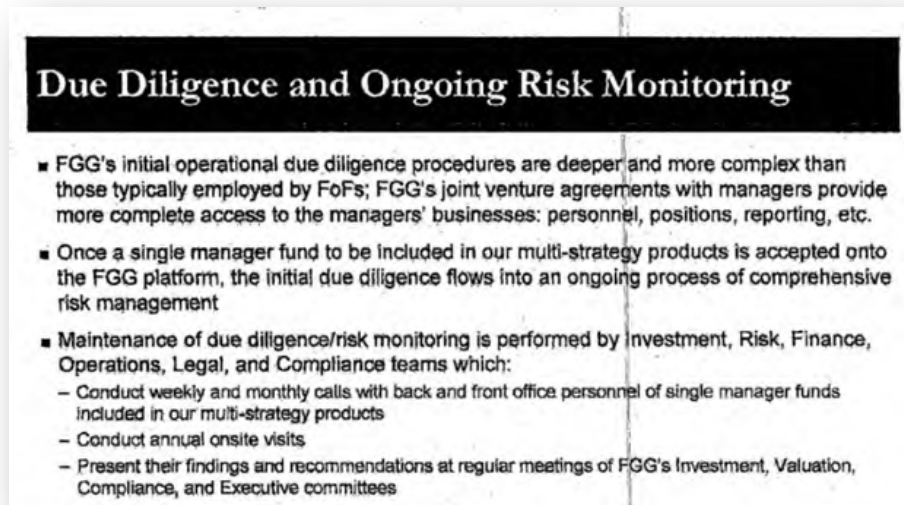
Figure 31: Due Diligence and Risk Oversight – Operations Team²⁴⁴



152. One of the many ongoing responsibilities of the Operations Team was reviewing liquidity risk such as trading volume, IT, and systems.

²⁴⁴ Interview of Amit Vijayvergiya, Commonwealth of Massachusetts Office of the Secretary of the Commonwealth Securities Division in the Matter of Bernard L. Madoff Securities, LLC, March 6, 2009, Exhibit 2, FGG Presentation for Fiduciary Trust, Ongoing Due Diligence and Risk Management, December 2006 [SECSEL0002155 -511 at -450].

Figure 32: Due Diligence and Ongoing Risk Monitoring²⁴⁵



153. FGG states that its initial operational due diligence was “deeper and more complex than those typically employed by FoFs [fund-of-funds].”²⁴⁶ In one of their presentations, FGG states that its due diligence is akin to the type of due diligence performed when “acquiring another asset manager, rather than a passive Investor entering a disposable investment.”²⁴⁷
154. Having conducted due diligence on a management company of a hedge fund being considered for purchase by a Wall Street broker, I can attest that the scope of due diligence for that type of transaction is vast and thorough. It includes a deep dive into the financials of the firm, a complete review of all policies, processes, trading statements, vendor reviews, and procedures. It takes months to complete a review of any financial firm being considered for purchase. These reviews are not only necessary to find cracks and flaws in an organization, but they are also critical for spotting fraud. One of the most

²⁴⁵ Interview of Amit Vijayvergiya, Commonwealth of Massachusetts Office of the Secretary of the Commonwealth Securities Division in the Matter of Bernard L. Madoff Securities, LLC, March 6, 2009, Exhibit 2, FGG Presentation for Fiduciary Trust, Ongoing Due Diligence and Risk Management, December 2006 [SECSEL0002155 -511 at -454].

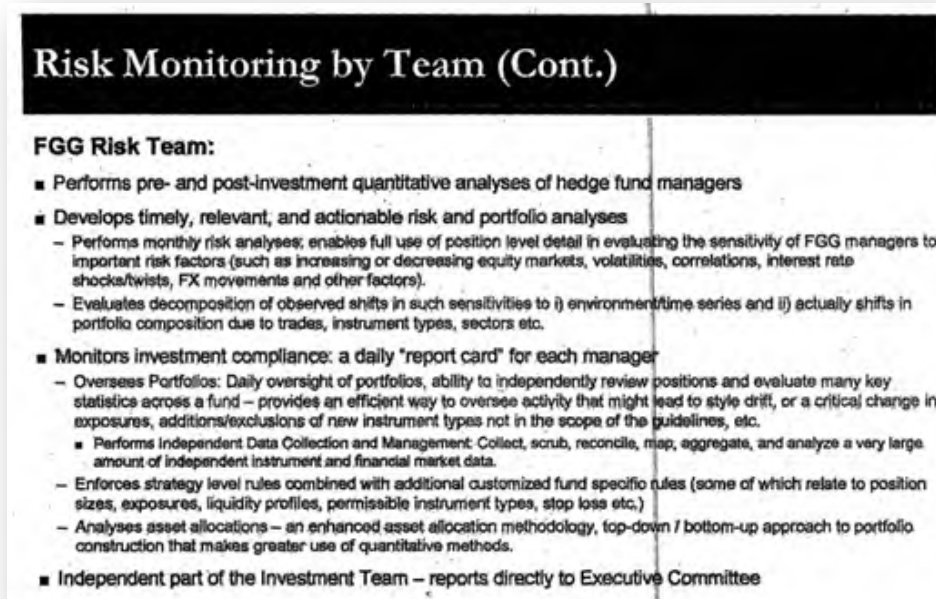
²⁴⁶ Interview of Amit Vijayvergiya, Commonwealth of Massachusetts Office of the Secretary of the Commonwealth Securities Division in the Matter of Bernard L. Madoff Securities, LLC, March 6, 2009, Exhibit 2, FGG Presentation for Fiduciary Trust, Ongoing Due Diligence and Risk Management, December 2006 [SECSEL0002155 -511 at -454].

²⁴⁷ FGG Due Diligence Process, July 2007 [SECSEV0040123-141 at -130].

important aspects of this type of due diligence is the confirmation of assets and valuation. Applying this level of due diligence to BLMIS, it would simply have been impossible to verify assets.

155. The following Figures discuss “risk monitoring” at FGG.

Figure 33: Risk Monitoring by FGG Risk Team²⁴⁸



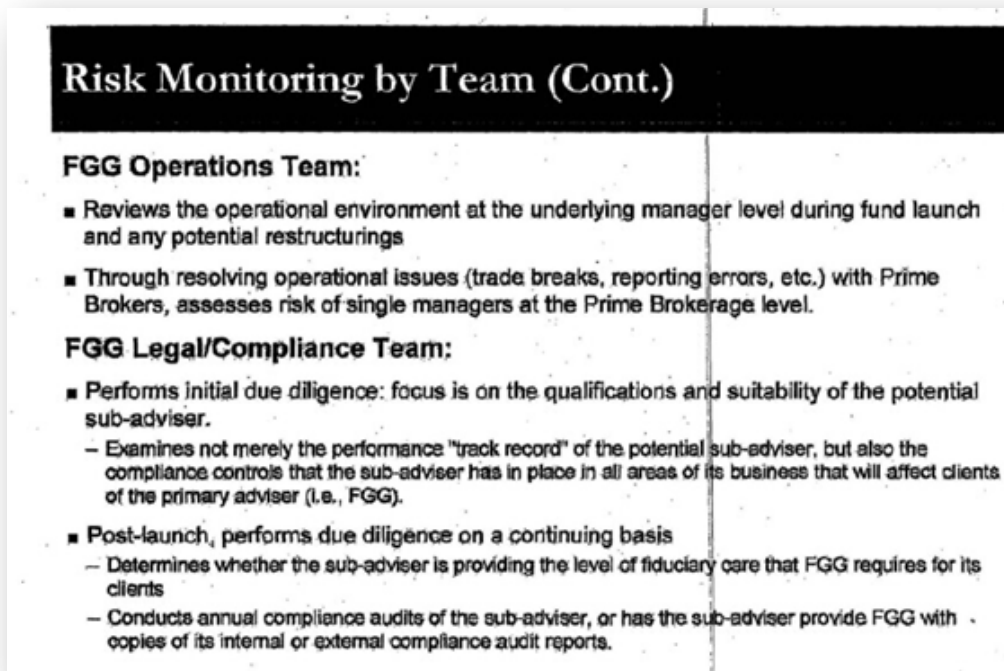
156. The key focus of the above FGG slide is the need to “develop[] timely, relevant, and actionable risk and portfolio analyses.”²⁴⁹ This includes “monthly risk analyses” and “[a]nalyses asset allocations . . . top-down/bottom-up approach to portfolio construction

²⁴⁸ Interview of Amit Vijayvergiya, Commonwealth of Massachusetts Office of the Secretary of the Commonwealth Securities Division in the Matter of Bernard L. Madoff Securities, LLC, March 6, 2009, Exhibit 2, FGG Presentation for Fiduciary Trust, Ongoing Due Diligence and Risk Management, December 2006 [SECSEL0002155 -511 at -456].

²⁴⁹ Interview of Amit Vijayvergiya, Commonwealth of Massachusetts Office of the Secretary of the Commonwealth Securities Division in the Matter of Bernard L. Madoff Securities, LLC, March 6, 2009, Exhibit 2, FGG Presentation for Fiduciary Trust, Ongoing Due Diligence and Risk Management, December 2006 [SECSEL0002155 -511 at -456].

that makes greater use of quantitative methods.”²⁵⁰ Based on the documents that I have reviewed, I have seen no indication that FGG took any action in response to its risk management analysis of the Fairfield BLMIS Accounts. Instead, it appears that FGG used its risk management processes solely for marketing purposes.

Figure 34: Risk Monitoring by FGG Operations Team²⁵¹



157. The FGG slide above focuses on ongoing due diligence to determine “whether the sub-advisor is providing the level of fiduciary care that FGG requires for their clients” and asserts that FGG “[c]onducts annual compliance audits of the sub-advisor, or has the sub-

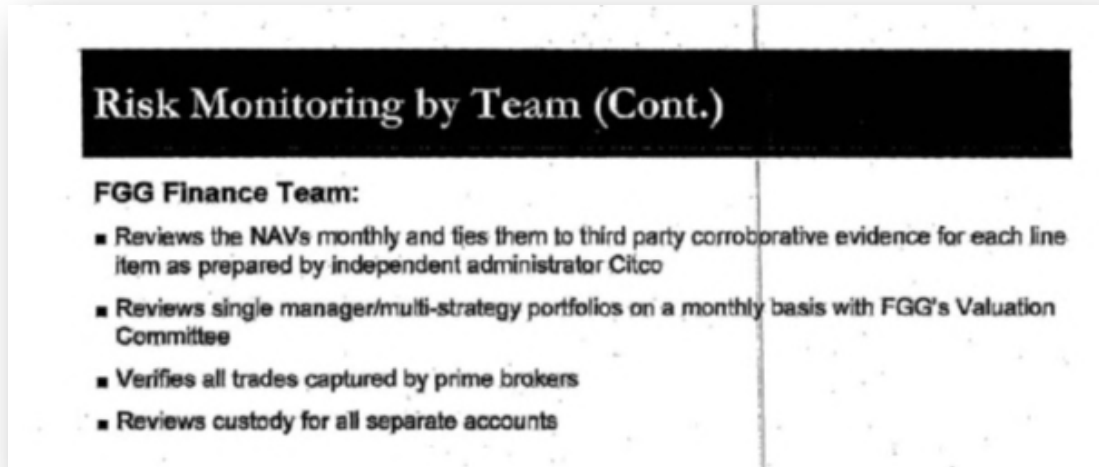
²⁵⁰ Interview of Amit Vijayvergiya, Commonwealth of Massachusetts Office of the Secretary of the Commonwealth Securities Division in the Matter of Bernard L. Madoff Securities, LLC, March 6, 2009, Exhibit 2, FGG Presentation for Fiduciary Trust, Ongoing Due Diligence and Risk Management, December 2006 [SECSEL0002155 -511 at -456].

²⁵¹ Interview of Amit Vijayvergiya, Commonwealth of Massachusetts Office of the Secretary of the Commonwealth Securities Division in the Matter of Bernard L. Madoff Securities, LLC, March 6, 2009, Exhibit 2, FGG Presentation for Fiduciary Trust, Ongoing Due Diligence and Risk Management, December 2006 [SECSEL0002155 -511 at -458].

advisor provide FGG with copies of its internal or external compliance audit reports.”²⁵²
These amount to verification of the entity holding the assets to ensure that the assets exist.

158. Finally, as seen in the slide below, FGG focuses on the “[v]erifi[cation] of all trades captured by prime brokers” and “[r]eview[] [of] custody for all separate accounts.”

Figure 35: Risk Monitoring by FGG Finance Team²⁵³



159. In 2004, FGG presented on a Thomson StreetEvents webcast and made the following representations, among others, regarding their investment process and risk management:
- “For FGG to be successful in its approach, we must deploy a greater level of resources per manager to perform the due diligence and ongoing risk monitoring process. All of FGG’s managers have undergone an in-depth due diligence process.”
 - “Due Diligence. Simultaneously, the investment team is conducting a comprehensive review of the manager’s investment process, risk management, portfolio composition, performance history analysis, financial statement history,

²⁵² Interview of Amit Vijayvergiya, Commonwealth of Massachusetts Office of the Secretary of the Commonwealth Securities Division in the Matter of Bernard L. Madoff Securities, LLC, March 6, 2009, Exhibit 2, FGG Presentation for Fiduciary Trust, Ongoing Due Diligence and Risk Management, December 2006 [SECSEL0002155 -511 at -458].

²⁵³ Interview of Amit Vijayvergiya, Commonwealth of Massachusetts Office of the Secretary of the Commonwealth Securities Division in the Matter of Bernard L. Madoff Securities, LLC, March 6, 2009, Exhibit 2, FGG Presentation for Fiduciary Trust, Ongoing Due Diligence and Risk Management, December 2006 [SECSEL0002155 -511 at -457].

operational, regulatory and legal issues. Every manager, whether established or emerging, is different, and may require a somewhat different focus in this process.”

- “Due diligence does not end with the initial investment. We are always talking with the manager, viewing the portfolio, and providing, monitoring and reports to our clients. Once invested, we have frequent conversations with managers during the month.”
- “Our overall goal with respect to risk management is to ensure that we identify well the risks that we are exposed to, that we understand them, and that they are intentionally taken, properly measured and monitored, and that we can control them, also seek to minimize risks that are difficult to quantify or that we’re not compensated well for.”²⁵⁴

160. In the February 2006 issue of Hedge Fund Manager magazine, FGG described the due diligence process at FGG in an article titled, “Let the light shine in:”

At FGG, transparency begins with a thorough due diligence process that typically lasts between four and six months prior to the initial investment in a fund. During that period, operations and infrastructure are looked at in as much detail as the portfolio, according to Jennifer Keeney, the company’s head of due diligence. Such critical matters as a manager’s trading and valuation procedures, the fund’s back-office controls and its key employees are investigated in depth. FGG looks for warning signs – such as a failure to segregate trade execution and portfolio management, lack of proper auditing, lack of a disaster recovery plan, or weak infrastructure in general.

During the process, FGG researchers speak to all the service providers associated with the manager, run a professional background check on them and speak to industry contacts, references and investors.

That is followed by close quantitative and qualitative monitoring right down to the securities positions of the manager’s portfolio – provided by the prime broker, not the manager.

²⁵⁴ Thomson StreetEvents, Conference Call Transcripts, Fairfield Greenwich Group Investment Process and Risk Management Overview, Webcast, September 1, 2004 [FAIRFIELD_01619882-889 at -883, 885, 888 / Greisman Exhibit 19]. (Greisman, Keeney and Vijayvergiya and Andrew Ludwig presented).

*In rare cases, FGG may shorten the probationary due-diligence period, but maintains the same level of monitoring and continuing oversight. Keeney explains: “If the management team is extraordinarily experienced and talented, we may be more willing to allocate capital more quickly.”*²⁵⁵

161. The Hedge Fund Manager magazine article followed up the “Careful start” section with a section titled, “Total determination,” which stated the following:

*The company is relentless in carrying out its process. “Where we have raised concerns with a fund’s sub-adviser, and those concerns have not been satisfactorily addressed, we have disinvested,” Keeney says. “If the fund is doing well, but the sub-adviser seems to be diverging from the guidelines to which we have mutually agreed, we will question them closely so as to try to understand their thinking. If we cannot reach an understanding that is within the context of the guidelines, FGG may be compelled to disinvest.”*²⁵⁶

162. FGG applied its “FGG Initial Due Diligence Process” which included “check[ing] for [a] ‘reputable’ auditor,” “[v]erify[ing] assets under management with [the] prime broker,” and “understand[ing the] trade execution process”²⁵⁷ to investment opportunities, identifying concerns that, at times, resulted in passing on the opportunities.²⁵⁸ As an example, **Figure 36**, Vijayvergiya noted with respect to the Catalyst Fund, that “HG [Harold Griesman] thinks not much here.” On another fund, Vijayvergiya notes “short history...HG wants to pass.”

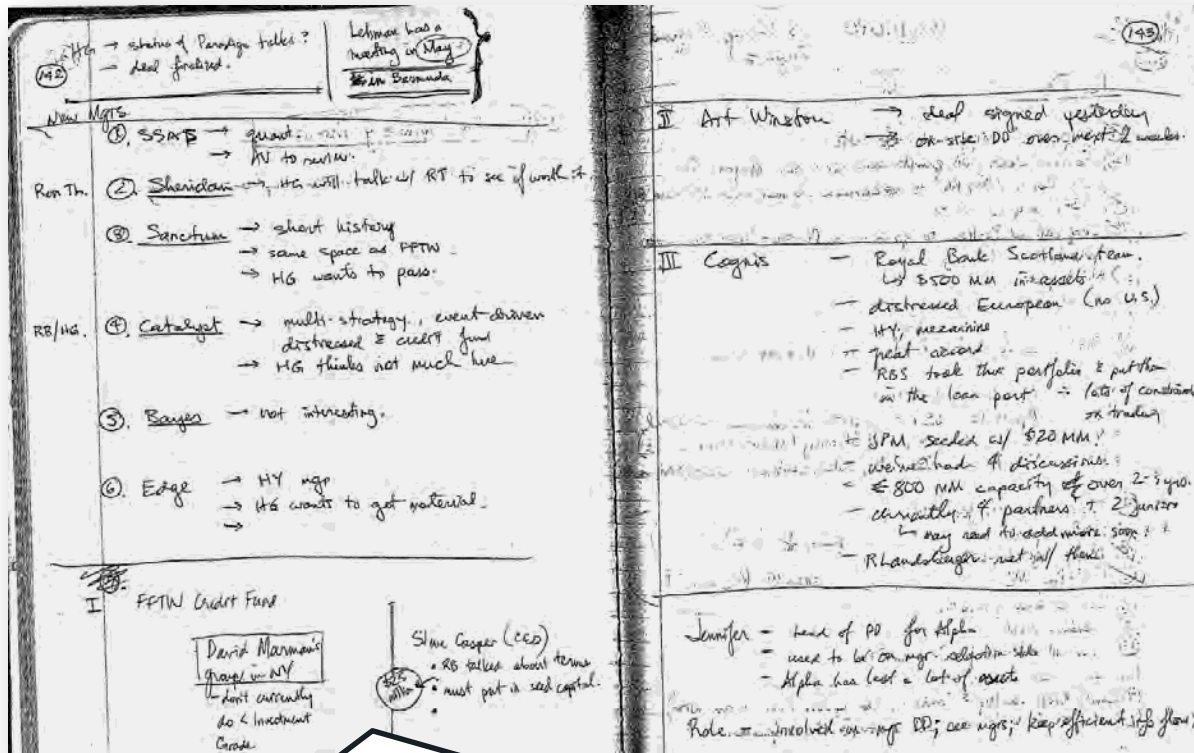
²⁵⁵ Hedge Fund Manager Magazine, *Let the light shine in, Fairfield Greenwich says its transparency requirement reduces risk and enables it to realise steadier returns. John Butcher explains how it works*, February 2006 [FG-05574622-623]; Keeney Dep., 3/1/24, Ex. 33 [FG-05574618-623 at -622-623].

²⁵⁶ Hedge Fund Manager Magazine, *Let the light shine in, Fairfield Greenwich says its transparency requirement reduces risk and enables it to realise steadier returns. John Butcher explains how it works*, February 2006 [FG-05574622-623 at -623].

²⁵⁷ Keeney Dep., 3/1/24, Ex. 5 [FG-02316564-663 at -578].

²⁵⁸ Amit Vijayvergiya’s Notebook, December 2003 - April 2004 [FGG00092432-530 at -503 / SECSEL0000001-099 at -072]; *see also* Amit Vijayvergiya’s Notebook, August 2007 – October 2007 [FGG00098879-979 at -919-922; *see also* SECSEL0001602-702 at -642-645] (further examples of the types of due diligence FGG conducted)

Figure 36: Excerpt from Vijayvergiya's Notebook, December 2003 – April 2004²⁵⁹



“New Mgrs.

1. SSAS - quant[,] AV to review
2. Sheridan - HG will talk w/ RT to see if worth it
3. Sanctum - short history[,] same space as FPTW[,] HG wants to pass
4. Catalyst - multi-strategy event driver distressed & credit fund[,] HG thinks not much here
5. Bayes - not interesting
6. Edge - HY mgr[,] HG wants to get material”

163. Vijayvergiya's notebooks also outline some of FGG's due diligence related to BLMIS, as shown in **Figure 37** below.

²⁵⁹ Vijayvergiya's Notebook, December 2003 - April 2004 [FGG00092432-530 at -503 / SECSEL0000001-099 at -072].

Figure 37: Excerpt from Vijayvergiya's Notebook, June 26, 2004²⁶⁰

June 26/04.
(150)

① Ask JT again to arrange a visit to BLM for me to:

- (a) test allocation procedures of trades to accounts
- (b) Verify Chinese Walls & separation of duties btwn wholesale mkt mkg & mgd accts businesses.
- (c) see the technology platform and understand their execution capabilities better.
- (d) Do they have a SAS 70.
- (e) What sorts of processes, controls etc. do the SEC & NASD examine & treat during their audits.
- (f) Why not use futures on OEX instead of stock basket.
- (g) Can I meet the teams overseeing the SSC strategy?
- bios? how many people? all traders or are these other roles? experience? are decisions on entry/exit made by group or an individual?
- (h) verify custodial records, DTC.
- (i) obtain copy of compliance manual, personal trading rules, code of ethics & standards of conduct.
- (j) obtain copy of their compliance reports/exceptions to guidelines.

1. Ask JT again to arrange a visit to BLM for me to:
 - a. test allocation procedures of trades to accounts
 - b. verify Chinese Walls & separation of duties btwn wholesale mkt mkg & mgd accts businesses.
 - c. See the technology platforms and understand their execution capabilities better.
 - d. Do they have a SAS 70.
 - e. What sorts of processes, controls etc. do the SEC & NASD examine & treat during their audits.
 - f. Why not use futures on OEX instead of stock basket.
 - g. Can I meet the teams overseeing the SSC strategy?
- bios? how many people? all traders or are these other roles? experience? are decisions on entry/exit made by group or an individual?
 - h. verify custodial records. DTC.
 - i. obtain copy of compliance manual, personal trading rules, code of ethics & standards of conduct.
 - j. obtain copy of their compliance reports/exceptions to guidelines.

²⁶⁰ Amit Vijayvergiya's Notebook, May 2004 – July 2004 [FGG00092531-630 at -605 / SECSEL0000504-603 at -578].

164. The excerpt from Vijayvergiya's notebook shown above in **Figure 37** identifies one of the items for Vijayvergiya to perform at a potential visit to BLMIS as "verify custodial records. DTC."²⁶¹ In fact, during a conversation with FGG client, Meritz Insurance, Vijayvergiya specifically said that both FGG and PwC had traced trades back to the DTC.²⁶²
165. FGG's risk management policy mirrored the stringency of its due diligence process. In its operational risk management policy, FGG outlined six particular requirements, two of which are as follows:
- "Review audited financials and auditor's management letter comments; look for affiliated party loans and pledged assets or collateralized loans;" and
 - "Review accounting controls: from trade execution; to trade capture; to trade reconciliation with the Street, administrator, and fund; to fund's books and records."²⁶³
166. FGG stressed the importance of its role as investment manager and its due diligence procedures to ensure the transparency of the manager's approach and practices. This was reflected on FGG's website as of January 9, 2006, as shown in **Figure 38**:

²⁶¹ Vijayvergiya's Notebook, May 2004 – July 2004 [FGG00092531-630 at -605 / SECSEL0000504-603 at -578].

²⁶² Conference Call Transcription between FGG and Meritz Insurance, July 26, 2007 [MERITZ0000346-354 at -346-347]; Meritz Insurance Statement of Account, July 31, 2007 [CFSSAM0012130]. In Fall 2006, FGG made similar misrepresentations to Chris Cutler, a consultant who conducted due diligence on behalf of a prospective investor. *See* Deposition of Christopher Cutler, January 21, 2010, 181:5-183:25 [CUCCAA0000001-328 at -181-183]; [CCUSAA0000025-031 at -026, -030] Cutler's notes and testimony regarding call in which Vijayvergiya informed Cutler that PwC verified Sentry's assets at BLMIS and checked trades back to the DTC.

²⁶³ Due Diligence Questionnaire (DDQ), CPH Absolute Returns Pty Limited, April 14, 2005 [FG-00180599 -616 at -614].

Figure 38: FGG Website - Manager Search and Selection²⁶⁴

Sourcing and Initial Assessment

FGG is introduced to several hundred potential managers in the course of each year. A relevant subset of these leads are pursued and background information on promising potential relationships is collected and shared among FGG's professionals for initial assessment.

The nature of FGG's manager transparency model employs a significantly higher level of due diligence work than that typically performed by most fund of funds and consulting firms. This model requires a thorough understanding of a manager's business, staff, operational practices, and infrastructure.

At this stage, FGG begins qualitative and quantitative reviews of a manager's past performance obtained from independent sources, as well as a series of manager interviews and reference calls.

Through this process, a preliminary assessment evolves of a manager's business and investment practices. Particular attention is paid to the extent to which each manager's controls are reasonably suited to maintain operational, market, and credit risks at an appropriate level and as represented by the manager.

During this period, FGG personnel also have an opportunity to evaluate a manager's attitudes and receptiveness (as opposed to his proclaimed intention) towards providing FGG with full transparency of its security level trading activity and access to its investment thought process.

This close level of communication and access is the cornerstone of FGG's ongoing relationship with the manager, without which a business relationship with FGG would not exist.

A small portion of managers who pass through this basic screening process are considered for further, significant investigation. Some do not progress beyond this stage; some are placed on a watch list for further monitoring.

FGG's business model enables the firm to have privileged access to all aspects of a manager's operation and investment process, including security level transparency for risk monitoring purposes.

167. Furthermore, FGG's website stressed the importance of ongoing due diligence, stating that "[o]nce FGG brings a fund to market for a new manager relationship, FGG's due diligence process evolves into a similarly multi-faceted risk monitoring function":

²⁶⁴ FGG Website, January 9, 2006 [PUBLIC0707010] (*emphasis added*).

Figure 39: FGG Website - Risk Monitoring and Management²⁶⁵

Once FGG brings a fund to market for a new manager relationship, FGG's due diligence process evolves into a similarly multi-faceted risk monitoring function.

This ongoing activity ensures that FGG funds continue to follow their investment methodologies - and constraints - and otherwise act in accordance with the operational and risk framework that was approved during the due diligence phase.

Any divergences are discussed with the manager and addressed or resolved; on several occasions, the arrangement with the manager has been terminated as a result of this ongoing review and analysis.

Portfolios are reviewed at the individual security level from independent sources and discussed with manager personnel several times each month. FGG also utilizes a number of independent, sophisticated quantitative measurement tools to monitor the performance of its managers. FGG personnel review changes in a variety of factors, including changes in: organization, investment process, the manager's view of the relevant markets, and their portfolio's position with respect to those views. Operational processes are periodically reviewed and updated, as are compliance and regulatory issues, and personnel background checks.

168. With regard to “Risk Monitoring and Management,” FGG’s website discussed implementation of due diligence and risk monitoring, stating that FGG “employs a variety of techniques that probe deeply into all key elements of risk,” including: (i) Manager Style, (ii) Market Risk, (iii) Operation Risk, (iv) Credit Risk, and (v) Legal Risk:

²⁶⁵ FGG Website, January 9, 2006 [PUBLIC0707010].

Figure 40: FGG Website - Risk Monitoring and Management (cont'd)²⁶⁶

Due diligence and risk monitoring, as implemented by FGG, employs a variety of techniques that probe deeply into all key elements of risk, including:

Manager Style:

- Dependence on extremely structured or illiquid securities
- Correlation of manager's style with the current fund aggregate
- Style drift
- An examination of performance under varying market conditions (volatility shocks, changes to credit spreads, yield curve shifts,)
- Deep understanding of idea generation, research processes, and execution capabilities
- Determination of a sustainable edge (access to superior research resources, a specialized and differentiated skill set, an advanced technology platform)

Market Risk:

- Identification of strategy-specific risk exposures and schedule of relevant risk factors
- Generation of loss distribution function through Monte Carlo simulations; calculation of Historical and Monte Carlo VaR to examine market risk exhibited by non-linear instruments; VaR results are complemented with stress tests and scenario analyses
- Review adherence to concentration and risk limits and compliance with Operating Guidelines

Operational Risk:

- Review audited financials and auditor's management letter comments; look for affiliated party loans and pledged assets or collateralized loans
- Review accounting controls: from trade execution; to trade capture; to trade reconciliation with the Street, administrator, and fund; to fund's books and records
- Review bank reconciliations for irregular or outstanding items
- Review pricing procedures and valuation procedures and inquire about frequency of pricing disputes; review revenue recognition policies
- Review broker reconciliations to ensure completeness and existence of all securities
- Infrastructure Adequacy Evaluation and disaster recovery plans

Credit Risk:

- Credit mitigants: swaps, derivatives
- Financial guarantees
- Letters and lines of credit
- Exposure limits

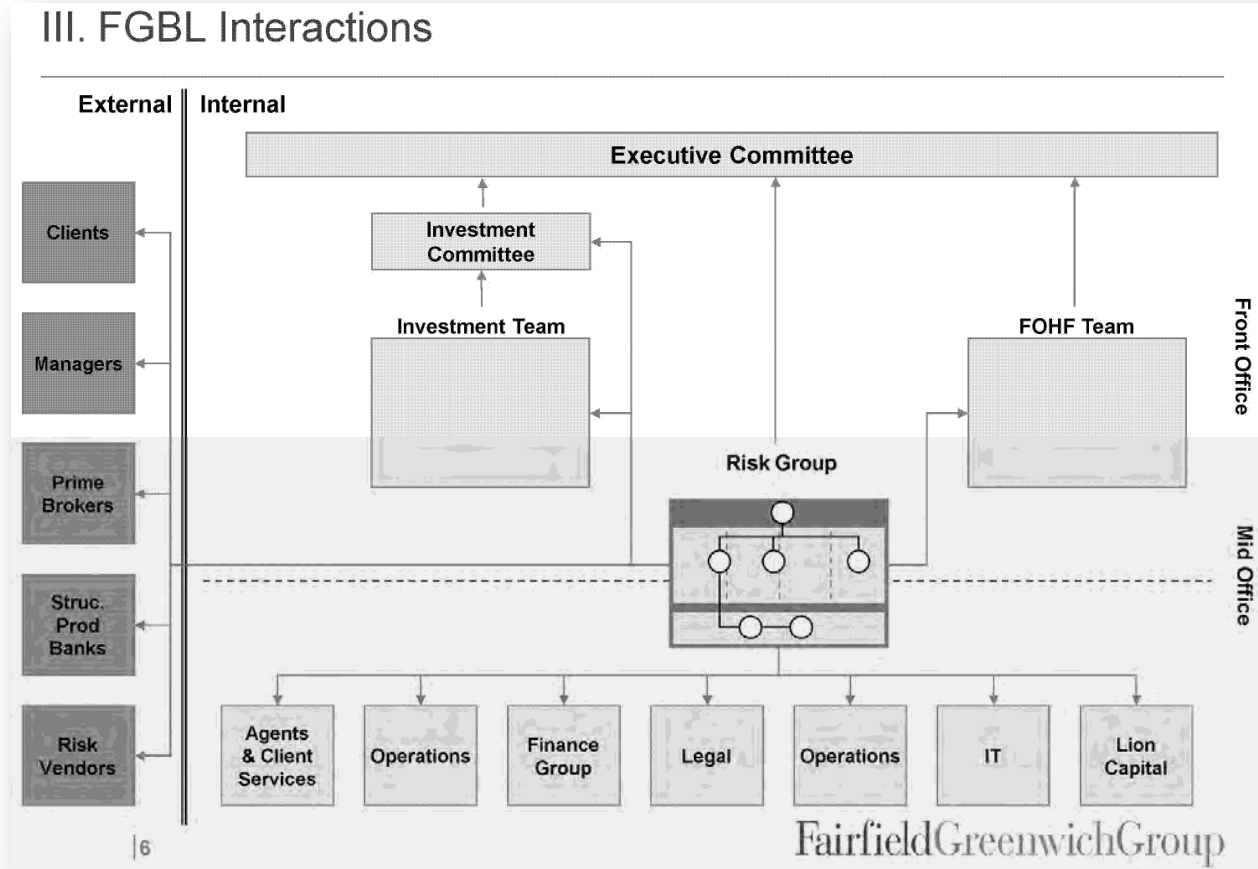
Legal Risk:

- Anti-money laundering policies and procedures
- Client complaints and litigation
- Personal trading and trade allocations
- Regulatory exams and results
- Soft dollars and directed brokerage/best execution

²⁶⁶ FGG Website, January 9, 2006 [PUBLIC0707010].

169. The chart below is an example of the relationship between the risk management group at FGBL and the rest of the FGG organization.

Figure 41: FGBL Interactions²⁶⁷



170. As of December 24, 2005, FGG's website noted that the following areas of risk were subject to examination: (i) Portfolio Evaluation, Investment Performance, and Financial Risks; (ii) Personal Background Investigation; (iii) Structural and Operational Risk; and (iv) Legal, Compliance, and Regulatory Risk:

²⁶⁷ FGG Presentation, October 30, 2007 [FG-00376870-881 at -875 / SECSEV2289208-219 at -213].

Figure 42: FGG Website - Due Diligence²⁶⁸

1. Portfolio Evaluation, Investment Performance, and Financial Risks:

A core area for further analysis is to attempt to dissect and further understand investment performance, how a manager generates alpha, and what risks are taken in doing so. As portfolio management and risk management incorporate elements of both art and science, FGG applies both qualitative and quantitative measures. FGG:

- Examines independent prime broker trading records
- Conducts detailed interviews to better understand the manager's methodology for forming a market view, and for selecting and exiting core positions.
- Analyses trading records
- Conducts a number of qualitative and quantitative tests to determine adherence to risk limits over time
- Confirms portfolio loss risk controls, diversification and other risk-related control policies, as well as any experience regarding unexpected or extreme market events
- Reviews the risk and return factors inherent in the strategy
- Evaluates capacity issues, which may affect alpha, as well as expected opportunities going forward within each candidate's strategy
- Analyses the various drivers underlying a particular portfolio's risk
- Evaluates credit risk and market risk both at the instrument and portfolio level
- Assesses the extent to which leverage is used by a manager, as well as how it is used, the funding sources, and the impact on the risk profile of the fund
- Investigate whether or not private or special registration securities are held, and determine how the daily trading volume and inventory held compares to the float and/or daily trading volume for a given security

FGG also conducts many quantitative reviews of investment performance in light of:

- Fees and fee structure
- Historical draw-downs
- Return volatility
- Commissions earned
- Performance return in calm versus volatile markets
- Current/historical correlation of the fund under consideration with standard industry benchmarks, peer groups, and other FGG or competitor funds used as benchmarks

FGG attempts to understand the return attribution for individual securities in the portfolio, and conducts a full suite of VaR analyses and stress tests to model the loss distribution function under extreme market scenarios. Leverage, concentration limits, and long/short exposures are examined over time to assess whether they have remained within operating guidelines.

Style fidelity is another key area of inquiry; the manager's trading pattern over time and through various market environments, FGG determines whether the manager is prone to trade outside of their area of expertise.

²⁶⁸ FGG Website, December 24, 2005 [PUBLIC0707007].

Figure 43: FGG Website - Due Diligence (cont'd)²⁶⁹

2. Personal Background Investigation:

FGG examines the abilities and personalities of the individuals involved in managing the fund through extensive interviews, as well as background investigations.

FGG verifies:

Education

Personal credit standing

Litigation and regulatory background

Track record

Other indicators

FGG explores the manager's experience and qualifications relative to the strategy being managed. Prior professional associations of a manager's key personnel can be crucial in understanding a person's experience and character and how they run their investment management business.

3. Structural and Operational Risk:

"Operational risk" refers to the risk of loss resulting from inadequate or failed internal processes, human resources, or systems, or from external events.

Operational failures, including misrepresentation of valuations and outright fraud, constitute the vast majority of instances where massive investor losses occur. Other operational risks include staff processing errors, technology failure, and poor data.

Pricing models, as well as the adequacy, independence, and transparency of valuation procedures, contingency plans, and other trading and settlement procedures are all matters for close scrutiny by FGG professionals.

FGG seeks a sound understanding of whether a hedge fund possesses **key controls** in the areas of portfolio management, conflicts of interest, segregation of duties, and compliance. FGG carefully assesses the controls and procedures that managers have in place and seek to determine actual compliance with those procedures, often suggesting modifications, separations of responsibilities, and remedial staff additions.

4. Legal, Compliance, and Regulatory Risk:

FGG's legal, compliance, and accounting teams specialize in investment management regulation, securities compliance, corporate operations, and tax issues. Hedge fund managers function within an ever more complex legal and regulatory landscape, and the role of this part of the diligence exam is to determine the seriousness of any deficiencies in this area which may cause risk of sanction, loss, or reputational embarrassment.

Both in-house and retained legal professionals interview the management and staff of the manager, research regulatory filings, and review corporate organizational documents, as well as fund memoranda and related material contracts.

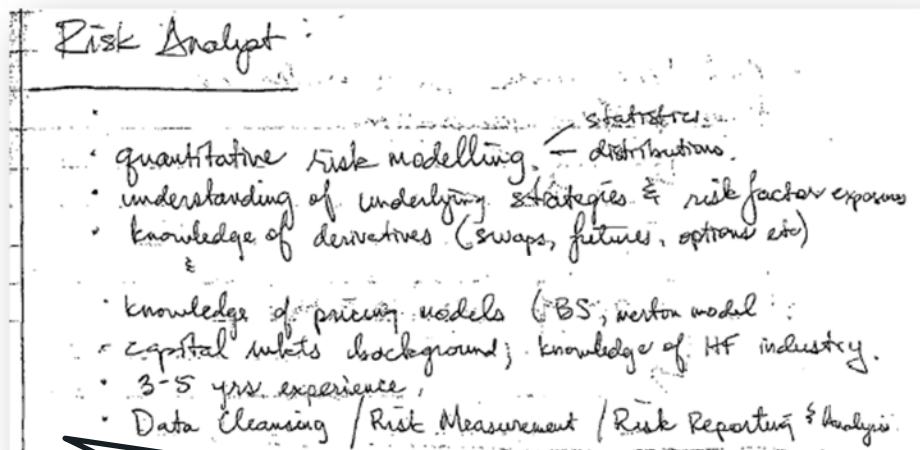
171. FGG highlighted the importance of assessing operational risk, stating that "54% of

²⁶⁹ FGG Website, December 24, 2005 [PUBLIC0707007] (*emphasis added*).

[h]edge [f]und [f]ailures [a]re [a]tttributed to [o]perational [r]isk.”²⁷⁰

172. As set forth in Vijayvergiya’s copious notes, FGG outlined the risk management tasks of key personnel including, but not limited to: “qualitative risk modeling;” “understanding underlying strategies & risk factor exposures;” “risk measurement;” “risk reporting & analysis;” “Sentry investor queries;” “trade ticket input, P[rofit] & L[oss] reports, compliance reports;” and “basic quant analysis.”²⁷¹ **Figure 44** and **Figure 45** show examples of such notes.

Figure 44: Excerpt from Vijayvergiya’s Notebook - December 2003 - April 2004²⁷²



“Risk Analyst:

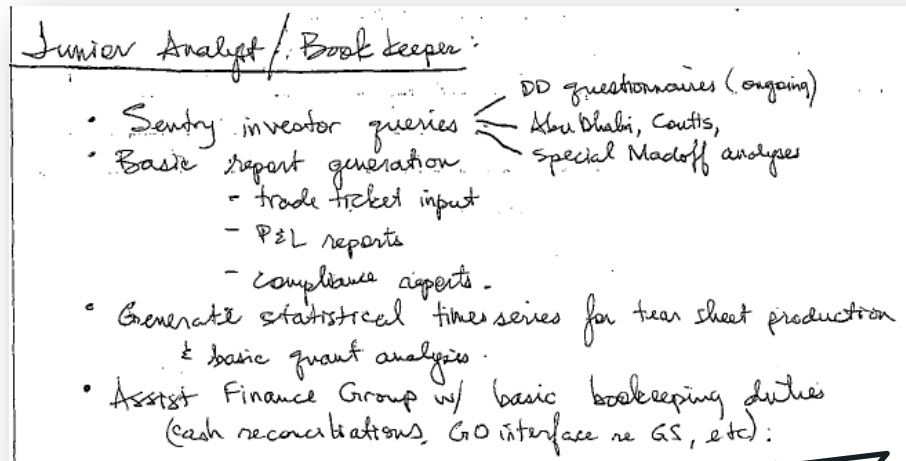
- quantitative risk modelling – statistics [:] distributions
- understanding of underlying strategies & risk factor exposures
- knowledge of derivatives (swaps, futures, options, etc)
- knowledge of pricing models (BS, merton model[])
- capital mkts background, knowledge of HF industry
- 3-5 yrs experience
- Data Cleansing / Risk Measurement / Risk Reporting & Analysis”

²⁷⁰ FGG Firm Profile and Capabilities, April 19, 2006 [FG-00000827-862 at -837-839]. See also, Capco White Paper, *Understanding & Mitigating Operating Risk in Hedge Fund Investments*, March 2003 [PUBLIC0708790]; HedgeWeek, *Study shows operational risk is key factor in hedge fund failures*, March 20, 2003 [PUBLIC0706386].

²⁷¹ Vijayvergiya’s Notebook, December 2003 - April 2004 [FGG00092432-530 at -492 / SECSEL0000001-099 at -061].

²⁷² Vijayvergiya’s Notebook, December 2003 - April 2004 [FGG00092432-530 at -492 / SECSEL0000001-099 at -061]. “I did occasionally use MKT and MKG to mean market making.” Deposition of Amit Vijayvergiya, January 31, 2025, 298:21-299:16 [10-03800 09-01239 VIJCAB0000001-283] (“Vijayvergiya Dep., 1/31/25”).

Figure 45: Excerpt from Vijayvergiya's Notebook - December 2003 - April 2004 (cont'd)²⁷³



“Junior Analyst / Bookkeeper:

- Sentry investor queries - DD questionnaires (ongoing) [:] Abu Dhabi, Coutis [:] Special Madoff analyses
- Basic report generation
 - traded ticket input
 - P&L reports
 - Compliance reports
- Generate statistical times series for tear sheet production & basic quant analysis
- Assist Finance Group w/ basic bookkeeping duties (cash reconciliations, GO interface re GS, etc):”

173. FGG further identified risk assessment of contingency plans should the investment decision maker become incapacitated. For example, the questionnaire asked: “What contingency plans do you have in terms of: ... incapacitated investment decision makers?”²⁷⁴ Such a contingency plan is essential in order to sustain required decision-making relating to the investments and prevent loss to investors.

174. In my experience, the statements above show that FGG conducted comprehensive due

²⁷³ Vijayvergiya's Notebook, December 2003 - April 2004 [FGG00092432-530 at -492 / SECSEL0000001-099 at -061].

²⁷⁴ Due Diligence Questionnaire (DDQ), CPH Absolute Returns Pty Limited, April 14, 2005 [FG-00180599-616 at -616]; FGG Hedge Fund Manager Due Diligence Questionnaire, April 7, 2003 [FG-00161345-364 at -363-364].

diligence, particularly evaluating the investment advisor, his portfolio, his processes, and performance. FGG had a sophisticated due diligence program, assessing both qualitative and quantitative risk, and risk management processes and procedures in place to oversee its investors' investments. As stated above, it is critical to note that FGG did not indicate in its presentations, website, or responses to investors, that these capabilities, processes, and procedures did not apply to FGG's investments with BLMIS.

2. Fairfield's Due Diligence on BLMIS

175. As I have stated, the core purpose of due diligence is to trust but verify, and that is what I have done here. I have analyzed the contemporaneous information and documents available to FGG, in addition to contemporaneous publicly available information. As a fiduciary in the same roles as FGG management and personnel, it is incumbent on the investment manager (or its delegate) to question anything that does not conform to a strategy, a regulation, or an industry practice, or anything that seems impossible. As discussed herein, the documents and information in FGG's possession over the course of its 18-year relationship with BLMIS revealed trading impossibilities and cumulative red flags that confirmed BLMIS was not trading securities. Simply put, FGG, with its rigorous due diligence practice, was in possession of documents and relevant facts that confirmed lack of trading at BLMIS as far back as 1997.

a) Impossibilities (i.e., lack of trading)

176. There are significant examples of reported transactions on the Fairfield BLMIS Account statements that could not have been executed and where the only conclusion is lack of trading. FGG acknowledged concerns regarding trading.²⁷⁵

177. The non-existence of trading and/or the securities themselves, was still an ongoing concern of FGG even in 2008. In May 2008, Lipton asked, in an email to Vijayvergiya, "[m]y biggest question with regards to the BLM is the existence and completeness of the

²⁷⁵ See e.g., Email from Vijayvergiya to Richard Landsberger, RE: important questions from Korea Life, May 23, 2006 [SECSEV0772661-665 at -663]; Gil Berman Reports checking for OOR trades, e.g., [SECSEV0841308-331 at -308, -324-325] (Gil Berman reports note whether transactions took place within the daily high/low range).

securities owned.”²⁷⁶

(1) Volume Analysis

178. Concerns regarding the volume of options BLMIS was purportedly trading were raised numerous times, by investors, or internally within FGG. For example, in November 2003, Mami Hidaka, a sales agent at Fairfield, emailed Vijayvergiya with a question on behalf of an investor “regarding the large volume of index options used by Madoff” and asked “[i]s it really as excessive as they implied[?]”²⁷⁷
179. In February 2004, Harold Greisman received an email from Vontobel Asset Management, Inc. raising an investor’s concerns. Specifically, the email mentions an investor with up to \$15 million to invest, but notes that “[o]ne of [the investor’s] main concerns holding him back appears to be his doubt about Sentry’s ability to put a collar consisting of option[s] on the S&P 100 Index on the total long portfolio. Specifically, he doubts there is sufficient liquidity in these options to cover the needs of a portfolio the size of which is managed by Madoff in its totality.”²⁷⁸ Greisman forwarded this email to Vijayvergiya.²⁷⁹
180. I compared the volume of call options purportedly traded for the Fairfield BLMIS Accounts against the market, and 526 transactions, or 57.7%, had a number of contracts above the daily market volume for the relevant option and trade date.²⁸⁰ Looking further into the transactions that traded above the daily market volume, as shown below in

²⁷⁶ Email from Lipton to Vijayvergiya, RE: 2008 Due Diligence- Bernard L. Madoff, May 15, 2008 [FG-00009253-257 at -253].

²⁷⁷ Email from Mami Hidaka to Vijayvergiya, November 20, 2003 [SECSEV1371185-187 at -185].

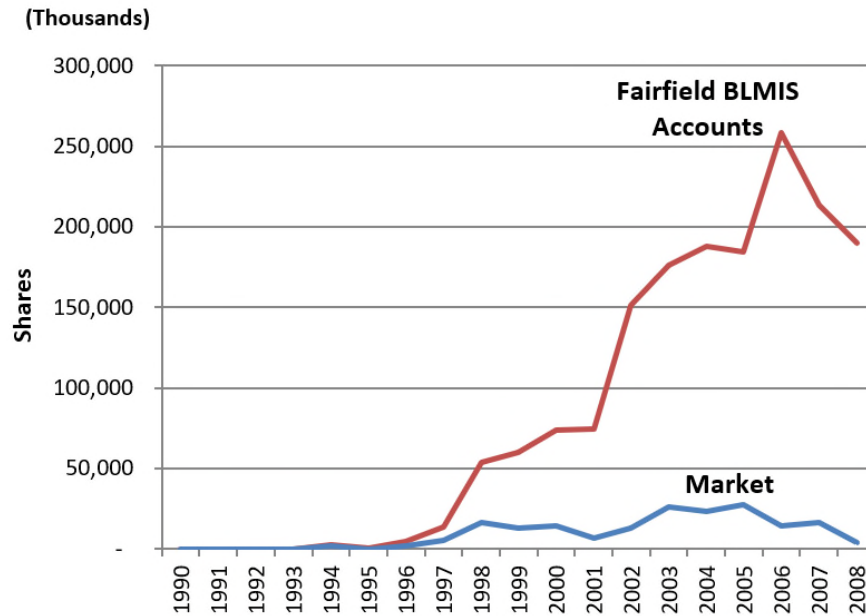
²⁷⁸ Email from Heinrich Schlegel to Harold Greisman, RE: Vontobel Absolute Return Fund, Ltd., February 9, 2004 [SECSEV0980098-099 at -098].

²⁷⁹ See also Vijayvergiya’s Notebook, August 2005 - December 2005 [FGG00098087-187 at -095 / SECSEL0000807-907 at -815] (including “modeling of: ...volume patterns” under “Quantitative Analysis of SSC strategy”).

²⁸⁰ Options are traded as a “contract” where each contract represents 100 options. The number of call and put contracts bought or sold by BLMIS was determined based on the purported equity positions as consistent with the BLMIS SSC strategy. In determining how many transactions included contracts above the daily market volume, I aggregated volume across the Fairfield BLMIS Accounts; therefore the 57.7% reflects the percentage of unique transactions in the Fairfield BLMIS Accounts with volume above the daily market volume. There was a total of 912 unique transactions with a specific transaction date, strike price, and maturity—57.7% of which had reported volumes above the daily market volume across the Fairfield BLMIS Accounts.

Figure 46, I found that the number of shares purportedly transacted by BLMIS exceeded the total share volume transacted on the exchange as early as 1997. In addition, there were 20 instances where BLMIS reported buying or selling call options for the Fairfield BLMIS Accounts when there was no volume traded on that day.²⁸¹

Figure 46: Fairfield BLMIS Accounts Annual Call Option Volume Relative to Corresponding Market Volume 1990-2008²⁸²

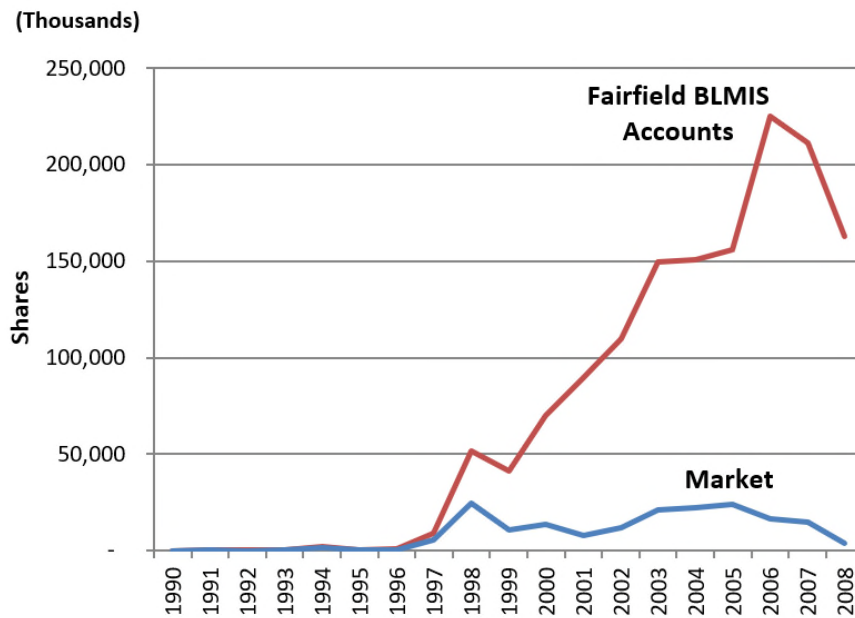


181. As an example, as shown in **Figure 46** above, in 2008, for call option transactions that exceeded the daily market volume, the market volume was 3,963, while the volume traded in the Fairfield BLMIS Accounts was almost 200,000.
182. An analysis of put option transactions showed similar results, as shown in **Figure 47**.

²⁸¹ For example, on October 18, 2001, BLMIS reportedly bought 19,186 S&P 100 Index October 505 Call option contracts for the Fairfield BLMIS Accounts. According to CBOE Market Data, this option was not bought or sold on that day. Sources include Settled Cash table, StorQM Customer Statements, Customer Ledgers, and CBOE Market Data.

²⁸² Includes option trades made between November 1990 and November 2008, where the transacted volume for the Fairfield BLMIS Accounts were greater than the market volume. Sources include Settled Cash table, StorQM Customer Statements, Customer Ledgers, and CBOE Market Data.

Figure 47: Fairfield BLMIS Accounts Annual Put Option Volume Relative to Corresponding Market Volume 1990-2008²⁸³



183. As an example, as shown in **Figure 47** above, in 2008, for put option transactions that exceeded the daily market volume, the market volume was 3,711, while the volume traded in the Fairfield BLMIS Accounts was more than 150,000.
184. The volumes highlighted above were only for the Fairfield BLMIS Accounts. This does not even include the other BLMIS feeder funds; including them would have only increased the impossible option volumes.²⁸⁴
185. On multiple occasions, FGG acknowledged the lack of volume available on the exchange. For example, in response to an investor's questions regarding option volume, Vijayvergiya stated that Madoff used OTC options, acknowledging that "the level of

²⁸³ Includes option trades made between November 1990 and November 2008, where the transacted volume for the Fairfield BLMIS Accounts were greater than the market volume. Sources include Settled Cash table, StorQM Customer Statements, Customer Ledgers, and CBOE Market Data.

²⁸⁴ As noted in Vijayvergiya's notebooks, FGG was aware of at least the following other Madoff funds: Kingate, Thema, American Masters Broadmarket 2, Optimal, Santa Barbara, and M-Invest. Vijayvergiya's Notebook, August 2003 - December 2003 [FGG00092331-431 at -411 / SECSEL0000100-200 at -180]; Sentry Clones AUM, Management and Performance Fees, and Liquidity data [FG-00151636]; Fairfield Sentry Limited, May 2008 [FAIRFIELD_01679055-083 at -068]; *see also* [FG-00115801] (listing returns data for multiple Madoff feeder funds).

options activity required to notionally protect the stock basket would exceed the amount available on the listed options exchanges.”²⁸⁵ Similarly, a 2003 Fairfield Sentry “Q&A” document stated “given the large volume of his options transactions, BLM no longer uses exchange traded or listed options because the notional value of his transactions typically exceed the volume in the listed options on any given day.”²⁸⁶

186. BLMIS claimed that the options used were not exchange traded, they were over-the-counter (“OTC”).²⁸⁷ OTC trades are traded between counterparties off-exchange and are privately negotiated transactions. In my experience, however, no counterparty would shoulder the amount of risk needed to transact the size of OTC options BLMIS purported without hedging that risk on the Chicago Options Exchange (“OEX”). As indicated in **Figure 46** and **Figure 47** above, the volume necessary did not exist.
187. Options transactions could not have been executed on the public markets or over the counter, for multiple additional reasons, including the following.
188. First, as discussed in more detail in Section VII.B.2.c)(3), despite FGG stating that BLMIS’s counterparties were top-tier and were required to post guarantees (or performance assurances), FGG never confirmed the identity of any counterparties. In fact, there were no counterparties to the options transactions – and representations by FGG regarding the counterparties’ integrity and ability to perform their financial obligations were false.
189. Second, there were no counterparty agreements for the transactions reported in the

²⁸⁵ Email from Vijayvergiya to Richard Landsberger, RE: important questions from Korea Life, May 23, 2006 [SECSEV0772661-665 at -663]. See also Vijayvergiya MSD Dep. 3/20/09, 78:13-79:23.

²⁸⁶ Email from Vijayvergiya to Lakshmi Chaudhuri RE: Fairfield Sentry Ltd. Q&A, Amit Anwar Dep., 6/20/13, Ex. 15 [10-03800_FGG_0022456-467 at -459-460]. Vijayvergiya’s Notebook, August 2003 - December 2003 [FGG00092331-431 at -411 / SECSEL0000100-200 at -180].

²⁸⁷ See, e.g., FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -618]. (Amit Vijayvergiya (FGG): “Well, *when we started the strategy* many years ago, we were -- as I understand I wasn’t around then *using the exchange traded but when we were constructing the notional hedge on currently 5.3 billion worth of assets, to construct that hedge by buying long puts and financing the short calls, it would exceed the long index that’s available on the listed exchanges*. And so in order to actually implement this strategy, we have a number of options counterparties and effectively implement the options caller on the OTC markets by transacting in privately negotiated contracts, which are virtually identical in every material respect. In particular, they relate to pricing, in every other material respect, to the exchange credit counterparts. But they are OTC.”) (*emphasis added*).

Fairfield BLMIS Accounts. In order to trade OTC with a counterparty, there must be a bilateral agreement that, at minimum, sets forth the parties' financial obligations, the particular transaction, the agreement's maturity or expiration date, limits on exposure, collateral requirements, terms of default, and risk limits. In my experience, I have never seen an OTC transaction without a counterparty agreement. None of the documents I reviewed contained a signed OTC counterparty agreement, or a signed Master Options Agreement. It is industry custom and practice to review these agreements to understand counterparty risk. Without these agreements, you cannot manage counterparty risk as you have no way of rating the counterparty.

190. Third, as stated above, Madoff would have needed an OTC counterparty who was willing to accept the significant risks to perform these options transactions in the volumes reported on the customer statements. For example, an OTC counterparty (or counterparties) to a BLMIS transaction of 7,000 contracts of S&P100 Index October 550 call options, purportedly executed on October 14, 2005, would have had to agree to undertake the risk that BLMIS would not honor the agreement or somehow default on the agreement, a risk of almost \$3 million to the purported counterparty.²⁸⁸
191. In another example, an OTC counterparty (or counterparties) to a BLMIS transaction of 2,589 contracts of S&P100 Index July 700 call options, purportedly executed on June 12, 2007, would have had to agree to undertake the risk that BLMIS would not honor the agreement or somehow default on the agreement, a risk of over \$2 million to the purported counterparty.²⁸⁹ It is highly unlikely that any counterparty trading with BLMIS would have taken a risk of this magnitude, particularly given the volume purportedly traded across all BLMIS accounts. No such counterparty to either transaction was ever identified.²⁹⁰ The same could be said for any options transaction BLMIS claimed to have executed. In my experience, no such single counterparty would ever bear such a

²⁸⁸ Trade Confirmations for account 1-FN-069 in October 2005 [FGGSAA0007733-740 at -733], *see* "Net" amount. The "Net" amount of \$2,793,000 is calculated as the \$4.00 price less a \$0.01 commission multiplied by 700,000 options (as discussed above, each of the 7,000 option contracts represents 100 options each).

²⁸⁹ Trade Confirmations for account 1-G-0092 in June 2007 [FGGSAA0020585-589 at -587], *see* "Net" amount.

²⁹⁰ McKeefry Dep. 2/5/25, 119:14-120:2; Vijayvergiya Dep., 1/30/25, Ex. 1, 103:20-104:3 [FG-00012782-961 at -808].

significant risk and, if they did, specific terms related to collateral or a guarantee would have to be included in the counterparty agreement. Based on my review of the documents available in this matter, I have seen no counterparty agreement, collateral agreement, or guarantee for the options transactions reported in the Fairfield BLMIS Accounts.

192. Fourth, the trade confirmations for the Fairfield BLMIS Accounts reflected a CUSIP number for the S&P 100 Index options indicating the options were traded on the Chicago Board of Options Exchange (“CBOE”) as opposed to custom OTC agreements that are not traded on an exchange.²⁹¹ While the CUSIP identifies the specific security, that is not needed for an OTC transaction because the particular security would be set forth in the OTC agreement. The existence of the CUSIP number on the trade confirmation is a red flag if this was a purported OTC transaction.
193. Trading at volumes above what is in the market on a particular day is impossible – it cannot happen – and there is nothing that supports the “theory” that these transactions occurred OTC. Even theories or unconfirmed explanations do not make impossible transactions reality.

(2) Out of Range Trades

194. It is important to assess the purchase and/or sale price of a security, something that FGG acknowledged when it stated that every trade was checked to ensure they were in the daily price range.²⁹² An analysis of the Fairfield BLMIS Accounts showed securities

²⁹¹ See, e.g., Trade Confirmation for account 1-FN-069 on October 11, 2005 [FGGSAA0007701-720 at -717]. The first six digits of a CUSIP identify the issuer of the security. The CUSIP code using the six digits 783790 is specifically assigned to CBOE, and designates OEX options, which are trademarked by the CBOE. See generally Chicago Board Options Exchange, OEX and XEO S&P 100 Index Options (2001). See also, Chicago Board Options Exchange, *OEX Product Specifications, OEX S&P100 Index Options*, CBOE [PUBLIC0708156].

²⁹² Memo to Wolfgang G. Isler, Lloyds Bank Plc Zurich Branch, from Roger Steenberg, July 2, 1998 [ANWAR-CCI-00082596-597 at -596] (“All confirmations are forwarded to an individual in Colorado who reviews them to determine whether the price of each trade is within the range of actual prices for that day.”); Fairfield Sentry Limited Board of Directors Meeting Minutes, May 18, 2004 [ANWAR-C-ESI-00366544-552 at -545]; Gil Berman Reports checking for OOR trades, e.g., Berman Report for April 1996, May 15, 1996 [FGGE000263785-808 at -801-802 / SECSEV0841308-331 at -324-325], (“The sale of Oracle Corporation shares on April 15th occurred at a price of 45 7/8, above the listed high of 44 1/2 for that date.”). [SECSEV0841308-331 at -308, -324-325] (Gil Berman reports note whether transactions took place within the daily high/low range); Vijayvergiya MSD Dep. 3/20/09, 68:17-70:22.

purportedly traded at impossible prices, for equities, options, and T-Bills. On numerous occasions, starting in the early 1990s, the customer statements showed trades purportedly occurring at prices that were above the high price for the day or below the low price for the day. The daily price range for a particular security reflects the full range of prices that were traded during the day; had the BLMIS trades actually occurred, their prices would have been included in the daily price range. It is not possible for an exchange traded instrument to be executed at prices that are not within the price range of the day of execution (trade date).

195. FGG acknowledged the out-of-range trades. A recurring element of the Berman Reports was the notation of whether transactions in the Fairfield BLMIS Accounts traded within the daily high/low prices.²⁹³
196. For example, on December 22, 2006, BLMIS purportedly sold 136,118 shares of Merck & Co Inc (MRK) at a price of \$44.61 for the Fairfield BLMIS Accounts, when the high price for the day was \$43.42.²⁹⁴ This resulted in a purported gain of approximately \$647,924.
197. Between November 1990 and November 2008, there were at least 922 out-of-range equity trades in the Fairfield BLMIS Accounts, reflecting over 123.5 million shares, and generating a purported gain of almost \$13.5 million. These results are shown in **Figure 48** and **Schedule 1**.

²⁹³ See, e.g., Gil Berman Reports checking for OOR trades, e.g., [SECSEV0841308-331 at -308, -324-325] (Gil Berman reports note whether transactions took place within the daily high/low range).

²⁹⁴ December 2006 Customer Statement, 1-FN012-3 [MDPTPP02973401-418 at -410]; December 2006 Customer Statement, 1-FN045-3 [MDPTPP03000719-736 at -728]; December 2006 Customer Statement, 1-G0092-3 [MDPTPP03262828-844 at -836]; December 2006 Customer Statement, 1-G0371-3 [MDPTPP03442922-938 at -930].

Figure 48: Out of Range (OOR) Equities²⁹⁵

Time Period	Account	# of OOR Equity Trades	# Shares OOR	Total Gain/(Loss) from OOR Trades
11/1990 – 11/2008	1FN012	321	60,255,797	\$6,379,709
11/1992 – 11/2008	1FN045	292	59,168,265	\$6,551,674
11/1992 – 11/2008	1G0092	299	4,116,359	\$552,333
5/2006 – 11/2008	1G0371	10	26,355	\$6,154
All Fairfield BLMIS Accounts		922	123,566,776	\$13,489,871


198. Reconciliation of trading activity is a critical aspect of investment management, and FGG claimed to reconcile trading on a daily basis. Despite hundreds of out of range equity trades, only once during the life of the Fairfield BLMIS Accounts were there corrections to trades that were out of range. On December 8, 2003, BLMIS purportedly purchased across multiple accounts (with a settlement date of December 11, 2003), 22 stocks at prices that were out of range.²⁹⁶ The customer statements then showed a purported sale at the same price, followed by an additional purchase at a price within range.²⁹⁷ An example is shown below in **Figure 49** and **Figure 50**.

²⁹⁵ Settled Cash table, StorQM Customer Statements, Customer Ledgers, and Bloomberg Market Data.

²⁹⁶ December 2003 Customer Statements, 1-FN012-3 [FG-01298051-090 at -052-056 / MDPTPP02972947-965 at -948-952]; December 2003 Customer Statements, 1-FN045-3 [MDPTPP03000268-286 at -269-275]; December 2003 Customer Statements, 1-G0092-3 [MDPTPP03262346-364 at -347-352]. On December 8, 2003, 138 trades were corrected across accounts: 1-FN012-3, 1-FN045-3, and 1-G0092-3. 66 of these corrected trades were OOR.

²⁹⁷ To the extent this was an error and correction, this should not have been on the customer statement at all. The customer statement should not show a buy and a sell at incorrect prices; if a correction occurs within the month, the customer statement should only report the correct transaction.

Figure 49: December 2003 BLMIS Customer Statement²⁹⁸



BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York ☐ London

885 Third Avenue
New York, NY 10022
(212) 230-2424
800 334-1343
Fax (212) 838-4061

Affiliated with
Madoff Securities International Limited
12 Berkeley Street
Mayfair, London W1J 8DT
Tel 020 7493 6222

****DUPLICATE** FOR ACCOUNT CITCO GLOBAL CUSTODY N Y**
FAIRFIELD SENTRY LTD

C/O FAIRFIELD GREENWICH GROUP
919 THIRD AVENUE 11TH FLR
NEW YORK NY 10022

PERIOD ENDING
12/31/03


PAGE
5

YOUR ACCOUNT NUMBER
1-FN012-3-0

YOUR TAX PAYER IDENTIFICATION NUMBER

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
12/11	164,958		65012	PEPSICO INC	47.410	7,820,658.78	
12/11		164,958	65012	PEPSICO INC	47.410		7,820,658.78

**Figure 50:
December 2003 BLMIS Customer Statement (cont'd)²⁹⁹**



BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York ☐ London

885 Third Avenue
New York, NY 10022
(212) 230-2424
800 334-1343
Fax (212) 838-4061

Affiliated with
Madoff Securities International Limited
12 Berkeley Street
Mayfair, London W1J 8DT
Tel 020 7493 6222

****DUPLICATE** FOR ACCOUNT CITCO GLOBAL CUSTODY N Y**
FAIRFIELD SENTRY LTD

C/O FAIRFIELD GREENWICH GROUP
919 THIRD AVENUE 11TH FLR
NEW YORK NY 10022

PERIOD ENDING
12/31/03

PAGE
7

YOUR ACCOUNT NUMBER
1-FN012-3-0

YOUR TAX PAYER IDENTIFICATION NUMBER

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
12/11	199,686		69906	JP MORGAN CHASE & CO	34.790	6,947,075.94	
12/11	243,096		70043	COCA COLA CO	46.790	11,374,461.84	
12/11	121,548		70180	MCDONALDS CORP	26.070	3,168,756.36	
12/11	112,866		70317	MEDTRONIC INC	46.810	5,283,257.46	
12/11	86,820		70454	MERRILL LYNCH & CO INC	55.210	4,793,332.20	
12/11	78,138		70591	3M COMPANY	80.830	6,315,894.54	
12/11	199,686		70728	ALTRIA GROUP INC	51.380	10,259,866.68	
12/11	217,050		70865	MERCK & CO	43.050	9,344,002.50	
12/11	1,041,840		71002	MICROSOFT CORP	26.030	27,119,095.20	
12/11	104,184		71139	MORGAN STANLEY	55.130	5,743,663.92	
12/11	104,184		71550	BANC ONE CORP	44.550	4,641,397.20	
12/11	503,556		71687	ORACLE CORPORATION	12.740	6,415,303.44	
12/11	164,958		71824	PEPSICO INC	48.510	8,002,112.58	

199. Between November 1990 and November 2008, there were at least 391 out-of-range option trades in the Fairfield BLMIS Accounts, reflecting 1.2 million option contracts, and generating a purported gain of \$22.3 million. These results are shown in **Figure 51** and **Schedule 2**.

²⁹⁸ December 2003 Customer Statement, 1-FN012-3 [FG-01298051-090 at -055]. On December 8, 2003, the market low was \$48.08, and the market high was \$48.74 for PEPSICO INC. As seen in **Figure 49**, the stock was purchased for \$47.41, which is below the market low. As seen in **Figure 49**, this purchase was immediately followed by purported sale at the same price and as seen within **Figure 50**, purchased back at a price within the daily range.

²⁹⁹ December 2003 Customer Statement, 1-FN012-3 [FG-01298051-090 at -057] (*emphasis (highlight) added*).

Figure 51: Out of Range (OOR) Options³⁰⁰

Time Period	Account	# of OOR Option Trades	# Options Contracts OOR	Total Gain/(Loss) from OOR Trades
11/1990 – 9/2000	1FN012	78	88,164	\$2,003,742
11/1992 – 9/2000	1FN045	53	62,069	\$390,219
11/1992 – 11/2008	1G0092	126	43,470	\$918,610
1/1995 – 11/2008	1FN069	65	496,966	\$8,999,885
1/1995 – 11/2008	1FN070	64	511,427	\$9,991,708
5/2006 – 11/2008	1G0371	5	655	\$39,845
All Fairfield BLMIS Accounts		391	1,202,751	\$22,344,009

200. In addition to the impossible out-of-range equity and options trades, there were also T-Bill transactions that were out-of-range. Because the Fairfield BLMIS Accounts were in T-Bills for a large percentage of the time, I reviewed the reported prices, as compared to the market prices to check whether they were in range. Between December 1, 1999 and November 30, 2008, 43.0% of the T-Bill transactions in the Fairfield BLMIS Accounts were out-of-range. The total number and percentage of out-of-range T-Bill transactions are shown in **Figure 52**.

³⁰⁰ Settled Cash table, StorQM Customer Statements, Customer Ledgers, and CBOE Market Data.

Figure 52: Out of Range (OOR) T-Bills³⁰¹

Time Period	# of T-Bill Trades	# OOR Trades	% OOR Trades
12/1999	56	15	26.8%
1/2000 – 12/2000	588	276	46.9%
1/2001 – 12/2001	488	187	38.3%
1/2002 – 12/2002	672	363	54.0%
1/2003 – 12/2003	630	304	48.3%
1/2004 – 12/2004	623	322	51.7%
1/2005 – 12/2005	555	215	38.7%
1/2006 – 12/2006	774	312	40.3%
1/2007 – 12/2007	837	339	40.5%
1/2008 – 11/2008	525	139	26.5%
Total	5,748	2,472	43.0%

201. Even when trades were purportedly within the daily range, there was not sufficient volume traded at these prices. Comparing data for trades in the Fairfield BLMIS Accounts purportedly purchased at or near the daily low or high to intraday data illustrates that BLMIS could not have made these trades.³⁰² For example, on August 12, 2003, BLMIS purportedly sold 883,356 shares of American International Group (“AIG”)

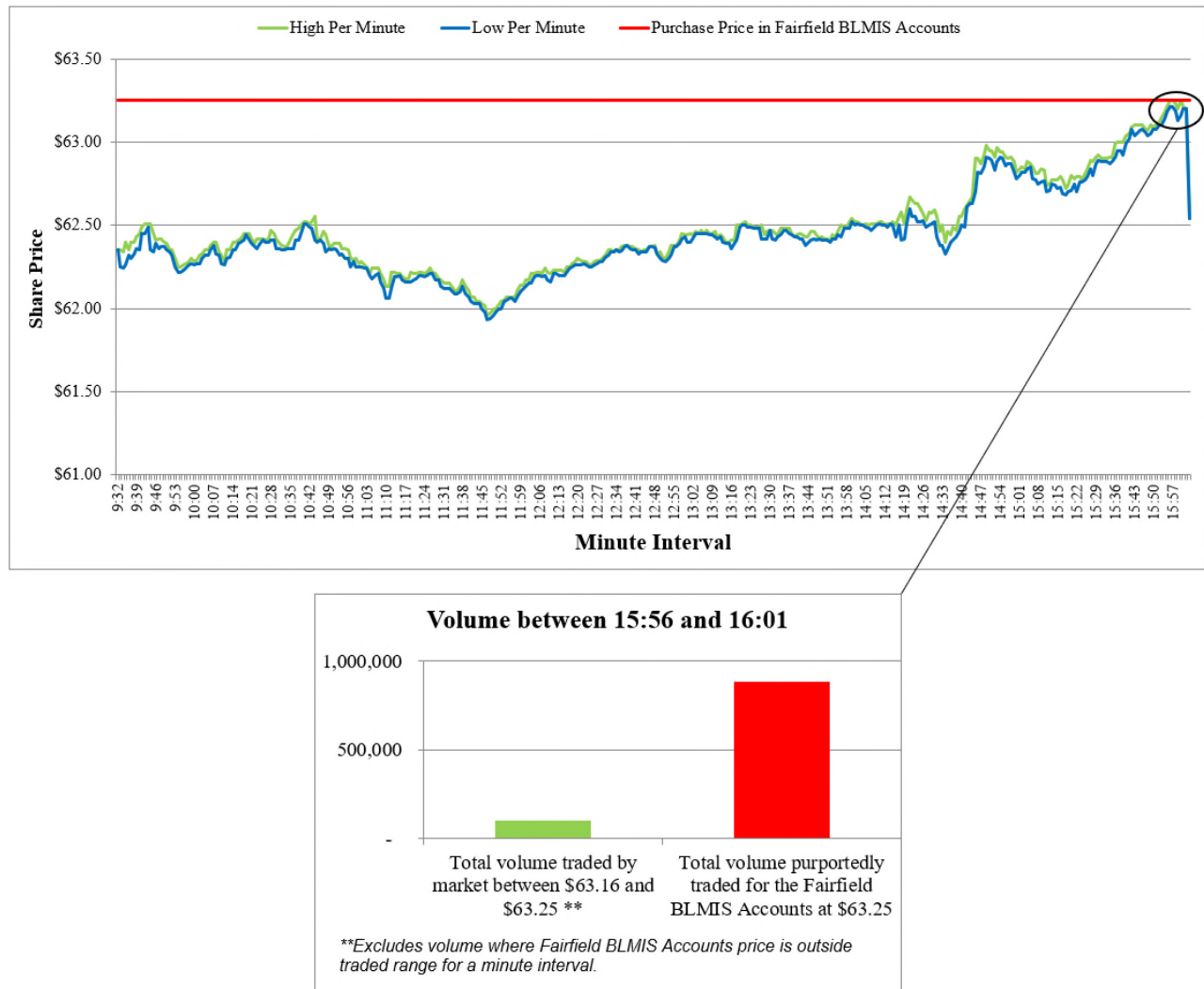
³⁰¹ Settled Cash table, StorQM Customer Statements, Customer Ledgers, and CBOE Market Data. For purposes of this analysis, out of range trades is calculated based on BLMIS’s implied yield relative to the market low and high yields for the trade date. BLMIS’s implied yield is calculated based on the following calculation. The numerator in BLMIS’s implied yield is the delta of 100 minus the reported price, divided by the reported price. The denominator in BLMIS’s implied yield is 360, divided by the number of days between the T-Bill’s maturity date and the trade date. *See*, Trade Confirmations for account 1-FN012-3 in October 2005 [FGGSAA0005496]. Given the various ways to calculate prices based on yields and the sensitivity of rounding, I also calculated the percent of out of range trades by adjusting the high/low to add/subtract 1-10 basis points. Even looking at a 1bp, 5bp and 10bp adjustment, there are still a significant percentage of OOR trades. This analysis starts in December 1999 based on the availability of market data. *See* **Schedule 3**.

³⁰² This analysis is particularly informative because Madoff claimed at times to have executed large volumes of trades in smaller amounts throughout the day (sometimes called “time slicing.”). To the extent that Madoff was purportedly time slicing, time slicing is typically not a source of alpha, nor is it designed to generate alpha. It simply ensures that the trades are being executed at VWAP. It is a passive version of trading where the investor is satisfied to execute at VWAP because the investor is not buying above or selling below VWAP. The fact that Madoff’s execution is consistently better than VWAP is therefore inconsistent with the understanding that Madoff was time slicing. *See, e.g.*, Due Diligence Questionnaire (DDQ), CPH Absolute Returns Pty Limited, April 14, 2005 [FG-00180599 -616 at -612].

across three Fairfield BLMIS Accounts, for \$63.25 per share,³⁰³ which was exactly at the daily high market price.

202. **Figure 53** shows the high and low price, by minute, for AIG on August 12, 2003.

Figure 53: AIG Intraday Share Price and Volume vs. Fairfield BLMIS Accounts – August 12, 2003³⁰⁴



203. As shown in **Figure 53**, the only time period where the range of share prices included the purported FGG price of \$63.23, was between 3:56 PM (15:56 PM) and 4:01 PM (16:01).

³⁰³ August 2003 Customer Statement, 1-FN012-3 [MDPTPP02972889-900 at -889]; August 2003 Customer Statement, 1-FN045-3 [MDPTPP03000210-221 at -210]; August 2003 Customer Statement, 1-G0092-3 [MDPTPP03262282-293 at -282]. Share price excludes commissions of \$0.04 per share.

³⁰⁴ Sources include Settled Cash table and TICK Data market data.

During this 5-minute period, BLMIS purportedly sold 883,356 shares of AIG for the Fairfield BLMIS Accounts, while only 102,300 shares were traded in the market. It would be impossible to sell the 883,356 shares purportedly sold by BLMIS at the market high price within that 5 minute period.

- 204. FGG represented it confirmed every trade against its daily price range.³⁰⁵ Looking at these intraday prices of equities, on a minute-by-minute basis, shows that it was impossible to execute at the prices reported on the customer statements of the Fairfield BLMIS Accounts.
- 205. Stocks being traded outside of the daily high/low prices and stocks purchased or sold in significant volumes at intraday high and low prices are impossible – they cannot happen in the market.

b) Impossibilities Given the SSC Strategy

- 206. An integral part of due diligence is understanding the strategy of the investment and its performance. The strategy and the performance of Fairfield Sentry's investments with BLMIS are at the core of the qualitative due diligence presented by FGG in Section VII.B.1 above. As far back as 1996, it is my opinion that the documents and information in FGG's possession showed that the reported trading in the Fairfield BLMIS Accounts was impossible given the SSC Strategy.
- 207. One red flag is how FGG's description of the SSC strategy changed throughout the years, as discussed in Section VII.B.3.b). First explained as a simple SSC strategy, it was also described as a market timing strategy.
- 208. But the SSC strategy is a hedge strategy, as discussed and acknowledged by FGG in Section VI.A above. BLMIS's SSC strategy was intended to produce performance returns similar to the S&P100 Index, but with less volatility due to the options collar or "hedge."³⁰⁶ Yet FGG insisted that the primary driver of performance was market

³⁰⁵ Memo to Wolfgang G. Isler, Lloyds Bank Plc Zurich Branch, from Roger Steenbergen, July 2, 1998 [ANWAR-CCI-00082596-597 at -596], ("All confirmations are forwarded to an individual in Colorado who reviews them to determine whether the price of each trade is within the range of actual prices for that day.").

³⁰⁶ See, e.g., Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 (FG-03982369-433 at -404-416)]

timing.³⁰⁷ This raises important questions.

209. Why on earth would a great market timer use the SSC strategy? The SSC strategy yields little return unless done with a large amount of leverage (FGG denied the use of leverage).³⁰⁸ If you have a great market-timer, why not buy the S&P100 or S&P500 when you predict it will rise and sell it when you predict it will fall? Under those circumstances, you would not need to establish an options collar to protect against the downside.
210. In a telephone conversation with Vijayvergiya and McKeefry, Madoff explained that the strategy involves buying a basket of securities that replicate the S&P 100 Index, aiming for a 95% correlation with the index's performance.³⁰⁹ Madoff emphasized that the model is designed to track the overall movement of the market rather than selecting individual stocks based on their potential performance.³¹⁰ The goal is to follow the market's movement as closely as possible, ensuring that the basket of securities aligns with the capitalization weights built into the S&P.³¹¹ The put options were intended to limit losses but could not turn losses into gains.
211. There were innumerable examples of a complete decoupling of correlated performance between Fairfield Sentry and the S&P100 Index, as discussed herein. All of which are red flags that Madoff was not implementing the SSC strategy.

³⁰⁷ FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -614] (“[t]he strategy is [a] market timing strategy. And what that means is, is that the Alpha or the excess return strategy is generated predominantly from identifying and profitably organizing an implementation around a short-term market movement upward in large cap stocks, large cap U.S. equities.”); Email from Vijayvergiya to FGG’s Executive Committee, re: Sentry P&L Analysis, December 3, 2007 [SECSEV0800692-693 at -692] (“[t]he key conclusion is that market timing (of entry/exit and of options trading) is the principal source of alpha”).

³⁰⁸ Amit Vijayvergiya’s Notebook, December 2003 - April 2004 [FGG00092432-530 at -432 / SECSEL0000001-099 at -001], (“The equity accounts employ no leverage, margining or borrowings & are ring-fenced from all other accounts @ BLM.”).

³⁰⁹ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 (FG-03982369-433 at -378)].

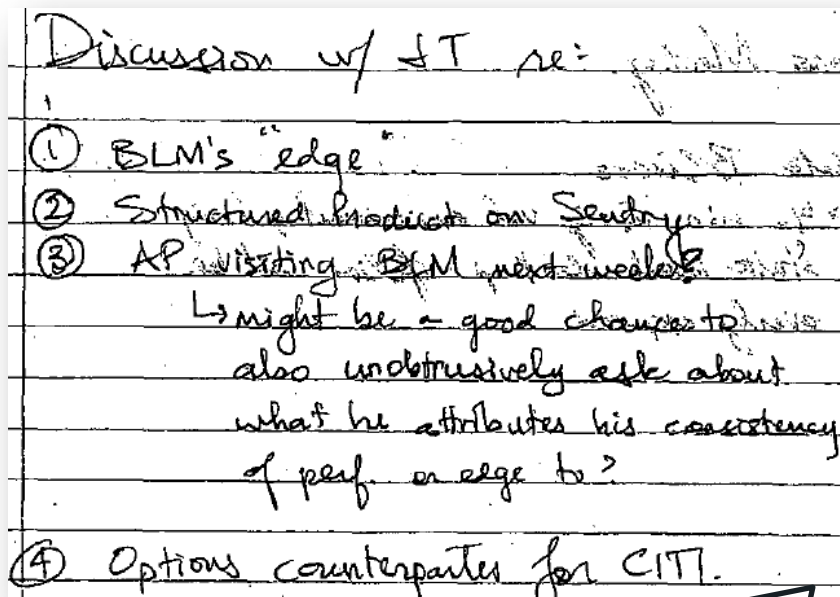
³¹⁰ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 (FG-03982369-433 at -378)].

³¹¹ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 (FG-03982369-433 at -378)].

(1) Performance Attribution

212. The first thing you do when you are selling a strategy is to understand it and how returns are generated.
213. For example, in 2006, as shown in **Figure 54**, Vijayvergiya's notebook indicated a discussion with Tucker regarding BLMIS's "edge." Vijayvergiya's notes also referenced an "AP" (presumably Piedrahita) visit with BLMIS the following week and noted it "might be a good chance to also unobtrusively ask about what [Madoff] attributes his consistency of [performance] or edge to."

Figure 54: Excerpt from Vijayvergiya's Notebook – February 2006 – May 2006³¹²



"1. BLM 'edge'...

3. AP visiting BLM next week? - might be a good chance to also unobtrusively ask about what he attributes his consistency of perf. on edge to?"

³¹² Vijayvergiya's Notebook, February 2006 – May 2006 [FGG00098291-391 at -327 / SECSEL0001209-309 at -245].

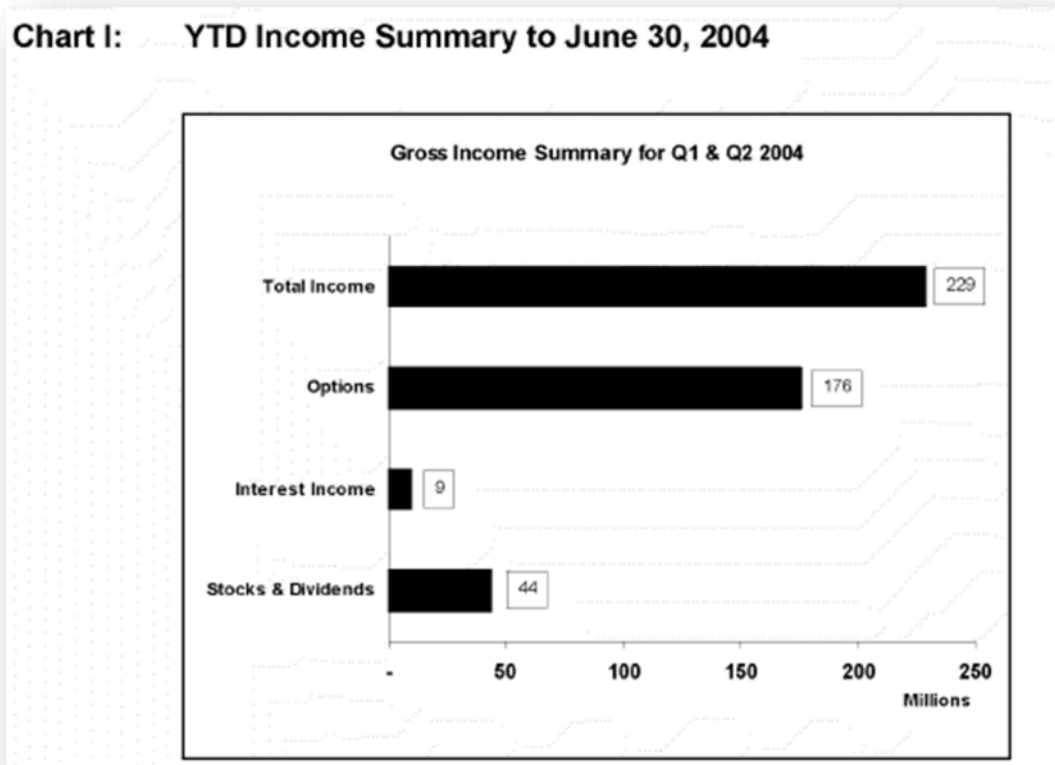
214. The SSC strategy was not intended to be an options trading strategy, yet the Berman Reports point out numerous examples of the monthly profit being attributable to options trades.

- For example, the January 2000 Berman Report showed that options accounted for 90.4% of the monthly total profit of \$69.9 million (Fairfield and Greenwich Sentry combined), while stocks, T-Bill's, and net dividends accounted for 4.4%, 5.2%, and 0.0%, respectively.³¹³
- In some instances, as discussed in Section VII.B.2.b)(4), a speculative option trade, funded entirely on margin, was a significant source of return for the month.

215. Similarly, a July 2004 Fairfield Sentry Limited “Semi-Annual Update” includes the following chart, showing that the vast majority of the “Gross Income” for the first and second quarters of 2004 was attributed to options.

³¹³ Gil Berman RE: Fairfield Sentry Limited and Greenwich Sentry LP January 2000 Trading Activity, February 8, 2000 [SECSEV0034745-203 at -197-200]. *See e.g.*, “Options P&L” of \$61,206,683 for Fairfield Sentry Limited, and \$1,949,913 for Greenwich Sentry LP, which totals \$63,156,596 or 90.4% of the total monthly profit.

Figure 55: Excerpt from July 2004 Fairfield Sentry Semi-Annual Update³¹⁴



216. Despite claims of superior market timing, the Fairfield BLMIS Account statements and returns showed that Madoff was not actually good at market timing.
217. There are numerous examples where FGG is unable to reconcile where the profits in the Fairfield BLMIS Accounts came from with what the strategy was supposed to be. For example, in a November 2008 email chain, Charles Murphy questioned Sentry's "extraordinary" month-to-date performance through November 20, 2007, "given market indices and performance of nearly all our other funds."³¹⁵ Murphy went on to state "[w]ould obviously want first to more fully understand how/why? When can we revisit your work in progress on analysing how P&L has been generated during this (and last)

³¹⁴ Fairfield Sentry Limited Semi-Annual Update, 1st & 2nd Quarters, 2004, July 23, 2004 [SECSEV0040696-699 at-698].

³¹⁵ Email chain dated November 16-27, 2007 between Charles Murphy, Gordon McKenzie, Vijayvergiya, Executive Committee, re: Reporting Sentry implementation cycles [SECSEV2612690-694 at -690].

year's implementation cycles?"³¹⁶

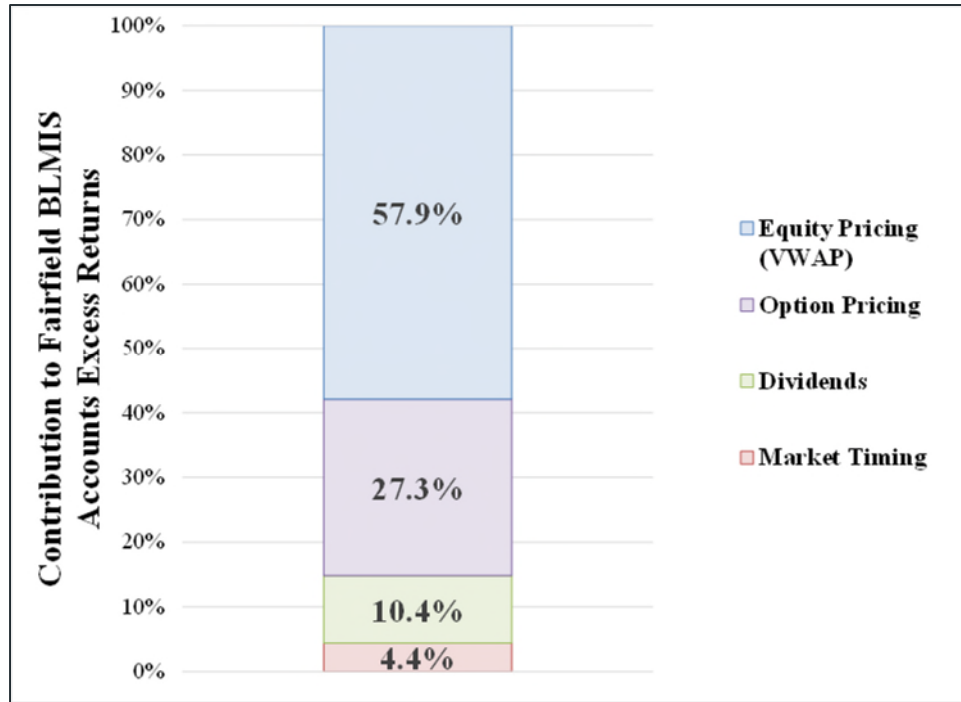
218. In April 2008, FGG conducted analysis in “an attempt to analyze the different types of active decision making that contribution [sic] to Sentry’s return and find out how each one contributes.”³¹⁷ The analysis broke the “active decision[s]” into three areas: (i) timing – includes the call/put trade time, the date to roll options, and the repurchase and sale of a call mid-cycle; (ii) execution – stock price execution as compared to VWAP; and (iii) signal – cycle (basket) start and end dates, and the amount to invest.³¹⁸
219. Indeed, a performance attribution analysis on the purported profits of the Fairfield BLMIS Accounts shows that the largest component of the purported returns comes from BLMIS’s purported trade execution (equity pricing), and not from market timing.

³¹⁶ Email chain dated November 16-27, 2007 between Charles Murphy, Gordon McKenzie, Vijayvergiya, Executive Committee, re: Reporting Sentry implementation cycles [SECSEV2612690-694 at -690].

³¹⁷ Email from Clare Wood to Vijayvergiya re: Sentry Return Decomposition, April 28, 2008 and attachment [SECSEV0035297-298 at -298].

³¹⁸ Email from Clare Wood to Vijayvergiya re: Sentry Return Decomposition, April 28, 2008 and attachment [SECSEV0035297-298 at -298].

Figure 56: Performance Attribution (2000-2008)³¹⁹



220. As shown in **Figure 56**, the largest source of the purported returns, 57.9 percent, was from BLMIS’s purported equity pricing in the Fairfield BLMIS Accounts. In order to assess trade execution, I compared the BLMIS transaction prices with the Volume Weighted Average Price (“VWAP”) for the stock for the day. VWAP is a metric that is used by traders that shows a weighted average price, weighted by volume, for a transaction. It can be used as a benchmark for looking at how well you traded. If a trader was always buying their trades below VWAP or selling above VWAP, that would be statistically impossible. FGG conducted such analysis, comparing BLMIS trade prices with VWAP data.³²⁰ For example, a May 2008 trading analysis compared equity prices

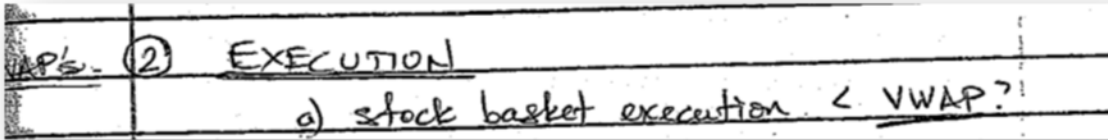
³¹⁹ StorQM Customer Statements, Settled Cash table and Bloomberg market data. Excess Return is the return over and above the risk-free rate. This analysis starts in 2000 based on the availability of market data.

³²⁰ VWAP data is easily obtainable from any Bloomberg terminal and it appears that FGG used a direct Bloomberg pull in Excel. *See, e.g.*, Excel file with Cycle P&L data from April 1, 2008 – May 22, 2008 [SECSEV0833792-4160].

to VWAP and notes that buying below VWAP saved the fund \$15.2 million.³²¹

221. Vijayvergiya's notebooks also highlight the use of VWAP when evaluating "[f]actors that [i]nfluence [r]eturns,"³²² including execution:

Figure 57: Excerpt from Vijayvergiya's Notebook – Factors that Influence Returns³²³



222. A comparison of equity trading prices for the Fairfield BLMIS Accounts to VWAP for the respective stocks over the period January 1996³²⁴ through November 2008 shows that 84.9% of the shares purportedly purchased were at prices below VWAP and 77.6% of the shares purportedly sold were at prices above VWAP. This level of consistent execution is statistically impossible.

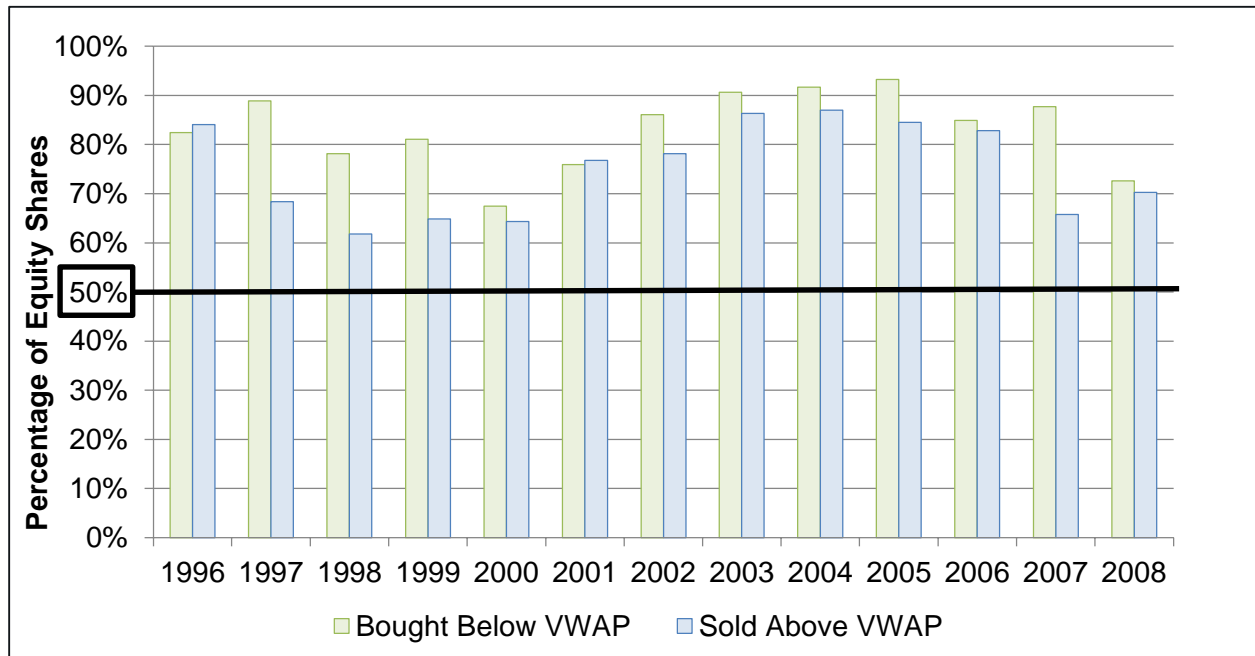
³²¹ Email from Sentry Team to Executive Committee, Jeffrey Tucker, and Walter Noel, Subject: Sentry analysis of May 6 implementation, May 16, 2008 [SECSEV0035275-292 at -284].

³²² Vijayvergiya's Notebook, February 2008 – June 2008 [FGG00099079-196 at -148 / SECSEL0001898-015 at -967].

³²³ Vijayvergiya's Notebook, February 2008 – June 2008 [FGG00099079-196 at -148 / SECSEL0001898-015 at -967].

³²⁴ Reflects the earliest VWAP data that is currently obtainable.

Figure 58: Fairfield BLMIS Accounts Percentage of Shares Bought Below or Sold Above VWAP (1996 to November 2008)³²⁵



223. Gil Berman highlighted this in June 2008 after issuing his May 2008 Sentry report, which described the “May options trading activity to be *unusual* and difficult to explain.”³²⁶ Berman encouraged Vijayvergiya to investigate the unusual activity further and scheduled a call for June 25, 2008.³²⁷ In advance of the call, Berman prepared talking points which noted that “[t]rades can’t all be profitable – 100%[,] not even Madoff.”³²⁸

³²⁵ Sources include Settled Cash table, StorQM Customer Statements, and Bloomberg market data. This analysis starts in 1996 based on the availability of market data

³²⁶ Email from Berman to Vijayvergiya, re: Sentry reports for May, June 13, 2008 [SECSEV1210905-906 at -905] (*emphasis added*); Email from Berman to Vijayvergiya, re: Sentry report for May, June 13, 2008 [GBESAA0043765], (“It was a complex month in terms of options activity and, as my memo indicates, there were several unusual transactions relative to the typical matching of stock and options positions in executing the split-strike conversion strategy.”). *See also*, Berman Report re: Fairfield Sentry Limited May 2008 Trading Activity, June 13, 2008 [SECSEV1210868-869].

³²⁷ Email from Berman to Vijayvergiya, Subject: Sentry reports for May, June 13, 2008 [SECSEV1210905-906 at -905]; Email from Berman to Vijayvergiya, re: Sentry report for May, June 13, 2008 [GBESAA0043765]; Berman’s handwritten notes, “FGG call on 6/25/08” [GBESAA0043767]; Email from Gil Berman to Amit Vijayvergiya, re: Our Conference Call, June 25, 2008 [SECSEV1242543]; Berman Anwar Dep., 6/20/13, 177:3-183:7 [10-03800_FGG_0022022-155 at -066-068] (“Berman Anwar Dep., 6/20/13”).

³²⁸ Berman’s handwritten notes, “FGG call on 6/25/08” [GBESAA0043767]; Berman Anwar Dep., 6/20/13, 190:11-218:14.

Berman's call notes also included: "[b]ackdating? Confirms rec'd on settlement date."³²⁹

224. Berman testified that he raised the concern of backdating to FGG since trade confirmation were received after the trade dates, "on or around the settlement date."³³⁰ Berman asked FGG if they had "considered the possibility of backdating" to explain the very high level of profitability.³³¹ Berman testified, and I agree, that backdating is "...several days or some time period after the fact, to send a confirmation after the outcome of the trade has already been known in the marketplace."³³² Furthermore, Berman testified that "[b]ackdating is -- to my knowledge, depending on the circumstances, is improper and/or illegal."³³³

225. On multiple occasions, FGG referred to the BLMIS SSC strategy as a market timing strategy. For example:

- In a May 16, 2005, FGG Training Memo for a mock due diligence meeting for Sentry (the "2005 Mock Due Diligence Meeting") stated "*[t]he strategy is [a] market timing strategy.* And what that means is, is that the Alpha or the excess return strategy is generated predominantly from identifying and profitably organizing an implementation around a short-term market movement upward in large cap stocks, large cap U.S. equities."³³⁴
- A 2007 email from Vijayvergiya states "*[t]he key conclusion is that market timing (of entry/exit and of options trading) is the principal source of alpha*"³³⁵
- A June 2006 Fairfield Sentry tearsheet describes Sentry as a "[m]arket timing strategy."³³⁶

226. However, as shown in **Figure 56**, market timing contributed very little (4.4 percent) to the returns for the Fairfield BLMIS Accounts. If Madoff were good at market timing,

³²⁹ Berman's handwritten notes, "FGG call on 6/25/08" [GBESAA0043767].

³³⁰ Berman Anwar Dep., 6/20/13, 198:16-201:9.

³³¹ Berman Anwar Dep., 6/20/13, 198:16-199:5.

³³² Berman Anwar Dep., 6/20/13, 199:6-199:12.

³³³ Berman Anwar Dep., 6/20/13, 199:6-201:17, (Berman testified that he was not suggesting that Madoff was doing something improper, but that he "was raising it as a concern" 201:10-23).

³³⁴ FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -614] (*emphasis added*).

³³⁵ Email from Vijayvergiya to FGG's Executive Committee, re: Sentry P&L Analysis, December 3, 2007 [SECSEV0800692-693 at -692].

³³⁶ Fairfield Sentry, Ltd. Tearsheet, June 2006 [SECSEV0002239-240 at 239].

you would expect him to be in the market during periods that the market went up, and out when the market went down. However, a review of the SSC implementations in the Fairfield BLMIS Accounts (i.e., the times when Madoff chose to enter and exit the market) shows that out of the 84 SSC implementations Madoff purportedly entered into between December 1991 and September 2008, the S&P 100 Index was up only 46 times, or 55% of the time, as shown in the following figure.

**Figure 59: Comparison of Returns in Fairfield BLMIS Accounts vs S&P 100 Index Returns During SSC Implementations in the Fairfield BLMIS Accounts
(December 1991 to November 2008)³³⁷**

	Number of SSC Implementations	Fairfield BLMIS Accounts Up	Fairfield BLMIS Accounts Down
S&P 100 Index Up	46	46	0
S&P 100 Index Down	38	36	2

227. In an October 13, 2003, DDQ, when asked “Are the market inefficiencies you exploit present continuously or do they appear sporadically? What market environments favor or hinder the availability of investment opportunities?”³³⁸ Fairfield Sentry responded “The strategy performs best in a market with an upward bias with moderate volatility. The strategy requires modest market volatility for opportunistic implementation in a tactical sense. A relatively unfavorable situation would be a stagnant market with no volatility. Also, extreme downside market leaves little opportunity for success for this strategy.”³³⁹
228. A simple review of S&P 100 Index performance and volatility shows that not only did performance of the Fairfield BLMIS Accounts not correlate, but the performance of the index shows that the returns would not have been consistent. That is completely separate

³³⁷ StorQM Customer Statements, Settled Cash table, Customer Ledgers, and Bloomberg market data. This analysis starts in December 1991 at the first implementation of the SSC strategy with baskets. See **Schedule 4** for SSC implementations.

³³⁸ Fairfield Sentry Fund Ltd. (B Shares) ‘DDQ,’ October 13, 2002 [SECSEV0689561-595 at -577]. I note that this document is mis-dated as October 13, 2002, the document contains data as of August 31, 2003, and October 1, 2003.

³³⁹ Fairfield Sentry Fund Ltd. (B Shares) ‘DDQ,’ October 13, 2002 [SECSEV0689561-595 at -577]. I note that this document is mis-dated as October 13, 2002, the document contains data as of August 31, 2003, and October 1, 2003.

from the fact that no one in the history of trading has ever been able to time the market so perfectly. Ever.

(2) Out of Market at Year-End and Quarter-End

229. The opportunistic nature of the BLMIS SSC strategy should be agnostic to any specific calendar month, yet BLMIS was purportedly out of the market at the end of each year from 1995 through 2007 (13 straight years). Additionally, BLMIS was also purportedly out at the end of each quarter for 25 straight quarters beginning in the third quarter of 2002 and proceeding through the third quarter of 2008. There is no rational explanation for Madoff to do this, and this is completely inconsistent with a market timing strategy.
230. Dan Lipton noticed this, asking in an April 2008 email how Madoff could have ***“rolled 6-7BN of Tbills on the last day of the year in each of the last day of [2006 and 2007]”***—***“[s]eriously—all of them?”*** McKenzie states that he “[w]ill double check but yes from memory every year.” Lipton then asked McKenzie what he thought Madoff’s reasoning for doing this was. Based on the email chain reviewed, McKenzie does not appear to provide a response to this question, but instead replies with the following: “[s]ame thing every year. Went back to 2004.” Lipton responded stating that “BLM has every angle covered – he’s playing over my head.”³⁴⁰
231. Investors also questioned this behavior by Madoff. For example, Vijayvergiya received an email from Yanko Della Schiava (FGG Director Italy & Ticino) relaying questions from an investor, including asking why Madoff goes into cash at the end of each year.³⁴¹ Vijayvergiya responded with two explanations: (i) “Trading volume, volatility and order flow may fluctuate from normal ranges in December and result in a less than favorable environment in which to invest the strategy. Consequently, the absence of reliable trade signals often result in the strategy remaining in cash during December”; and (ii) “in previous years, the strategy has often generated targeted returns by November. The team at Madoff responsible for the split-strike conversion strategy has not seen the need to take

³⁴⁰ Emails between Dan Lipton, Gordon McKenzie, and Nancy Zhang, RE: gsplp, April 15, 2008 [FG-02017806-808 at -806-807] (*emphasis added*).

³⁴¹ Emails between Vijayvergiya and Yanko Della Schiava, RE: Sentry, December 11, 2003 [SECSEV0974093-097 at -095-097].

on more risk in December.”³⁴² Schiava then replies “I remember Jeffrey [Tucker] once specifically mentioning about the last days of the year to be in cash so he did not have to fill certain tax forms... or something similar..[.]”³⁴³ which Vijayvergiya acknowledges is a third possible reason, but states that he has “been advised not to emphasize this.”³⁴⁴ In addition, Vijayvergiya notes that the rule Tucker is referring to “requires that if Madoff ends the year invested on December 31, then they are required by law to report their holdings in these same positions for the next four quarters. I am further told that Madoff has been reluctant to do this and has preferred to remain invested in cash on December 31 in certain years.”³⁴⁵

232. There is no industry standard regarding year-end trading, however, there is an industry practice; let winners run and cut losses. Regardless of the calendar, professional traders do not go to cash simply because it is year-end. In my experience, investment advisors go to cash at year-end under the following conditions:

- The portfolio manager is mandated by the offering documents or trading directive.
- If, by the beginning of December (or mid-December) individual portfolio traders (compensated by their profit & loss) have booked very large profits for the year, locking in their target performance and bonus, they may decide to go to cash.
- If the portfolio has a particular tax incentive to offset a loss with a gain or visa-versa, the portfolio manager may choose to go to cash prior to the taxable year-end.

233. BLMIS did not have any of the above reasons to be in cash at year-end, because BLMIS was compensated by commissions, not by profit and loss, and there was no directive to do so. In fact, you would expect that BLMIS would be trading *more* if compensated based on commissions, not *less*.

³⁴² Emails between Vijayvergiya and Yanko Della Schiava, RE: Sentry, December 11, 2003 [SECSEV0974093-097 at -094-095].

³⁴³ Emails between Vijayvergiya and Yanko Della Schiava, RE: Sentry, December 11, 2003 [SECSEV0974093-097 at -093-094].

³⁴⁴ Emails between Vijayvergiya and Yanko Della Schiava, RE: Sentry, December 11, 2003 [SECSEV0974093-097 at -093-094].

³⁴⁵ Emails between Vijayvergiya and Yanko Della Schiava, RE: Sentry, December 11, 2003 [SECSEV0974093-097 at -093].

(3) Lack of Scalability

234. BLMIS could not have executed the SSC strategy as represented with the amount of assets under management. Actual profit potential is minimal and would require tremendous leverage – market volume and notional value – to attain the performance that Fairfield BLMIS Accounts did.
235. The size of the overall strategy was such that there was not enough volume to execute the notional value in options.
236. This was also highlighted by Neil Chelo, a respected hedge fund analyst working for Benchmark, a company with whom my firm invested after significant due diligence. In 2007, Chelo explained how it was not possible for Madoff to execute the purported trading that was reported on the customer statements of Thema Longitude Fund, another BLMIS account.
237. On July 11, 2007, Michael Bockner at Singletrack Advisors emailed Neil Chelo an attachment which contained a “trade snapshot” of a Madoff account from February 28, 2007, as seen in **Figure 60**.³⁴⁶

Figure 60: “Trade Snapshot” sent to Neil Chelo³⁴⁷

	A	B	C	D	E	F	G	H	I
		Security ID	Quantity	Local Market Price	Current Local cost	Local Market Value	Unrealized gain/loss	% invest	% NAV
1									
2									
3	LONG POSITIONS								
4									
5	American Put Option								
6	S&P 100 Index 665 Put 03/17/2007	DT31712	14,780.00	21.20	6,715,160.00	31,333,600.00	24,618,440.00	2.73	2.72
7									
8	Equity								
9	3M Co	2595708	118,240.00	74.08	9,012,038.32	8,759,219.20	-252,819.12	0.76	0.76
10	AT&T Inc	2831811	975,480.00	36.80	36,307,595.40	35,897,664.00	-409,931.40	3.13	3.11
11	Abbott Laboratories	2002305	236,480.00	54.62	12,440,957.68	12,916,537.60	475,579.92	1.13	1.12
12	Altria Group Inc	2692632	325,160.00	84.28	27,987,236.78	27,404,484.80	-582,751.98	2.39	2.38
13	American Express Co	2026082	187,219.00	56.87	10,806,825.16	10,647,144.53	-159,680.63	0.93	0.92
14									
15									
16									
17									
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42									
43									
44									
45									
46									
47									
48									
49									
50	Fixed Income								
51	USD								
52	US Treasury Bill 0% 5.10.2007	B1H1WY0	88,400,000.00	99.01	87,459,424.00	87,523,047.25	63,623.25	7.63	7.59
53	US Treasury Bill 0% 5.10.2007	B1HM9T7	88,400,000.00	98.91	87,371,024.00	87,436,587.63	65,563.63	7.62	7.58
54									
55									
56									
57	SHORT POSITIONS								
58	S&P 100 Index 675 Call 03/17/2007	DT31267	-14,780.00	0.20	-5,503,200.00	-295,600.00	5,207,600.00	-0.03	-0.03
59									
60									
61									
62									
63									
64									
65									
66									
67									
68									
69									
						1,147,492,353.87		100.02	99.46

³⁴⁶ Email from Michael Bockner to Neil Chelo, RE: Trade Example, July 11, 2007 [FG-05504008-010 at -009].

³⁴⁷ Email from Michael Bockner to Neil Chelo, RE: Trade Example, July 11, 2007, with attachment [FGGE000318634-642 at -637-640 / SECSEV0896157-165 at -160-163].

238. As seen in **Figure 61**, Chelo replied to Bockner's email with his own calculation based on the trade example, questioning the consistent performance of the Madoff account and concluding that "this smells fishy. I would like to talk to Fairfield and get further clarification. In particular, I would like to see time stamps on the trades and a one or two month trade history. Does Madoff provide any legit references to talk too?"

Figure 61: "Trade Example" Email – Neil Chelo Reply³⁴⁸

From: Neil Chelo <nchelo@bpfunds.com>
Sent: Wednesday, July 11, 2007 4:27 PM
To: Michael Bockner <mbockner@singletrackadvisors.com>
Subject: RE: Trade Example
OK, let us think about this for a second.

- He only owns 58 of the 100 stocks in the index so he is subject to basis risk. Over the 10+ years of him running money it is hard to believe that this has not hurt him at least a few times.

- Why would he own 14,780 contracts? This would hedge the equivalent of $(14,780 * 100 * 665) = \$982,870,000$ when the equity in this one account is \$87m. This is clearly a directional trade and not market neutral as he would benefit greatly if the market crashed and get killed if the market ran higher. For example, say the OEX went up 10% from the end of February to the 3/17/07 expiration. (643.74 to 708.11). Granted, low odds, but certainly within the distribution of past returns. His stock portfolio would go up 10% and gain roughly \$9.7m, the puts would expire worthless and lose \$31m of value. The short calls would lose $14,780 * 100 * 33.1 = \$48m$. So the account would lose about \$70m. Far from being a market neutral trade.

- Since this is a snapshot at end of February and he is holding March contracts, I looked at similar situation now. If you look at entire open interest of August OEX calls there is only 22,248 contracts outstanding. Assuming Madoff was the entire open interest for the upcoming month at an average strike of 700, he could only hedge \$1.5B of stock. Given the fact he is running \$5 to \$20B depending on who you talk to, then this would be impossible.

I am telling you that this smells fishy. I would like to talk to Fairfield and get further clarification. In particular, I would like to see time stamps on the trades and a one or two month trade history. Does Madoff provide any legit references to talk too?

Neil

239. Chelo's concerns and the emails were forwarded to Vijayvergiya.³⁴⁹
240. While the purported trading was purportedly conducted via the OTC market, OTC dealers lay off risk on the exchange using either individual securities or exchange traded index options. There is no evidence during the purported trading of the SSC strategy (particularly when it was thought to be over \$20 billion globally) of any footprint in the exchange traded products that would have been used to hedge the dealer risk. As billions

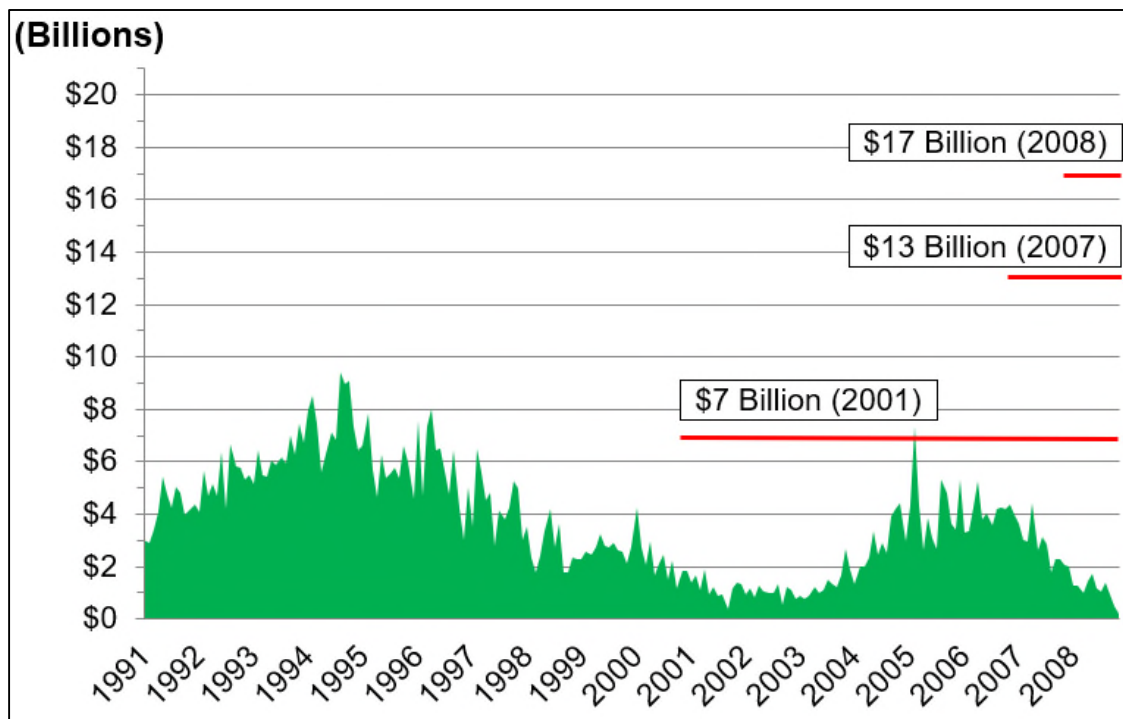
³⁴⁸ Email from Neil Chelo to Michael Bockner, RE: Trade Example, July 11, 2007 [FG-05504008-010 at -008-009] *format edited for presentation purposes.*

³⁴⁹ Emails from Vijayvergiya to Jeremy Norton RE: Trade Example, July 11-12, 2007 [SECSEV0896197-199 at -197].

of notional value OTC options were thought to be traded, there would have been visible activity on the exchange.

241. The chart below shows the notional value of the OEX (S&P100) call options between 1990 and 2008 that were less than three months duration and 1-3% out of the money. As you can see, there was not enough volume to support the type of hedging needed.

**Figure 62: Notional Value of S&P 100 Index Call Options vs BLMIS
Purported AUM³⁵⁰**



(4) Speculative Options

242. As stated, the SSC strategy is a hedge strategy.³⁵¹ Any time it was not fully hedged, it

³⁵⁰ SEC Form ADV, Bernard L. Madoff Investment Securities, January 24, 2007 [PUBLIC0003763-796 at -771]; SEC Form ADV, Bernard L. Madoff Investment Securities, January 7, 2008 [PUBLIC0003834-864 at -840]; Michael Ocran, *Madoff tops charts; skeptics ask how*, MAR/Hedge (RIP) No. 89, May 2001 [PUBLIC0018782-786 at -782-783]. Madoff's strategy required selling call options that were out-of-the-money, therefore the chart depicts the monthly maximum notional value of call options that are out-of-the-money (with an expiration date of less than three months and a strike price between 1-3% out-of-the-money). The maximum reflects the highest notional value reported on any day within the month. Data was obtained from CBOE.

³⁵¹ See, e.g., Section VI.A.

became a speculative trade which violated the parameters set forth in the Trading Directive and the strategy description in the Private Placement Memorandum (“PPM”). Starting in 1993 there were several times when the transactions reported in the Fairfield BLMIS Accounts were not hedged properly.

243. For example, on August 29, 2001, BLMIS purportedly purchased 28,931 S&P 100 September 570 put contracts across three transactions, at share prices of \$5.60, \$5.70, and \$5.80. BLMIS then sold them two days later, on August 31, 2001, across three transactions for \$10.90, \$11.00, and \$11.10, for a net gain of more than \$15 million. The transaction was not used to hedge any equity transaction, and was instead entirely speculative, for the sole purpose of generation a profit.
244. In April 2004, while purportedly invested in an SSC implementation, BLMIS purportedly bought back 80,839 OEX May 560 call options on April 22, 2004 without any other changes to the basket of stocks or options, and then sold the same call options again on April 23, 2004 “to reestablish their short calls position.”³⁵² As Berman noted, this speculative option trade that was not part of the strategy generated profits of over \$19 million, equal to approximately 80% of the total purported gain in the account for the month.³⁵³

³⁵² Gil Berman Report RE: Fairfield Sentry Limited April 2004 Trading Activity, May 11, 2004 [SECSEV0034745-203 at -991-995].

³⁵³ The total net profit for the month was \$24.2 million, \$23.4 million from Fairfield Sentry Limited and \$0.9 million from Greenwich Sentry LP. Gil Berman Report RE: Fairfield Sentry Limited April 2004 Trading Activity, May 11, 2004 [SECSEV0034745-203 at -991-995].

Figure 63: Excerpt from Berman's April 2004 Report³⁵⁴

On April 22nd the Fairfield Sentry accounts bought a total of 80,839 OEX May 560 calls to close, selling them again on April 23rd to reestablish their short calls position while generating an interim trading profit of \$19,239,682 net of commissions.

In summary, April trading activity for the Fairfield Sentry accounts consisted of acquiring fully invested positions in S&P 100 split-strike conversions at the beginning of the month, then rolling the options hedge at expiration and subsequently making a profitable interday trade while maintaining the positions through month's end. Please let me know if you have any additional questions regarding my findings.

245. Berman specifically calls this out in his email to Vijayvergiya, stating:

*Attached are the April reports. As I'm sure you have already noticed, **there was a successful overnight trade of the entire May short call position, which produced most of the profit for the month.** If you wish to discuss this further, or have any other comments or questions about my report (including the new options page), please contact me at your convenience.*³⁵⁵

246. Additionally, the buy-back of these call options caused a negative cash balance of over \$12 million in the Fairfield Sentry BLMIS Account.³⁵⁶ Said another way, not only did BLMIS purportedly make a speculative option trade that was not part of the SSC strategy, but there was also not enough cash in the Fairfield Sentry BLMIS Account to fund this speculative option trade. As noted on FGG's website, the FGG Finance Group "[r]econciles cash daily for all funds."³⁵⁷ In my experience, if there were negative account balances, it would be reflected on a cash reconciliation. Further, it would prompt

³⁵⁴ The total net profit for the month was \$23 million. Gil Berman Report RE: Fairfield Sentry Limited April 2004 Trading Activity, May 11, 2004 [SECSEV0034745-203 at -991-995].

³⁵⁵ Email from Berman to Vijayvergiya, re: Sentry reports for April, February 21, 2005 [FG-00173072] (*emphasis added*).

³⁵⁶ April 2004 Customer Statement, 1-FN045-3 [MDPTTP03000318-334]; April 2004 Customer Statement, 1-FN070-4 [MDPTTP03040225-228]. At the beginning of April 2004, the opening cash balance in Fairfield Sentry BLMIS Accounts 1-FN045-3 and 1-FN070-4 was \$0.51 and \$0.00, respectively. Based on the purported transactions in accounts 1-FN045-3 and 1-FN070-4, by April 22, 2004, the combined cash balance in the two accounts was \$0.84. On April 22, 2004 (with a settlement date of April 23, 2004), despite having a cash balance of only \$0.84, BLMIS purportedly purchased 40,424 May 560 call option contracts, across 5 transactions, for \$12,167,624.00 in account 1-FN070-4. This resulted in a negative cash balance of \$12,167,623.16 on April 23, 2004 for the combined accounts.

³⁵⁷ FGG Website, Investment Process [PUBLIC0709407].

a review and require an explanation.

247. Similarly, on March 4, 2005 (with a settlement date of March 7, 2005), while purportedly invested in an SSC implementation, BLMIS purportedly spent more than \$13 million to buy back OEX March 585 call options in the Fairfield Sentry BLMIS Account, without any other changes to the basket of stocks or options, only to sell the same call options again one business day later on March 7, 2005 (with a settlement date of March 8, 2005), for a total profit of almost \$10 million (and a total profit of more than \$20 million across the Fairfield BLMIS Accounts).³⁵⁸
248. At the beginning of March 2005, the combined cash balance in Fairfield BLMIS Accounts 1FN012-3 and 1FN069-4 was \$0.62.³⁵⁹ While the accounts purportedly received four dividend payments in the first four days of the month that (net of tax withholdings) totaled \$594,084.77, this was not nearly enough to fund a call option purchase of more than \$13 million.

³⁵⁸ March 2005 Customer Statement, 1-FN070-4 [MDPTPP023040251-252 at -251]; March 2005 Customer Statement, 1FN069-4 [MDPTPP03039317-318 at -317]; *see* February 2005 Customer Statement, 1-FN012-3 [MDPTPP02973131-135 at -132-134] and February 2005 Customer Statement, 1-FN069-4 [MDPTPP03039315-316 at -316], showing that at the beginning of March, the accounts were purportedly invested in an SSC implementation.

³⁵⁹ March 2005 Customer Statement, 1-FN012-3 [MDPTPP02973136-150]; March 2005 Customer Statement, 1FN069-4 [MDPTPP03039317-318 at -317].

Figure 64: March 2005 Customer Statement for Account 1FN012³⁶⁰

CITCO GLOBAL CUSTODY N V FBO FAIRFIELD SENTRY LTD		3/31/05	1	AM
NETHERLAND		1-FN012-3-0		
	BALANCE FORWARD			.62
3/01	INTEL CORP	DIV		252,736.72
3/01	DIV 2/07/05 3/01/05			
3/01	W/H TAX DIV INTC	CW	75,821.02	
3/01	WELLS FARGO & CO NEW	DIV		413,081.28
3/01	DIV 2/04/05 3/01/05			
3/01	W/H TAX DIV WFC	CW	123,924.38	
3/04	BOEING CO	DIV		101,911.50
3/04	DIV 2/11/05 3/04/05			
3/04	W/H TAX DIV BA	CW	30,573.45	
3/04	GILLETTE CO	DIV		80,963.03
3/04	DIV 2/01/05 3/04/05			
3/04	W/H TAX DIV G	CW	24,288.91	

249. There were also instances where BLMIS purportedly exited certain equity positions mid-SSC implementation, without making any changes to the basket of stocks or options. Several examples of this were pointed out by Berman. This defied the “Terms and Conditions for Option Heading Transactions” in BLMIS’s trading authorization, which stated that “[u]pon liquidation of equity positions for the account, a corresponding amount of index option contracts shall be unwound.”³⁶¹
250. For example, in his January 2001 report, Berman notes: “On January 23rd, the Fairfield Sentry accounts sold their holdings in American Express Company.”³⁶²

³⁶⁰ March 2005 Customer Statement, 1-FN012-3 [MDPTPP02973136-150]; March 2005 Customer Statement, 1FN069-4 [MDPTPP03039317-318].

³⁶¹ BLMIS’s trading authorization was changed by Madoff at some time prior to FGG’s call with Madoff in preparation of the SEC interview in January 2006; Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 (FG-03982369-433 at -370)]. For reasons not disclosed, FGG kept the trading authorization “under lock and key” even though it should have been made available, at minimum, to all FGG personnel conduct, PwC, and Citco. Email from Vijayvergiya re: Madoff Funds’ New Trading Authorizations, August 30, 2006 [FG-00002224-241 at -224, -229]. This is consistent with industry customs and practices – provide all relevant trading information.

³⁶² Gil Berman Report RE: Fairfield Sentry Limited January 2001 Trading Activity, February 9, 2001 [SECSEV0034745-203 at -145-148].

Figure 65: Excerpt from Berman's January 2001 Report³⁶³

I have reviewed all of the January-settlement activity for the Fairfield Sentry accounts. On January 3rd, 16th and 17th, the accounts bought typical portfolios of S&P 100 stocks, moving to a fully invested position upon completion of the third increment. On January 23rd, the Fairfield Sentry accounts sold their holdings in American Express Company. There were no further transactions for the remainder of the settlement month.

251. In his February 2001 report, Berman notes: "On February 7th the accounts sold their holdings of EMC Corporation"³⁶⁴

Figure 66: Excerpt from Berman's February 2001 Report³⁶⁵

I have reviewed all of the February-settlement activity for the Fairfield Sentry accounts. On February 7th the accounts sold their holdings of EMC Corporation. Over the three day period ending on February 16th the Fairfield Sentry accounts liquidated their portfolios of S&P 100 stocks. These sales left the accounts in a 100% cash position, which was maintained for the balance of the settlement month.

252. In 2003, Vijayvergiya noted, "BLM always buys the puts [at] the same time they buy the stock. The sale of the calls are usually concurrent but they don't have to be."³⁶⁶ But anytime a full hedge is not in place, the fund had unintended market risk. While it is true that you may wait to sell the calls the same or next day, you should see a payment for the purchase of the puts if the calls were not sold to cover the cost of the puts. I did not see such payment in the documents and information produced by FGG.
253. When asked whether options are only used as a collar strategy versus actively trading

³⁶³ Berman Report RE: Fairfield Sentry Limited January 2001 Trading Activity, February 9, 2001 [SECSEV0034745-203 at -145-148].

³⁶⁴ Berman Report RE: Fairfield Sentry Limited February 2001 Trading Activity, March 12, 2001 [SECSEV0034745-203 at -141-144].

³⁶⁵ Berman Report RE: Fairfield Sentry Limited February 2001 Trading Activity, March 12, 2001 [SECSEV0034745-203 at -141-144].

³⁶⁶ Vijayvergiya's Notebook, June 2003 - August 2003 [FGG00092230-330 at -252 / SECSEL0000201-301 at -223].

them to generate returns, FGG's response did not include speculative call options.³⁶⁷

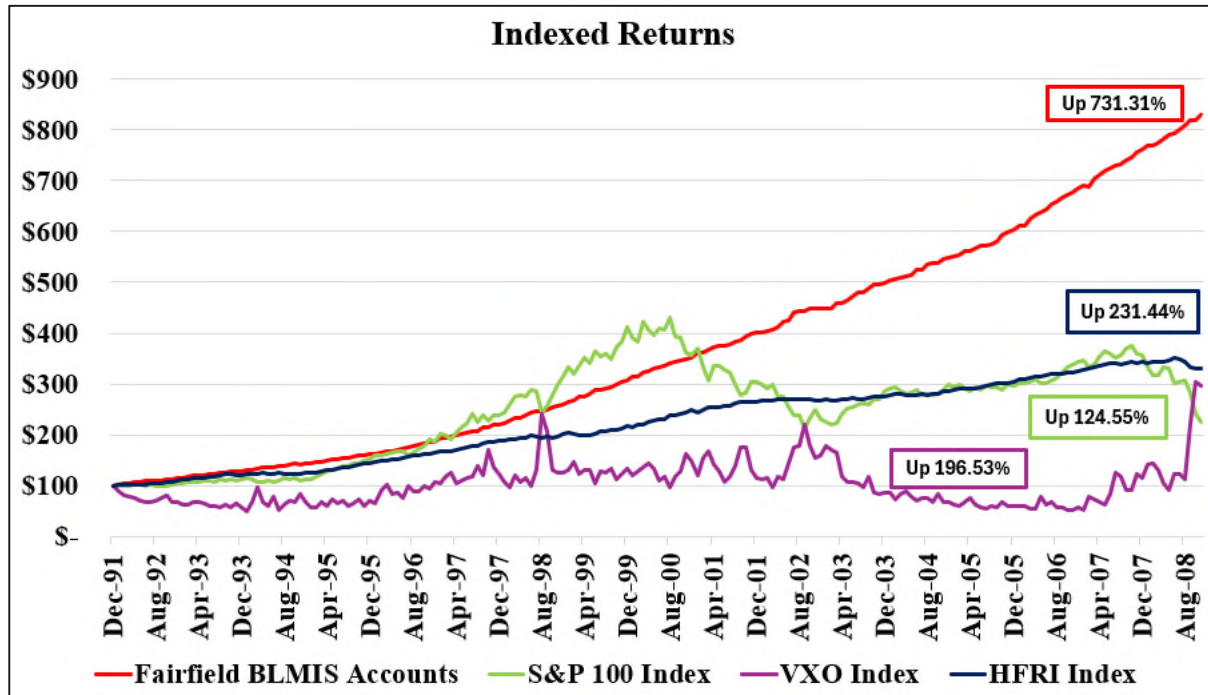
(5) Comparison to Benchmarks

254. In conducting due diligence as well as on-going risk analysis, it is customary to compare an investment's performance to appropriate market benchmarks, investable alternatives, other funds, or other peer groups to ascertain if the investment that you are in is performing as expected given the stated strategy.
255. FGG was comparing themselves to benchmarks for marketing purposes to show their success. For example, when discussing creating a list of benchmarks on March 11, 2008, Vijayvergiya noted "what makes FGG look good (client purpose)" and noted that there were "two purposes" for the benchmarks: "internal (which bench is most informative) vs. external (which makes FGG look good)."³⁶⁸ What the results really show is that the performance is inconsistent with the strategy.
256. As shown in the figure below, BLMIS's returns were consistently positive, and steadily increased regardless of what the market was doing.

³⁶⁷ Email from Vijayvergiya to Lakshmi Chaudhuri RE: Fairfield Sentry Ltd. Q&A, October 29, 2003 [10-03800_FGG_0022456-467 at -464]. FGG's responses delved into several areas discussed herein: such as (1) discretionary account (*see* Section VII.B.3.a)); (2) counterparties (*see* Section VII.B.2.c)(4)); (3) personnel at BLMIS (*see* Section VII.B.2.c)(7)), etc.

³⁶⁸ Vijayvergiya's Notebook, February 2008 - June 2008 [FGG00099097-196 at -103 / SECSEL0001898-015 at -922].

Figure 67: Indexed Monthly Returns –Fairfield BLMIS Accounts, S&P 100 Index, HFRI Index and VXO Index (Indexed at December 1991 = \$100)³⁶⁹



257. For example, Vijayvergiya said that the SSC strategy should do well in periods of “stable yet modest and perhaps growing volatility.”³⁷⁰ The figure above shows that, during this period, as shown by the CBOE S&P 100 Index Volatility Index (“VXO”) returns,³⁷¹

³⁶⁹ StorQM Customer Statements, Settled Cash table, Customer Ledgers, Hedge Fund Research Inc. © 2012 HFR Inc. - www.hedgefundresearch.com, and Bloomberg market data [PUBLIC0707968]. This analysis starts in 1991 at the implementation of the SSC strategy with baskets.

³⁷⁰ FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -635-636]. *See also*, Fairfield Sentry Fund Ltd. (B Shares) ‘DDQ,’ October 13, 2002 [SECSEV0689561-595 at -577], (“The strategy performs best in a market with an upward bias with moderate volatility. The strategy requires modest market volatility for opportunistic implementation in a tactical sense. A relatively unfavorable situation would be a stagnant market with no volatility. Also, extreme downside market leaves little opportunity for success for this strategy.”); Phone Conversation between Vijayvergiya and Frank DiPascali [FG-03906197], (FG-03906197.WAV), (Frank DiPascali stated “the Volatility of the ... stock market is, is pretty much what gives us the opportunity to be as profitable as we are for you... We’re looking for stock prices to be volatile.”).

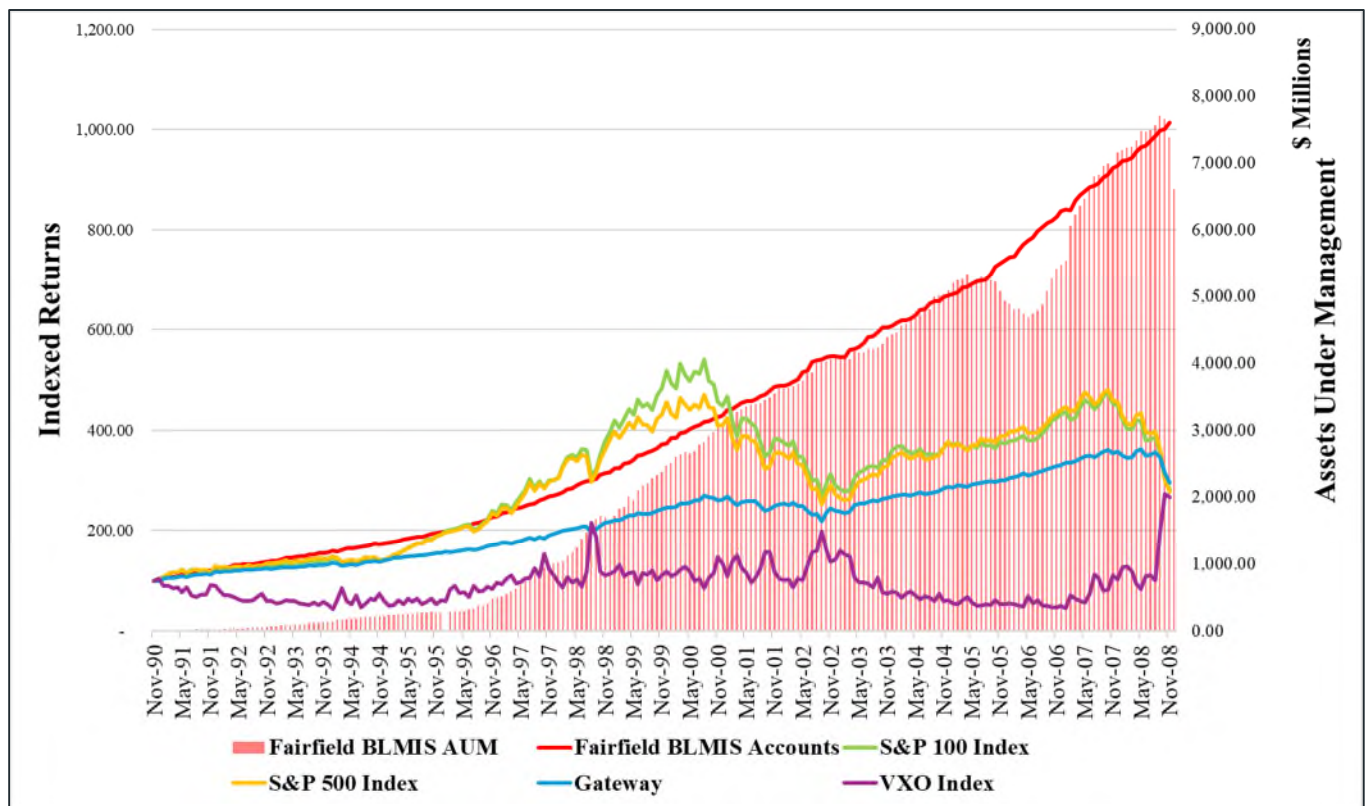
³⁷¹ The VXO was an index created by the CBOE that measured the volatility of the S&P 100 Index. Note that the VXO was decommissioned as of August 31, 2021. *See*, CBOE Global Indices Summary of Responses to the Consultation Regarding the Cessation of the VXO and VXHYG Indices) [PUBLIC0709021]. VXO is a measure of volatility used by FGG. *See, e.g.*, Vijayvergiya’s Notebook, August 2005 - December 2005 [FGG00098087-187 at -095 / SECSEL0000807-907 at -815], (“Quantitative Analysis of SSC strategy: ... modeling of: ... volatility (VXO)”); Conference Call with HSBC (New York) January 19, 2006 [FG-00005071-176 at -073-074]; FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -635-636]; Fund of Hedge Funds Manager Correspondence, April 10, 2008 [FG-00009143-161 at -158-159].

volatility was low, yet BLMIS continued to generate returns. The BLMIS returns also far exceed returns for the HFRI Equity Market Neutral Index (the “HFRI Index”), an index of hedge funds,³⁷² which FGG used as a benchmark,³⁷³ and was uncorrelated with returns of the S&P 100 Index. These returns show that Madoff was not trading the SSC strategy.

258. FGG nonetheless maintained that BLMIS was executing the SSC strategy.

259. BLMIS continued to generate these returns, despite large increases in AUM.

Figure 68: Cumulative Monthly Returns (Indexed at Nov 1990 = \$100) and AUM in the Fairfield BLMIS Accounts³⁷⁴



260. The Fairfield BLMIS Accounts, when compared to the broad markets (represented by the

³⁷² The HFRI “are a series of benchmarks designed to reflect hedge fund industry performance by constructing composites of constituent funds, as reported by the hedge fund managers listed within HFR Database.” *See*, HFRI Hedge Fund Indices Defined Formulaic Methodology [PUBLIC0708122].

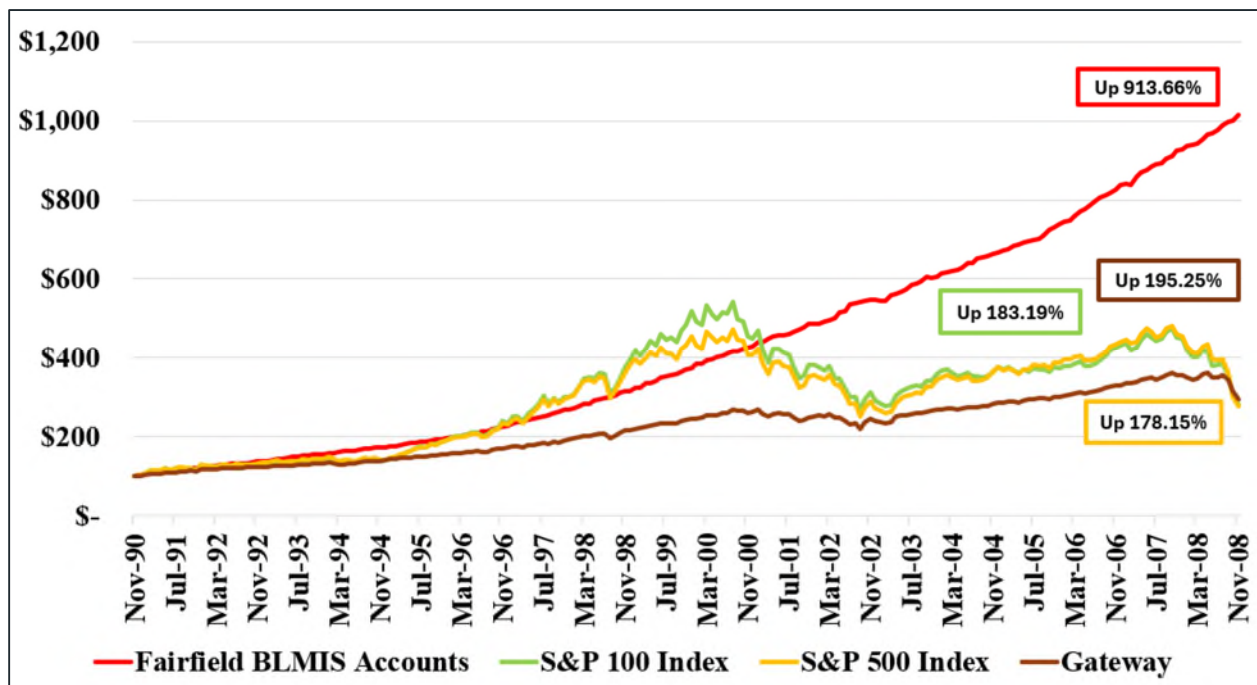
³⁷³ Fund of Hedge Funds Manager Correspondence, April 10, 2008 [FG-00009143-161 at -145-149].

³⁷⁴ StorQM Customer Statement, Settled Cash table, Customer Ledgers, Bloomberg market data, Morningstar Direct Database.

S&P 100 Index, the S&P 500 Index, VXO Index, as well as BLMIS's most representative peer, Gateway, as shown above in Figure 68) during the best and worst performance periods experienced by the industry, looks completely out of place.

261. For example, I compared the returns of Gateway to the Fairfield BLMIS Accounts, the S&P 100 Index, and the S&P 500 Index. As discussed below in Section VII.B.2.b)(5)(c), Gateway is a mutual fund that has been implementing an SSC strategy using stocks from the S&P 500 Index.

Figure 69: Comparison to Gateway's Indexed Monthly Returns (December 1990 – November 2008)³⁷⁵



262. Additionally, I compared the historical returns of Fairfield BLMIS Accounts within the context of different peer groups, such as world-class investment advisors, indices, and Gateway. As further discussed below, when selecting benchmarks, I selected funds that exhibited similar characteristics to BLMIS as related to strategy, asset classification, and/or skill of the investment advisor (e.g., when analyzing elite investment advisors).

³⁷⁵ StorQM Customer Statement, Settled Cash table, Customer Ledgers, Bloomberg market data, and Morningstar Direct Database. Returns are indexed starting at 100 as of the end of November 1990.

263. The peer analysis presented herein includes six metrics: (i) Sharpe Ratio; (ii) Sortino Ratio; (iii) number or percent of positive months; (iv) number or percent of negative months; (v) maximum drawdown; and (vi) number or percent of months in drawdown.
264. The Sharpe Ratio and the Sortino Ratio are two primary metrics used to evaluate investment advisor performance on a risk-adjusted basis. The Sharpe Ratio measures the amount of return above a risk-free rate per unit of risk. It is calculated as the mean portfolio return less a risk-free return³⁷⁶ ($r_p - r_f$), divided by the standard deviation of the returns.³⁷⁷ A higher Sharpe Ratio indicates that the investment is generating more return for the same amount of risk. In my experience, a Sharpe ratio of 1 or above is acceptable. For example, Forbes describes it as follows: “[g]enerally speaking, a Sharpe ratio between 1 and 2 is considered good. A ratio between 2 and 3 is very good, and any result higher than 3 is excellent.”³⁷⁸
265. The Sortino Ratio is a form of the Sharpe Ratio where only downside risk is incorporated into the formula by calculating the standard deviation of only negative returns.³⁷⁹ In this manner, the Sortino Ratio does not penalize performance for being volatile if the volatility always results in positive performance. Similar to the Sharpe Ratio, in my experience, a Sortino Ratio of 1 or above is considered good, a Sortino Ratio between 2 and 3 is very good, and any result higher than 3 is excellent.³⁸⁰
266. The Sharpe and Sortino Ratios are common statistics used to compare performance

³⁷⁶ For purposes of this calculation, the risk-free rate is calculated based on the market yield on U.S. Treasury Securities at 3-month constant maturity, quoted on an investment basis. Accessed via the Board of Governors of the Federal Reserve System [PUBLIC0707014].

³⁷⁷ The Sharpe Ratio was developed by William Sharpe and made public in his 1966 Journal of Business publication *Mutual Fund Performance*. William Sharpe, *Mutual Fund Performance*, The Journal of Business, 119-128 (Vol. 39, No. 1, Part 2, January 1966) [PUBLIC0704485-505].

³⁷⁸ Understanding The Sharpe Ratio [PUBLIC0709028].

³⁷⁹ In the formula for Sortino Ratio the positive returns are set to 0 for purposes of calculating the standard deviation. The Sortino Ratio was developed by Frank Sortino and Lee Price and made public in their 1994 Journal of Investing publication *Performance Measurement in a Downside Risk Framework*. Frank Sortino and Lee Price, *Performance Measurement in a Downside Risk Framework*, The Journal of Investing 59-64 (Vol. 3, No.3 Fall 1994) [PUBLIC0704397-402]. See also, FRANK J. TRAVERS, INVESTMENT MANAGER ANALYSIS 93-94 (2004) [PUBLIC0704408-462 at -415-416].

³⁸⁰ Charles Schwab, “Using the Sortino Ratio to Gauge Downside Risk,” June 27, 2024, <https://www.schwab.com/learn/story/using-sortino-ratio-to-gauge-downside-risk> (last visited August 21, 2025).

between two or more funds, and both of these risk-adjusted performance metrics were well-established due diligence tools prior to 2008.

267. I also included an analysis of drawdowns. I looked both at maximum drawdowns and the number of months in drawdown.³⁸¹ When calculated on a monthly basis, a drawdown occurs when a portfolio experiences a loss in the current month that brings the portfolio below its previous high. Maximum drawdown is the largest drop between peak to trough in the period. Months in drawdown are the number of months in which the current portfolio is below the previous high. These analyses are helpful in evaluating the magnitude and duration of losses.
268. Finally, I calculated two other related metrics, the number of months with positive returns and the number of months with negative returns. These are also included in the analysis as they are helpful in evaluating the performance of investment advisors.
269. It is statistically improbable, if not impossible, for BLMIS to outperform all peer groups, across all six performance metrics, and for all time periods considered. The documents and information in FGG's possession showed that the returns in the Fairfield BLMIS Accounts were significantly outperforming elite investment advisors, market indices, and Gateway, a comparable mutual fund executing the SSC strategy in the same market as BLMIS.³⁸² By 1994, the performance differences between the Fairfield BLMIS Accounts in comparison to the closest benchmark, Gateway, discussed in more detail below, was a significant red flag.

(a) Elite Investment Advisors

270. I evaluated the performance of the Fairfield BLMIS Accounts in the context of four distinguished or "elite" investment advisors (the "Elite Investment Advisors") to account for and analyze the notion that Madoff's performance could be explained by his "genius"

³⁸¹ See, e.g., Due Diligence Questionnaire (DDQ), CPH Absolute Returns Pty Limited, April 14, 2005 [FG-00180599-616 at -610] (showing drawdown analysis).

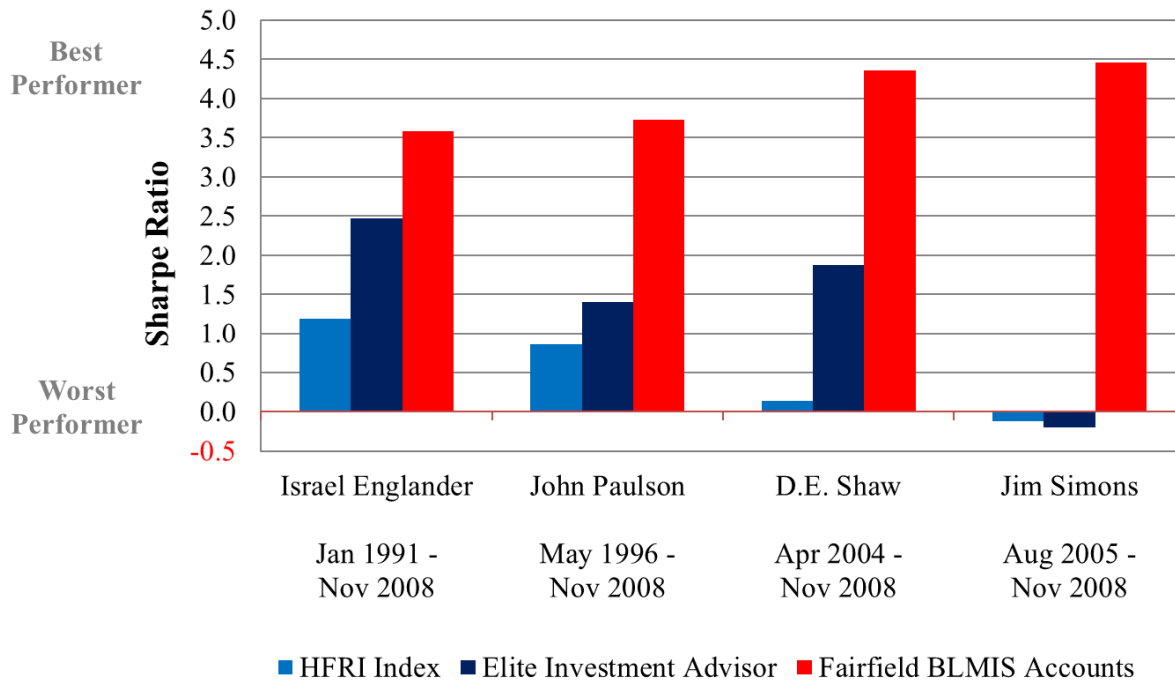
³⁸² Although Gateway traded securities in the S&P 500 Index and BLMIS purportedly traded securities within the S&P 100 Index. The S&P 100 Index is a subset of the S&P 500 Index and creating a basket that correlates to the benchmark would require a heavy weighting in the top 100 stocks of the S&P 500 Index. See also FGG Notes from a Conference Call with the SEC, December 21, 2005, Greisman Dep. 1/9/24, Ex. 20 [FG-00098647-656 at -652].

or “elite” skills and abilities. The Elite Investment Advisors, and the funds they manage, serve strictly as examples of possible performance benchmarks, and are: Israel Englander (Millennium International, Ltd.), John Paulson (Paulson International Ltd.), D.E. Shaw (D.E. Shaw Oculus International Fund), and Jim Simons (Renaissance Institutional Equities Fund LLC Series BB).³⁸³ For each Elite Investment Advisor, I compared the selected fund’s performance over the available time period to the performance of the Fairfield BLMIS Accounts.

271. First, I calculated the Sharpe and Sortino Ratios for the Elite Investment Advisors. As discussed above, these metrics are used to evaluate investment advisor performance on a risk-adjusted basis. As shown in **Figure 70**, the Sharpe Ratio for the Fairfield BLMIS Accounts, during the same corresponding time period with each Elite Investment Advisor, was higher than the Sharpe Ratio of any of the Elite Investment Advisors and the HFRI Index. Different time periods are shown for each Elite Investment Advisor as each fund began at a different time.

³⁸³ The Elite Investment Advisors, and the funds they manage, serve as examples of possible performance benchmarks. The specific funds utilized for purposes of this analysis for each Elite Investment Advisor were selected because (i) these funds operated during large portions of time while FGG was invested in BLMIS and (2) these funds operated with a significant AUM, typically over \$1 Billion.

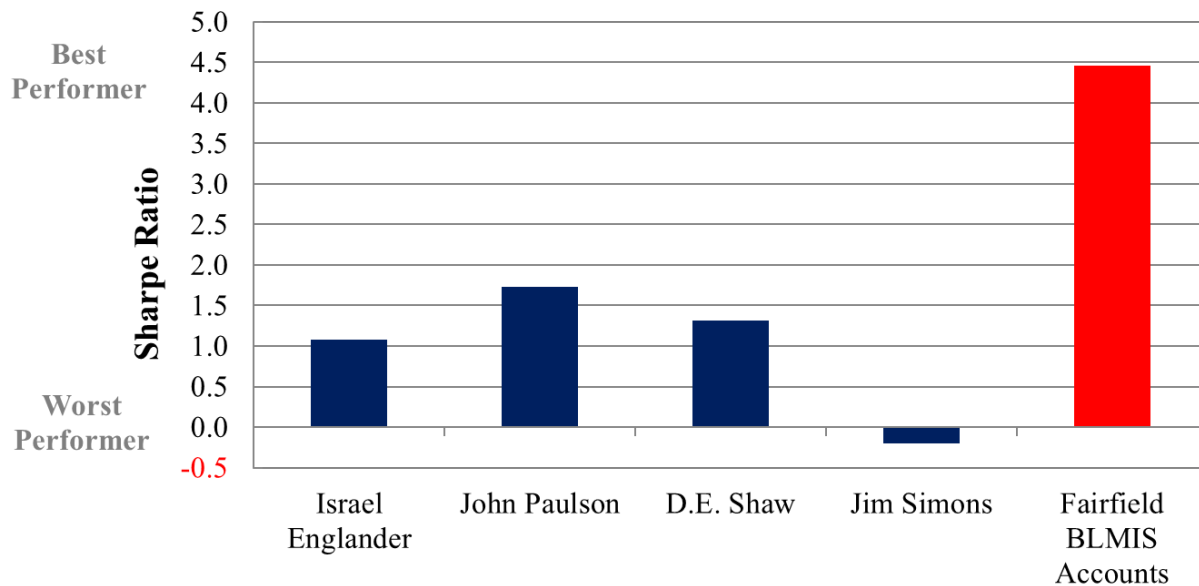
Figure 70: Sharpe Ratio - Elite Investment Advisors and HFRI Index v. the Fairfield BLMIS Accounts³⁸⁴



272. Additionally, I calculated the Sharpe Ratio for each Elite Investment Advisor during the period in which they all overlapped, August 2005 to November 2008, and compared them to the Sharpe Ratio for the Fairfield BLMIS Accounts, the Sharpe Ratios are shown in **Figure 71** below.

³⁸⁴ StorQM Customer Statements, Customer Ledgers, Morningstar Direct Database, BarclayHedge Hedge Fund Database, Bloomberg market data, Hedge Fund Research Inc. © 2012 HFR Inc. - www.hedgefundresearch.com. For each Elite Investment Advisor, I compared the selected fund's performance over the available time period to the performance of the Fairfield BLMIS Accounts. HFRI Index reflects data for the HFRI Equity Market Neutral Index.

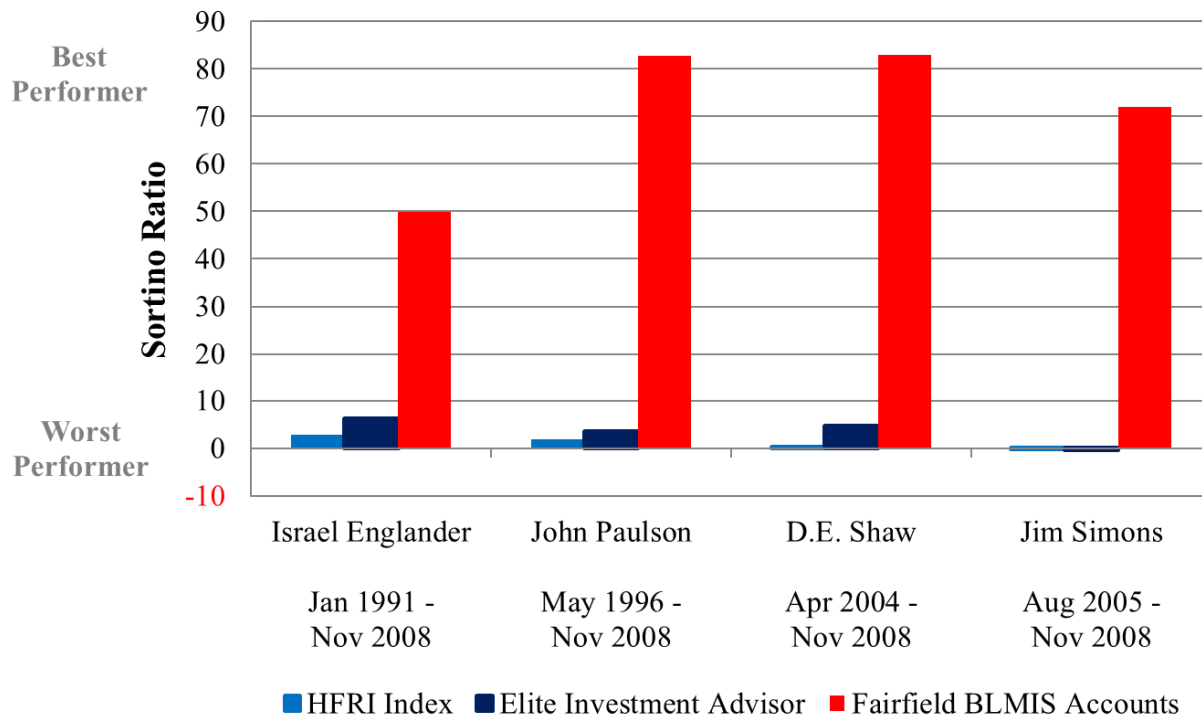
Figure 71: Sharpe Ratio - Elite Investment Advisors v. the Fairfield BLMIS Accounts (August 2005 – November 2008)³⁸⁵



273. Similarly, as shown in **Figure 72**, the Sortino Ratio for the Fairfield BLMIS Accounts far exceeded the Sortino Ratio of the HFRI Index and every Elite Investment Advisor in the respective periods.

³⁸⁵ StorQM Customer Statements, Customer Ledgers, Morningstar Direct Database, BarclayHedge Hedge Fund Database, Bloomberg market data.

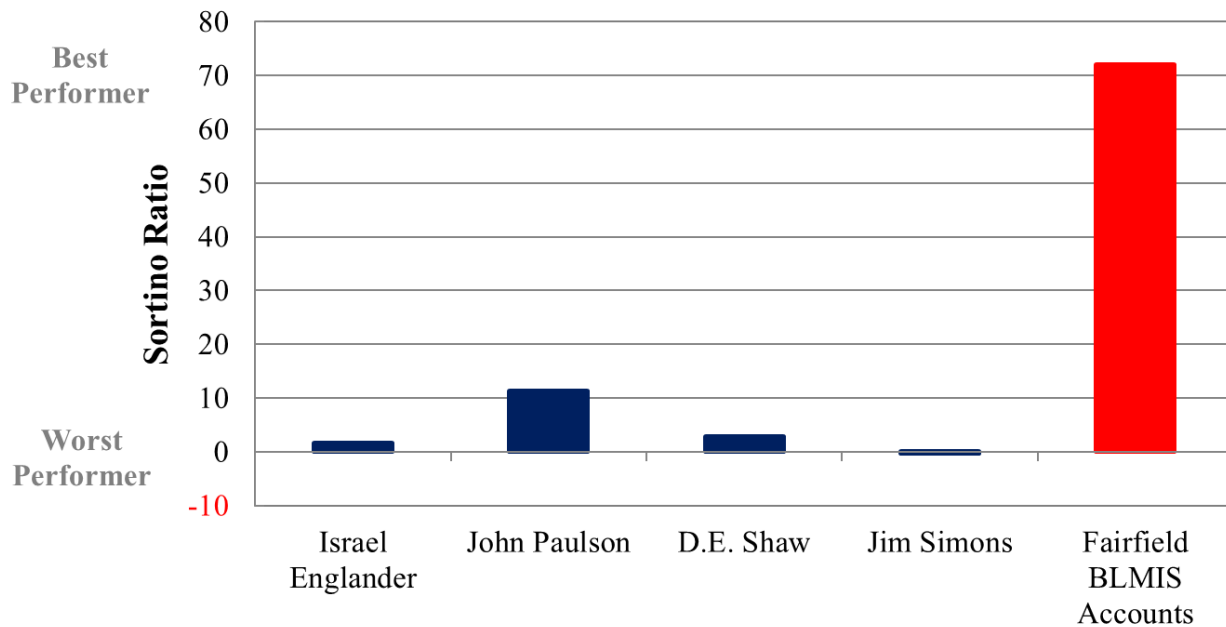
Figure 72: Sortino Ratio - Elite Investment Advisors and HFRI Index v. the Fairfield BLMIS Accounts³⁸⁶



274. Additionally, I calculated the Sortino Ratio for each Elite Investment Advisors during the period in which they all overlapped, August 2005 to November 2008, and compared them to the Sortino Ratio for the Fairfield BLMIS Accounts, the Sortino Ratios are shown in **Figure 73** below.

³⁸⁶ StorQM Customer Statements, Customer Ledgers, Morningstar Direct Database, BarclayHedge Hedge Fund Database, Bloomberg market data. For each Elite Investment Advisor, I compared the selected fund's performance over the available time period to the performance of the Fairfield BLMIS Accounts.

Figure 73: Sortino Ratio - Elite Investment Advisors v. the Fairfield BLMIS Accounts (August 2005 – November 2008)³⁸⁷



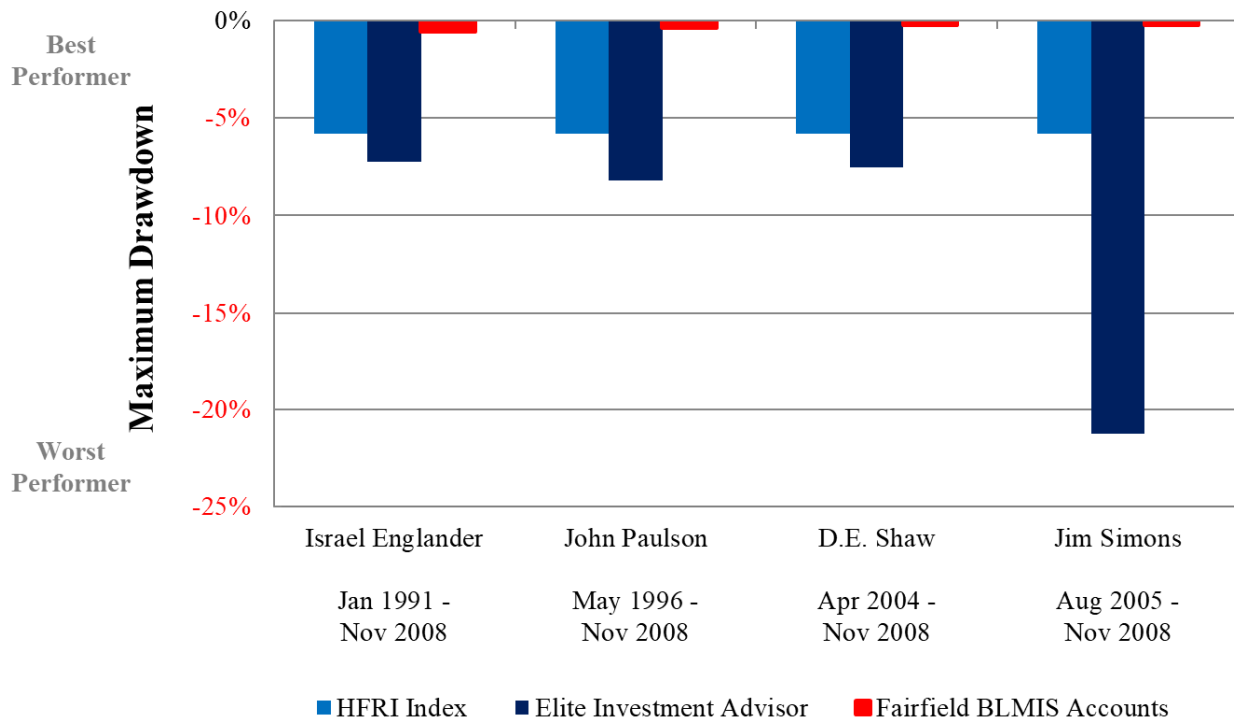
275. The Fairfield BLMIS Accounts are an outlier in the risk-adjusted performance metrics, with Sharpe Ratio and Sortino Ratio far exceeding those of every other Elite Investment Advisor.

276. Next, I calculated the maximum drawdown and the percentage of months in drawdown for the Fairfield BLMIS Accounts and for the Elite Investment Advisors.

277. As shown in **Figure 74**, the maximum drawdown for the Fairfield BLMIS Accounts, during the relevant time period for each Elite Investment Advisor, outperformed every Elite Investment Advisor and the HFRI Index, regardless of the time period analyzed. For example, Israel Englander had a maximum drawdown of negative 7.2% in August 1998, John Paulson's maximum drawdown was negative 8.2% in August 1998, D.E. Shaw's was negative 7.6% in October 2008, and Jim Simons' was negative 21.3% in November 2008. Meanwhile, the Fairfield BLMIS Accounts never observed a maximum drawdown worse than negative 0.5% during the relevant time periods.

³⁸⁷ StorQM Customer Statements, Customer Ledgers, Morningstar Direct Database, BarclayHedge Hedge Fund Database, Bloomberg market data.

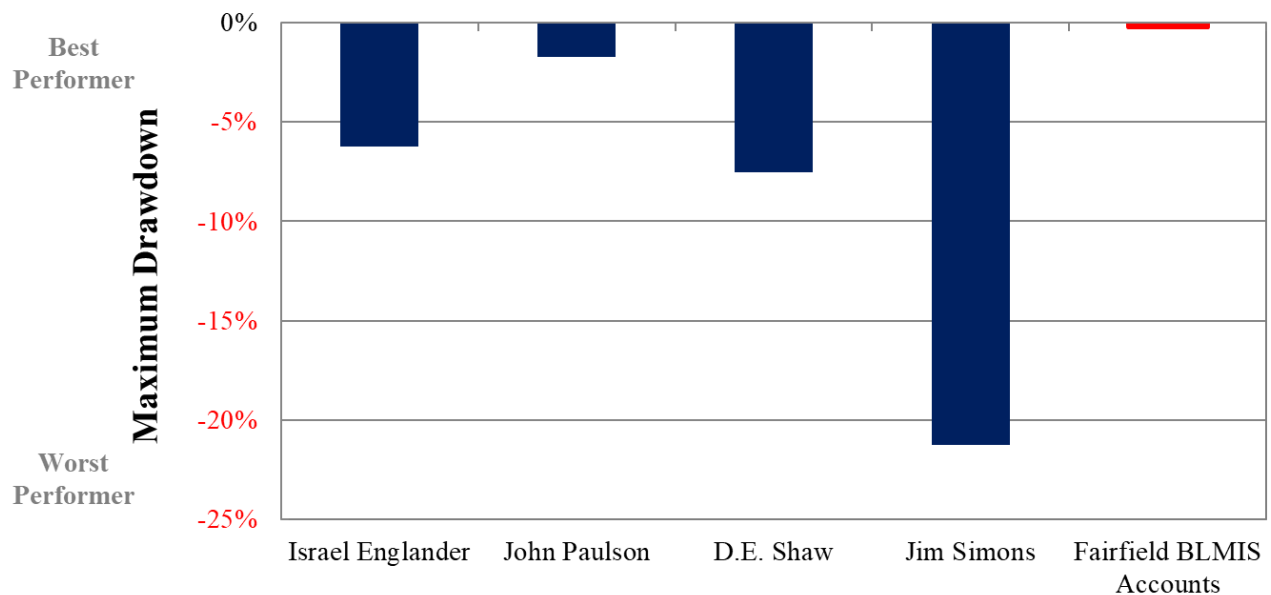
Figure 74: Maximum Drawdown - Elite Investment Advisors and HFRI Index v. the Fairfield BLMIS Accounts³⁸⁸



278. As shown in **Figure 75**, the maximum drawdown for the Fairfield BLMIS Accounts, from August 2005 to November 2008, outperformed every Elite Investment Advisors maximum drawdown. For example, Israel Englander had a maximum drawdown of negative 6.2% in October 2008, John Paulson's maximum drawdown was negative 3.4% in July 2008, D.E. Shaw's was negative 7.6% in October 2008, and Jim Simons's was negative 21.3% in November 2008. Meanwhile, the Fairfield BLMIS Accounts never observed a maximum drawdown worse than negative 0.2% during the overlapping time periods.

³⁸⁸ StorQM Customer Statements, Customer Ledgers, Morningstar Direct Database, BarclayHedge Hedge Fund Database, Bloomberg market data, Federal Reserve FRB: H:15 Release. For each Elite Investment Advisor, I compared the selected fund's performance over the available time period to the performance of the Fairfield BLMIS Accounts.

Figure 75: Maximum Drawdown - Elite Investment Advisors v. the Fairfield BLMIS Accounts (August 2005 – November 2008)³⁸⁹



279. Also, as shown in **Figure 76**, the percent of months in drawdown for the Fairfield BLMIS Accounts, during the relevant time period for each Elite Investment Advisor, was lower than any of the Elite Investment Advisors maximum drawdown, regardless of the time period analyzed.

Figure 76: Percent of Months in Drawdown - Elite Investment Advisors and HFRI Index v. the Fairfield BLMIS Accounts³⁹⁰

Elite Investment Advisor - Period	% of Months in Drawdown		
	Elite Investment Advisor	Fairfield BLMIS Accounts	HFRI Index
Israel Englander (Jan 1991 - Nov 2008)	18.6%	4.2%	31.2%
John Paulson (May 1996 - Nov 2008)	25.2%	2.6%	33.1%
D.E. Shaw (Apr 2004 - Nov 2008)	42.9%	1.8%	37.5%
Jim Simons (Aug 2005 - Nov 2008)	55.0%	2.5%	35.0%

280. Additionally, as shown in **Figure 77**, the percentage of months in drawdown for the Fairfield BLMIS Accounts, from August 2005 to November 2008, was lower than any of

³⁸⁹ StorQM Customer Statements, Customer Ledgers, Morningstar Direct Database, BarclayHedge Hedge Fund Database, Bloomberg market data.

³⁹⁰ StorQM Customer Statements, Customer Ledgers, Morningstar Direct Database, BarclayHedge Hedge Fund Database, Bloomberg market data. For each Elite Investment Advisor, I compared the selected fund's performance over the available time period to the performance of the Fairfield BLMIS Accounts.

the Elite Investment Advisors' maximum drawdown during this period.

Figure 77: Percent of Months in Drawdown - Elite Investment Advisors v. the Fairfield BLMIS Accounts (August 2005 – November 2008)³⁹¹

Advisor	% of Months in Drawdown
Israel Englander	25.0%
D.E. Shaw	47.5%
Jim Simons	55.0%
John Paulson	32.5%
Fairfield BLMIS Accounts	2.5%

281. Finally, I calculated the percentage of months with positive returns and the percentage of months with negative returns for the Fairfield BLMIS Accounts and for the Elite Investment Advisors. As shown in **Figure 78**, **Figure 79**, and **Figure 80**, the Fairfield BLMIS Accounts also posted far greater percentages of months with positive returns and far fewer negative months than the Elite Investment Advisors for the relevant and overlapping time periods.

Figure 78: Percent of Months with Positive Returns - Elite Investment Advisors and HFRI Index v. the Fairfield BLMIS Accounts³⁹²

Elite Investment Advisor - Period	% of Positive Months		
	Elite Investment Advisor	Fairfield BLMIS Accounts	HFRI Index
Israel Englander (Jan 1991 - Nov 2008)	88.4%	96.3%	78.6%
John Paulson (May 1996 - Nov 2008)	78.1%	97.4%	76.8%
D.E. Shaw (Apr 2004 - Nov 2008)	69.6%	98.2%	71.4%
Jim Simons (Aug 2005 - Nov 2008)	65.0%	97.5%	70.0%

³⁹¹ StorQM Customer Statements, Customer Ledgers, Morningstar Direct Database, BarclayHedge Hedge Fund Database, Bloomberg market data.

³⁹² StorQM Customer Statements, Customer Ledgers, Morningstar Direct Database, BarclayHedge Hedge Fund Database, Bloomberg market data. For each Elite Investment Advisor, I compared the selected fund's performance over the available time period to the performance of the Fairfield BLMIS Accounts.

Figure 79: Percent of Months with Negative Returns - Elite Investment Advisors and HFRI Index v. the Fairfield BLMIS Accounts³⁹³

Elite Investment Advisor - Period	% of Negative Months		
	Elite Investment Advisor	Fairfield BLMIS Accounts	HFRI Index
Israel Englander (Jan 1991 - Nov 2008)	11.6%	3.7%	21.4%
John Paulson (May 1996 - Nov 2008)	21.9%	2.6%	23.2%
D.E. Shaw (Apr 2004 - Nov 2008)	30.4%	1.8%	28.6%
Jim Simons (Aug 2005 - Nov 2008)	35.0%	2.5%	30.0%

Figure 80: Percent of Months with Positive/Negative Returns - Elite Investment Advisors v. the Fairfield BLMIS Accounts (August 2005 – November 2008)³⁹⁴

Advisor	% of Positive Months	% of Negative Months
Israel Englander	82.5%	17.5%
D.E. Shaw	67.5%	32.5%
Jim Simons	65.0%	35.0%
John Paulson	75.0%	25.0%
Fairfield BLMIS Accounts	97.5%	2.5%

282. The analyses above show that the Fairfield BLMIS Accounts outperformed, and often by a significant amount, every Elite Investment Advisor, across every performance metric. This outperformance of the most elite advisors epitomizes the due diligence notion of too good to be true, or simply impossible, returns.

(b) Indices

283. In addition to comparing returns against peers and other investment advisors, performance-related due diligence consistent with industry customs and practices includes comparing returns against well-known indices.

284. I evaluated the performance of the Fairfield BLMIS Accounts in the context of equity and bond market indices. Specifically, I used the following indices: (i) S&P 100 Index; (ii)

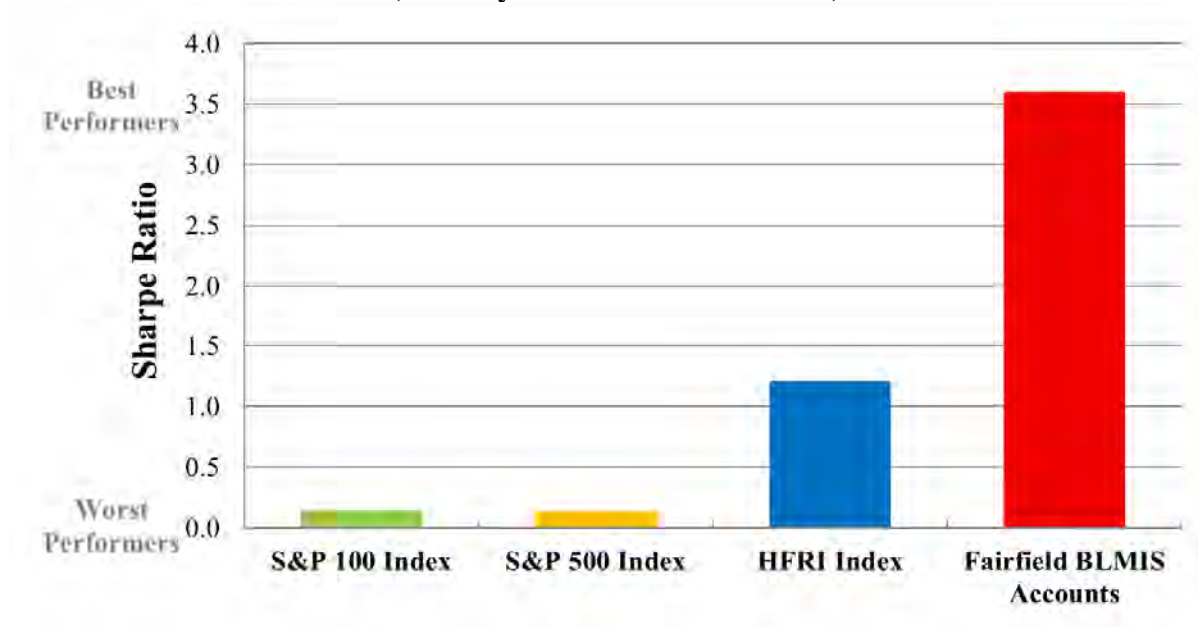
³⁹³ StorQM Customer Statements, Customer Ledgers, Morningstar Direct Database, BarclayHedge Hedge Fund Database, Bloomberg market data. For each Elite Investment Advisor, I compared the selected fund's performance over the available time period to the performance of the Fairfield BLMIS Accounts.

³⁹⁴ StorQM Customer Statements, Customer Ledgers, Morningstar Direct Database, BarclayHedge Hedge Fund Database, Bloomberg market data.

S&P 500 Index; and (iii) HFRI Index. The metrics for the Fairfield BLMIS Accounts calculated over more than one decade dwarfed those for these indices.

285. For example, I calculated the Sharpe Ratios for each Index from January 1991 to November 2008 and compared them to the Sharpe Ratio for the Fairfield BLMIS Accounts. The indices' Sharpe Ratios were lower than the Fairfield BLMIS Accounts and are shown in **Figure 81** below.

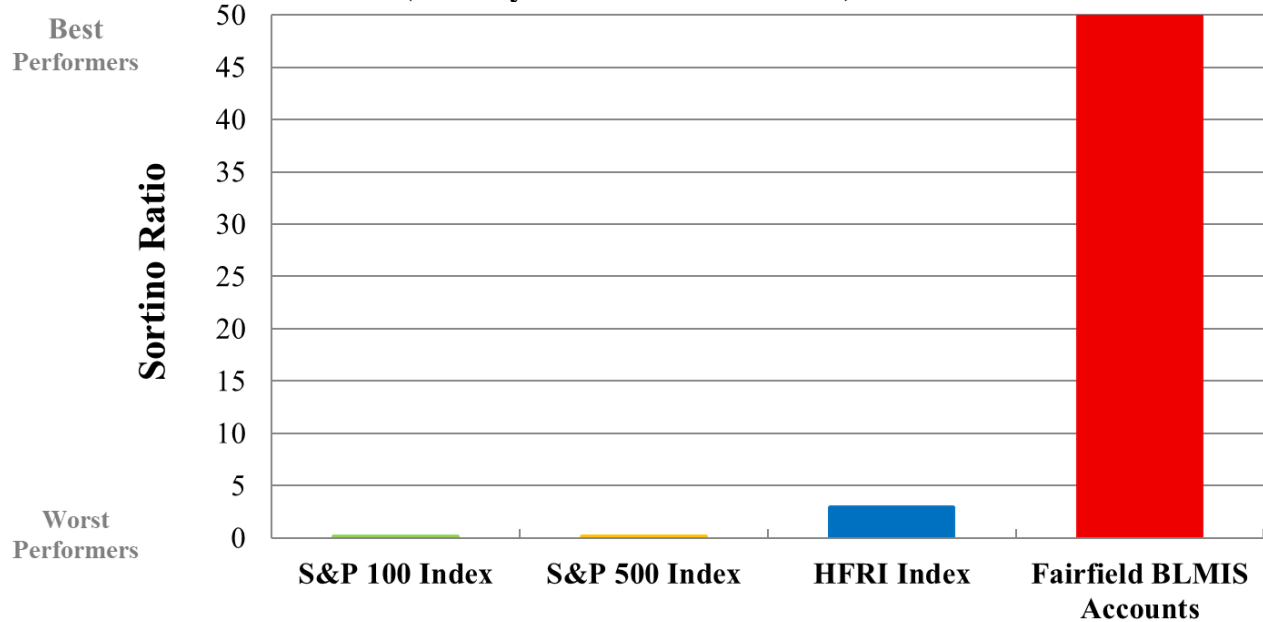
**Figure 81: Sharpe Ratio - Indices v. the Fairfield BLMIS Accounts
(January 1991 – November 2008)³⁹⁵**



286. Similarly, as shown in **Figure 82**, the Sortino Ratio for the Fairfield BLMIS Accounts far exceeded the Sortino Ratio of every other index.

³⁹⁵ StorQM Customer Statements, Customer Ledgers, Bloomberg market data, Hedge Fund Research Inc. © 2012 HFR Inc. - www.hedgefundresearch.com.

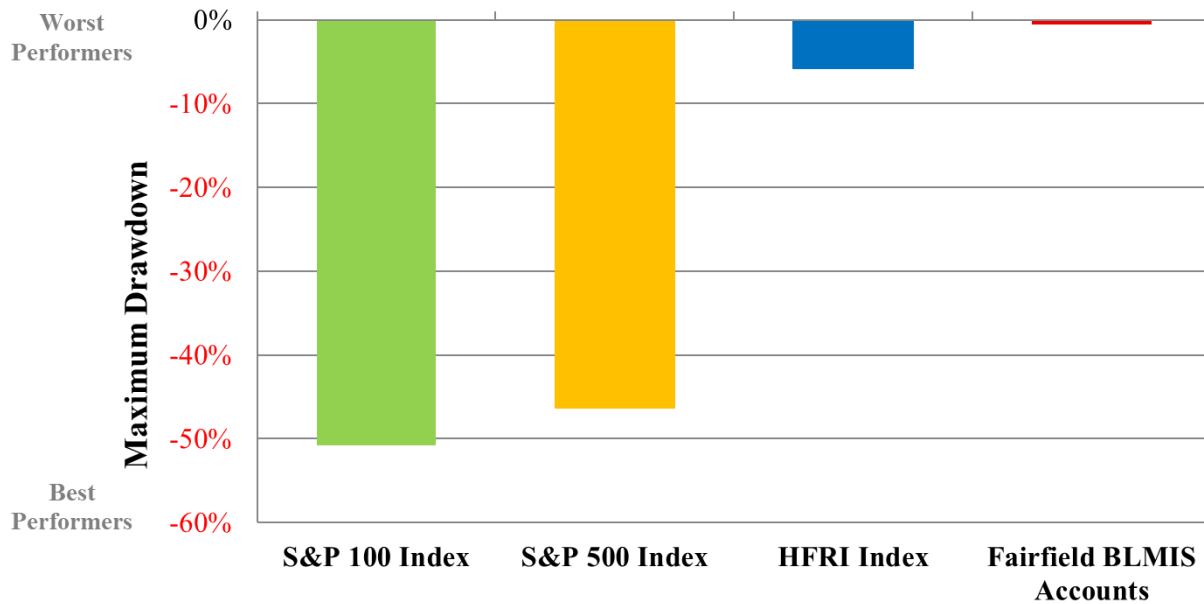
**Figure 82: Sortino Ratio - Indices v. the Fairfield BLMIS Accounts
(January 1991 – November 2008)³⁹⁶**



287. As shown in **Figure 83**, the maximum drawdown for the Fairfield BLMIS Accounts, during the relevant time period for each index, was not as low as any of the Indices maximum drawdown, regardless of the time period analyzed. For example, the S&P 100 Index had a maximum drawdown of -50.8% in September 2002, the S&P 500 Index had a maximum drawdown of -46.3% in September 2002, and the HFRI Index's maximum drawdown was -5.8% in November 2008. Meanwhile the Fairfield BLMIS Accounts never observed a drawdown greater than 0.5% during the relevant time periods.

³⁹⁶ StorQM Customer Statements, Customer Ledgers, Bloomberg market data, Hedge Fund Research Inc. © 2012 HFR Inc. - www.hedgefundresearch.com.

Figure 83: Maximum Drawdown - Indices v. the Fairfield BLMIS Accounts (January 1991 – November 2008)³⁹⁷



288. Also, as shown in **Figure 84**, the percentage of months in drawdown for the Fairfield BLMIS Accounts, during the relevant time period for each Index, was lower than any of the indices.

Figure 84: Percentage of Months in Drawdown - Indices v. the Fairfield BLMIS Accounts (January 1991 – November 2008)³⁹⁸

Fund Name	% of Months in Drawdown
S&P 100 Index	73.5%
S&P 500 Index	72.6%
HFRI Index	31.2%
Fairfield BLMIS Accounts	4.2%

289. Finally, I calculated the percentage of months with positive returns and the percentage of months with negative returns for the Fairfield BLMIS Accounts and for the indices. As shown in **Figure 85**, the Fairfield BLMIS Accounts also posted far greater percentages of months with positive returns and far fewer negative months than the indices. As seen

³⁹⁷ StorQM Customer Statements, Customer Ledgers, Bloomberg market data, Hedge Fund Research Inc. © 2012 HFR Inc. - www.hedgefundresearch.com.

³⁹⁸ StorQM Customer Statements, Customer Ledgers, Bloomberg market data, Hedge Fund Research Inc. © 2012 HFR Inc. - www.hedgefundresearch.com.

below, the Fairfield BLMIS Accounts had more months with positive returns and fewer months with negative returns than every index regardless of the time period analyzed.

Figure 85: Percent of Months with Positive/Negative Returns – Indices v. the Fairfield BLMIS Accounts (January 1991 – November 2008)³⁹⁹

Fund Name	% of Positive Months	% of Negative Months
S&P 100 Index	60.0%	40.0%
S&P 500 Index	62.8%	37.2%
HFRI Index	78.6%	21.4%
Fairfield BLMIS Accounts	96.3%	3.7%

290. The analyses above show that the Fairfield BLMIS Accounts outperformed, and often by a significant amount, each of these indices, across every performance metric.

(c) Gateway

291. Gateway is a mutual fund that has been implementing an SSC strategy using stocks from the S&P 500 Index since 1988.⁴⁰⁰ It is custom and practice in the investment management industry to perform peer analysis using other funds that employ strategies as close as possible to the subject investment.
292. Gateway employs a strategy that is similar to the BLMIS SSC strategy,⁴⁰¹ yet the performance of the Fairfield BLMIS Accounts dominates Gateway with respect to every analyzed metric. For example, see below for a comparison of the performance metrics in **Figure 86** through **Figure 89**.

³⁹⁹ StorQM Customer Statements, Customer Ledgers, Bloomberg market data, Hedge Fund Research Inc. © 2012 HFR Inc. - www.hedgefundresearch.com.

⁴⁰⁰ *The Gateway Fund's Hedging Edge, Markets & Finance*, BLOOMBERG BUSINESS (April 20, 2005) [PUBLIC0704583-591]; Gateway Fund Performance Profile, December 31, 2014 [PUBLIC0704553-554 at -554].

⁴⁰¹ See, e.g., FGG Notes from a Conference Call with the SEC, December 21, 2005, Greisman Dep. 1/9/24, Ex. 20 [FG-00098647-656 at -652].

Figure 86: Sharpe and Sortino Ratio – Gateway v. the Fairfield BLMIS Accounts (January 1991 – November 2008)⁴⁰²

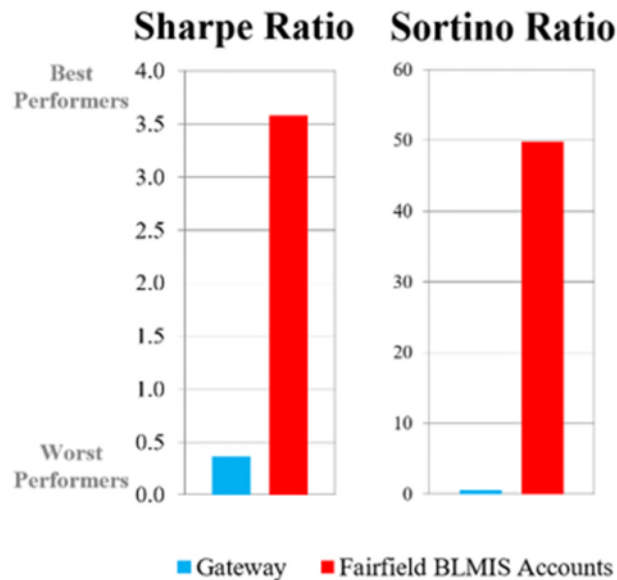


Figure 87: Drawdown – Gateway v. the Fairfield BLMIS Accounts (January 1991 – November 2008)⁴⁰³

Maximum Drawdown		% of Months in Drawdown	
Gateway	Fairfield BLMIS Accounts	Gateway	Fairfield BLMIS Accounts
-18.5%	-0.5%	42.3%	4.2%

Figure 88: Months with Positive/Negative Returns – Gateway Index v. the Fairfield BLMIS Accounts (January 1991 – November 2008)⁴⁰⁴

# of Negative Months		# of Positive Months	
Gateway	Fairfield BLMIS Accounts	Gateway	Fairfield BLMIS Accounts
56	8	157	205

293. Regardless of the time period reviewed, the Fairfield BLMIS Accounts outperformed

⁴⁰² StorQM Customer Statements, Settled Cash table, Customer Ledgers, and Morningstar Direct Database.

⁴⁰³ StorQM Customer Statements, Settled Cash table, Customer Ledgers, and Morningstar Direct Database.

⁴⁰⁴ StorQM Customer Statements, Settled Cash table, Customer Ledgers, and Morningstar Direct Database. Gateway had two months with returns of zero percent (not positive or negative): March 1992 and August 1992.

Gateway, as shown in the following figure.

Figure 89: Indexed Monthly Returns – Gateway v. the Fairfield BLMIS Accounts⁴⁰⁵

Period	Fairfield BLMIS Accounts Indexed Returns	Gateway Indexed Returns
1990-1994	69.30%	40.43%
1995-1999	114.75%	74.86%
2000-2004	78.55%	16.81%
2005-2008	51.85%	2.94%

294. When looking at the market stressed period of 2000 through 2002, BLMIS outperforms Gateway by over 48 percent.

Figure 90: Indexed Monthly Returns – Gateway v. the Fairfield BLMIS Accounts 2000-2002⁴⁰⁶

Period	Fairfield BLMIS Accounts Indexed Returns	Gateway Indexed Returns
2000-2002	46.45%	-2.14%

(6) Performance in Times of Market Stress

295. The Fairfield BLMIS Accounts' impossible performance is further highlighted when periods of market stress are reviewed. As highlighted in an April 2005 DDQ, "extreme downside market leaves little opportunity for success for this strategy."⁴⁰⁷
296. However, the opposite results are seen during periods of market stress, as shown in

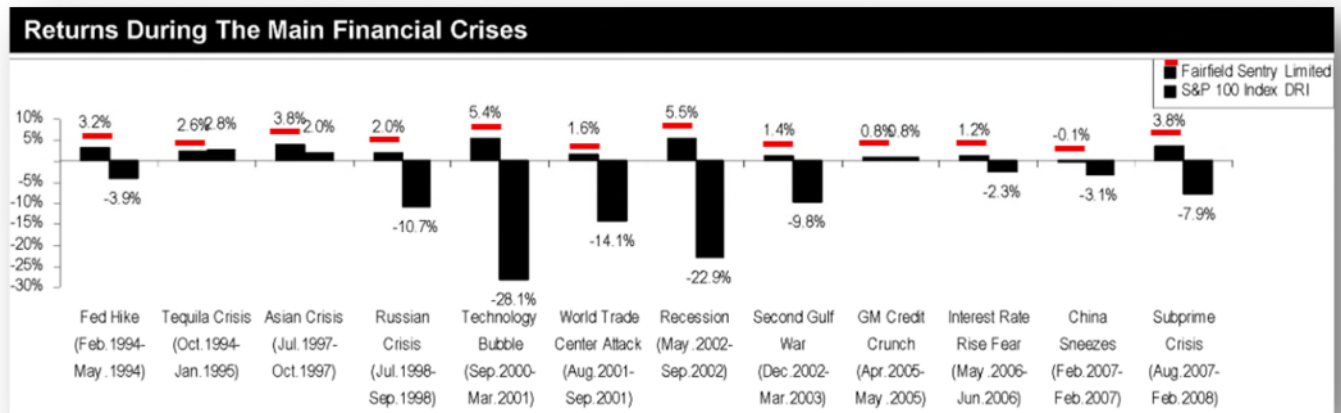
⁴⁰⁵ StorQM Customer Statements, Settled Cash table, Customer Ledgers, and Morningstar Direct Database. This table includes 5-year increments from 1990-2008 and the market stress period of 2000-2002, as discussed below.

⁴⁰⁶ StorQM Customer Statements, Settled Cash table, Customer Ledgers, and Morningstar Direct Database. This table includes 5-year increments from 1990-2008 and the market stress period of 2000-2002, as discussed below.

⁴⁰⁷ Due Diligence Questionnaire (DDQ), CPH Absolute Returns Pty Limited, April 14, 2005 [FG-00180599 -616 at -611].

FGG's monthly risk reports. For example, a July 2008 report includes the following chart:

Figure 91: Excerpt from FGG Monthly Risk Report⁴⁰⁸



297. In a 2005 Mock Due Diligence Meeting, Vijayvergiya was asked about Fairfield Sentry being up during 9/11 when the market went down dramatically. Vijayvergiya said he would have to go back and pull the trade tickets.⁴⁰⁹ During the mock interview it was also raised that there have been times FGG wondered “why we made money when we shouldn’t have or vice versa.”⁴¹⁰
298. While investing in T-Bills could potentially explain Madoff being up during these periods, a review of these periods for the Fairfield BLMIS Accounts shows that was not the case; the Fairfield BLMIS Accounts were not invested in cash or T-Bills for the entirety of these periods.

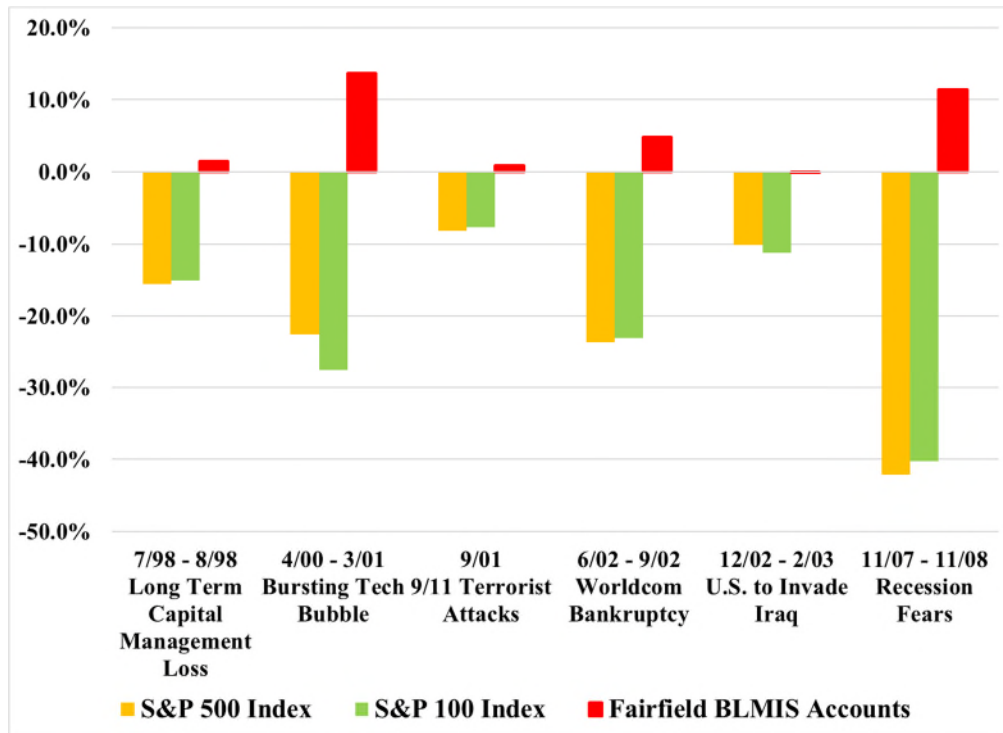
⁴⁰⁸ Fairfield Sentry Ltd., Monthly Risk Report, July 2008 [FGG002390606-648 at -647 / SECSEV0490613-655 at -654]. (Red highlight added). See also Berman Anwar Dep., 6/20/13, Ex.15, [10-03800_FGG_0022456-467 at -464], (says that “BLM was able to take advantage of the high volatility and flush liquidity environment surrounding the first Gulf War. Coincident with the invasion of Kuwait by Iraqi forces in August 1990, the Fund posted its single largest month, returning 5.06% net to investors.”).

⁴⁰⁹ FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -633]. (“This will be a mock Sentry due diligence... Amit if you be Fairfield Greenwich, the investment manager of Sentry and I'll [Dan Lipton] pretend to be a client and try to stump him. And we'll take you through what the due diligence meeting looks like.”).

⁴¹⁰ FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -635].

299. A review of the Fairfield BLMIS Accounts' performance during periods of market stress further showed that their returns were inconsistent with the performance of the S&P 100 Index and the S&P 500 Index, as shown in the figure below.

Figure 92: Fairfield BLMIS Accounts Monthly Returns vs S&P 100 Index, S&P 500 Index and Gateway Monthly Returns during Times of Market Stress⁴¹¹



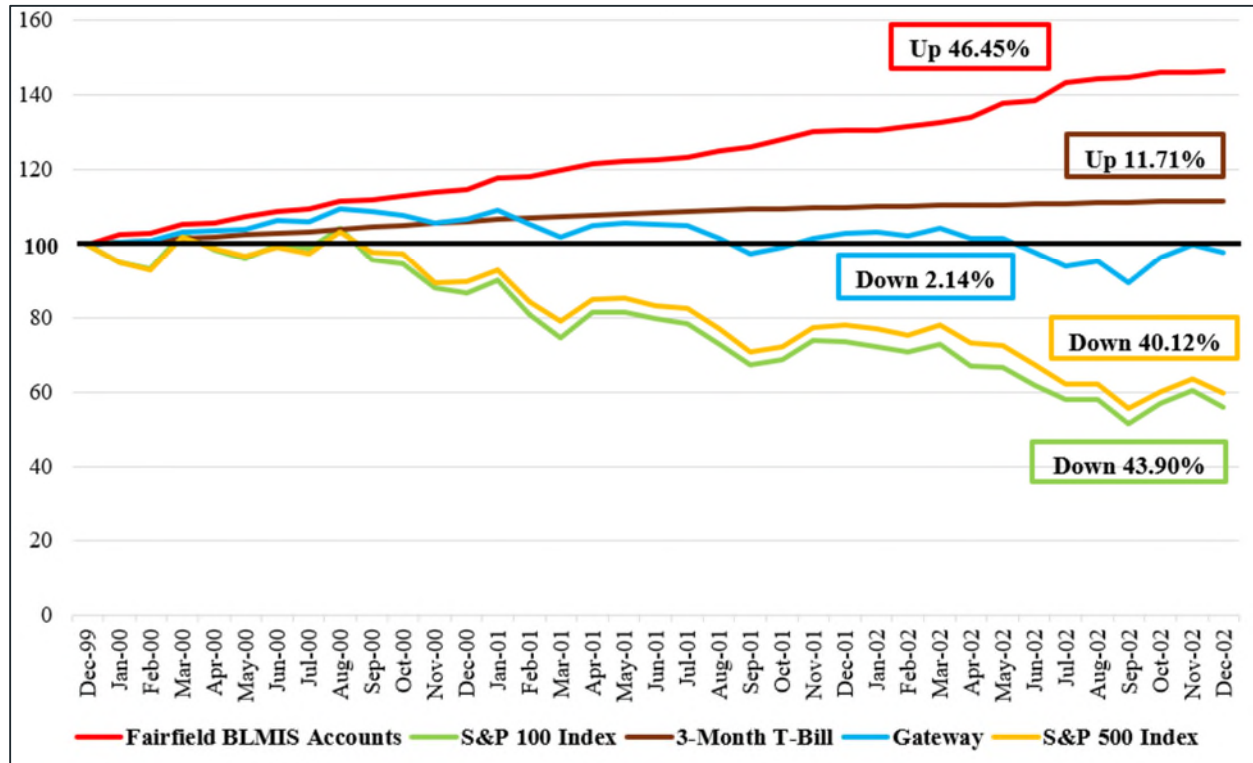
300. BLMIS's impossible performance can also be seen during the market downturn of 2000 through 2002.⁴¹² This impossible performance was questioned by investors.⁴¹³

⁴¹¹ StorQM Customer Statements, Settled Cash, Bloomberg market data.

⁴¹² See also Email from Vijayvergiya to Lakshmi Chaudhuri RE: Fairfield Sentry Ltd. Q&A, October 29, 2003 [10-03800_FGG_0022456-467 at -464]. (FGG is asked "Since most of the returns are generated from going long in S&P100 securities, why are the returns in 2001 and 2002 not much lower than from 1993 – 2000?" FGG responded that this was due to "exceptional market timing and execution" and that there were "ample opportunities in 2001 and 2002...to exploit bear market rallies.").

⁴¹³ See, e.g., Email chain between Lourdes Barreneche, Jeffrey Tucker, Dan Lipton, Lakshmi Chaudhuri, Veronica Barco, and Rob Blum, RE: Communication - Fairfield Sentry Investors, October 24, 2002 [FAIRFIELD_01705405-406]. (Lakshmi Chaudhuri states "Banco Atlantico (Mexico) and other institutions in Miami and Colombia are facing a tough time convincing their clients to stay invested in Fairfield Sentry because they are very skeptical about the "reality" of the returns generated by the Fund in the current market environment. This is a concern that I have heard during most of my meetings with Fairfield Sentry investors in Miami, Colombia, Mexico and Panama.").

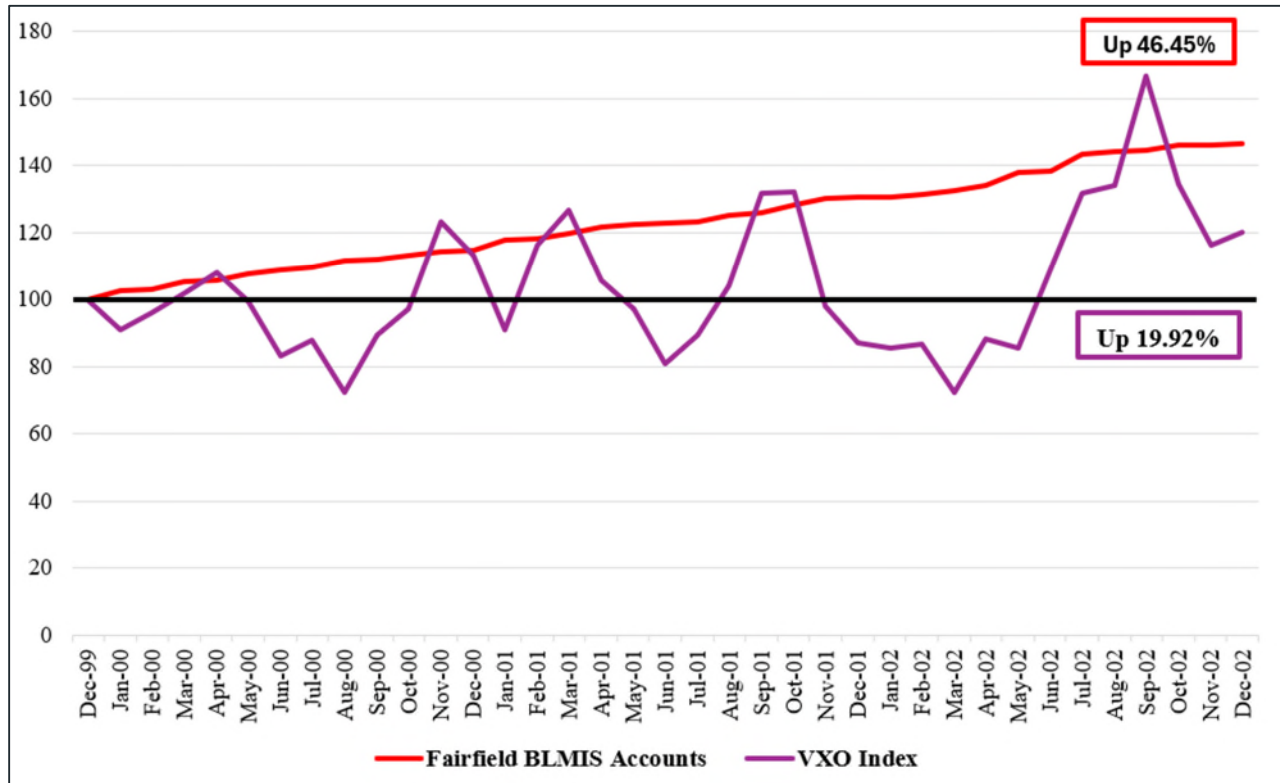
Figure 93: Indexed Monthly Returns From 2000 to 2002⁴¹⁴



301. Given the significant volatility during this time period, I also compared BLMIS's impossible performance during the market downturn of 2000 through 2002 to the VXO Index.

⁴¹⁴ StorQM Customer Statements, Settled Cash, Customer Ledgers, Bloomberg market data, Morningstar Direct Database, Federal Reserve FRB H:15 Release.

Figure 94: Indexed Monthly Returns – VXO v. the Fairfield BLMIS Accounts (2000 to 2002)⁴¹⁵



302. During this time period, for the Fairfield BLMIS Accounts, the largest source of the purported returns, 69.1 percent, was from BLMIS's purported equity pricing in the Fairfield BLMIS Accounts.⁴¹⁶ Conversely, market timing had a *negative* impact on the purported returns.⁴¹⁷

(7) Correlation Analysis

303. The Fairfield BLMIS Accounts returns were unrelated to the performance of the S&P100 Index during its almost 18 years of performance, inconsistent with an SSC Strategy. It is

⁴¹⁵ StorQM Customer Statements, Settled Cash table, Bloomberg market data.

⁴¹⁶ Performance attribution analysis on the purported profits of the Fairfield BLMIS Accounts for this time period shows the source of returns as follows: Equity Pricing: 69.1 percent, Option Pricing: 33.9 percent, Market Timing: negative 8.2 percent, and Dividends: 5.2 percent. StorQM Customer Statements, Settled Cash table and Bloomberg market data.

⁴¹⁷ The return attributable to market timing was negative 8.2 percent. StorQM Customer Statements, Settled Cash table and Bloomberg market data.

my opinion that the documents and information in FGG's possession showed that the Fairfield BLMIS Accounts' returns were inconsistent with the SSC Strategy as far back as 2000.

304. Meanwhile Gateway, a mutual fund that implemented an SSC strategy using stocks from the S&P 500 Index since 1988,⁴¹⁸ maintained a correlation to the S&P 500 Index which was much more consistent with the performance of an SSC Strategy:

Figure 95: Correlation of Fairfield BLMIS Accounts Monthly Returns and Gateway to S&P Indices Monthly Returns (December 1990 – November 2008)⁴¹⁹

Account	Correlation to the S&P 100 Index	Correlation to the S&P 500 Index
Fairfield BLMIS Account	33.3%	29.6%
Gateway	88.0%	89.0%

(8) Lack of Downside Risk

305. Given that the Fairfield BLMIS Accounts were comprised of a basket of stocks in the S&P 100 Index, its position would have been expected to move with the overall S&P 100 Index.⁴²⁰ However, the returns for the Fairfield BLMIS Accounts did not move consistent with the returns of the S&P100 Index and instead consistently outperformed the market.
306. For example, from December 1990 through November 2008, the S&P 100 Index incurred losses 40 percent of the time (86 out of 216 months).⁴²¹ As discussed in Section VI.A above, Sentry's SSC strategy was supposed to be correlated to the S&P 100 Index.⁴²² If BLMIS had actually been trading the purported SSC strategy, the Fairfield BLMIS Accounts would have experienced a similar percentage of negative return months.
307. However, this was not the case. While the S&P100 Index was only up approximately 60

⁴¹⁸ *The Gateway Fund's Hedging Edge, Markets & Finance*, BLOOMBERG BUSINESS (April 20, 2005) [PUBLIC0704583-591]; Gateway Fund Performance Profile, December 31, 2014 [PUBLIC0704553-554 at -554].

⁴¹⁹ StorQM Customer Statements, Settled Cash, Customer Ledgers, Bloomberg market data, Morningstar Direct Database.

⁴²⁰ Fairfield Sentry Fund Semi-Annual Update, October 22, 2003 [FAIRFIELD_00024253-257 at -253].

⁴²¹ StorQM Customer Statements, Settled Cash, Customer Ledgers, Bloomberg market data.

⁴²² Fairfield Sentry Fund Semi-Annual Update, October 22, 2003 [FAIRFIELD_00024253-257 at -253].

percent of months, the Fairfield BLMIS Accounts were up approximately 95 percent of the time:

Figure 96: Number of Months with Positive Returns⁴²³

Time Period	# of Months	Fairfield BLMIS Accounts # of Up Months	Fairfield BLMIS Accounts % of Up Months	S&P 100 Index # of Up Months	S&P 100 Index % of Up Months
12/90 – 11/08	216	208	96.3%	130	60.2%

308. As with the correlation analysis described above, the Fairfield BLMIS Accounts performed inconsistent with the SSC Strategy. This is evidenced by consistently positive returns in the Fairfield BLMIS Accounts, in contradiction to the performance of the S&P100 Index. For example, the chart below shows that during 86 months of negative returns for the S&P 100 Index, the Sentry Funds were positive 80 of those months:

Figure 97: Fairfield BLMIS Accounts Monthly Performance Relative to the S&P 100 Index from December 1990 to November 2008⁴²⁴

		Fairfield BLMIS Accounts	
S&P 100 Index Performance	# of Months	# of Up Months	# of Down Months
Positive Returns	130	128	2
Negative Returns	86	80	6
Total	216	208	8

(9) Conclusion – Impossibilities Given the SSC Strategy

309. During my review, I concluded that no trading was taking place because I could not reconcile the impossible returns with the purported strategy. As demonstrated in the above analysis, the files reviewed – including trade tickets and monthly statements – show that the trades and returns purported by BLMIS could not have occurred by

⁴²³ StorQM Customer Statements, Settled Cash, Customer Ledgers, Bloomberg market data.

⁴²⁴ StorQM Customer Statements, Settled Cash, Customer Ledgers, Bloomberg market data. FGG was looking at down months, as shown in Vijayvergiya's notebook. Vijayvergiya's Notebook August 2003 - December 2003 [FGG00092331-431 at -333 / SECSEL0000100-200 at -102].

executing the purported SSC strategy.

c) Other Cumulative Red Flags Further Confirmed That BLMIS Was Not Trading Securities

310. In 1999 or 2000, I was asked to get capacity directly with ‘Bernie’ by numerous prospective clients. Based on the lack of available information and the inability to get documentation, I refused. I lost potential clients, steadfastly refusing to invest in Madoff at the time based on the lack of information and documentation alone. FGG, however, had voluminous contemporaneous documents and information throughout its investment with BLMIS, which identified numerous other red flags that, when viewed cumulatively over the 18-year investment with BLMIS and in conjunction with the impossibilities discussed above, confirmed that BLMIS was not trading securities. Even one year of the information and documents in FGG’s possession revealed trading impossibilities and red flags confirming the lack of trading. FGG had eighteen years of information and documentation.

(1) Excessive Concentration of Duties

311. BLMIS’s operational structure and excessive concentration of duties was a red flag. Madoff operated as the investment advisor, custodian and counterparty broker. The excessive concentration of managerial duties is considered problematic from a due diligence and risk management perspective because it removes checks and balances, creates key-man risk, and significantly limits transparency into the management of the fund.⁴²⁵
312. FGG only met with Madoff or Frank DiPascali. Normally, the head of any organization (i.e., broker or hedge fund) would spend the least amount of time with investors. Prospective investors would usually meet with client service representatives for the bulk of a meeting and sit with the portfolio manager or other operations personnel later in the meeting for specific topics.
313. Concerns related to the concentration of duties was raised frequently by investors, by

⁴²⁵ Complaint for Injunctive and Other Equitable Relief at 6, *Commodity Futures Trading Comm’n v. Bayou Mgmt. et al.* No. 05 Civ. 8374 (S.D.N.Y. Sept. 29, 2005), ECF No. 1 [PUBLIC0706549].

Citco, by ratings agencies, and was also acknowledged by FGG.⁴²⁶

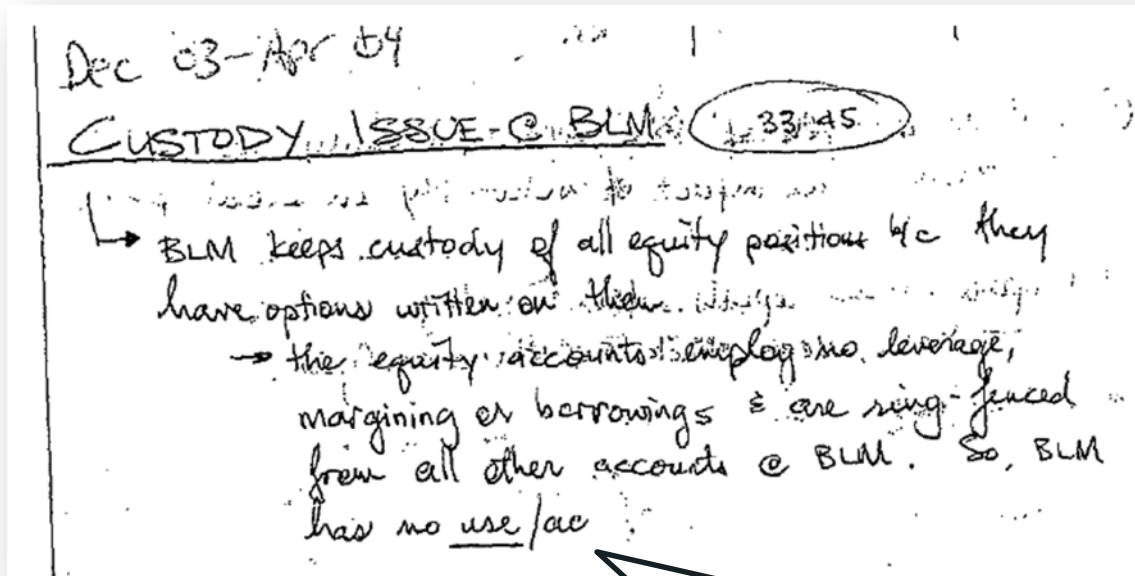
314. For example, FGG declined to invest in the Bayou fund after an initial meeting. FGG made this decision due to the dangers inherent in a fund that was self-administered and owned the accounting firm that did their audits; FGG called this a “definite red flag.”⁴²⁷ FGG later contemplated writing an investor letter touting its due diligence after the Bayou fund was exposed as a fraud.⁴²⁸
315. FGG’s internal notes acknowledge this red flag:

⁴²⁶ In addition to the examples highlighted in this section, *see also* Vijayvergiya’s Notebook, August 2003 - December 2003 [FGG00092331-431 at -379 / SECSEL0000100-200 at -148] (listing “Madoff – conflict of interest” under “DD questions re: Sentry”); Vijayvergiya’s Notebook, July 2004 - September 2004 [FGG00092631-731 at -639 / SECSEL0000403-503 at -411]. (notes re: Follow-Up Sentry Call with Anthony Dirga of Temasek, noting “Risk – independent custodian; how do we verify assets are @ BLM”).

⁴²⁷ Email from Jennifer Keeney to Carla Castillo, et al., September 9, 2005, re: Taylor Update on Bayou Management LLC, Keeney Dep., 3/1/24, Ex. 18 [FGGE001832016-020 at -016 / SECSEV2408967-971 at -967].

⁴²⁸ Email from Andrew Ludwig, et al. August 30, 2005 [FG-01324902-907 at -902 / 10-03800_09-01239_GRECAA0000685-690 at -685] / Greisman Ex. 45; Complaint for Injunctive and Other Equitable Relief at 7, *Commodity Futures Trading Comm’n v. Bayou Mgmt. et al.* No. 05 Civ. 8374 (S.D.N.Y. Sept. 29, 2005), ECF No. 1 [PUBLIC0706549]; Gretchen Morgenson, Jenny Anderson and Geraldine Fabrikant, *Clues to a Hedge Fund’s Collapse*, The New York Times, September 17, 2005 [PUBLIC0703275-284].

Figure 98: Excerpt from Vijayvergiya's Notebook - FGG "Custody Issue"⁴²⁹



"Custody Issue - @ BLM

- BLM keeps custody of all equity positions b/c they have options written on them
 - The equity accounts employ no leverage, margining or borrowings & are ring-fenced from all other accounts @ BLM. So, BLM has no use/acc."

316. Additionally, an email in August 2008 indicated that FGG was reviewing fraud concerns at BLMIS, and asked the following two questions: "[a]re the accounts actually segregated? Do the account[s] actually hold the assets they report."⁴³⁰

⁴²⁹ Vijayvergiya's Notebook, December 2003 - April 2004 [FGG00092432-530 at -432 / SECSEL0000001-099 at -001].

⁴³⁰ Email from Santiago Bareno to FGG Executive Committee, Charles Murphy, Vijayvergiya, Piedrahita, Richard Landsberger, Philip Toub, and Tucker, RE: Unigestion redemption, August 29, 2008 [FGGSIPC00032488 / FGGSAB0006129].

Figure 99: Excerpt from August 29, 2008, Email⁴³¹

From: Santiago Bareno [sbareno@fggus.com]
Sent: Friday, August 29, 2008 3:34 PM
To: Charles Murphy; Amit Vijayvergiya; Andres Piedrahita; Richard Landsberger; Philip Toub; Executive Committee; Jeffrey Tucker
Cc: Sentry Team; Lauren Ross
Subject: RE: Unigestion redemption

A few thoughts to complement Charles' comments...

Non SSC assets: These should not be an issue for any investor in Sentry from an Operational Risk perspective. If anything, the non SSC assets add diversification to the portfolio from a market and operational perspective.

Independent Valuation: This should not be an issue either, as the assets that BLM invests in are so liquid and easy to value. Don't forget we are talking of the 50 most liquid names in the S&P100 and ATM plain vanilla closest maturity call and put options on the S&P100. Not to mention the T-Bills. If BLM reports the assets correctly, Sentry's administrator and ourselves will easily value them. Another question is: Does Sentry administrator receive the report on assets and prepare an independent valuation, or do they directly receive the account valuation from BLM, without detail at the asset level?

Counterparty Risk: This is a real counterparty risk on the put options. Regardless of what Banks BLM uses as counterparty of the options, it is BLM that acts as counterparty to Sentry, if I am not wrong. So the puts that Sentry buys against BLM could suffer a default if BLM blows up. That event would leave Sentry's portfolio uncovered on the down side. It seems an affordable risk, though.

Segregation: This is a very important point for Sentry. If the accounts are actually segregated, BLM can't borrow against the assets in the account and a potential BLM's blow up would not affect the assets held in such account.

Fraud: This remains the main issue. Two questions rise at this level:

1. Are the accounts actually segregated?
2. Do the account actually hold the assets they report?

If the accounts are segregated and actually hold the reported assets, the worst case scenario is that BLM blows up for whatever reason and the portfolio is left unhedged on the down side, as the puts default. To analyse the potential loss under such scenario, several factors need to be considered:

1. Are the options marked to market against the counterparty on a daily basis?
2. What drawdown could the S&P experience until the hedge is re-established, the full position unwound, or the options expire? Or since the puts were bought if they are not marked to market daily?

Regardless of how conservative we want to stay at this point, it seems like it would be an affordable loss (a few percentage points)

So let's focus on the two main sorts of fraud...

If the assets are not held in segregated accounts, and especially if BLM is borrowing against those assets, a potential BLM's blow up could seriously affect the value of Sentry's account. Of course the final size of the loss would depend on the recovery value once BLM is liquidated among creditors. And the timing to receive such recovery value also very difficult to predict.

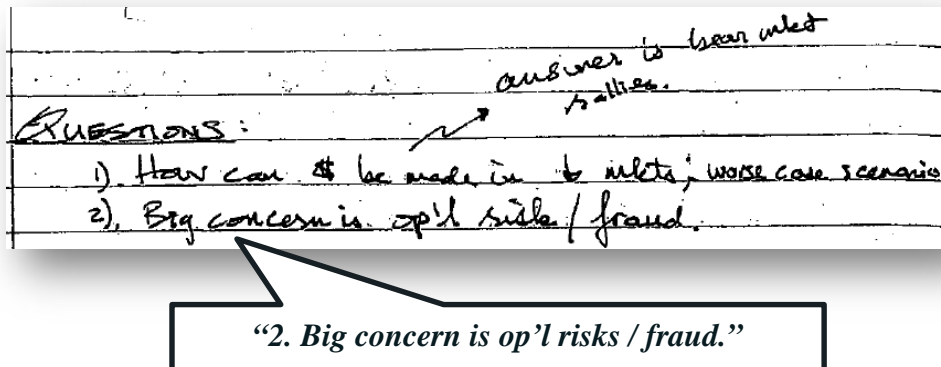
If the accounts do not hold the reported assets, needless to say that the loss is unpredictable, and most likely total.

How can the investor gain comfort at this level? The easiest way would be if assets were under custody in an independent entity, not BLM. But we know that is something BLM does not even consider. And probably their negative to do so (even for free) raises concerns in most Banks.

The next step is to explore who has access to the accounts:

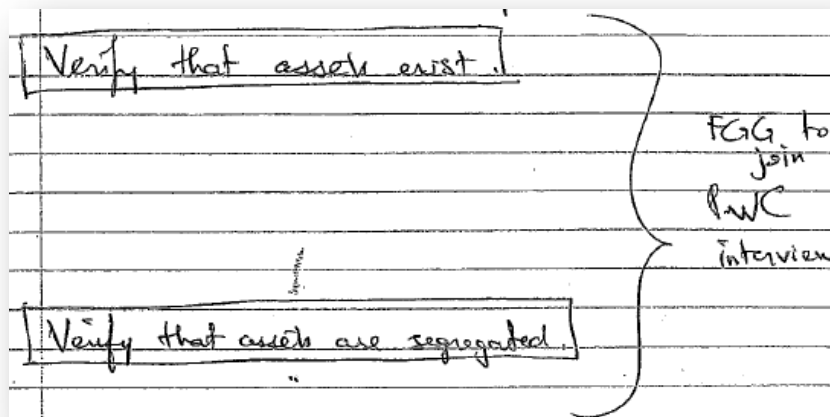
317. The concern of fraud was also raised in 2006, as shown in **Figure 100**.

Figure 100: Excerpt from Vijayvergiya's Notebook – February 2006 – May 2006⁴³²



318. This concern was raised again in 2008, in Vijayvergiya's notebook, as shown in **Figure 101**.

Figure 101: Excerpt from Vijayvergiya's Notebook – June 2008 – November 2008⁴³³



319. Citco raised concerns in January 2002 detailing that “Madoff is now also doubted upon in

⁴³¹ Email from Santiago Bareno to FGG Executive Committee, Charles Murphy, Vijayvergiya, Piedrahita, Richard Landsberger, Philip Toub, and Tucker, RE: Unigestion redemption, August 29, 2008 [FGGSIPC00032488 / FGGSAB0006129] (*emphasis added*).

⁴³² Vijayvergiya's Notebook, February 2006 – May 2006 [FGG00098291-391 at -375 / SECSEL0001209-309 at -293].

⁴³³ Vijayvergiya's Notebook, June 2008 – November 2008 [FGG00099197-297 at -252 / SECSEL0002016-116 at -071].

the financial world” and Citco believed that “the chance that things are wrong is at least 25%” or “50%.”⁴³⁴ As a result, Citco and PwC, FGG’s auditor, had a site visit to BLMIS.⁴³⁵ However, the agreed upon procedures were not performed and neither FGG nor Citco were able to verify the existence of FGG’s assets, with Citco’s representative declaring the “mission” had “failed.”⁴³⁶

320. Investors and rating agencies raised concerns about the excessive concentration of duties, including: Meritz, SUVA, Societe Generale, Spectrum Value Management, UBP Asset Management, SAMBA Financial Group, Vantage Capital, EFG Bank, EFG Capital, Irongate, Fitch, and Moody’s.⁴³⁷

⁴³⁴ Email from Ger-Jan Meyer to Ruud Bodewes and Jack Jacobs, Legal contingency plan, January 15, 2002 [ANWAR-C-ESI-00452468-471 at -470].

⁴³⁵ Email from Ger-Jan Meyer to Ruud Bodewes and Jack Jacobs, Legal contingency plan, January 15, 2002 [ANWAR-C-ESI-00452468-471 at -470]; Email from Albert van Nijen to William Keunen, Anuschka Cova, Michael van Zanten, Ronald Irausquin re: Visit Madoff, December 17, 2002 [ANWAR-C-ESI-00357244-247 at -245-246]; PWC Motion in Limine, Ex. 3, December 17, 2002, internal Citco email chain [ANWAR-C-ESI-00555129-131].

⁴³⁶ PWC Motion in Limine, Ex. 3, December 17, 2002, internal Citco email chain [ANWAR-C-ESI-00555129-131]; Email from Albert van Nijen to William Keunen, Anuschka Cova, Michael van Zanten, Ronald Irausquin re: Visit Madoff, December 17, 2002 [ANWAR-C-ESI-00357244-247 at -245-246].

⁴³⁷ See, e.g., [FGGE000322898-900 at -898-899 / SECSEV0900421-423 at -421-422] (Meritz); [FGGE000260405-406 / SECSEV0837928-929] (SUVA); [FGGE000103764 / SECSEV0681287] (SUVA) ; [FGGE000099147-148 / SECSEV0676670-671] (Societe Generale); [FGGE001192744-745 / SECSEV1770267-268] (KROS); [FGGE000089654-660 at -657/ SECSEV0667177-183 at -180] (Spectrum Value Management); [FGGE000145930-931 / SECSEV0723453-454] (UBP Asset Management); (SAMBA Financial Group); [FGGE000323180-181 / SECSEV0900703-704] (Vantage Capital); [FGGE001119911-912 / SECSEV1697434-435] (EFG Bank); [FGGE001768846 / SECSEV2345796] (EFG Bank); [FGGE001768847 / SECSEV2345797] (EFG Bank); [FGGE001768863-865 / SECSEV2345813-815] (EFG Bank); [FGGE001752433-437 at -434-435 / SECSEV2329383-387 at -384-385] (Unigestion); [ACCSAA0047120-162 at -146] (Irongate); [FGGE000190274-276 / SECSEV0767797-799 at -797] (Fitch); [FGGE000188598-601 / SECSEV0766121-124] (Fitch/Moody's); [FGGE001812001-003 / SECSEV2388952-954] (Fitch); [FGGE000087475 / SECSEV0664998] (EFG Capital); Deposition of Daniel Lipton, March 5, 2009, 53:2-55:18 [FGG00105092-348 at -144-146 / SECSEL0002512-768 at -564-566] (“Lipton Dep., 3/5/09”); Hedge Funds due diligence call report for Fairfield Group, December 18, 2002 [SCISAA0000192-193]. ; FGG Due Diligence Process, July 2007 [FGGE001539277-310 at -291 / SECSEV2116800-833 at -814]; Confidential Private Placement Memorandum, April 1, 2002 [PWCSAA000478-820 at -796]; Email chain between Amit Vijayvergiya, Jeffery Tucker, and Jacqueline Harary, RE: Answering Madoff rumours [sic], October 20, 2003 [FGG000097699-700 / SECSEV0675222-223 at -223] ; Email chain between Amit Vijayvergiya, Rob Blum, and others, RE: Sentry Teach-in Topics, February 2-5, 2004 [FGGE001182964-965 / SECSEV1760487-488]; [FGGE000162658 / SECSEV0740181]; Email chain between Jeffery Tucker, Amit Vijayvergiya, Andrew Smith, and others, RE: Hedge Funds, March 14-21, 2008 [FGGE000732325-329 at -328-329 / SECSEV1309848-852 at -851-852]; Email chain between Andres Piedrahita, Richard Landsberger, Matthias Knab, and others, RE: Alternative Market Briefing 21. Jun, 2007, June 13, 2007 [FGGE000314736-746 / SECSEV0892259-269 at -259]; Confidential Private Placement Memorandum, Fairfield Renaissance

321. During the due diligence process, industry standard verification of assets is of paramount importance and, as indicated in their marketing materials and due diligence presentations, is something FGG performed. BLMIS, however, was a broker-dealer and FGG did not have the added comfort or oversight of an independent custodian or prime broker. FGG's due diligence presentations detail an independent review of assets such as third-party verification of assets, which includes cash and treasury bills.⁴³⁸ Since assets did not exist, they could not have been verified.
322. This is consistent with the discussion above detailing how excessive concentration of managerial duties significantly limits transparency into the management of the fund. Based on an email from 2008, Vijayvergiya did not have transparency into BLMIS's interpretation of the T-Bill rule within the trading authorization,⁴³⁹ and therefore was unable to conclude whether BLMIS T-Bill transactions were aligned with the strategy set out in the trading authorization.

(2) Commissions

323. Instead of charging management and/or performance fees, BLMIS reportedly charged commissions of \$0.04 per share for equities and \$1.00 per share for options.⁴⁴⁰ Prior to 2006, the equity commissions were reflected directly in the reported share prices.⁴⁴¹ Beginning in September 2006, when BLMIS registered as a registered investment

Institutional Equities Fund Ltd., September 2006 [PWCSAA0005937-036 at -944-945]; Chester Global Strategy Fund, Due Diligence Questionnaire, January 1, 2007 [BBVSAA0000865-911 at -870-871].

⁴³⁸ FGG Due Diligence Process, July 2007 [FGG00043212-230 at -229 / SECSEV0040123-141 at -140]. In addition regarding the cash, BLMIS insisted that cash be custodied at BLMIS when the fund was out of the market. The reason BLMIS offered for this structure was that they needed to have the cash on hand so that they would be ready to implement the SSC strategy when the time was right. Had this been a fast trading, short-term trading strategy, this may have made some sense. However, this strategy was implemented less than 10 times a year, and execution timing was days not minutes. There was no need for BLMIS to hold onto investors' cash in times when BLMIS was supposedly out of the market.

⁴³⁹ Emails between Vijayvergiya and Bjorn Axelsson, et al., Re: T-bill exceptions for Sentry, April 28 to 29, 2008 [FG-01855262-263], "it seems that the '5% deviation from the weighted average YTM of all available issues' rule can be calculated in *either or two ways*" (*emphasis added*).

⁴⁴⁰ Emails between Vijayvergiya and Charles Murphy, et al. Re: Sentry Inflows/Outflows 4/30, April 25, 2008 [FG-02672201-210 at -201]

⁴⁴¹ Trade Confirmations for account 1-FN012 in October 2005 [FGGSAA0007932-984] and Trade Confirmations for account 1-FN012 in February 2007 [FGGSAA0011725-774] ("COMMISSION" amount is not detailed separately).

advisor, the commissions were reflected directly on BLMIS customer statements and trade confirmations. BLMIS charged no commission on Treasury Bill trades.⁴⁴²

324. By charging commissions instead of management and/or performance fees, Madoff was leaving significant sums of money on the table. As shown in **Figure 102**, BLMIS generated approximately \$416 million in commissions between 1996 and 2008. Had BLMIS charged a more typical fee structure, BLMIS could have generated fees of \$968 million to \$1.8 billion.

Figure 102: Fees Under Performance/Management Fee Structure vs. Actual BLMIS Commissions (1996 - 2008)⁴⁴³

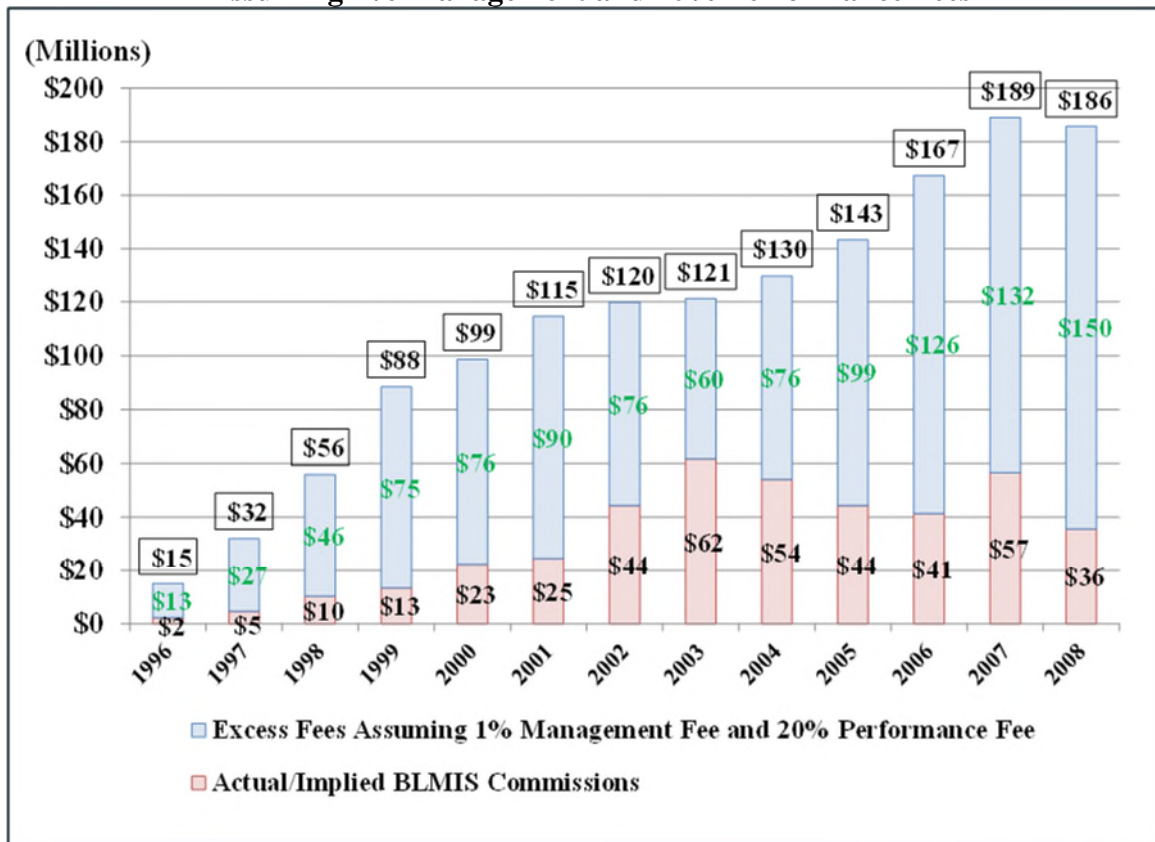
Management Fee / Performance Fee	Fees Under Typical Performance/Management Fee Structure
1% / 10%	\$ 968,200,934
2% / 10%	\$1,396,102,215
1% / 20%	\$1,460,956,002
2% / 20%	\$1,841,312,696
BLMIS Actual/Implied Commissions	\$ 415,660,788

325. In **Figure 103**, the numbers in green indicate the amount of money left on the table each year by not charging a more typical fee structure. For example, in 2007, BLMIS could have made an additional \$132 million had it charged a typical 1-and-20 fee structure.

⁴⁴² See, e.g., Vijayvergiya's Notebook, February 2007 – April 2007 [FGG00098691-786 at -764/ SECSEL0001703-798 at -776] ("Call Frank --> when we see no commission charged on TT's, does that in fact mean that BLM charged no comm."). See also SEC Form ADV, Bernard L. Madoff Investment Securities, August 25, 2006 [PUBLIC0003729-762 PUBLIC0704403-404 at -734].

⁴⁴³ Sources include StorQM Customer Statements. For this analysis I have assumed that actual/implied commissions were \$0.04 per share for equities and \$1.00 per option contract.

**Figure 103: Actual/Implied BLMIS Annual Commissions v. Excess Fees
Assuming 1% Management and 20% Performance Fees⁴⁴⁴**



326. In my experience during the time frame of the Fairfield BLMIS Accounts, there was a frenzy of traders and money managers setting up hedge funds. One of the primary reasons was the fee structure of 1/20 or 2/20. It was the golden era of the incentive and management fee. Given what the market would bear, it made absolutely no sense that any manager would simply elect to charge commissions and forego incentive and management fees. **Figure 103** above shows that between 1996 and 2008, BLMIS left a significant amount of money on the table by not charging a management or incentive fee. Not just a few dollars, but multi-millions every year. In my 45 years in the business, I have never met a money manager that would do that.

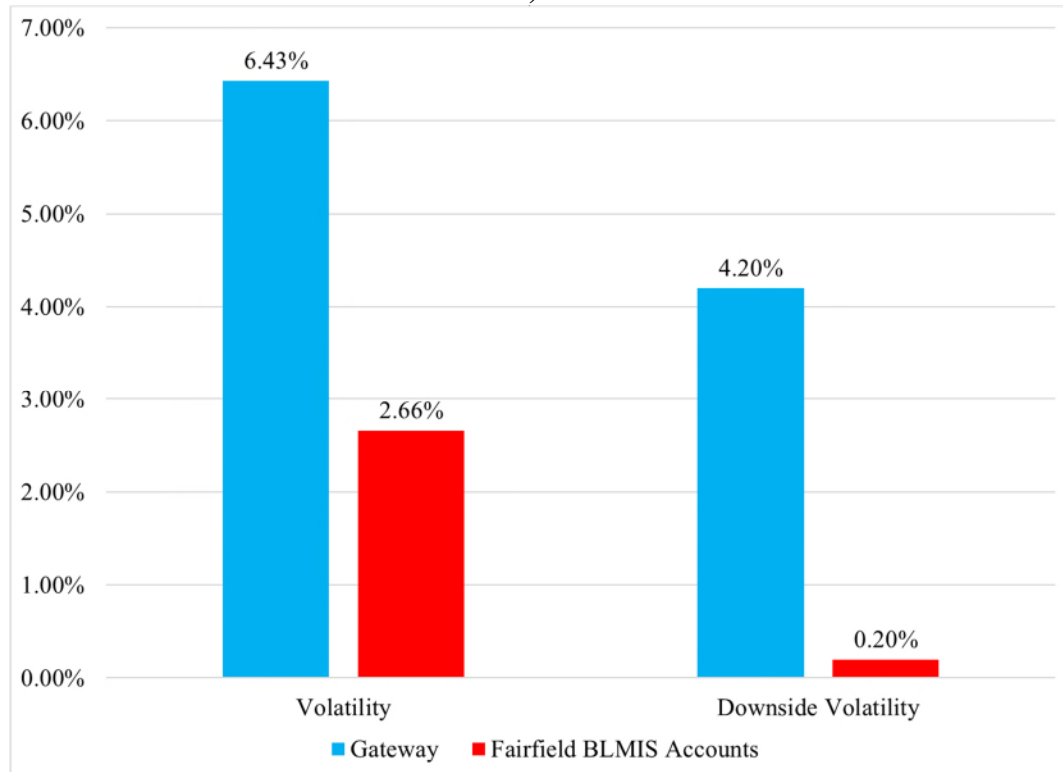
⁴⁴⁴ Sources include Settled Cash table, StorQM Customer Statements.

(3) Lack of Volatility

327. The volatility of the SSC strategy utilized in the Fairfield BLMIS Accounts should have, at a minimum, incorporated two prevalent market risks: (i) the risk due to movements in the S&P 100 Index within the option strikes (i.e., the call and put options); and (ii) because BLMIS did not purport to buy all 100 stocks in the index, there was additional risk related to the difference between the performance of the stocks selected by Madoff and the performance of the S&P 100 Index. These same market risks are incorporated into other funds that utilize an SSC strategy.
328. Therefore, I compared the volatility of Fairfield BLMIS Accounts monthly returns to the volatility of monthly returns for Gateway, a mutual fund that implemented an SSC strategy using stocks from the S&P 500 Index since 1988.⁴⁴⁵
329. For the entire period analyzed, the volatility for the Fairfield BLMIS Accounts was 41.48% of the volatility expected from Gateway (2.67% vs. 6.43%). I also modeled the downside volatility, which presents a much more skewed observation, as it only considers downside risk, as opposed to volatility resulting in positive performance. Here, the downside volatility for the Fairfield BLMIS Accounts of 0.23% was only 5.49% of Gateway's volatility of 4.20%, as shown in the figure below.

⁴⁴⁵ *The Gateway Fund's Hedging Edge, Markets & Finance*, BLOOMBERG BUSINESS (April 20, 2005) [PUBLIC0704583-591]; Gateway Fund Performance Profile, December 31, 2014, p.2 [PUBLIC0704553-554].

Figure 104: Volatility Comparisons of Fairfield BLMIS Accounts Monthly Returns to Gateway Monthly Returns (December 1991 – November 2008)⁴⁴⁶



330. As illustrated above, the volatility and downside volatility for Gateway is significantly higher than the volatility in the Fairfield BLMIS Accounts. The BLMIS SSC strategy should have had volatility similar to Gateway given that they both utilized the SSC strategy on an S&P Index. However, the volatility of the returns for the Fairfield BLMIS Accounts was much less than what an actual SSC strategy showed. This difference between volatilities indicates that BLMIS was not implementing the SSC strategy.

(4) Counterparty Risk

331. Counterparty risk analysis is critical for an investment manager. While all ‘vendors’ or ‘third parties’ should be reviewed to establish any potential counterparty risk, one of the greatest third party risks to a fund is the trading counterparties. As **Figure 30** above indicates, monitoring credit risk is an integral part of FGG’s risk oversight process;

⁴⁴⁶ StorQM Customer Statements, Settled Cash, Customer Ledgers, Bloomberg market data. This analysis starts in December 1991 based on the implementation of the SSC strategy in baskets.

included risks noted are default, credit downgrade, counterparty/obligor, manager, horizon, and duration.

332. FGG repeatedly claimed to investors that they knew BLMIS's option counterparties yet could never provide the names of those counterparties.⁴⁴⁷ They also claimed that the OTC trades were 'guaranteed' by the counterparties.⁴⁴⁸
333. I have seen only one sample BLMIS Master Agreement for OTC Options in the productions made to the Trustee by FGG.⁴⁴⁹ This agreement specifically states: (1) "each Counterparty entering into an Option will have entered into an agreement with BLMIS substantially similar to this Agreement" and (2) "it will use its best efforts to ascertain that each Counterparty has the wherewithal or provided any necessary Performance Assurance to meet its obligations under the option; provided, however, that such representation and warranty does-not in any way constitute a guarantee of the Counterparty's performance of its obligations under each Option." Despite this specific clause, FGG represented that the counterparty risk was minimal because of performance guarantees.
334. FGG had multi-level marketing or other relationships with brokerage firms, banks, and derivative dealers around the world. Based on many FGG emails and other

⁴⁴⁷ See, e.g., FGG Responses to: Due Diligence Questionnaire DDQ [FGGE000504797-802 at-799 / SECSEV1082320-325 at -322] (counterparties won't be disclosed for "obvious reasons"); Fairfield Greenwich Group: Fairfield Sentry Limited Company Overview, April 25, 2005 [BBVSAB0000687-176]; Emails between Gordon McKenzie, Vijayvergiya, Mami Hidaka, and others, RE: please answer whatever any of you can..., February 15, 2008 [FGGE000490395-399 / SECSEV1067918-922]; Emails between Vincent Pfister, Phillip Toub, Vijayvergiya, and others, RE: Fairfield Sentry- some questions, February 20, 2006 [FGGE002029681-683 / SECSEV2606632-634]; [FGGE002029684-686 / SECSEV2606635-637] (Credit Suisse); [FGGE000504957-463 / SECSEV1082480-486] (Pension B, Brussels and the Periphery); [FGGE000766340-349 / SECSEV1343863-872] (JP Morgan); [FGGE001134893-898 / SECSEV1712416-421] (RBS International).

⁴⁴⁸ See, e.g., Email from Vijayvergiya to Ornella Dellapina Fenman, RE: Help!, June 13, 2007 [FGGE000313403-405 / SECSEV0890926-928] ("well-known international banks"); Email chain between Vijayvergiya, Tony Jang, Richard Landsberger, and others, RE important questions from Korea Life, May 24, 2006 [FGGE000195138-142 / SECSEV0772661-665] (example of FGG's representations about absence of counterparty risk, without identifying any by name). Note that internal communications within FGG questioned this guarantee, see, Email from Bjorn Axelsson to Disha Attavar, Vijayvergiya, Gordon McKenzie, and others, RE: Call with BLM, June 11, 2008 [FGGE000557107-108 / SECSEV1134630-631] ("I thought that derivative dealers weren't required to post any collateral/margin under normal circumstances").

⁴⁴⁹ The sample Bernard L. Madoff Investment Securities LLC MASTER AGREEMENT FOR OTC OPTIONS [FAIRFIELD_00555013-044].

documentation, FGG had relationships with the largest OTC counterparties, such as: UBS, Deutsche Bank, Citigroup, JPMorgan, Societe Generale, Barclay's Capital, Merrill Lynch, Morgan Stanley, and Credit Suisse.⁴⁵⁰ With respect to JPMorgan, in connection with a meeting held in 2005 with Vijayvergiya and Shakil Riaz, CIO of JP Morgan, Vijayvergiya's notebook included a question regarding whether BLMIS traded any options OTC with JPMorgan.⁴⁵¹

335. These groups, including HSBC, RBS, and Citigroup, asked FGG about BLMIS's counterparties.⁴⁵² There would have been no reason for this if they had a direct relationship with BLMIS as a counterparty to any BLMIS transaction.
336. Further, these banks and derivatives dealers were in a select group that handled enough volume to trade OTC options in the size that would have been required by BLMIS; if they were counterparties to BLMIS's alleged OTC options trades, they would not need to be asking FGG about BLMIS's counterparties.
337. Even if one or two of these counterparties were theoretically trading OTC options with BLMIS, there was never any large movement of price / volume in the exchange traded options to support the hedging activity that the counterparty would need to hedge its own market risk, as it is extremely unlikely that any OTC counterparty buying or selling options worth billions in notional value would keep these trades on their books without a hedge. In fact, FGG acknowledged failures of other counterparties, including Refco,

⁴⁵⁰ Email from Disha Attavar to Sentry Team, Subject: Size of OTC derivatives market & top dealers, October 2, 2008 [FGG00063993-036 / SECSEV0060149-192], attachments: BIS - OTC derivatives market activity.pdf, risk survey 2006.pdf, IMFchap4.pdf; Vijayvergiya's Notebook, August 2007 – October 2007 [FGG00098879-979 at -938 / SECSEL0001602-702- at -661] (Soc. Gen meeting); Vijayvergiya's Notebook, February 2006 – May 2006 [FGG00098291-391- at -327 / SECSEL0001209-309 at -245] (noting "Options counterparties for CITI").

⁴⁵¹ Vijayvergiya's Notebook, June 2005 - August 2005 [FGG00097986-8086 at -003 / SECSEL0001009-109 at -026] ("Does BLM do any options OTC trades thru JPM").

⁴⁵² *See, e.g.*, Emails between Vijayvergiya, Lourdes Barreneche, Disha Attavar, and others, RE: Fairfield Sentry Ltd. Operational Due Diligence Meeting with HSBC, October 10, 2008 [FGGE000767725-726 / SECSEV1345248-249]; Email chain between Vijayvergiya, Santiago Bareno, Disha Attavar, David Schwartz, and others, RE: FGG Sentry TS v1 02(3).doc, November 17, 2008 [FGGE001134893-898 / SECSEV1712416-421]; ; Email chain between Philip Toub, Vijayvergiya, Vincent Pfister, and others RE: Fairfield Sentry- some questions, August 22, 2005 [FG-00212887-889]; Email from Vijayvergiya to Jeffery Tucker, RE: Citibank query, May 26, 2005 [FGGE000039061 / SECSEV0616584]; Vijayvergiya's Notebook, February 2006 - May 2006 [FGG00098291-391 at -337 / SECSEL0001209-309 at -258].

Bear Sterns, Lehman, and Merrill Lynch, and contemplated whether they “serve[d] as a counterparty to Sentry’s options business.”⁴⁵³

338. There were no other counterparties large enough to conduct business with BLMIS in size. This left no identifiable counterparties.⁴⁵⁴ No counterparties and insufficient volume on the exchange meant there could be no actual options trading.
339. Vijayvergiya’s notebook from 2003, shown in **Figure 105** claims that Tucker “saw all counterparties,” “took the stock record of every beneficial owner of those shares...[and] checked that it corresponded to” FGG’s account.⁴⁵⁵ Vijayvergiya also claimed that “BLM showed [Tucker] his [account at] DTC to verify the BLM [position].”⁴⁵⁶ I have not seen any documents produced that indicate third-party confirmation of counterparties or the positions with the DTC.

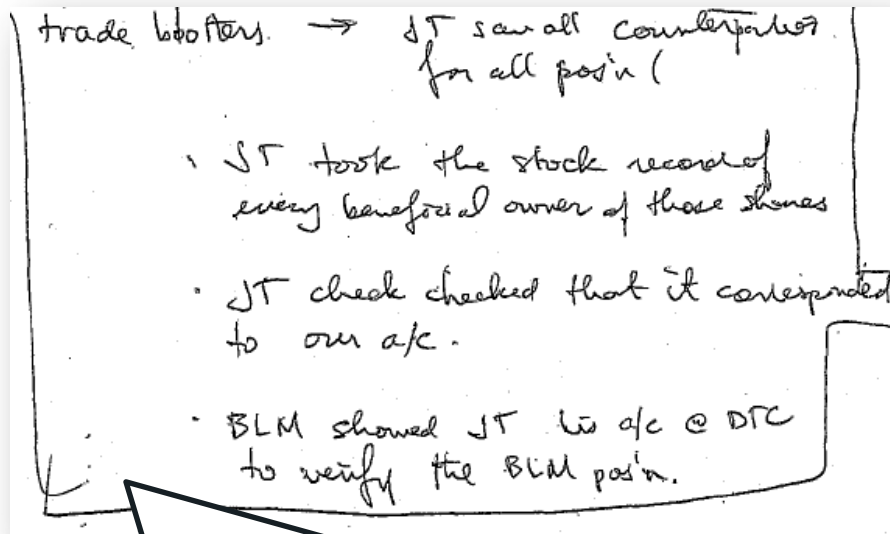
⁴⁵³ Email from Tucker to Vijayvergiya re: Refco, October 15, 2005 [FGGE000126512 / SECSEV0704035]. *See also*, emails detailing that Madoff confirmed that counterparties such as Refco, Bear Sterns, Lehman, and Merrill Lynch had no impact on BLMIS, e.g., Email From Jeffery Tucker to Global Employees RE: [none], October 24, 2005 [FGGE000126778 / SECSEV0704301]; Emails between Vijayvergiya, Willem Alders, and others, RE: Potential Sentry capacity increase needed obo PRF for 1st April, March 17, 2008 [FGGE000728787-788 / SECSEV1306310-311]; Emails between Vijayvergiya, Disha Attavar, Charles Murphy, and others, RE: SSC counterparty exposure, September 15, 2008 [FGGE001651024-026 / SECSEV2227974-976].

⁴⁵⁴ Even in 2006, FGG was still asking about counterparties. *See*, e.g., Vijayvergiya’s Notebook, September 2006 – November 2006 [FGG00098491-591 at -521 / SECSEL0001409-509 at -439] (note to “Call Frank to” “question come up on the OTC options & how the [agreements] with the counterparties are set up”).

⁴⁵⁵ Vijayvergiya’s Notebook, August 2003 - December 2003 [FGG00092331-431 at -346 / SECSEL0000100-200 at -115].

⁴⁵⁶ Vijayvergiya’s Notebook, August 2003 - December 2003 [FGG00092331-431 at -346 / SECSEL0000100-200 at -115].

**Figure 105: Excerpt from Vijayvergiya's Notebook, August 2003 -
December 2003⁴⁵⁷**



“Trade blotters → JT saw all counterparties for all pos’n (

- JT took the stock record of every beneficial owner of those shares
- JT check checked that it corresponded to our a/c.
- BLM showed JT his a/c @ DTC to verify the BLM pos’n.”

340. Ratings agencies questioned BLMIS’s refusal to identify OTC options counterparties. For example, In September 2006, one investor notified Vijayvergiya that Fitch, the ratings agency, was “challenging us a bit on the counterparty risk created by the options.”⁴⁵⁸ The investor stated the need to “respond quickly” to Fitch and raised questions that “now need to be answered,” including: (i) “is there systematicaly [*sic*] an ISDA/CSA contract with the counterparties”? (ii) “are there margin calls”? (iii) “are there rating minimas [*sic*] for the counterparty”? and (iv) “is there a limit size for each of the counterparty”?⁴⁵⁹

341. The next day, the same investor again emailed Vijayvergiya stating “[i]t turns out that the

⁴⁵⁷ Vijayvergiya’s Notebook, August 2003 - December 2003 [FGG00092331-431 at -346 / SECSEL0000100-200 at -115].

⁴⁵⁸ Email exchange between Emmanuel Lefot, Patrick Mabilie and Vijayvergiya re: Sentry CFO. Questions, September 2006 [FGGE000188598-601 at -598 / SECSEV0766121-124 at -121].

⁴⁵⁹ Email exchange between Emmanuel Lefort, Patrick Mabilie and Vijayvergiya re: Sentry CFO. Questions, September 2006 [FGGE000188598-601 at -598 / SECSEV0766121-124 at -121].

three rating agencies are challenging us on the puts (and the calls) re counterparty risk.”⁴⁶⁰ The investor informed Vijayvergiya that they “really need to know as soon as possible” information including, “under what documentation are those options traded (ISDA ?),” and who is contractually the owner of the put.⁴⁶¹

342. Additionally, Steve Goldenberg wrote in September 2008 that “[t]he biggest worry I had with Madoff had to do with ‘counter party’ risk.”⁴⁶² Joseph Sloves forwarded this email to Tucker, who responded to Sloves stating that “[c]ounter-party risk certainly exists here ... The Madoff defense here is to use several, credit worthy(hopefully) counter-parties.”⁴⁶³ Joseph Sloves thanked Tucker for the answer and said: “[h]opefully it will never be an issue, but it sure is scary out there.”⁴⁶⁴
343. In June of 2008, the FGG team asked Madoff questions about options trading. In this conversation FGG noted that Madoff stated “the stock basket is never on without put protection. *Maybe an hour, nothing significant.*”⁴⁶⁵ Even a lag of one hour in purchasing the puts is speculative, inconsistent with the SSC strategy, and creates potential market exposure. Further, FGG stated that the puts were purchased simultaneously as they were pre-arranged by BLMIS with the option counterparty.⁴⁶⁶
344. In August of 2008, Vijayvergiya acknowledged that an investor likely “redeemed due to concerns about Madoff risk” and conceded that “[u]nfortunately, there are certain aspects

⁴⁶⁰ Email from Emmanuel Lefort to Vijayvergiya re: Sentry puts and calls, September 28, 2006 [FGGE000189165-166 at -165 / SECSEV0766688-689 at -688].

⁴⁶¹ Email from Emmanuel Lefort to Vijayvergiya re: Sentry puts and calls, September 28, 2006 [FGGE000189165-166 at -165 / SECSEV0766688-689 at -688]. *See also* Vijayvergiya’s Notebook, July 2004 - September 2004 [FGG00092631-731 at -639 / SECSEL0000403-503 at -411] (notes re: Follow-Up Sentry Call with Anthony Dirga of Temasek, noting “counterparties”).

⁴⁶² Email from Steve Goldenberg to Joseph Sloves, Subject: The biggest worry I had with Madoff had to do with “counter party” risk, September 5, 2008 [FGGE001113307-309 / SECSEV1690830-832].

⁴⁶³ Emails between Joseph Sloves and Jeffrey Tucker, RE: The biggest worry I had with Madoff had to do with “counter party” risk, September 9, 2008 [FGGE001113307-309 at -307/ SECSEV1690830-832 at -830].

⁴⁶⁴ Email from Joseph Sloves to Jeffrey Tucker, RE: The biggest worry I had with Madoff had to do with “counter party” risk, September 10, 2008 [FGGE001113307-309 at -307/ SECSEV1690830-832 at -830].

⁴⁶⁵ Meeting Minutes from Phone Conversation with Bernard Madoff, June 4, 2008 [FGG0119940-941 / FGGSAC0013902-903] (*emphasis added*).

⁴⁶⁶ Meeting Minutes from Phone Conversation with Bernard Madoff, June 4, 2008 [FGG0119940-941 / FGGSAC0013902-903]; Amit Vijayvergiya SEC Testimony, Oct. 20, 2009, 115:24–118:15 [FG-00008075-254 at -104-105).

of BLM's operations that remain unclear and although we are attempting to obtain responses from Bernie Madoff (via an operational DDQ), this process could take some time."⁴⁶⁷ Vijayvergiya's note is striking given the duration of their relationship and the fact that the FGG team spoke with Madoff about counterparty risk only two months prior to this email.⁴⁶⁸

(5) Lack of Real-Time Access

345. FGG did not have online or real-time access to their BLMIS accounts.⁴⁶⁹ In fact, they received paper confirmations several days after the trade date.⁴⁷⁰ In 2002, FGG considered sending a "runner" to BLMIS's offices daily "for confirms in the future so we don't go as clueless" about trading activity in the Fairfield BLMIS Accounts. Tucker's response was "they [BLMIS] will not be happy; let's not even ask."⁴⁷¹
346. Electronic communications were used by discount brokerages and other players in the investment management industry beginning as early as the 1990s,⁴⁷² and by 2000, even most hedge funds had online access with their brokers. It is inconceivable that BLMIS did not have this capability. In the early 1990's I ran a trading group for Merrill Lynch and we delivered trade confirmations on trade date and statements on trade date plus one. BLMIS's refusal to provide timely trade information was a huge red flag. Holding on to trade confirmations for days after a trade was completed gave any manager or broker the increased possibility of fabricating trades. At the very least, the investor would have no

⁴⁶⁷ Emails from Vijayvergiya to Piedrahita and Charles Murphy, et al., August 19 to August 20, 2008 [FGGE001832373-381 at -373 and -377 / SECSEV2409324-332 at -324 and -328].

⁴⁶⁸ Meeting Minutes from Phone Conversation with Bernard Madoff, June 4, 2008 [FGG0119940-941 / FGGSAC0013902-903].

⁴⁶⁹ See, e.g., FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -623]. See also, [FGGE000190466-493 / SECSEV0767989-8016 at -999] (Q: "Do you have online access to the brokerage account so that you could see it on a daily basis?" Vijayvergiya: "No, we don't have online access").

⁴⁷⁰ See, e.g., FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -636]. See also, [FGGE000190466-493 / SECSEV0767989-8016 at -8012] (noting "we get tickets from Madoff after the trade is made on a settlement day basis through the mail. So you've got a few days there where we don't know exactly when the trade is actually put on.").

⁴⁷¹ Email chain between Rob Blum, Daniel Lipton, and Jeffery Tucker, RE: Madoff trades 7/26-runner, July 31, 2002, [Fairfield_01810225-226].

⁴⁷² See, e.g., *E-Trade* (April 1997) [PUBLIC0703330-331]; *Fidelity* (April 1997) [PUBLIC0703336]; *Schwab* (April 1997) [PUBLIC0704249]; Andrew Burchill, *Make way for middlemen*, Institutional Investor, June 1993 [PUBLIC0703187-188]; *T. Rowe Price* (January 1998) [PUBLIC0704406-407].

idea if there was a mistake which could lead to a negative economic outcome.

347. It was even more unusual and atypical since Madoff was touted as a global leader in the use of technology in publications at the time, including *Securities Week*, *The New York Times*, and *Wall Street & Technology*.⁴⁷³ BLMIS also advertised itself as providing “[q]uality [e]xecutiions and [s]ervice through [i]nnovative [t]echnology” in an internal publication.⁴⁷⁴

348. Vijayvergiya raised this question to Tucker in August 2003; when discussing a conference call with Globe Op regarding their risk platform, Vijayvergiya asked:⁴⁷⁵

We discussed how to electronically link data from the various Prime Brokers used by our managers to Globe Op’s risk platform. We determined that this could be done with relative ease for all of our managers but had a question for you regarding Madoff. Would it be possible for us to receive electronic transaction summary and holdings reports from Madoff? As a broker/dealer with an advanced technology platform, I wonder whether Madoff could give us electronic access to our accounts (either online access or by emailed reports). ”

349. Blum replied “we have tried to get electronic input from Madoff but they are not willing to do so.”⁴⁷⁶

350. The notes below in **Figure 106** show that, as early as 2003, FGG had online access to their accounts at several brokerage firms. It is highly improbable that BLMIS, hailed as one of the most technologically advanced broker-dealers, could not provide online access to the FGG portfolios and transactions while others could. An email from Vijayvergiya in August of 2003 stated that FGG was internally discussing the “possibility of receiving

⁴⁷³ See, e.g., *NYSE Price Material Raises Eyebrows at Madoff*, *Securities Week* (McGraw Hill, Inc. September 3, 1990) [PUBLIC0704178]; Anthony Guerra, *Family Influence*, *Wall Street & Technology* (July 07, 2000) [PUBLIC0703571-582 at -573-574]; *Madoff Seeks Edge with Pre-Opening Price Improvement Plan*, *Securities Week* (May 31, 1999) [PUBLIC0703820-821]; Susan Rodetis, *Third Market Man*, *Equities* (October 1993) [PUBLIC0704405]; Press Release, NASDAQ, SEC Grants Permanent Approval of NASDAQ’s Primex Auction System (New York: Mar. 3, 2003) [PUBLIC0704250-252].

⁴⁷⁴ BLMIS internal publication [FGGSAA0004305-320 at -306].

⁴⁷⁵ Emails between Vijayvergiya, Tucker, Rob Blum, et al., re: “Madoff questions,” August 27, 2003 – September 3, 2003 [FGGE000145930-931 at -931 / SECSEV0723453-454 at -454].

⁴⁷⁶ Emails between Vijayvergiya, Tucker, Rob Blum, et al., re: “Madoff questions,” August 27, 2003 – September 3, 2003 [FGGE000145930-931 at -930 / SECSEV0723453-454 at -453].

electronic feeds (or electronic access) to our accounts at [BLMIS].”⁴⁷⁷

Figure 106: Excerpt from Vijayvergiya’s Notebook, December 2003 to April 2004⁴⁷⁸

PRIME BROKER ACCESS		
PS	FUND	HOW TO ACCESS
① UBS	WHITEFORD	<ul style="list-style-type: none"> www.ubs.com/financialservices username = whiteford password = whiteford 1
② REFCO	ISIS	<ul style="list-style-type: none"> reports.refco.com username = 11015591A password = bfund 55
	EMF	<ul style="list-style-type: none"> reports.refco.com username = 11017894 password = zm17034
③ CORRESPONDENT NETWORK - NATIONAL BANK OF CANADA	PRESERVATION	<ul style="list-style-type: none"> http://cnweb1.comnet.com username = cna15636 password = newyork
④ GOLDMAN SACHS	REDSTONE	<ul style="list-style-type: none"> www.gs.com/primebrokerage login = fgg/vijaya password = 0705 secure id code onshore fund = REDFAIRTOP offshore fund = RED00209895
	SCHLARBUM	<ul style="list-style-type: none"> offshore = 5500209888
	NGA	<ul style="list-style-type: none"> WINGEN
	ARUNTON	<ul style="list-style-type: none"> WINDWARD

⑤ NORISAN SPANLEY DOVER: www.morganstanley.com → clientlink
username = amitel@quest.com
password = 07052126 + secure id code

GMO

⑥ CSFB: https://primebroker.csfb.com
username = fglolant
password = vq2933

351. Vijayvergiya’s notes around the same time detailed that FGG had to call BLMIS to find out Fairfield BLMIS Accounts’ AUM and to find out whether or not the Fairfield BLMIS Accounts were invested. For example:

⁴⁷⁷ Email from Vijayvergiya to Lipton et al., August 27, 2003 re: Madoff questions [FAIRFIELD_00000420]. Testimony of Citco employees in the Anwar action indicates that Citco requested an electronic interface with BLMIS as early as 2000. See, e.g., 6/13/2013 Michel Van Zanten Tr. 21:3 – 23:18 [10-03800_FGG_0008884-964 at -889-890]. See also, Vijayvergiya’s Notebook, August 2003 - December 2003 [FGG00092331-431 at -346 / SECSEL0000100-200 at -115] (“[Tucker] is open to asking Frank @ BLM if we can get electronic feeds.”).

⁴⁷⁸ Vijayvergiya’s Notebook, December 2003 - April 2004 [FGG00092432-530 at -451 / SECSEL0000001-099 at -020].

Figure 107: Excerpt from Vijayvergiya's Notebook, December 2003 to April 2004⁴⁷⁹

Feb 12 Estimates

FN-012	2,186,835,933
FN-045	2,236,951,438
G-092	153,385,561

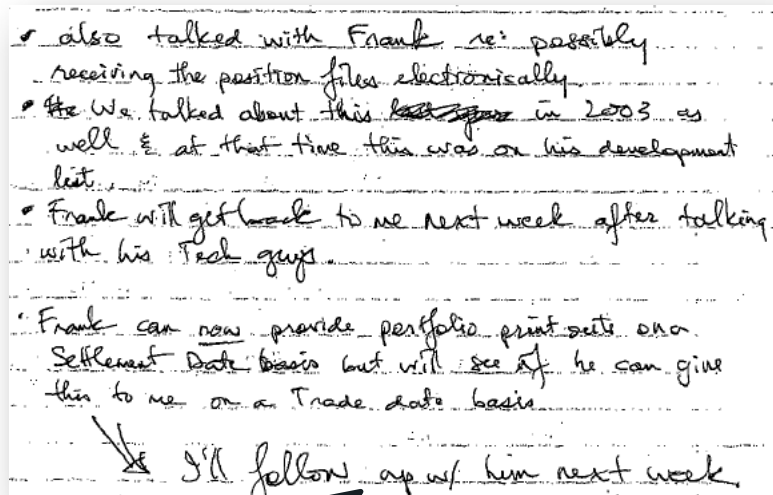
fully invested

352. In 2005, FGG again talked with BLMIS about obtaining electronic access, two years after initially raising the issue.⁴⁸⁰

⁴⁷⁹ Vijayvergiya's Notebook, December 2003 - April 2004 [FGG00091432-530 at -468 / SECSEL0000001-099 at -037]; *see also* FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -636]; FGBL's August 2003 Fund Operations Policies and Procedures Manual [FG-06646944-959 at -950:] ("Weekly estimates for F. Sentry and G. Sentry are calculated every Friday as of the close of Thursday. Madoff will call Friday morning with the account balances and afterwards, the P&L for the week will be calculated."); Anwar Deposition of Nancy Zhang, January 30, 2013, 76:17 - 79:15 [FG-06646505-643 at -524 - 525] ("Zhang Anwar Dep., 1/30/13") (discussing weekly calls through which FGG obtained account values from BLMIS); Anwar Deposition of Gordon McKenzie, May 8, 2013 26:15-23 [FG-00003410-543 at -417] (McKenzie Anwar Dep., 5/8/13") ("We would receive a phone call on Friday from the Madoff organization. They would give us the market value of the accounts we held there. We would compare the market value with the previous month's market value, previous week's market value to come up with a gross return on those accounts."); Lipton Dep., 1/23/25, 74:20-25 (Q. Mr. Lipton, earlier you said there were weekly calls with BLMIS. What generally was discussed on those calls? A. My team asked for the market values as recorded by BLMIS of the accounts for Fairfield Sentry and Greenwich Sentry.")

⁴⁸⁰ FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -623].

Figure 108: Excerpt from Vijayvergiya's Notebook, April to June 2005⁴⁸¹



A photograph of a handwritten note on lined paper. The text is written in cursive and matches the typed transcription provided in the adjacent list. The note is dated April to June 2005. It lists several points about a conversation with Frank regarding electronic position files, development lists, and portfolio print sets.

- also talked with Frank re: possibly receiving the position files electronically.
- We talked about this ~~last year~~ in 2003 as well & at that time this was on his development list.
- Frank will get back to me next week after talking with his Tech guys.
- Frank can now provide portfolio print sets on a Settlement Date basis but will see if he can give this to me on a Trade date basis.
- I'll follow up w/ him next week.

- “[A]lso talked with Frank re: possibly receiving the position files electronically.
- We talked about this in 2003 as well & at that time this was on his development list.
- Frank will get back to me next week after talking with his tech guys.
- Frank can now provide portfolio print sets on a settlement date basis but will see if he can give this to me on a trade date basis – I’ll follow up w/ him next week.”

353. However, this access never came to fruition.⁴⁸² Furthermore, despite never receiving real-time electronic access, FGG represented to Union Bancaire Privée in 2007 that FGG “[r]eceive[s] full end-of-day position level transparency for *all* managers *via Web access* to prime brokers.”⁴⁸³ This was simply not true.

⁴⁸¹ Vijayvergiya's Notebook, April 2005 – June 2005 [FGG00092934-3033 / SECSEL0000707-806 at -767].

⁴⁸² FGG did reportedly receive some month-end account information via an FTP site. See, e.g., MSD Deposition of Amit Vijayvergiya, March 6, 2009, 66:2-68:16, 87:13-89:7 [FGG00104735-5091 at -800-802, -821-823 / FG-06612968-324 at -033-035, -054-056] see also [SECSEL0002155-511 at -220-222, -242-243] (“Vijayvergiya MSD Dep. 3/20/09”); SEC Deposition of Amit Vijayvergiya, October 20, 2009, 136:1-17 [FG-00012782-961 at -816 / 10-3800_09-01239_VIJCAA0000349] (“Vijayvergiya SEC Dep., 10/20/09”); Anwar Deposition of Amit Vijayvergiya, June 17, 2013 34:8-18 [FG-00008255-410 at -264 / 10-03800_09-01239_VIJCAB0000993-1148 at -1002] (“Vijayvergiya Anwar Dep., 6/17/13”). This, however, is not real-time access.

⁴⁸³ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 / SECSEV1793790-876 at -834] (*emphasis added*).

⁴⁸⁵ February 2007 Customer Statement, 1FN012-3 [MDPTPP02979870-937 at -873] (*emphasis added*).

Figure 110: Trade Confirmation Reflecting SOLD⁴⁸⁶

BERNARD L. MADOFF INVESTMENT SECURITIES LLC New York <input type="checkbox"/> London		MEMBER: NASDAQ SIPC NSCC ITC		885 Third Avenue New York, NY 10022 212 250-8424 800 834-1343 Fax 212 838-4061	
ORIGINATOR NO 0646	DELIVERED YES	ACCOUNT NUMBER 1-FN012-3	DIR D	TRANS. NO. 97905	TR 5
				CODES CAP 1	SETT 1
				TRADE DATE 2/13/07	SETTLEMENT DATE 2/16/07
IDENTIFICATION NO.		COUNTRY		C.M. NUMBER	SPECIAL DELIVERY INSTRUCTIONS
FAIRFIELD SENTRY LTD C/O FAIRFIELD GREENWICH GROUP 919 THIRD AVENUE 11TH FLR NEW YORK NY 10022					**** DUPLICATE **** ACCT OFF CITIC GLOBAL CUSTODY N Y
WE SLO	QUANTITY 903,870	CUSIP NUMBER 00206R102	SECURITY DESCRIPTION AT&T INC		NET AMOUNT 33379918.30
PRICE 36.890		PRINCIPAL 33343764.30	COMMISSION 36154.00	STATE TAX	INTEREST
				FEE	MISC.

CONFIRMATION (Please see reverse for further details.)

17

CONFIDENTIAL

FGGSIPC00011725
FGGSAA0011725

356. This is just one example. In fact, I have not seen *any* trade confirmations produced by FGG that were correct. This is particularly disturbing since it was made clear to FGG that BLMIS was acting as an agent, not doing riskless principal trades, and not using the market making department of the firm.

(7) Lack of Credentials

357. In my experience a firm the size of BLMIS (growing to tens of billions in AUM) would

⁴⁸⁶ Trade Confirmation for account 1-FN012-3 in February 2007 [FGGSAA0011725-774 at -725] (*emphasis added*).

have employed a workforce that possessed credentials more like traditional investment management firms. Longstanding employees, such as general partners and general portfolio managers, at hedge funds and other investment vehicles would be expected, at a minimum, to hold a bachelor's degree, and in my experience, it was common for them to also hold advanced degrees (e.g., master's degrees or PhDs) and professional certifications (e.g., Chartered Financial Analyst or Certified Public Accountant).⁴⁸⁷

358. It is customary to review ADV forms as part of due diligence, and BLMIS disclosed in its SEC Form ADV as having no more than five employees who performed investment advisory functions.⁴⁸⁸ It would be nearly impossible for a multi-billion dollar investment management business to operate with no more than five employees who served in that role. This red flag would necessitate an investigation into the backgrounds of these employees.

359. In reality, BLMIS had a limited number of personnel, with no advanced education or training.⁴⁸⁹ These individuals were purportedly implementing a multi-billion dollar investment strategy. This lack of headcount and credentials was a glaring red flag.

(8) Fidelity Mutual Fund Name Change

360. During the periods in which BLMIS was purportedly out of the market, BLMIS purported to invest in U.S. Treasuries, specifically the Fidelity Spartan U.S. Treasury Money Market Fund (the "Fidelity Fund").

⁴⁸⁷ General partners, focus on daily operations such as trading, modeling, research, risk control, and general fund support. Data from the BarclayHedge Database, between 1975 and 2010, showed that 100% of directors or managers held bachelor's degrees, 61% held master's degrees, 29% held PhDs, 1% held JDs, 8% were Chartered Financial Analyst ("CFA") charterholders, 4% were Certified Public Accountants ("CPA"), and 1% were Financial Risk Managers ("FRM"). Barclay Hedge Database, August 2011.

⁴⁸⁸ SEC Form ADV, Bernard L. Madoff Investment Securities, August 25, 2006 [PUBLIC0003729-762 PUBLIC0704403-404 at -734]. BLMIS listed one-to-five total employees performing investment advisory functions. *See also*, Email from Mark McKeefry to Fitch Ratings, December 7, 2007 [FG-00229539-540 at -539] (FGG sending BLMIS's SEC Form ADV to Fitch).

⁴⁸⁹ For example, Frank DiPascali, Annette Bongiorno, and Jo Ann Sala were high school graduates with no further education. Trial Testimony of Frank DiPascali, *United States v. Bonventre*, et. al, Dec. 2, 2013, 4509:2-5 (10-CR-228_USVBON0004385 at 4405); 4531:9-25 (10-CR-228_USVBON0004385 at 4427) (DiPascali graduated high school in 1974 and attended St. John's University in Queens, New York for one semester before dropping out); Deposition of Annette Bongiorno, May 22, 2019, 16:24-17:4 [08-01789_BOACAC0000001]; Deposition of Jo Ann Sala, April 8, 2019, 13:1-3 [08-01789_SAJCAC0000001].

361. The Fairfield BLMIS Accounts reflected the purported purchase or sale of the Fidelity Spartan U.S. Treasury Money Market Fund (Ticker: FDLXX).⁴⁹⁰ While this fund officially changed its name to Fidelity U.S. Treasury Money Market Fund, effective August 15, 2005,⁴⁹¹ the customer statements for the Fairfield BLMIS Accounts never reflected the name change, and continued to report the historical, incorrect name. This happened on hundreds of statements. Therefore, customer statements for the Fairfield BLMIS Accounts reported securities not available for purchase.

(9) Atypical Frequency of Dividends

362. Dividend payments were an important part of the Fairfield BLMIS Accounts' performance figures, as seen in the Berman reports. During the periods in which BLMIS was purportedly out of the market, BLMIS purported to invest in the Fidelity Fund.⁴⁹² The Fidelity Fund paid dividends once per month, always in the first few days or the last few days of the month.⁴⁹³

363. Typically, money market funds declare dividends daily and pay them monthly.⁴⁹⁴ However, the statements for the Fairfield BLMIS Accounts reflected as many as eight separate Fidelity Fund dividends in a single month.⁴⁹⁵ In the month of September 2005, for example, the customer statements for the Fairfield BLMIS Accounts showed that the account purportedly received four dividends on September 6, September 8, September 9, and September 12.⁴⁹⁶

⁴⁹⁰ See, e.g., January 2007, Customer Statement, 1-FN012-3 [MDPTPP02973419-424 at -420-422].

⁴⁹¹ Supplement to the Spartan U.S. Treasury Money Market Fund, Spartan U.S. Government Money Market Fund, and Spartan Money Market Fund June 29, 2005 Prospectus [PUBLIC0704403-404].

⁴⁹² The customer statements for the Fairfield BLMIS Accounts reflected the purported purchase and sale of the Fidelity Spartan U.S. Treasury Money Market Fund (Ticker: FDLXX). While this fund officially changed its name to Fidelity U.S. Money Market Fund, effective August 15, 2005, the customer statements for the Fairfield BLMIS Accounts never reflected the name change, and continued to report the historical, incorrect name.

⁴⁹³ From 1998 through 2008, all Fidelity Fund dividends were paid either during the first two or last two business days of the month. There were three instances over that time period in which two dividends fell during the same calendar month, but dividends never occurred less than 25 days apart. Bloomberg Market Data.

⁴⁹⁴ <https://www.interactivebrokers.com/prospectus/31607A109.pdf>, page 19 [PUBLIC0704521-552].

⁴⁹⁵ February 2007 Customer Statement, 1G0371-3 [MDPTPP03442946-961 at -946-947, -950, -953, -957].

⁴⁹⁶ September 2005 Customer Statement, 1FN012-3 [MDPTPP02973189-212 at -189, -191, -195, -197].

364. These results can be seen throughout the life of the Fairfield BLMIS Accounts, as shown in **Figure 111**.

Figure 111: Atypical Date and Frequency of Fidelity Fund Monthly Dividends (January 1998 – November 2008)⁴⁹⁷

Time Period	Account	Total Money Market Dividends	Money Market Dividends Paid on Wrong Date	Percent of Money Market Dividends Paid on Wrong Date	Number of Months with 3 or more Money Market Dividends
1/98 – 11/08	1FN012	196	191	97%	23
1/98 – 11/08	1FN045	197	192	97%	23
1/98 – 11/08	1FN069	1	1	100%	0
1/98 – 11/08	1FN070	1	1	100%	0
1/98 – 11/08	1G0092	212	207	98%	27
1/98 – 11/08	1G0371	84	82	98%	14
1/98 – 11/08	All Fairfield BLMIS Accounts	691	674	98%	87

365. As shown above, the customer statements for the Fairfield BLMIS Accounts reflected payments of at least three purported Fidelity Fund dividends in a single month 87 times. Additionally, 98 percent of the purported money market dividends were paid on the wrong date. Purported money market dividend payments reflected on the statements for the Fairfield BLMIS Accounts that did not match the dates, or the frequency of the actual Fidelity Fund dividend payments are evidence that what was reported on customer statements did not occur.

3. Conduct by FGG Management in the Face of 18 Years of Trading Impossibilities and Cumulative Red Flags

366. Once it was confirmed that BLMIS was not trading securities and that it was a fraud, I would have expected FGG to redeem the Sentry Funds' investment with BLMIS. FGG

⁴⁹⁷ StorQM Customer Statements, Settled Cash table. This analysis starts in 1998 based on the availability of market data.

had the duty to protect its investors, particularly from losses or even liability when a fraud eventually collapses. I found nothing in the documents produced to date that indicated that FGG attempted to redeem the Sentry Funds' investment. Instead, I found that throughout FGG's entire relationship with BLMIS, FGG repeatedly hid or made nonsensical excuses for impossibilities and red flags. As an investment manager, there is no legitimate reason for hiding or disregarding that BLMIS was not trading, impossibilities, or red flags. Hiding such facts goes against every tenet of an investment manager's duty to advise and to protect the interests of its investors.

**a) FGG Changed its Description of the Sentry Funds'
Relationship with Madoff over the Years**

367. FGG's description of its relationship with Madoff and BLMIS changed over the years, at times at Madoff's direction. As discussed in more detail in Section VII.B.3.f), Madoff also directed FGG how to describe the SSC strategy and FGG's relationship with Madoff to the SEC.
368. In the Offering Memorandum dated June 30, 1994, and amended multiple times at least through 2000, FGG stated that FGL, which was incorporated in October of 1997, "serves as [Fairfield Sentry's] investment manager,"⁴⁹⁸ yet states that it has "delegated the management of [Fairfield Sentry's] investment activities to Bernard L. Madoff Investment Securities."⁴⁹⁹
369. In the Offering Memorandum for Fairfield Sentry dated July 1, 2000,⁵⁰⁰ FGG states that Fairfield Sentry has "*discretionary account[s]*" at BLMIS and that "[a]ll investment decisions in the account at BLM are effected by persons associated with BLM." In a 2001 letter to clients, FGG described "[t]he Fairfield Sentry Fund [as] a *discretionary cash*

⁴⁹⁸ Fairfield Sentry Limited Information Memorandum, June 30, 1994, as amended January 1, 1999 [BNPSAB0000491-536 at -496-500]. See also FG-00010556-595 (Tucker Exhibit 28).

⁴⁹⁹ Fairfield Sentry Limited Information Memorandum, June 30, 1994, as amended January 1, 1999 [BNPSAB0000491-536 at -500]. ("The manager has delegated all investment management duties to Bernard L. Madoff Investment Securities.").

⁵⁰⁰ Fairfield Sentry Limited Information Memorandum, June 30, 1994, as amended July 1, 2000 [HSBSAE0001159-219] (*emphasis added*).

account at Madoff Securities...”⁵⁰¹

370. In the Private Placement Memoranda for Fairfield Sentry dated January 1, 2002, FGG reiterates that it has established a “*discretionary account*” at BLMIS and Madoff makes the investment decisions in the accounts.⁵⁰² It is further disclosed that because “[t]he Manager has allocated the Fund’s assets to a managed account at Bernard L. Madoff Investment Securities. As a result, the Fund is subject to the judgment, decisions and trading opinions of Bernard L. Madoff Investment Securities and has no control over the decisions implemented by Bernard L. Madoff Investment Securities.”⁵⁰³ The document discloses that the “services of the Manager’s principals and *key employees and Bernard L. Madoff Investment Securities are essential* to the continued operations of the Manager and the Fund. If their services were no longer available, their absence would have an adverse impact upon an investment in the Fund.”⁵⁰⁴
371. But, in the Fairfield Sentry Fund Ltd. (B Shares) DDQ, dated October 13 2002,⁵⁰⁵ FGG changed its characterization of the accounts at BLMIS and execution of the strategy, referring to BLMIS as a “*non-discretionary brokerage account*...who has timing implementation authority for the execution of the strategy.”⁵⁰⁶ It further stated that there were “no sub-advisors on the [SSC] strategy.”⁵⁰⁷

⁵⁰¹ [FGG Letter to Investors in Response to MAR/Hedge Report and Barron’s Article, June 2001 [FG-05133770-771 at -770] (*emphasis added*). FGG’s auditor PwC agreed that BLMIS had discretion. Anwar Deposition of Sylvie Villoria, October 9, 2012, 127:17-129:4 [10-03800_FGG_0018016-117 at -048] (“Q. Someone within the BLMIS organisation actually had to make a judgment, ‘Is the time right to enter the market in order to make money?’ Is that right? A. Yes. Q. And that was a discretionary decision, was it not? A. Well, yes, I agree.”).

⁵⁰² Confidential Private Placement Memorandum, January 1, 2002 [FG-03978789-836 at -799, -805-806].

⁵⁰³ Confidential Private Placement Memorandum, January 1, 2002 [FG-03978789-836 at -805].

⁵⁰⁴ Confidential Private Placement Memorandum, January 1, 2002 [FG-03978789-836 at -805] (*emphasis added*).

⁵⁰⁵ Fairfield Sentry Fund Ltd. (B Shares) ‘DDQ,’ October 13, 2002 [SECSEV0689561-595 at -561, -594].

⁵⁰⁶ Fairfield Sentry Fund Ltd. (B Shares) ‘DDQ,’ October 13, 2002 [SECSEV0689561-595 at -578] (*emphasis added*). (“A fixed set of criteria and investment parameters are in place and a non-discretionary brokerage account is open with Bernard L Madoff Securities who has timing implementation authority for the execution of the strategy.”)

⁵⁰⁷ Fairfield Sentry Fund Ltd. (B Shares) ‘DDQ’ October 13, 2002 [SECSEV0689561-595 at -577-578]. (Q: “Do you use any external investment sub-advisors? If you do, identify them, describe their contribution to your investment process, and describe how their performance and compliance with your investment guidelines are monitored.” A: “No sub-advisors on the split strike conversion strategy which is 95% of the fund, however, the fund may seed new managers with 5% of the funds assets not to exceed \$50 million per manager...”).

372. In the October 2004 Confidential Private Placement Memorandum for Fairfield Sentry,⁵⁰⁸ FGG refers to Fairfield Greenwich (Bermuda) Ltd. as Fairfield Sentry's Funds' investment manager, "responsible for the management of the Fund's investment activities."⁵⁰⁹ Madoff or "BLM" was not disclosed in the document as an investment advisor or as having any decisions or authority over the investments of Fairfield Sentry. Rather, BLMIS is identified, together with other entities, as the "Sub-Custodians" for certain assets.⁵¹⁰
373. In a conference call with Meritz Insurance, Vijayvergiya explained Madoff's role as a sub-custodian, and particularly how FGG and PwC purportedly confirm transactions "back to the DTC."⁵¹¹ I have not seen any documents produced that indicate confirmation with the DTC.

⁵⁰⁸ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -760, -762-763]. ("The Fund seeks to obtain capital appreciation of its assets principally through the utilization of a nontraditional options trading strategy described as 'split strike conversion', to which the Fund allocates the predominant portion of its assets." "The Fund's investment manager is Fairfield Greenwich (Bermuda) Ltd., a corporation organized under the laws of Bermuda ('FGBL' or the 'Manager'), which was incorporated on June 13, 2003. It is responsible for the management of the Fund's investment activities, the selection of the Fund's investments, monitoring its investments and maintaining the relationship between the Fund and its escrow agent, custodian, administrator, registrar and transfer agent." "The Manager, in its sole and exclusive discretion, may allocate a portion of the Fund's assets (never to exceed, in the aggregate, 5% of the Fund's Net Asset Value at the time of investment) to alternative investment opportunities other than its 'split strike conversion' investments (the 'Non-SSC Investments')").

⁵⁰⁹ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -760].

⁵¹⁰ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -768-769].

⁵¹¹ Conference Call Transcription between FGG and Meritz Insurance, July 26, 2007 [MERITZ0000346-354 at -346-347].

Figure 112: Excerpt from July 26, 2007, Conference Call Transcription⁵¹²

Conference Call Transcription

- Conference Date: July 26, 2007 (9:00 am ~ 10:30 am)
- Participants
 - Fairfield Greenwich (Bermuda) Ltd.
 - ① **Amit Vijayvergiya** (Chief Risk Officer)
 - Meritz Insurance
 - ② **Yong Ho Choi** (CIO)
 - ③ **Du Young Cheong** (Head of Investment Department, General Account)
 - ④ **Yong Nam Shin** (Deputy General Manager of Investment Department, Separate Account)
 - ⑤ **Jaehyun Park** (Manager of Investment Department, Separate Account)

When we think about Madoff in so far as housing the assets of the account, I think the important point to stress in terms of that relationship is – although Citco serves as the custodian of the fund – in practice, the Madoff organization will have a custody through the sub-custody appointment of the asset, the split strike conversion, in much like every brokerage account in the States – a very common practice; you will see the asset of the split strike conversion. You know... sub-custodian may open it as trades occur... they... you know... you can trace literally back to DTC. We do this periodically, so does PWC. Asked of the test, nothing is gonna. You'd have a question how do we know for sure that the assets are in fact at Madoff with this number way. Periodically, it will conduct – it'd be - a full check when we go back into the Madoff operations, internal books, and internal records. Pull-up trade... trades... esteemed to display among there... stock on their trade *lotter* (?)... traced back to the stock *risker* (?), and ultimately, trace back through on the *BUSiness*(?) account... said... that they, Madoff, have at DTC. So it's very standard practice, in fact, very common practice in the brokerage world to have exactly sort of setup.

⁵¹² Conference Call Transcription between FGG and Meritz Insurance, July 26, 2007 [MERITZ0000346-354 at - 346-347] (*emphasis added*).

374. In the 2005 Mock Due Diligence Meeting,⁵¹³ FGG again characterized the investments at BLMIS as “***non-discretionary brokerage accounts.***”⁵¹⁴ FGG’s responses to an April 2005 DDQ,⁵¹⁵ uses the same reference to a “***non-discretionary account***” and adds only that the strategy has defined risk and profit parameters.
375. The omission of Madoff as the investment advisor or disclosure of the fact that he made all decisions regarding the strategy and trading are problematic. Based on my experience as an investment advisor, FGG had a duty to the Sentry Funds’ investors to disclose all material information related to the investment with BLMIS; the identity of the person(s) making the investment decision are material.
376. FGG’s characterization of the accounts at BLMIS is likewise disturbing, particularly since FGG was reaping management and performance fees from the investments in the BLMIS accounts. The change from a discretionary account to non-discretionary account reflected the fact that FGG never managed the investments with BLMIS. BLMIS simply presented FGG with parameters of options and parameters of the basket, but FGG had no input into the strategy or trading. At no time during the life of the Sentry Funds did FGG make one change to any position in the Fairfield BLMIS Accounts. Even the deposits of

⁵¹³ FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -613].

⁵¹⁴ FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -619] (*emphasis added*). (Dan Lipton: “You’re the investment manager. So, does this Madoff guy work for you?” Amit Vijayvergiya: “Yes, you’re right. I hadn’t mentioned the main Madoff yet, but that is, in fact, the U.S. broker/dealer that this fund has a relationship with, and has, since the inception of the fund used as, sort of, the executing party. So, we have -- so, it’s not a strict kind of, employer[-]employee relationship. The relationship that the fund and the investment manager have with the organization Bernard L. Madoff Securities, is one -- well, can be described as follows. Let’s say, [a] number of cash accounts have been established and are intact[.] They’re essentially broker’s accounts that had long ago been opened at the Madoff organization. And they’re non-discretionary, a very key point -- non-discretionary built brokerage accounts. And what that means, is that, under these operating guidelines or trading authorizations that I’ve described, there is a limited flexibility to deploy the assets within the brokerage accounts in a manner that conforms to these guidelines. And that limited flexibility relates exclusively in 2 areas. One, with respect to price, and two, with respect to the timing of the entry and the exit decision. So, it’s not an employer-employee relationship with Madoff. It’s essentially a relationship where we have non-discretionary brokerage accounts that we’ve established there.”)

⁵¹⁵ FGG Responses to: Due Diligence Questionnaire (DDQ), CPH Absolute Returns Pty Limited, April 14, 2005 [FG-00180599 -616 at -603]. (Q: “Does the firm or advisor have any relationship which may affect its trading flexibility, e.g. associated broker/dealer?” A: “The Manager has established a non-discretionary account for the Fund at Bernard L Madoff Investment Securities Inc. (sometimes referred to as BLM), a registered broker-dealer in New York, who utilises a strategy described as “split strike conversion,” to which it allocated the predominant portion of the Fund’s assets. This strategy has defined risk and profit parameters, which may be ascertained when a particular position is established.”).

subscriptions had to be approved by Madoff.⁵¹⁶

377. And the air of secrecy regarding BLMIS within the FGG organization does not make sense. The management at FGG had segregated duties and roles with respect to managing the funds, including the Sentry Funds, and was entrusted with carrying out their duties, particularly in light of the management fees they reaped. FGG management and its operations needed – required in my view – to have access to and communications with BLMIS and Madoff. However, internal FGG communications confirm that things related to BLMIS or Madoff specifically had to be run by Tucker before action was taken. That applied to meetings with BLMIS, investor calls, and written correspondence with investors.⁵¹⁷ Even the Chief Risk Officer, Vijayvergiya, had to ask Tucker for access to BLMIS.⁵¹⁸ Tucker, Madoff’s friend, was also his gatekeeper.
378. In 2008, when clients asked for meetings with BLMIS, the suggestion in Vijayvergiya’s notebook was quarterly “meet & greet[s]” with BLMIS, for “20 minutes tops.”⁵¹⁹ The additional suggestion was to “pre-clear clients & ‘train’ them that this [meeting] is **simply to shake hands & verify the office exists.**”⁵²⁰

⁵¹⁶ Email from Jeffrey Tucker to Partners and corresponding email chains, August 20, 2004 [SECSEV2606276]; [SECSEV0694323-324]; [SECSEV0694309]. *See also*, Email from Jeffrey Tucker to Dan Lipton, Mark McKeefry, and “Partners,” Subject: call with Bernie, September 20, 2004 [SECSEV0604147]; Transcript of phone call between Bernard Madoff and Amit Vijayvergiya, McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 at -374-376]; Office-wide email from Tucker, December 20, 2000 [ANWAR-C-ESI-00043480].

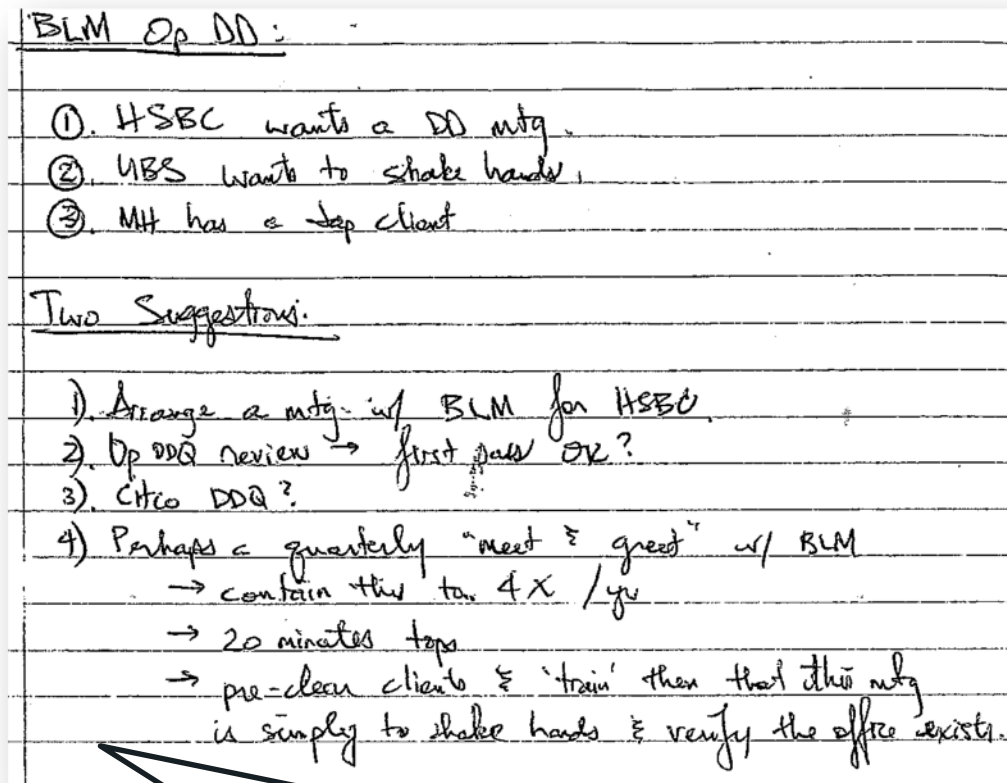
⁵¹⁷ Email from Lipton to Vijayvergiya, re: RE: Fairfield Sentry /Sigma, July 22, 2003 [FG-00123668-671 at -668], (“Whoa! Did you get Jeffrey to sign off on that?”); Email from Vijayvergiya to Tucker, re: BAREP conference call on Thursday February 5th, February 3, 2004 [FG-00132994], (“Am I approved to send Stephane a pdf copy of these documents by email, with the instruction that he only show these documents to the client, allow no copies and ensure that he take all documents back when he leaves?”); Email from Dan Lipton to Rob Blum, Subject: Visit and review of Madoffs operations, November 22, 2002 [FAIRFIELD_00376230], (Lipton: “What do you think? PwC wants to visit Madoff. What has been done in the past?” Rob Blum: “HAH! If by some chance jeffre yis willin [*sic*].”); Emails between Lipton and Vijayvergiya, March 31, 2004 [FG-02724950-954 at -950], (“#1 that’s a Jeffrey question, if you need to call Bernie about refernces [*sic*] for the accountants — he may already have some?”)..

⁵¹⁸ *See, e.g.*, Vijayvergiya’s Notebook, May 2004 - July 2004 [FGG00092531-630 at -605 / SECSEL0000504-603 at -578].

⁵¹⁹ Vijayvergiya’s Notebook, June 2008 – November 2008 [FGG00099197-297 at -248 / SECSEL0002016-116 at -067].

⁵²⁰ Vijayvergiya’s Notebook, June 2008 – November 2008 [FGG00099197-297 at -248 / SECSEL0002016-116 at -067] (*emphasis added*).

Figure 113: Excerpt from Vijayvergiya's Notebook, June 2008 – November 2008⁵²¹



- "4. Perhaps a quarterly 'meet & greet' w/ BLM
- [C]ontain this to 4x / yr
 - 20 minutes tops
 - [P]re-clear clients & 'train' them that this mtg is simply to shake hands & verify the office exists"

379. BLMIS insisted that the Madoff name be removed from all Fairfield materials, and FGG acquiesced.

380. For example, there are multiple internal emails at FGG in June of 2004 detailing a comprehensive removal of BLMIS from various pages on FGG's website, including the strategy page, as well as the terms and conditions.⁵²²

⁵²¹ Vijayvergiya's Notebook, June 2008 – November 2008 [FGG00099197-297 at -248 / SECSEL0002016-116 at -067].

⁵²² Email from Gordon McKenzie to Nancy Ng, RE: Announcing FGG's New Web Site, June 23, 2004 [FGGE000015601-606 at -601 / SECSEV0593124-129 at -124]; Email from Andrew Ludwig to Alla, Subject:

381. As discussed in Section VII.B.3.f), Madoff and FGG held a meeting to prepare for an upcoming SEC interview. To kick off the meeting Madoff told FGG representatives that this call “never took place” and then proceeded to prepare FGG for the interview.⁵²³ This interview ultimately took place on December 21, 2005.⁵²⁴
382. Additionally, Madoff requested that FGG notify him prior to having any contact with regulators regarding Sentry and that FGG “discuss with him first.”⁵²⁵
383. In my experience, there is no business or professional reason for FGG’s acquiescence to Madoff’s requests for anonymity, modifications to disclosures, and limitation on communications with Madoff and BLMIS.
384. In fact, Madoff’s behavior was polar opposite to most of the hedge fund managers I knew during that time period, who were more transparent about their operations and their firm. For example, Millenium allowed me to perform a full operational due diligence, including meeting with them in person and reviewing confidential materials. Likewise, at Citadel, I met with the operations manager, visited different parts of the firm, and reviewed confidential materials.

b) FGG Changed its Description of the BLMIS SSC Strategy Over the Years

385. BLMIS represented that it executed the SSC strategy. However, in the DDQ’s and investor correspondence over the years the Sentry Funds were invested with BLMIS, FGG presented the strategy to others as not only an SSC Strategy, but also a Modified

Edits to Sentry, Sigma, Lambda Strategy pages, June 29, 2004 [FGGE000016805-806 / SECSEV0594328-329]; Email Chain between Vijayvergiya, Lipton, McKeefry, and Andrew Ludwig, RE: Website Terms & Conditions for Sentry, Sigma & Lambda, June 24, 2004 [FGGE000015820-821 / SECSEV0593343-344].

⁵²³ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433]; *see also*, Testimony of Amit Vijayvergiya, May 6, 2009, In the Matter of Bernard L. Madoff Securities, LLC Docket No. E-2008-0087 in the Commonwealth of Massachusetts [SECSEL0002155-511 at -194-200].

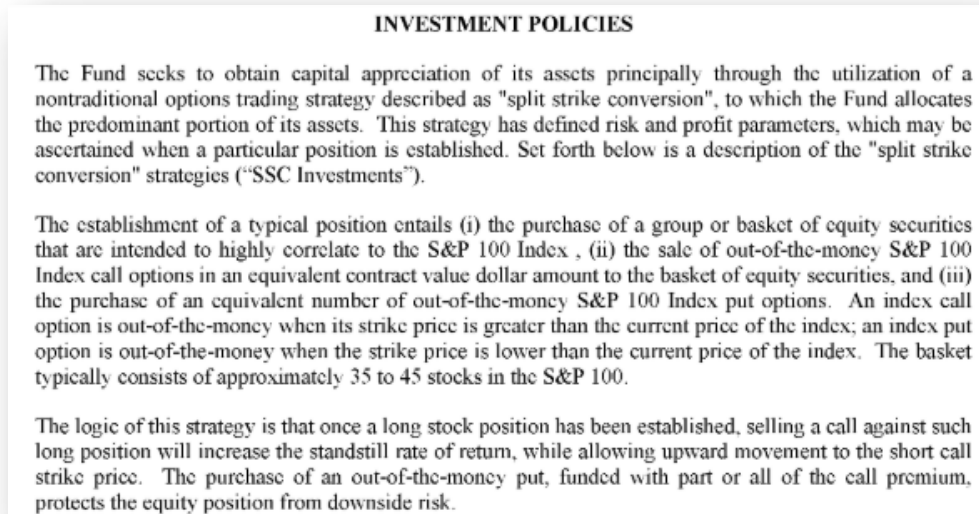
⁵²⁴ FGG Notes from a Conference Call with the SEC, December 21, 2005 [FGG00097822-831 / SECSEV0093963-972].

⁵²⁵ Email from Mark McKeefry to Rob Blum, RE: NASD Series 7 Tests, March 17, 2005 [SECSEV2349068-069 at -068]. (McKeefry “assured [Madoff] of [FGG’s] intention to notify him of any regulatory contacts regarding [S]entry or [FGG’s] ria, and to discuss with him in advance.”).

SSC, a Hedged Strategy, Market-Timing Strategy, or a “Hedged Market Timing Strategy.”⁵²⁶

386. For example, in a July 2003 Confidential Private Placement Memorandum, FGG defined the SSC strategy as follows:

Figure 114: Definition of SSC Strategy per a July 2003 Fairfield Sentry Confidential Private Placement Memorandum⁵²⁷



387. However, in the 2005 Mock Due Diligence Meeting, Vijayvergiya described the SSC strategy as a “market timing strategy” that “profit[s] from those – kind of brief bursts of

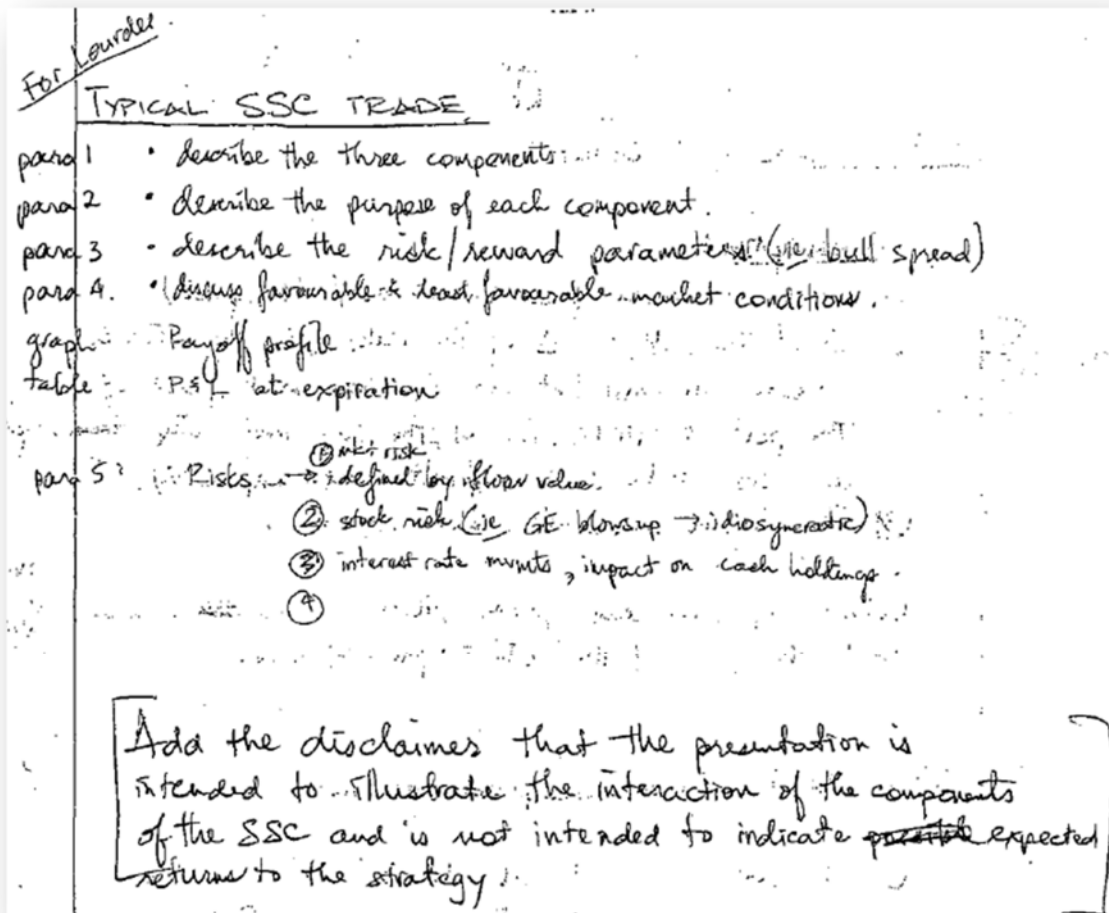
⁵²⁶ See, e.g., Fairfield Sentry PPM, July 2003 [FGGE001560333-400 at -341,-347, -360 / SECSEV2137283-350 at -291, -297, -310]; Fairfield Sentry Tearsheet, June 2006 [FGG00002269-270 at -269 / SECSEV0002239-240 at -239]; FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FGGE001216267-353 at -283-286 / SECSEV1793790-876 at -806-809]; Fairfield Sentry Fund Ltd. (B Shares) ‘DDQ’ October 13, 2002 [FGGE000112038-072 at -053-054 / SECSEV0689561-595 at -576-577]. (Q: “Are the market inefficiencies you exploit present continuously or do they appear sporadically? What market environments favor or hinder the availability of investment opportunities?” A: “The strategy performs best in a market with an upward bias with moderate volatility. The strategy requires modest market volatility for opportunistic implementation in a tactical sense. A relatively unfavorable situation would be a stagnant market with no volatility. Also, extreme downside market leaves little opportunity for success for this strategy.”); FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -614-618, -620, -624-625, -627]; Vijayvergiya’s Notebook, May 2004 – July 2004 [FGG00092531-630 at -627 / SECSEL0000504-603 at -600] and Vijayvergiya’s Notebook, July 2004 - September 2004 [FGG00092631-731 at -647 / SECSEL0000403-503 at -419] (referring to Sentry and SSC as “H. E.” and “Hedged Equity.”); Fairfield Investment Fund, LTD. 2004 Investment Outlook, December 4, 2003 [FG-00679322-327 at -325], (“Hedged Market Timing”).

⁵²⁷ Fairfield Sentry PPM, July 2003 [FGGE001560333-400 at -347 / SECSEV2137283-350 at -297].

momentum or upward moves in large cap U.S. equities.”⁵²⁸ Also, a FGG presentation to Union Bancaire Privée in January of 2007 described this strategy as a “Bull-Spread” position.⁵²⁹

388. As noted in **Figure 12** above and **Figure 115** below, Vijayvergiya’s notebook contained various excerpts detailing the SSC strategy:

Figure 115: Excerpt from Vijayvergiya’s Notebook, December 2003 – April 2004⁵³⁰



⁵²⁸ FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -614-615].

⁵²⁹ FGG Firm Profile and Capabilities, Presentation to Union Bancaire Privée, January 16, 2007 [FG-01928201-287 at -219]. See also, [FGGE001216267-353 at -285 / SECSEV1793790-876 at -808].

⁵³⁰ Vijayvergiya’s Notebook, December 2003 - April 2004 [FGG00092432-530 at -434 / SECSEL0000001-099 at -003].

389. Inconsistent with the descriptions and notes above referring to the SSC strategy as a “bull-spread,” Gil Berman testified that the SSC strategy was.⁵³¹

“[B]uying either an underlying stock, collection of stocks or index, and hedging by selling an out-of-the-money call and buying an out-of-the-money put so that essentially there’s profits and losses within a specified range.”

390. None of these descriptions of the SSC strategy explain the impossible returns.

c) FGG’s Misrepresentation of the Services Performed by Citco

391. FGG retained Citco to act as the “custodian” for Fairfield Sentry, Fairfield Lambda, and Fairfield Sigma.⁵³² Citco is a well-known and recognized fund administrator incorporated in 1948, offering custodian services in addition to other services, including accounting and operations, financial reporting, and portfolio analytics.⁵³³ Under the Investment Advisers Act of 1940, a custodian maintains the funds and securities of an investor in a separate account and is required to annually verify the existence of the funds and securities “by actual examination.”⁵³⁴
392. FGG repeatedly marketed to investors and potential investors its retention of Citco as custodian of the securities purportedly purchased for the Fairfield BLMIS Accounts. At points between 1993 and 2006, Sentry Information Memoranda and PPMs listed Citco as

⁵³¹ Deposition of Gil Berman, July 1, 2024, 27:6-13, [10-03800_09-01239_BERCAA0000001-145 at -027] (“Berman Dep., 7/1/24”).

⁵³² Rule 30(b)(6) Deposition of Mark McKeefry, February 7, 2025 [10-03800_09-01239_MCKCAB0000001-222], (“McKeefry Dep. 2/7/25”); FGG 30(b)(6), Brokerage and Custody Agreement between CITCO BANK NEDERLAND N.V. and CITCO GLOBAL CUSTODY N.V. together and Fairfield Sentry Limited, September 20, 1994, McKeefry Dep., 2/7/25, Ex.11 [ANWAR-CBND-00059618-706 at -686-687]; FGG 30(b)(6) Brokerage and Custody Agreement between Citco and Fairfield Sentry Limited, July 17, 2003, McKeefry Dep. 2/7/25, Ex. 14 [ANWAR-CCI-00098825-847]; FGG 30(b)(6) Custodian Agreement between Citco and Fairfield Sentry Limited, July 3, 2006, McKeefry Dep. 2/7/25, Ex. 15 [10-03800_FGG_0002767-784]; Brokerage and Custody Agreement between Citco and Fairfield Sigma Limited, August 12, 2003 [ANWAR-CBND-00059055-077]; Brokerage and Custody Agreement between Citco and Fairfield Lambda Limited, October 25, 2002 [FG-05907335-357].

⁵³³ See <https://www.citco.com/our-story> [PUBLIC0706371]; <https://www.citco.com/our-services/fund-administration> [PUBLIC0706364]; <https://www.citco.com/our-services/banking/custody> [PUBLIC0706361].

⁵³⁴ See Cornell Law School Website: Rules And Regulations, Investment Advisers Act of 1940, 17 CFR § 275.206(4)-2 - Custody of funds or securities of clients by investment advisers [PUBLIC0706346].

custodian and later as custodian with BLMIS as subcustodian.⁵³⁵

393. FGG also fielded many investor inquiries regarding the custody of assets invested in the SSC strategy, with some declining to invest due to the lack “of independence between the true manager of the fund and the prime broker/Custodian of the fund” with FGG noting “at least their reason” to not invest “was a good one.”⁵³⁶
394. Despite Citco being listed as the custodian, Citco was never custodian of the securities purportedly purchased by BLMIS. Citco acknowledged the misrepresentations made in the offering documents, raising the issue to FGG that the PPMs did not accurately disclose the custody arrangement.⁵³⁷ Citco internally discussed their concerns about the Fairfield BLMIS Accounts and the lack of asset verification by Citco, stating: “My intuition tells me that this is wrong” and “that it is very worrisome that Citco has been

⁵³⁵ Fairfield Sentry Limited Subscription Documents, April 20, 1993 [AAMSAA0000502-512 at -511]; Fairfield Sentry Information Memorandum, January 2, 1996 [EFGCAP-00004840-911 at -854] (Identifying Citco as custodian and BLMIS as sub-custodian); Fairfield Sentry Information Memorandum Limited, February 28, 1997 [09-01161_TGH_0415377-467 at -447] (same); Fairfield Sentry Limited Information Memorandum, January 1, 1998 [FAIRFIELD_00368392-426 at -405] (same); Fairfield Sentry Limited Information Memorandum, January 1, 1999 [ANWAR-CFSE-00384172-227 at -186] (same); Fairfield Sentry Limited Information Memorandum, July 1, 2000 [ANWAR-C-ESI-00134388-426 at -403] (same); Confidential Private Placement Memorandum Fairfield Sentry Limited, January 1, 2002 [FG-03978789-836 at -804] (same); Confidential Private Placement Memorandum Fairfield Sentry Limited, June 15, 2002 [FAIRFIELD_01675947-998 at -962] (same); Confidential Private Placement Memorandum Fairfield Sentry Limited, July 1, 2002 [FG-05132917-969 at -932] (same); Confidential Private Placement Memorandum Fairfield Sentry Limited, October 1, 2002 [FAIRFIELD_01838022-080 at -038] (same); Confidential Private Placement Memorandum Fairfield Sentry Limited, February 1, 2003 [FAIRFIELD_01620694-870 at -710] (same); Confidential Private Placement Memorandum Fairfield Sentry Limited, July 1, 2003 [FAIRFIELD_01675807-874 at -827] (same); Confidential Private Placement Memorandum Fairfield Sentry Limited, October 1, 2004 [FGGE001771798-866 at -818-819 / SECSEV2348748-816 at -768-769] (same); Private Placement Memorandum Fairfield Sentry Limited, May 8, 2006 [FAIRFIELD_00246541-610 at -563] (same); Private Placement Memorandum Fairfield Sentry Limited, August 14, 2006 [FAIRFIELD_00025861-921 at -883] (same). While the latter Sentry PPMs identified BLMIS as the sub-custodian, the Lambda PPMs never identified BLMIS as sub-custodian. See [FAIRFIELD_00531864-907], (January 1, 1998 Lambda PPM); [FAIRFIELD_01693019-084], (July 1, 2003 Lambda PPM); [FAIRFIELD_00023853-916], (October 1, 2004 Lambda PPM).

⁵³⁶ Email from Kim Perry to Jeffrey Tucker, et al., Re: Fairfield Sentry, February 1, 2005, [SECSEV0740181]. *See also*, Email from Vijayvergiya to Richard Landsberger and Disha Attavar Re: Detailed Questions from Meritz about Fairfield Sentry, June 24, 2007 [FG-00006400-401 at -401]; Email from Vijayvergiya to Tucker Re: Madoff questions, August 27, 2003 [SECSEV0671922-923 at -922]; Lourdes Barreneche meeting notes, June 5, 2006 [SECSEV2352860-861 at -860] (“We do anticipate ‘challenge’ questions on transparency and custody issues”).

⁵³⁷ *See, e.g.*, Anwar Deposition of Christoffel Smeets, June 20, 2013, 226:6-231:12 [10-03800 FGG 0007261-388] (“Smeets Anwar Dep., 6/20/13”); Deposition of William Keunen, December 21, 2012, Exhibit 19 [10-03800_FGG_0003652]; Deposition of William DeRosa, February 7, 2013, Exhibit 8 [10-03800_FGG_0001644-665 at -646].

exposed for so long to such a high risk exposure.”⁵³⁸

395. As an investment manager, I would expect the PPMs to accurately reflect reality – that BLMIS was at all times the sole custodian of the securities purportedly purchased for the Fairfield BLMIS Accounts. And, once notified by Citco of the error, the PPMs should have been immediately revised to accurately represent that BLMIS was the only custodian for the Fairfield BLMIS Accounts. Instead, the contemporaneous documentation and information show that FGG took steps to maintain the appearance of Citco’s involvement. These included FGG executing a Waiver and Indemnity Agreement in April 1995, wherein FGG agreed to indemnify Citco Global Custody N.V. and Citco Bank Nederland N.V., defined as “Custodian” and “Bank,” respectively, for any damages arising out of the appointment of and performance by BLMIS as a “Subcustodian” including acts, omissions, shortcomings, negligence, bankruptcy, or insolvency.⁵³⁹ Knowing that a custodian is indemnified against any action done by a subcustodian shifts the risk of the investment back to FGG.
396. And, in May 2006, FGG agreed to Citco’s requested fee increase of 1 basis point of net assets, effective June 2006, which increased Citco’s fees by 4 to 5 times. This was an exorbitant increase. Citco itself expressed that it “can’t imagine that [FGG] will want to pay bps given the function perform[ed] for Sentry.”⁵⁴⁰ Prior to this increase, Citco acknowledged that it “was really not performing any real function,” and recommended that it be allowed to step down “to be replaced by Madoff.” FGG asked Citco to stay on

⁵³⁸ Anwar Deposition of Ger Jan (Folger) Meijer, December 6, 2012, Ex. 5 [10-03800_FGG_0005688-693]; Anwar Deposition of Arno Boelaars, April 11, 2013, Ex. 6 [10-03800_FGG_0000184-199 at -185]. Concerns regarding BLMIS were raised with FGG. *See, e.g.*, Deposition of Albert Van Nijen, November 8, 2012, Ex. 4 [10-03800_FGG_0008651-660 at -655] (October 2002 internal email chain stating Lipton told Citco Lipton would try to get “independent information relating to the positions assumed by Madoff”); Deposition of Michel Van Zanten, June 13, 2013, Ex. 5 [10-03800_FGG_0009003- at-004] (noting that meeting was to discuss “further possibilities of improvement for managing the money of [Fairfield Sentry] in view of asset protection, independency and verification procedures).

⁵³⁹ Waiver & Indemnity Agreement between Citco and FGG, April 20, 1995 [ANWAR-CBND-00060493-536 at -497-499]; Citco Custodial Services Agreement, September 20, 1994 [ANWAR-CGC-00000021-028 at -024-025]. FGG 30(b)(6) McKeefry Dep., 2/7/25, Ex. 13 [ANWAR-CBND-00059618-706 at -681-682].

⁵⁴⁰ Smeets Anwar Dep., 6/20/13, Exhibit 25 [10-03800_FGG_0007625-627] (“Regarding the fees, Citco Bank used to get peanuts (\$50-60K a year if I remember correctly),” “On Sentry CB receives a \$35,000 fixed fee plus \$25 per trade ticket which comes to about \$100,000 to \$125,000 in total CBN per annum.”); Smeets Anwar Dep., 6/20/13, Exhibit 26 [10-03800_FGG_0007628] (“Current NAs approx \$5bn, i.e. fees of \$500k.”).

because of Citco's reputation and because FGG "prefer[red] not to have to explain any new structure/arrangements."⁵⁴¹

397. In my experience, material changes to a fund are communicated to investors and prospective investors. If Citco was not performing the duties of a custodian, the representation should have been immediately corrected. There is no legitimate reason to maintain the misrepresentation, years after Citco first pointed it out.⁵⁴² There is also no legitimate reason for an investment manager to agree to an exorbitant increase in fees and to provide the waiver and indemnification to allow the fund to continue to represent that Citco was the custodian when it clearly was not. Lying or lying by maintaining a representation that is known to be false in governmental or regulatory disclosures or to investors is the antithesis of the regulatory obligations and fiduciary duty of an investment manager.
398. Additionally, I was surprised by FGG's efforts to shield Madoff and BLMIS from Citco's scrutiny. In response to Citco's internal auditor's concerns about the inability to verify assets and other red flags, Citco participated in a meeting with FGG and BLMIS in May 2000.⁵⁴³ Before that meeting, Tucker coached Citco to ask questions of Madoff "in a polite manner and non-offensive approach," because it was "imperative" not to harm FGG's relationship with BLMIS.⁵⁴⁴
399. Citco's attempt to conduct due diligence on or raise due diligence concerns about BLMIS was not supported by FGG. In 2008, when Citco asked for an updated BLMIS DDQ, and to "liaise directly" with BLMIS, not only did FGG not send the DDQ to BLMIS, FGG limited its responses to "only include information that Citco is likely to already know

⁵⁴¹ FGG 30(b)(6) McKeefry Dep., 2/7/25, Ex. 16 [10-03800_FGG_0003696-97].

⁵⁴² *See, e.g.*, Smeets Anwar Dep., 6/20/13, 226:6-231:12. ("Q. There were issues which were being discussed for four years at this point which were raised initially by Mr. Meyer regarding the lack of independent evidence of the existence of the assets in the Fairfield Sentry fund, correct? A. Yes. Q. As of 2004, Citco never obtained such independent evidence, correct? A. Correct.").

⁵⁴³ Anwar Deposition of Michel Van Zanten, June 13, 2013, [10-03800_FGG_0008884-964] ("Zanten Anwar Dep., 6/13/13"); Anwar Deposition of Ermanno Unternaehrer, January 17, 2013, Ex. 1, [10-03800_FGG_0008364-375].

⁵⁴⁴ Zanten Anwar Dep., 6/13/13, 28:7-29:1, Ex. 5 [10-03800_FGG_0009003-008 at -005] (report by Van Zanten of May 2000 meeting with BLMIS in which he notes that for Tucker it is "imperative to not damage the relationship in any way, since that could damage [FGG's] relationship as well.").

based on their previous DD questionnaire last year.”⁵⁴⁵ In 2002, Citco advised FGG that they were “shocked” by the Barron’s article (discussed below) and asked FGG for verification of the assets of the Fairfield BLMIS Accounts.⁵⁴⁶ Citco stated that it was not aware of FGG ever doing so.⁵⁴⁷ In 2003, after an internal audit, Citco recommended to FGG that PWC should do an audit of BLMIS. FGG said, however, they did not want to “badger” Madoff.”⁵⁴⁸

400. In my experience, there is no legitimate reason to decline implementation of an audit of assets. A legitimate investment manager (such as FGG) should not hesitate to conduct due diligence, should not stall due diligence, and should not hinder or obstruct due diligence on billions of dollars of investor money with BLMIS. A legitimate investment advisor should not feel badgered by an investment manager or its administrator wanting to conduct due diligence; that is standard in the financial industry.

d) The MARHedge and Barron’s Publications

401. FGG management’s reaction to industry criticism of Madoff was contrary to all tenets of proper due diligence and risk management. As discussed in Section VII.A.3, industry concerns require investment managers and due diligence professionals to investigate those concerns.

⁵⁴⁵ Email from Vijayvergiya to McKeefry, RE: 2008 Due Diligence- Bernard L. Madoff, November 27, 2008 [FG-00005723-732 at -723, -728]; *see also* emails between FGG and Citco regarding 2008 due diligence, which span from February 29, 2008, to December 8, 2008 [FG-04020472-479].

⁵⁴⁶ Email from Ger-Jan Meyer to Albert van Nijen, Nijen Anwar Dep., 11/8/12, Ex. 5 [10-03800_FGG_0008661-674 at -667-668], Email from Albert van Nijen to Ger-Jan Meyer and Jos Leppers, October 24, 2002, Nijen Anwar Dep., 11/8/12, Ex. 4 [10-03800_FGG_0008651-660 at -655]; *See, e.g.*, Anwar Deposition of Folgert Meijer, May 9, 2013, Ex. 25 [10-03800_FGG_0005902-911 at -902-905]; Anwar Deposition of Folgert Meijer, May 9, 2013, Volume II, 238:2-240:4 [10-03800_FGG_0005565-665]; Anwar Deposition of Ermanno Unternaehrer, January 17, 2013, 274:7-13, (testifying that the “doubts” Citco’s internal audit raised were communicated to Fairfield and PwC); Anwar Deposition of Michel Van Zanten, June 13, 2013, Ex. 15 [10-03800_FGG_0009082-083], 162:15-165:7 (noting “there was a discussion with where Rob [Blum] will take responsibility and take time to talk to Jeffrey [Tucker] on the possibility to have PWC check some positions at Madoff to check proof of existence of some or all portfolio items.”).

⁵⁴⁷ Smeets Tr. at 188:15-189:6 (Q. You don't know if anyone ever directly asked, are they independently confirming the existence of the assets? A. Correct); Nijen Anwar Dep., 11/8/12, Ex. 4 [10-03800_FGG_0008651-660 at -655], (October 2002 internal email chain stating Lipton told Citco Lipton would try to get “independent information relating to the positions assumed by Madoff”).

⁵⁴⁸ Smeets Anwar Dep., 6/20/13, 237:6-238:14 (testifying that Fairfield’s response to Citco’s request was that “they didn’t want to badger Mr. Madoff”).

402. In 2001, both MARHedge and Barron's, financial industry publications, published articles raising concerns regarding BLMIS, particularly regarding how Madoff was achieving his returns using a market-correlative strategy.⁵⁴⁹ The MARHedge article, *Madoff tops charts; skeptics ask how*,⁵⁵⁰ specifically singled out Fairfield Sentry as the "best performing fund for the period on a risk-adjusted basis" of the 42 hedge funds listed on the "Zurich database" that reported performance for the same historical period, from 1989 to 2001, and top one or two of the 1,100 funds based on AUM. The article reported that throughout the industry there was "amazement, fascination, and curiosity" about "the relative complete lack of volatility in the reported monthly returns."⁵⁵¹ The article noted that those in the industry also "marvel[ed] at the seemingly astonishing ability to time the market and move to cash in the underlying securities before market conditions turn negative; and the related ability to buy and sell the underlying stocks without noticeably affecting the market."⁵⁵² In particular, many in the industry questioned how the consistently low volatility returns could be achieved for so long.⁵⁵³
403. The Barron's article, *Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum*,⁵⁵⁴ highlighted doubt within the industry that Madoff's returns could be based on the split-strike conversion strategy. It noted that "option strategists for major investment banks... couldn't understand how Madoff churns out such numbers."⁵⁵⁵ The article also quoted a "former Madoff investor" who commented, "[a]nybody who's a seasoned hedge-fund investor knows the split-strike conversion is not the whole story. To

⁵⁴⁹ Michael Ocrant, *Madoff tops charts; skeptics ask how*, MAR/Hedge (RIP) No. 89, May 2001 [PUBLIC0018782-786]; Erin E. Arvedlund, *Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum*, Barron's, May 7, 2001 [PUBLIC0018779-781].

⁵⁵⁰ Michael Ocrant, *Madoff tops charts; skeptics ask how*, MAR/Hedge (RIP) No. 89, May 2001 [PUBLIC0018782-786 at -782-783].

⁵⁵¹ Michael Ocrant, *Madoff tops charts; skeptics ask how*, MAR/Hedge (RIP) No. 89, May 2001 [PUBLIC0018782-786 at -783].

⁵⁵² Michael Ocrant, *Madoff tops charts; skeptics ask how*, MAR/Hedge (RIP) No. 89, May 2001 [PUBLIC0018782-786 at -783-784].

⁵⁵³ Michael Ocrant, *Madoff tops charts; skeptics ask how*, MAR/Hedge (RIP) No. 89, May 2001 [PUBLIC0018782-786 at -786].

⁵⁵⁴ Erin E. Arvedlund, *Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum*, Barron's, May 7, 2001 [PUBLIC0018779-781].

⁵⁵⁵ Erin E. Arvedlund, *Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum*, Barron's, May 7, 2001 [PUBLIC0018779-781 at -780].

take it at face value is a bit naïve.”⁵⁵⁶

404. Another investor commented, that “[e]ven knowledgeable people can’t really tell you what he’s doing... People who have all the trade confirmations and statements still can’t define it very well.”⁵⁵⁷ Still another investor said, that “[w]hat Madoff told us was, ‘if you invest with me, you must never tell anyone that you’re invested with me. It’s no one’s business what goes on here.’”⁵⁵⁸ The investor added, “[w]hen [Madoff] couldn’t explain how they were up or down in a particular month, I pulled the money out.”⁵⁵⁹
405. The Barron’s article pointed out Fairfield Sentry’s remarkable returns using the SSC; the fund “had only four down months since inception in 1989. In 1990, Fairfield Sentry was up 27%. In the ensuing decade, it returned no less than 11% in any year, and sometimes as high as 18%. Last year, Fairfield Sentry returned 11.55% and so far in 2001, the fund is up 3.52%.”⁵⁶⁰
406. Tucker was quoted in the Barrons article, simply stating that Fairfield was “a private fund. And so, our inclination has been not to discuss its returns . . . Why Barron’s would have any interest in this fund I don’t know.”⁵⁶¹
407. Tucker testified that soon after the articles were published, Madoff reached out to him and asked whether the articles had prompted concerns among FGG clients. Tucker testified that he responded to Madoff that his major concern, in light of the articles, was whether “the assets were there.”⁵⁶² Tucker represented that in response to expressing this

⁵⁵⁶ Erin E. Arvedlund, *Don’t Ask, Don’t Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum*, Barron’s, May 7, 2001 [PUBLIC0018779-781 at -780].

⁵⁵⁷ Erin E. Arvedlund, *Don’t Ask, Don’t Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum*, Barron’s, May 7, 2001 [PUBLIC0018779-781 at -780].

⁵⁵⁸ Erin E. Arvedlund, *Don’t Ask, Don’t Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum*, Barron’s, May 7, 2001 [PUBLIC0018779-781 at -780].

⁵⁵⁹ Erin E. Arvedlund, *Don’t Ask, Don’t Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum*, Barron’s, May 7, 2001 [PUBLIC0018779-781 at -780].

⁵⁶⁰ Erin E. Arvedlund, *Don’t Ask, Don’t Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum*, Barron’s, May 7, 2001 [PUBLIC0018779-781 at -780].

⁵⁶¹ Erin E. Arvedlund, *Don’t Ask, Don’t Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum*, Barron’s, May 7, 2001 [PUBLIC0018779-781 at -780].

⁵⁶² MSD Deposition of Jefferey Tucker, March 12, 2009, 97:8-99-100:4 [FGG00105666-958 at -762-765 / SECSEL0002968-260 at -064-065] (“Tucker MSD Dep., 3/12/09”); Anwar Deposition of Jeffrey Tucker (Part 1), June 27, 2013, 110:2-116:5 [FG-00010732-843 at -760-761] (“Tucker Anwar Dep., 6/27/13”).

concern, Madoff invited him to his office that same afternoon.⁵⁶³ Tucker also testified that the Barron's article provided reason for FGG to visit Madoff and "eyeball some of the records."⁵⁶⁴ This is peculiar because neither of the articles raised this issue.

408. In June 2001, FGG sent a letter to all of their clients,⁵⁶⁵ to "clarify some of the representations and innuendo contained within these articles, particularly related to the important issue of transparency."⁵⁶⁶

409. The letter to investors continued that FGG had an "uncommonly high degree of transparency with respect to the activities of the fund,"⁵⁶⁷ namely, "the Fund receives all trade confirmations in accordance with accepted practice and regulatory requirements. No less frequently than monthly we aggregate the confirmations, check them to insure trade execution is within that day's trading range, and compose a performance attribution for the period."⁵⁶⁸ The other industry concerns raised in the articles were not addressed at all in FGG's letter.⁵⁶⁹

410. The concerns raised in the articles were significant red flags that FGG had acknowledged: extraordinary performance (Section VII.B.2.b)(5)), correlation to the S&P

⁵⁶³ Tucker MSD Dep., 3/12/09, 97:8-99-100:4; Tucker Anwar Dep., 6/27/13, 110:2-116:5.

⁵⁶⁴ SEC Deposition of Jeffery Tucker, January 30, 2006, 38:18-40:8 [FG-00010108-211 at -142-143] (Tucker SEC Dep. 1/30/06"). Tucker's later testimony offers different time periods for the meeting but confirmed that it happened.

⁵⁶⁵ FGG Letter to Investors in Response to MAR/Hedge Report and Barron's Article, June 2001 [FGGE000799304-305 / SECSEV1376827-828]; *see also* FGG Letter to Investors in Response to MAR/Hedge Report and Barron's Article, June 2001 [FG-05133770-771].

⁵⁶⁶ FGG Letter to Investors in Response to MAR/Hedge Report and Barron's Article, June 2001 [FGGE000799304-305 / SECSEV1376827-828 at -827]; *see also* FGG Letter to Investors in Response to MAR/Hedge Report and Barron's Article, June 2001 [FG-05133770-771 at -770].

⁵⁶⁷ FGG Letter to Investors in Response to MAR/Hedge Report and Barron's Article, June 2001 [FGGE000799304-305 / SECSEV1376827-828 at -827]; *see also* FGG Letter to Investors in Response to MAR/Hedge Report and Barron's Article, June 2001 [FG-05133770-771 at -770].

⁵⁶⁸ FGG Letter to Investors in Response to MAR/Hedge Report and Barron's Article, June 2001 [FGGE000799304-305 / SECSEV1376827-828 at -827]; *see also* FGG Letter to Investors in Response to MAR/Hedge Report and Barron's Article, June 2001 [FG-05133770-771 at -770].

⁵⁶⁹ FGG Letter to Investors in Response to MAR/Hedge Report and Barron's Article, June 2001 [FGGE000799304-305 / SECSEV1376827-828 at -828]; *see also* FGG Letter to Investors in Response to MAR/Hedge Report and Barron's Article, June 2001 [FG-05133770-771 at -771]. ("There were other issues raised in these articles. Rather than discuss some of these smaller issues or inferences, we would simply like to use this occasion to say how privileged we are to have been associated with the professionals at Madoff Securities since 1989 and believe our investors are similarly privileged. We are always too happy to discuss these and other issues with our investors or their representatives.").

(Section VII.B.2.b)(7)), consistency of returns (Section VII.B.2.b)(8)), and lack of volatility (Section VII.B.2.c)(3)).

e) FGG's Misrepresentations to the ISE

411. FGG made misrepresentations of BLMIS's role to the Irish Stock Exchange ("ISE").
412. Fairfield Sentry had been listed on the ISE since 1995.⁵⁷⁰ In 2004, Citco raised concerns about Madoff's conflicting roles, in light of the ISE listing requirement that prohibited an entity with investment discretion over fund assets (such as a fund's investment advisor or manager) from also acting as the fund's custodian.⁵⁷¹ Citco requested that FGG confirm with ISE that Sentry was still eligible to be listed.⁵⁷² In response, FGG provided information concerning BLMIS's role to FGG's attorney, Kilroys Solicitors in Dublin, which passed along that information to the ISE in two written submissions.⁵⁷³ With information from FGG, the ISE concluded that "the broker could not be deemed to have investment discretion in this case, on the basis of the information provided."⁵⁷⁴ FGG then emailed Citco stating that "[t]he ISE's response should provide Citco comfort that the broker's acting as a sub-custodian to the fund does not offend ISE rules in this

⁵⁷⁰ Confidential Private Placement Memorandum, July 1, 2002 [10-03800_FGG_0000727-779 at -733, -739 / PWC_NL_ANWAR_001842-894 at -848, -854]. *See also*, McKeefry Anwar Dep., 6/19/13, 55:21-25. ("The fund had been listed at this point for ten years on the Irish Stock Exchange.") McKeefry's response was based on an email chain dated November 29, 2004: McKeefry Anwar Dep., 6/19/13, Ex. 6 [FG-00005665-684].

⁵⁷¹ Email from Renger Boonstra to Dan Lipton, RE: "Sentry custoday/PPM comments," November 2, 2004 [FG-00005662-664 at -662-663]. *See also*, Irish Stock Exchange Listing Requirements and Procedures for Investment Fund [ANWAR-C-ESI-00517835-958 at -853]. (Condition 2.38 – Broker "The directors or custodian or investment manager to an applicant, or the applicant itself, shall require any broker (except where 7.6 applies) which holds assets of the applicant, other than margin deposits, to segregate those assets, either in segregated customer or omnibus client accounts, and separately identify them as belonging to the applicant or the custodian as nominee or fiduciary for the applicant, in order to ensure that such assets are unavailable to the creditors of the broker or any other entity."). *See also*, Email chain between Mark McKeefry, Dan Litpon, Renger Boonstra, and Nicholas Braham, November 29, 2004 [FG-00005685- at -685].

⁵⁷² Citco email chain, January 28, 2005 - February 1, 2005 [ANWAR-C-ESI-00629857-858]. *See also*, Email from Hilary Griffey to Mark McKeefry, December 3, 2004 [10-03800_FGG_0003680-681 / ANWAR-C-ESI-00452503-504].

⁵⁷³ Memo from Hilary Griffey, Kilroys Solicitors, to Roseanne Kelly, ISE, July 29, 2005 [ANWAR-C-ESI-00572376-379]; Memo from Hilary Griffey, Kilroys Solicitors, to Roseanne Kelly, ISE, July 25, 2005 [FG-00005685-693 at -691-693].

⁵⁷⁴ Email from ISE to Kilroys, Subject: what constitutes investment discretion, August 16, 2005 [FG-00005685-693 at -685-686].

instance.”⁵⁷⁵

413. Although Citco was the custodian of record for the Sentry Funds, BLMIS retained all assets in the Fairfield BLMIS Accounts.⁵⁷⁶ Citco’s name created the impression of an independent custodian to meet the requirement for ISE listing.⁵⁷⁷ In 2006, after the ISE determined BLMIS did not have investment discretion and therefore could serve as sub-custodian for the Sentry Funds, Citco asked if it could step down as custodian and be replaced by BLMIS, given that BLMIS was already serving as sub-custodian and “[Citco] in its capacity as Custodian was really not performing any real function.”⁵⁷⁸ FGG urged Citco to remain, noting the ISE was more familiar with them as opposed to Madoff, and because they were raising additional capital from European investors and did not want to explain any new changes.⁵⁷⁹
414. In FGG’s second memo to the ISE,⁵⁸⁰ FGG’s counsel made the following representations:

We act as advisers to an international business Company organised under the Laws of the British Virgin Islands (the “Fund”) and refer to previous correspondence in relation to this matter namely our letter to you of 25th February 2005. Following

⁵⁷⁵ Email from Mark McKeefry to Nicholas Braham and William Keunen, FW: ISE Submission - investment discretion, August 21, 2005 [FG-00005685-693 at -685-686].

⁵⁷⁶ Smeets Anwar Dep., 6/20/13 226:6-231:12.

⁵⁷⁷ Irish Stock Exchange Listing Requirements and Procedures for Investment Fund, [ANWAR-C-ESI-00517835-at -852] (Condition 2.28 – Custodian: “[a]n applicant must have a custodian/s which is/are charged with responsibility for the safekeeping and custody (‘custody’) of the assets of the applicant and for compliance with the specific requirements outlined in 2.29-2.38. Any such custodian must be a separate legal entity to the investment manager and any investment adviser. It is permissible that the aforementioned service providers be affiliated companies.”). Email from Tony Stocks to Ruud Bodewes and other Citco employees, October 3, 2000 Anwar Deposition of Arno Boelaars, April 11, 2013, Ex. 1 [10-03800_FGG_0000101-102 at -101], (email explaining the history of Citco & FGG’s relationship: “Historically this situation arises from the Fairfield Sentry listing on the Irish Stock Exchange, which required an independent custodian. CBN was chosen, and in turn uses Madoff as sub-custodian.”); Anwar Deposition of Nicholas Braham, May 24, 2013, 247:4-7, 248:2-4 [10-03800_FGG_0000403-518 at -465], (“Q. During that time, did you learn why Citco remained as a custodian when, essentially, it had delegated all of its duties to Madoff?” “A. I believe that the reason Citco became the custodian was to do with the Irish Stock Exchange listing.”).

⁵⁷⁸ Email from William Keunen to Nicholas Braham and other Citco employees, Smeets Anwar Dep., 6/20/13, Ex. 25 [10-03800_FGG_0007625-627 at -626].

⁵⁷⁹ Email from William Keunen to Nicholas Braham and other Citco employees, Smeets Anwar Dep., 6/20/13, Ex. 25 [10-03800_FGG_0007625-627 at -626].

⁵⁸⁰ Memo from Hilary Griffey, Kilroys Solicitors, to Roseanne Kelly, ISE, July 29, 2005 [ANWAR-C-ESI-00572376-379 at -376].

discussions with Gerry Sugrue we understand that the Exchange is seeking further clarification on the issue of investment discretion and in particular information on the Fund's investment policy and strategy.

In relation to this latter point please now find attached a redacted extract from the Fund's Offering Memorandum setting out the investment strategy.

The Fund has established a non-discretionary brokerage account with the Broker (the "Account") in order to utilise a trading program described as "split strike conversion" (the "Trading Program"). The Broker has been authorised to effect transactions in the Trading Program, in accordance with the specific parameters contained therein, as described below, with authority only to determine at what price and when to establish the positions that will comprise the Trading Program.

415. FGG claimed that it – not BLMIS – was the investment manager as well as the investment advisor and that it established a “non-discretionary brokerage account” with the “Broker;” i.e., BLMIS was only executing trades. This was not true. BLMIS was the *only* investment advisor and had full discretion over the strategy and execution of trades in Fairfield Sentry, notwithstanding the parameters of a Trading Authorization Directive. In other settings, FGG acknowledged BLMIS’s discretion and made representations about it. For example, FGG detailed to its executive committee that BLMIS’s performance was due to market timing,⁵⁸¹ which requires the investment advisor to use his/her discretion to enter and exit trades. Further, if BLMIS was executing trades with OTC counterparties, such trading would require the investment advisor to use his/her discretion to negotiate the terms of the OTC trade with the counterparty. And BLMIS, as the investment advisor, broker, and custodian of the Fairfield BLMIS Accounts, purportedly decided which S&P equities to select for the basket, in what quantity, at what price, when to put on individual positions based on market condition, when to purchase

⁵⁸¹ Email from Vijayvergiya to FGG’s Executive Committee, Subject: Sentry P&L Analysis, December 3, 2007 [FGGE000223169-170 at -169 / SECSEV0800692-693 at -692]. *See also*, Email from Daniel van Veen to Dan Lipton, Re: Outstandings Fairfield Sentry- audit 2001, May 16, 2002 [10-03800_FGG_0015491-494 at -493-494], (“The investment manager has decided to[]have Madoff Securities manage all the assets of the fund... Madoff has full[]discretion to trade the securities in any manner he wishes.”).

and sell options to effect a “collar,” when to choose the strike and duration within a range, and when to exit the market. That is discretion.

416. The memorandum continued:

The Fund’s direction to the Broker with respect to the Trading Program is to invest all available assets to the fullest extent possible at the best price available in the market, i.e., a “best available price market order.”

With regard to the latter, the Broker is required, pursuant to fiduciary principles applicable to the conduct of U.S. brokerage accounts and principles of “best execution” set forth in NASD Rule 2320, “to use reasonable diligence to ascertain the best inter dealer market for the subject security and buy or sell in such market so that the resultant price to the [Fund] is as favorable as possible under prevailing market conditions.”⁵⁸²

417. This is not true. Further, FGG explained away trading at impossible volumes by representing that options were executed with OTC counterparties. If this were in fact true, this would be an arranged transaction and not a transaction on the “open market.”

418. The memorandum further stated.⁵⁸³

While the description of the Trading Program contains a grant of timing discretion, it must be understood that this is essentially nominal in nature and is dependent on, and subsumed by, the price discretion, which itself is governed by the market order instruction and “best execution” principles. This is not a case where the Broker can determine when to put on individual positions based on market conditions. In practice, transactions are effected through the Broker’s automated systems which are designed and are continually enhanced to automatically provide the highest levels of regulatory compliance and execution quality available.

419. This again is not true. First, FGG represented to investors that BLMIS could determine when to put on positions based on market conditions. Second, BLMIS was purportedly

⁵⁸² Memo from Hilary Griffey, Kilroys Solicitors, to Roseanne Kelly, ISE, July 29, 2005 [ANWAR-C-ESI-00572376-379 at -376-377].

⁵⁸³ Memo from Hilary Griffey, Kilroys Solicitors, to Roseanne Kelly, ISE, July 29, 2005 [ANWAR-C-ESI-00572376-379 at -377].

“timing” the market based on momentum and flow and not simply price. And options contracts were purportedly executed with pre-arranged counterparties; by their nature, these transactions could not be effected through “automated systems.”

420. The memorandum continued:⁵⁸⁴

The Broker does not have decision making authority with respect to the Fund’s account in any way that should be construed as having discretion over the account. All the Broker possesses is the ability, through the use of its automated trading systems, to determine the best price at which to effect a transaction, it does not determine the timing of transactions independent of the pricing process. While determining the best price is certainly an integral part of the execution process (indeed, its centrality is confirmed by the existence of the NASD’s “best execution” rule), it is not “discretion”, as that term is commonly construed with respect to the conduct of securities brokerage accounts.

421. This is not true. Again, an automated trading system was not used to determine when to execute the purported trades. According to FGG, BLMIS as the custodian had discretion as to when to be in or out of the market based on a qualitative ‘feel’ for the trend, not a pre-determined price mechanism. Further, BLMIS could also use available cash to implement trades without seeking prior permission. This is discretion and decision-making authority.

422. The memorandum continues:

*The Investment Manager decides on the allocation of the Split Strike Conversion (“SSC”) trading strategy and the parameters of that trading strategy. The actual investment decisions in this Fund comprise firstly deciding to buy this particular strategy and Trading Program and subsequently determining the dollar allocation to the Trading Program at any given time.*⁵⁸⁵

423. This is not true. FGG did not create the parameters of the trading strategy, BLMIS did.

⁵⁸⁴ Memo from Hilary Griffey, Kilroys Solicitors, to Roseanne Kelly, ISE, July 29, 2005 [ANWAR-C-ESI-00572376-379 at -377].

⁵⁸⁵ Memo from Hilary Griffey, Kilroys Solicitors, to Roseanne Kelly, ISE, July 29, 2005 [ANWAR-C-ESI-00572376-379 at -377].

Tucker confirmed that Madoff both informed FGG of the strategy and executed the strategy in his deposition.⁵⁸⁶ In addition, it is shocking that FGG would represent that the investment manager decides the allocation. There were no allocation decisions to make during the course of trading. Fairfield Sentry was mandated to have no less than 95% of the Fund allocated to the SSC strategy, so no allocation decisions were required.

424. The memorandum continues:

*Everything that happens after those decisions happens on an automated basis. The Broker inputs the “best available price market order” with the Trading Program to be fully invested at all times. It may take three to four days for the orders to be completely filled. (This is a \$5.5billion Fund). The Investment Manager is also monitoring the account with the Broker at all times. This is no different to the role required of a broker in meeting its best execution obligations.*⁵⁸⁷

425. This is not true. First, BLMIS was not fully invested at all times; it was routinely out of the market, even at inopportune times. Second, it does not take four days to execute a transaction in liquid markets such as the securities in the S&P100 Index. In 1993, the SEC “reduced the settlement cycle from five business days to three business days, which in turn lessened the amount of money that needs to be collected at any one time and strengthened our financial markets for times of stress.”⁵⁸⁸ Third, options contracts had to be negotiated and were not a “market order.” And last, FGG, who represented that it was the investment manager, never had real-time access to trades and therefore could not monitor the account “at all times.”

426. And the memorandum concluded:

We would reiterate that this is not investment discretion under the governing law of the arrangements i.e. U.S. Law. We again refer

⁵⁸⁶ Tucker Dep., 1/28/25, 56:8-15, 102:14-103:2. See, “Q: What did you discuss at the meeting at BLMIS? A Well, the -- after the pleasantries, Madoff described the strategy which took some time. He entertained questions from us. But basically it was a meeting to be informed about the strategy, and I would say that was the bulk of the meeting.”

⁵⁸⁷ Memo from Hilary Griffey, Kilroys Solicitors, to Roseanne Kelly, ISE, July 29, 2005 [ANWAR-C-ESI-00572376-379 at -378].

⁵⁸⁸ SEC, About Settling Trades In Three Days: Introducing T+3, May 20, 2004 [PUBLIC0708487]. See also, SEC Release No. 34-35558; File No. SR-CBOE-94-40, March 31, 1995 [PUBLIC0707011].

you to the opinion of U.S. Counsel furnished with our letter of 25th February 2005. While the ISE has stated that it does not afford any weight to the actual legal position and interpretation as set out in this opinion we cannot see any other possible approach or basis of interpretation. There would need to be a very clear and convincing basis for the ISE to take a view that is contrary to the confirmed legal position and yet no such basis or repudiating argument has been put to us.

It may also be helpful to look at the equivalent Irish rules for brokers (This is done for illustrative and comparative purposes only as this arrangement is not governed by Irish law or regulation). In our view the arrangements are also no different to the role required of an Irish broker in meeting its obligations under the “clients’ best advantage” rule of the Irish Stock Exchange. Please see paragraph 4.7 of the Rules of the Irish Stock Exchange (the “Rules”).

The definition of “discretionary account” in the Rules also makes it clear that for discretion to exist, dealings on an investment account must be carried out without prior reference to the client. This is clearly not the case in relation to the Fund’s relationship with its Broker as the Fund directs how and in what securities the account is to be invested.⁵⁸⁹

427. This is not true. With the trading parameters in place, the broker – BLMIS – could execute trades at whim; it did not require prior reference to the client. In fact, Fairfield Sentry never knew when a trade was executed or the terms of the trade until FGG received hard copy trade confirmations days later.
428. The ISE listing of Fairfield Sentry enabled FGG to continue to raise assets for investment with BLMIS, increasing their performance and management fees. There were and are no legitimate reasons to make misrepresentations to a regulatory agency. Therefore, there was no reason to hide BLMIS’s and Madoff’s actual roles as investment advisor, broker and custodian and there was no reason to hide that Fairfield Sentry had a discretionary account at BLMIS, except for the fact that if BLMIS was listed as both the custodian and the investment advisor, it would violate the ISE listing requirements stating that you have

⁵⁸⁹ Memo from Hilary Griffey, Kilroys Solicitors, to Roseanne Kelly, ISE, July 29, 2005 [ANWAR-C-ESI-00572376-379 at -378].

to have a separate custodian.⁵⁹⁰

f) FGG Follows Madoff's Script for SEC Interview

429. The audio and transcript of a call in or around December 2005 between Madoff and FGG management – Vijayvergiya and McKeefry – is astonishing.⁵⁹¹ While there is nothing remarkable about a friendly relationship between a fund manager (investment manager) and a money manager, the relationship between BLMIS, Madoff, and FGG was so intertwined that FGG followed Madoff's script for an upcoming call that FGG had with the SEC, even where the script was contrary to facts.⁵⁹² The conversation was arranged to discuss what should or should not be said at an upcoming SEC inquiry with FGG regarding the operational and compliance aspects of Madoff's investment strategy and BLMIS's relationship with Fairfield Sentry. FGG had sent BLMIS an outline to review prior to the call.⁵⁹³ There should be no need for a script; the only responses to SEC inquiries should be the truth.
430. The meeting began with Madoff saying "Obviously, first of all, this conversation never took place ... okay?"⁵⁹⁴ Vijayvergiya doesn't question the direction of the call or ask why; and just says "Yes, of course."⁵⁹⁵ Anyone who is an investment manager or a fund manager or involved in due diligence or compliance knows that it is their job to ask questions in order to obtain and provide information to the client and to protect the client's best interest. It is not to keep secrets or to pretend that conversations never took

⁵⁹⁰ Irish Stock Exchange Listing Requirements and Procedures for Investment Fund, [ANWAR-C-ESI-00517835-at -852] (Condition 2.28 – Custodian: "[a]n applicant must have a custodian/s which is/are charged with responsibility for the safekeeping and custody ('custody') of the assets of the applicant and for compliance with the specific requirements outlined in 2.29-2.38. Any such custodian must be a separate legal entity to the investment manager and any investment adviser. It is permissible that the aforementioned service providers be affiliated companies.").

⁵⁹¹ Vijayvergiya Dep., 1/31/25, 360:18-362:1; Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 (FG-03982369-433)].

⁵⁹² Transcript of phone call between Bernard Madoff and Amit Vijayvergiya, McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433]; Vijayvergiya Dep., 1/31/25, Ex. 29, [FG-03906195], (Audio Clip - FG-03906195.wav).

⁵⁹³ Vijayvergiya Dep., 1/31/25, Ex. 27 [FG-08776132-134]; Ex. 28 [FG-06605992-593] 362:18-364:23; Deposition of McKeefry, February 9, 2025, Ex. 14 [FG-03982369-433 at -402].

⁵⁹⁴ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 at -369], (Audio Clip - FG-03906195.wav).

⁵⁹⁵ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 at -369].

place.

431. Madoff first told FGG what to expect, specifically, concerns about the nature of BLMIS's relationship with the feeder funds, and not wanting BLMIS to be identified as the investment manager.⁵⁹⁶

*Mr. Madoff: All right. There are a couple of things that, you know, could come -- well, I don't know if they'll come up or not but let me just tell you how we -- information that we have given out in the past whenever we're asked about our relationship, our relationship with, any of these funds is, number one, we really have never seen any of your documentation, you know, like the stuff that you send out to your clients, you know, any of that stuff, **because we never want to be looked at as the investment manager** . . .*⁵⁹⁷

432. Madoff continues on the call, scripting that BLMIS should be identified as the "executing broker" and that trading was done per trading parameters. These trading parameters were set forth in the trading authorization and altered to omit options from the trading model so that BLMIS would not be considered the investment manager.

Mr. Madoff: ...[S]o in the past if we've ever been asked about what our role is with any of these types of funds, it has always been that we are the executing broker for these transactions, and that you use a proprietary trading model that we -- that is ours that basically sets the -- that, you know, has certain parameters built into it which have been approved by you and then that's part of the trading directive that you've seen.

Mr. Vijay: Right.

*Mr. Madoff: [A]nd by the way, on the trading directives, the one that you have -- Mark, the one that you sent me a copy of, which is an old one, all right -- **we're going to send you up -- actually, we'll messenger it up to you, Mark, today, a new trading authorization directive** that we had actually a couple of years ago, which basically is the same thing except it took the -- they said the other day the options are no longer part of the model . . . **The options are not part of the***

⁵⁹⁶ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 at -369].

⁵⁹⁷ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 at -369] (*emphasis added*).

model. It's important, so the -- but you have to have -- we have to have standing instructions on the model -- I mean on the option side as well so that we're not deemed to be, you know --.

*Mr. Vijay: Right.*⁵⁹⁸

433. Madoff then used the rest of the call to script FGG's responses to inquiries intended to deflect SEC inquiries into the possibility of frontrunning. Specifically, Madoff directed FGG to say it was not involved in the execution of trades and that he [Madoff] served as the executing broker.

Mr. Madoff: So the issue is, look, as far as you're concerned, the fund has allocated certain amount of money to go into a specific strategy. You know what the -- you've approved the parameters of the strategy and I've agreed to follow those. That's the trading authorization directive is it says, okay, these are the strategies -- this is the strategy. The model sets the size of the order, the stock and the price and that's it, and then once you get the execution then your job is to, as an investment manager I guess, is just to monitor that the -- that there were in fact the right securities in there that, you know, it followed the instructions or the model that you didn't buy gold, you bought IBM and General Motors and to track the performance of the strategy . . .

[T]hat's the rule. We're the executing broker. It's our strategy. You guys are just monitoring . . . and the concern of the commission or any regulator as it relates to hedge funds and executing brokers is that there -- is there an opportunity for the fund or one of their other funds or entities to front run an order...

So the -- you know, the question probably will come up is -- does -- does Madoff call you and tell you he's going into the market or getting out of the marker or that he started getting into the market and so on . . . that's the major concern that

⁵⁹⁸ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 at -369-371].

*these people have and probably why they want to know who is it that's implementing the strategy.*⁵⁹⁹

434. A competent investment manager, particularly one managed by a former SEC Enforcement attorney (Jeffrey Tucker), should not need to be told how to speak with a regulator. Madoff was purportedly executing the trades beyond the parameters of the trading authorization – selecting the stocks – and he was deciding when to get in and out of the market.⁶⁰⁰ BLMIS and Madoff were acting as the investment manager and executing broker. You don't hide what you are doing from your investors; nor do you hide facts and lie to the SEC.
435. Importantly, what Madoff was telling FGG to represent to the SEC was inconsistent with FGG's documentation. *See* above, Section VII.B.3.a), discussing the representations made by FGG about Madoff/BLMIS's role and FGG's role. In 2004, FGG documentation was changed to eliminate mention of BLMIS in any role except as subcustodian, making it appear that FGG was the investment advisor executing the strategy.⁶⁰¹
436. Throughout the conversation, Madoff stressed the importance of maintaining "Chinese walls"⁶⁰² within his organization to prevent information sharing between departments, to

⁵⁹⁹ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 at -380-383].

⁶⁰⁰ Transcript of phone call between Bernard Madoff and Amit Vijayvergiya, McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433, ("I'm the only one that pulls the trigger," "I'm the only one that can make the decision in our organization as to when to get in and out of the market.")].

⁶⁰¹ Confidential Private Placement Memorandum, October 1, 2004 [SECSEV2348748-816 at -768-769].

⁶⁰² Barron's Financial Guide, *Dictionary of Finance and Investment Terms*, Fifth Edition, 1998, p.94, ("Chinese Wall" is defined as "imaginary barrier between the investment banking corporate finance, and research departments of a brokerage house and the sales and trading departments. Since the investment banking side has sensitive knowledge of impending deals such as takeovers, new stock and bond issues, divestitures, spinoffs and the like, it would be unfair to the general investing public if the sales and trading side of the firm had advance knowledge of such transactions. So several SEC and stock exchange rules mandate that a Chinese Wall be erected to prevent premature leakage of this market-moving information. It became law with the passage of SEC Rule 10b-5 of the Securities Exchange Act of 1934. The investment banking department uses code names and logs of the people who have access to key information in an attempt to keep the identities of the parties secret until the deal is publicly announced.").

purposely deflect suspicion of front running. Madoff actually tells FGG: “and you say...”⁶⁰³

*Mr. Madoff: Basically -- you could basically -- you know, as I say if that -- they know that already because they've looked at -- when they come in to do exams for us, all right, they've -- they make sure that there are Chinese walls -- that we have Chinese walls established between our market making side and our -- and our proprietary side of the room and be -- and also from the institutional orders. So they know that we have Chinese walls.*⁶⁰⁴

*Mr. Madoff: So the -- you know, **the less that you know about how we execute, and so on and so forth, the better you are other than**, yes, you could -- you know, you could -- you know, **if they asked do you know that Madoff -- do you know if Madoff has Chinese walls, and you say, yes, look** -- you know, your position is say, listen, Madoff has been in business for 45 years, you know, he executes, you know, a huge percentage of the industry's orders, he's -- you know, he's a well known broker. You know, we make the assumption that he's -- he's doing everything properly. Yes, we know he has -- you know, as part of our normal relationship, we know that he has Chinese walls between the various business lines of his firms, but as to who executes the orders in our organization, how we execute the orders --.*⁶⁰⁵

437. There is no reason for the script to provide the SEC with information regarding a “Chinese wall,” that in reality did not exist or was a fact that could not be confirmed through due diligence. While FGG represented to investors and others the existence of a “Chinese Wall” at BLMIS between the market making side and the advisory side, Madoff was the sole owner of BLMIS and had active knowledge of all aspects of the business. In fact, FGG liked to point out that Madoff’s ability to time the market came from his access to market flow. There cannot be a “Chinese Wall” between two sides of a business when

⁶⁰³ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 at -396].

⁶⁰⁴ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 at -386].

⁶⁰⁵ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 -396-397] (*emphasis added*)

one person owns them, and is active in, both.⁶⁰⁶

438. Madoff also advised FGG to avoid written documentation, as regulators might request it. Even as it related to a redemption request, Madoff did not want documentation. There is no reason not to put communications with your investment advisor or executing broker in writing. You don't put something in writing because you want to hide something. This is not the approach that should be taken with the SEC.

Mr. Madoff: The best thing to do is not get involved with what you said, written instructions, if possible because any time you say you have something in writing they ask for it.

Mr. Vijay: Okay.

*Mr. Madoff: So, the best thing to do is just say it's a phone call. That's what we said it is, we get contacted by somebody at Fairfield.*⁶⁰⁷

439. Madoff also confirmed that he did not charge commissions on treasury transactions as it was "just cash management."⁶⁰⁸ This is a red flag because it is not custom or practice in the industry for a money manager to charge zero fees for cash management or acting as custodian. Similar to the discussion regarding foregoing incentive and management fees in Section VII.B.2.c)(2) above, BLMIS left a significant amount of money on the table by

⁶⁰⁶ Madoff confirmed his control over both the market making side and the advisory side in his allocation ("Madoff Allocation"), March 12, 2009 [PUBLIC0003412-461]. There is a total disconnect between FGG's story that BLMIS used its superior knowledge of order flow and FGG's story that there was a "Chinese Wall" between the investment management group that executed the SSC strategy and the rest of the firm. In a conversation between Frank DiPascali of BLMIS and Vijayvergiya, DiPascali stated that "our wholesale business is run entirely apart and away from the managed account business, most of the guys up on the trading floor who are doing our wholesale business aren't even aware of the transaction we do for you." DiPascali stated "my managed account business is run on a completely different system than the wholesale operation as far as order flow is concerned...which is the only real thing you need to have a... critical handle on because of the front running situation that could occur had you not done that." He further states that "the data entry system and order flow system of the wholesale business is not even on the same computer base." Based on these statements, trading could not have been influenced by knowledge of order flow, which was one of FGG's explanations for BLMIS's performance. Phone Conversation between Vijayvergiya and Frank DiPascali [FG-03906197], (FG-03906197.WAV).

⁶⁰⁷ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 at -375].

⁶⁰⁸ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 at -429].

not charging fees for cash management or acting as custodian. That aside, why hide the fact that Madoff was not charging a commission on treasury transactions? There is no reason to hide it unless you want to hide the red flag.

440. One of the most troubling aspects of the conversation is Madoff telling FGG what to disclose and not disclose regarding the trading models and execution, essentially directing FGG to revise its offering documentation to eliminate information about the execution of the split strike strategy. FGG had a fiduciary duty to provide its investors with as much information as possible; not eliminate critical information at Madoff's direction and offer misinformation to the SEC.

Mr. Madoff: On the split strike strategy [], okay, the simultaneous purchase. I know you keep saying that in your documentation, but again that was -- you just have to -- you don't have to say simultan -- you just say the purchase of the S&P put options . . .

Mr. Vijay: Right.

Mr. Madoff: Okay, you -- where you go onto say in brackets, which may benefit the fund in rising markets, you see where --

Mr. Vijay: Yeah, I'm with you on that point.

*Mr. Madoff: **That should be taken out, the whole thing after that . . .***⁶⁰⁹

441. The entire conversation is explicit evidence that FGG was taking direction from, and was working with, Madoff to develop a plan to hide the truth from regulators as of at least December 2005.⁶¹⁰ I have been a registered investment advisor with the SEC and am registered with the CFTC/NFA, having completed my Series 3 exam in the 1980s. I have personally met with the CFTC and the SEC on various matters. In no uncertain terms, you should never lie to a regulator.

⁶⁰⁹ Telephone call excerpt between Madoff, McKeefry and Vijayvergiya [Vijayvergiya Dep., 1/31/25, Exs. 29a-d / McKeefry Dep., 2/5/25, Ex. 14 [FG-03982369-433 at -413-414] (*emphasis added*).

⁶¹⁰ Vijayvergiya Dep. 1/31/25, 360:18-362:1.

g) FGG's Misrepresentation of the PwC Audit

442. It is critical that an investment manager knows the scope of any audits performed on the investment advisor and/or the executing broker. This is important for a number of reasons including: (1) the CFO or Controller of the fund typically makes certain financial and qualitative representations to the auditor; (2) the investment manager needs to know what has and has not been audited; and (3) to verify for itself that audits have been performed.
443. FGG made the representation to Banknord that PwC audited Madoff's returns.⁶¹¹ This representation is false, as the PwC audits of the Sentry Funds did not, include an audit of the investments of the Sentry Funds or its performance, a fact which was acknowledged by FGG.⁶¹² PwC did not audit Madoff or BLMIS.

⁶¹¹ Email from Patrick Blake to Yanko della Schiava RE: Banknord meeting notes, February 24, 2004 [FGGE000264323-325 at -324-325 / SECSEV0841846-848 at -847-848]. (On February 20, 2004, Max Cagliero, Banknord, met with FGG to "learn more about Sentry, specifically he had some concerns over rumors he had heard about Madoff." Mr. Cagliero noted that he "had heard that there was no transparency provided by Madoff" and that "Madoff's returns were not audited." In response, "Dan [Lipton] and Amit [Vijayvergiya] assured [Mr. Cagliero] they were (by Price Waterhouse Coopers) and that it would be a violation of SEC regulations if they weren't. As a result of the meeting, Mr. Cagliero noted that Banknord "would certainly be investing in both Sentry and FIF.").

⁶¹² Email from Daniel Van Veen to Gordon McKenzie, RE: BLM summary report of procedures [FG-00001769-771 at -769]. Lipton Anwar Dep., 5/14/13, Ex. 26 [FG-00001733-735 at -733], ("PwC doesn't audit the 'performance' of any of our funds."); Emails between Richard Landsberger, Rob Blum, and Patrick Blake, RE: Banknord meeting notes, February 25, 2004 [FGGE000264323-325 at -324-325 / SECSEV0841846-848 at -846].

Figure 116: Excerpt from PwC Email⁶¹³

From: daniel.van.veen@nl.pwc.com [mailto:daniel.van.veen@nl.pwc.com]
Sent: Thursday, June 16, 2005 8:57 AM
To: Gordon McKenzie
Cc: michiel.kroot@nl.pwc.com; sylvie.villoria@nl.pwc.com
Subject: Re: BLM summary report of procedures

Gordon,

I checked with our Bermuda office and the following was noted.

All reconciliations are automated and as such only exception reports are generated - Madoff runs as close to a paperless environment as you can get. We spoke through the process with the manager in charge. For our own audit process we gain a sample of trades direct from the Internal Audit function to check off to the fund's portfolio. While some emphasis of our visit was on segregation of duties, updates to models and specific performance in certain months (in particular when flat or negative gross performance), we have not (in the past) done specific detailed testing for all the funds represented. "Review" has been in the form of direct discussions with relevant persons and as such no statistical samples were taken. Should this really be an audit, we would have to take statistical samples (such as dates) according to our internal procedures.

Best regards,

Daniel van Veen
PricewaterhouseCoopers
Fascinatio Boulevard 350
3065 WB Rotterdam

444. In numerous communications from PwC, it was made clear that the review at BLMIS was not a complete audit, particularly not an audit of the purported trading at BLMIS. PwC did not test to independent sources, and almost all of the information received was from Madoff. PwC looked only at “a sample of the trades” and compared them to the investments of the Sentry Funds that were reported on the account statements. PwC stated: “we have not (in the past) done specific detailed testing for all the [Sentry] funds represented.”⁶¹⁴ PwC further explained that “[s]hould this really be an audit, we would have to take statistical samples (such as dates) according to our internal procedures.”⁶¹⁵

⁶¹³ Email from Daniel Van Veen to Gordon McKenzie, RE: BLM summary report of procedures [FG-00001769-771 at -769] (*emphasis added*).

⁶¹⁴ Email from Daniel Van Veen to Gordon McKenzie, RE: BLM summary report of procedures [FG-00001769-771 at -769].

⁶¹⁵ Email from Daniel Van Veen to Gordon McKenzie, RE: BLM summary report of procedures [FG-00001769-771 at -769] (*emphasis added*).

PwC's statements are clear: there was no audit of the investments of the Sentry Funds. PwC communicated all of this to FGG.

445. FGG's internal communications indicate that PwC was not auditing the purported "performance" at BLMIS. In fact, Dan Lipton explained to Lakshmi Chaudhuri in an email that "PwC doesn't audit the 'performance' of any of our funds. They audit the financial statements. No public accounting firm attests to the performance of a fund unless it is an extra engagement we direct them to do."⁶¹⁶ Lipton later testified that there was no extra engagement with PwC to audit the fund's performance.⁶¹⁷
446. There is no legitimate reason for an investment manager to make representations about an audit that are not true. I have been involved in a number of audits as an Investment Manager and Fund-of-Funds advisor. At no time should they ever be considered due diligence. The audit process is vastly different than due diligence and may not include key data points or processes used by the manager of the investments. While an investment manager can employ a third-party vendor such as PwC to conduct due diligence, this was not the case at FGG. PwC was hired to conduct a specific review in order to complete the annual audited financials of the Sentry Funds. In fact, the engagement letter signed by FGG clearly specifies the limitations of the audit and processes used.⁶¹⁸
447. Citco, the administrator for the Sentry Funds, retained by FGG, spoke with Tucker in

⁶¹⁶ Email from Dan Lipton to Lakshmi Chaudhuri, RE: Due Diligence Info for Lourdes' prospect [FG-00001733-735]; Lipton Anwar Dep., 5/14/13, Ex. 26 [FG-00001733-735].

⁶¹⁷ Lipton Anwar Dep., 5/14/13, 123:2-124:2.

⁶¹⁸ *See, e.g.*, PwC engagement letter with Fairfield Greenwich Group, December 9, 2003, Anwar Deposition of Daniel Van Veen, 10/11/12, Ex. 42 [10-03800_FGG_0017759-767 at -761], ("In this regard, management [FGG] is responsible for safeguarding the assets of the Funds, maintaining proper accounting records and maintaining an appropriate system of internal control (including procedures regarding ... prevention and detection of fraud, other irregularities and errors and non-compliance with law or regulations[.]) [PwC's] audit is not designed to specifically detect fraud."). FGG acknowledged this in an email from Lipton to Vijayvergiya, forwarding questions from an investor, Lipton Anwar Dep., 5/14/13, Ex. 27 [FG-00001736-738], ("There is a misconception [by the investor] of what an auditor's job is – the opinion states the purpose is to find material misstatements not to find fraud."). *See also*, PwC Draft Memo, March 15, 2005 [FG-00006095-103 at -099-103], ("the procedures performed are not directed to the providing of assurance in respect of internal control, nor to the detection of fraud, errors or illegal acts. The procedures performed do not constitute an audit nor an investigation of the internal controls of/at BLM. The procedures consisted of gathering factual information through an interview with Mr Madoff (hereafter 'BM'). No testing of controls and procedures was performed.").

October 2000 in a further attempt to verify assets.⁶¹⁹ At that meeting, FGG told Citco that PwC compiled the Sentry portfolio twice a year for circulation to the ISE, suggesting that Citco could rely on PwC to verify assets.⁶²⁰ This was misleading as PwC did not audit FGG's investments with BLMIS.⁶²¹

448. As can be seen in **Figure 124**, Citco confirmed the lack of an audit or due diligence on Sentry Funds' investments with BLMIS: "[s]o the objective 'increasing Citco's comfort level with respect to the existence of the assets in relation to our responsibilities as Custodian' was not achieved."⁶²² Citco verified that only "some" of the trades from Kingate's BLMIS account were checked against what was reported on customer statements from BLMIS; "no Fairfield trades were reconciled."⁶²³ Citco stated: "[n]o other substantive audit procedures/test of controls were performed."⁶²⁴

⁶¹⁹ Zanten Anwar Dep., 6/13/13, 121:9-122:19 [10-03800_FGG_0008884-964 at -914-915]; Anwar Deposition of Arno Boelaars, April 11, 2013, Ex. 1 [10-03800_FGG_0000101-102 at -101], (describing the October 2000 meeting between Citco and Tucker).

⁶²⁰ See Anwar Deposition of Arno Boelaars, April 11, 2013, Ex. 1 [10-03800_FGG_0000101-102], (describing the October 2000 meeting between Citco and Tucker); see also Anwar Deposition of John Verrwen, September 6, 2012, 129:11-130:12 [10-03800_FGG_0009118-158] ("the fund is audited every year by Pricewaterhouse, and then I believe twice a year we have to send portfolios to the Irish Stock Exchange, and they gave unqualified opinions. So why wouldn't I think the assets wouldn't exist?").

⁶²¹ Email from Daniel Van Veen to Gordon McKenzie, RE: BLM summary report of procedures [FG-00001769-771 at -769]. Lipton Anwar Dep., 5/14/13, Ex. 26 [FG-00001733-735 at -733], ("PwC doesn't audit the 'performance' of any of our funds."); Emails between Richard Landsberger, Rob Blum, and Patrick Blake, RE: Banknord meeting notes, February 25, 2004 [FGGE000264323-325 at -324-325 / SECSEV0841846-848 at -846].

⁶²² Email from Albert van Nijen to William Keunen, Anuschka Cova, Michael van Zanten, Ronald Irausquin re: Visit Madoff, December 17, 2002 [ANWAR-C-ESI-00357244-247 at -245-246].

⁶²³ Email from Albert van Nijen to William Keunen, Anuschka Cova, Michael van Zanten, Ronald Irausquin re: Visit Madoff, December 17, 2002 [ANWAR-C-ESI-00357244-247 at -245].

⁶²⁴ Email from Albert van Nijen to William Keunen, Anuschka Cova, Michael van Zanten, Ronald Irausquin re: Visit Madoff, December 17, 2002 [ANWAR-C-ESI-00357244-247 at -245].

Figure 117: Excerpt from FGG Email, December 17, 2002⁶²⁵

From: Nijen, Albert van AMS
Sent: Tuesday, December 17, 2002 4:49 PM
To: Keunen, William MIA; Cova, Anuschka AMS; Zanten, Michel van AMS; Irausquin, Ronald AMS
Cc: Meyer, Ger-Jan CUR; Bodewes, Ruud GRP
Subject: Visit Madoff

Dear all,

I am sorry to inform you that the "mission" has failed. Below a summary:

Visited Bernard Madoff this morning from 11.00 till 13.00 together with PwC (NY and Bermuda) and Dan Lipton (Fairfield).

In a pre meeting today with Dan, we discussed our "mutual" objectives for this meeting. Furthermore, Dan informed me that the meeting was initiated by PwC Bermuda in cooperation with PwC New York. PwC Bermuda is the auditor of Kingsgate (?) a Bermuda domiciled and administered (Hemisphere) fund. This fund has also a Madoff managed account. PwC contacted Fairfield Greenwich and it was agreed to include Fairfield Sentry in the procedures.

The agreed upon procedures (e.g. walkthrough tests) I received from PwC Amsterdam (Chris Meijnders) were not performed. During the meeting just some of the issues were discussed and PwC made some trade reconciliation's between the books of Kingsgate and Madoff's records. No other substantive audit procedures/test of controls were performed.

During the meeting (after Madoff left the room) we were informed by the partner of PwC that we were not supposed to review the back office procedures of Madoff because this was not agreed upon by PwC/Madoff. However we brought up a copy of Madoff's statement as of September 30, 2002 (only US T bill positions) with the request to receive some kind of evidence about the existence of the US T bills (e.g. stock record reconciliation / clearing confirmation). However we were palmed off with the reconciliation between Madoff's books and the statement. Although I am of the opinion that Madoff knew exactly what our intention was, it did not feel right to go deeper into this subject. We also did not get the opportunity to interview other personnel or to perform some review procedures ourselves. The discussion was limited to some general remarks (e.g. impact September 11, bunching/allocating trades, segregation of duties, disaster recovery plan, family on key positions, internal control) including a lot of name dropping on Madoff's side.

We were informed that PwC will not issue a report of this meeting. However Dan will contact Chris Meijnders about this (maybe Chris can provide us/Dan with some copies of audit work papers). The partner of PwC informed us that the "procedures" performed were merely to support the PwC audit of Kingsgate (and Fairfield??). I do not know why only Kingsgate and no Fairfield trades were reconciled, but I assume that PwC relies on Madoff's system (trades of all managed accounts are processed by one and the same system).

The only "independent" information we received is the independent auditors' report on internal control year end October 31, 2002 (incl. Sec rule 17a-5). However, this report is issued by Friehling & Horowitz certified public accountants (two employees?) and it is rumoured that this office is also (family) related to Madoff. We did not yet receive audited financial statements.

So the objective "increasing Citco's comfort level with respect to the existence of the assets in relation to our responsibilities as Custodian" was not achieved. For next visit, we (or Fairfield) need to come up with own procedures (due diligence) and these procedures should be agreed upon by Madoff.

Kind regards,
Albert

449. In Citco's view and my view, PwC's "procedures" did not provide independent verification and certainly not due diligence. *See* Section VII.A.1. There is no legitimate reason for FGG's misrepresentation of the scope of PwC's audit.

h) FGG's Misrepresentation of Counterparties

450. The red flags surrounding Madoff's use of options contracts and counterparties are

⁶²⁵ Email from Albert van Nijen to William Keunen, Anuschka Cova, Michael van Zanten, Ronald Irausquin re: Visit Madoff, December 17, 2002 [ANWAR-C-ESI-00357244-247 at -245-246], (*emphasis (highlights) added.*)

discussed above Section VII.B.2.c)(3).⁶²⁶ The information that FGG had in its possession confirmed that there were no options contracts and no options counterparties. Even more astonishing though is the fact that FGG made repeated misrepresentations regarding the existence and identities of the options counterparties.

451. According to FGG, they had been advised by Madoff that his options counterparties were reputable derivatives dealers, made up of 9 or 10 domestic banks that were the biggest derivatives dealers.⁶²⁷ Tucker stated that the counterparties “would almost have to be the big ones to do the size that they do there from Merrill [Lynch], Deutsche [Bank], Goldman [Sachs], Morgan Stanley, whoever does the big derivatives business and whoever has a reasonable credit rating or a good credit rating is probably a counter-party at some point, if not always.”⁶²⁸
452. Internally, FGG told its sales and marketing people that verifying the identity of the options counterparties “won[']t be possible.”⁶²⁹ Outwardly, FGG represented to investors and third parties that the counterparties to the transactions executed by BLMIS were top-tier. In addition, FGG represented that their counterparty risk was controlled through diversification, “no single counterparty can represent more than 10% of the exposure,” and performance assurances from the counterparties.⁶³⁰
453. Citigroup/Citibank and Credit Suisse First Boston asked FGG who BLMIS’s options counterparties were.⁶³¹ In March 2005, Citigroup was considering an investment and asked Vijayvergiya about, among other things, the identity of Madoff’s options

⁶²⁶ See, e.g., Sections VII.B.2.a)(1), VII.B.2.a)(2), VII.B.2.b)(4), VII.B.2.c)(3).

⁶²⁷ Tucker SEC Dep., 1/30/06, 35:3-35:20.

⁶²⁸ Tucker SEC Dep., 1/30/06, 35:3-35:2

⁶²⁹ Email from Amit Vijayvergiya to Mami Hidaka, February 13, 2008 [SECSEV1067918-922 at -918-919].

⁶³⁰ Email from Amit Vijayvergiya to Mami Hidaka, August 20, 2008 [FG-00406338-339]; Email from Amit Vijayvergiya to David Schwartz and Santiago Barenó, November 17, 2008 [FG-00617475-479 at -475]; Email from Lourdes Barreneche to Stephane Bensahel, July 23, 2008 [FG-05582908-909 at -908]; Email from Cornelis Boele to Bernard Caroyez, October 9, 2008 [FG-05801424-427 at -424].

⁶³¹ Email from Vincent Pfister to Philip Toub, Subject: Fairfield Sentry - some questions, August 22, 2005 [FG-00212887-889 at -888]; Email from Amit Vijayvergiya to Jeffrey Tucker, Subject: Citibank query, May 26, 2005 [FGGE000039061 / SECSEV0616584]; Amit Vijayvergiya’s Notebook, February 2006 - May 2006 [FGG00098291-391 at -340 / SECSEL0001209-309 at -258].

counterparties.⁶³² Vijayvergiya told Citigroup that Merrill Lynch and Deutsche Bank were among Madoff's counterparties.⁶³³

454. In response to a client inquiry routed through FGG sales (Ornella Dellapina Fenman) in June 2017, Vijayvergiya states:

Figure 118: Email from Vijayvergiya, June 2007⁶³⁴

Hello Ornella,

The number of S&P 100 Index options contracts necessary to notionally protect the market value of the stock basket would likely exceed the number normally traded on the liquid derivatives exchanges.

For this reason, the split strike conversion strategy typically uses OTC options contracts to construct the options collar. These trades are spread among a number of well known international banks who serve as the derivatives counterparties.

455. Again, in a May 16, 2005, "Mock Due Diligence Meeting," attended by select members of FGG (particularly the finance and operations group) and led by Dan Lipton and Vijayvergiya, when discussing options being traded over the counter with counterparties, Vijayvergiya stated, "[t]here's an element to counter-party risk. However the way that the *fund's mitigated that is, by spreading across very well capitalized, well established series of counterparties, which number between 8 to 12 on a given implementation.*"⁶³⁵
456. In the same 2005 Mock Due Diligence meeting, when asked whether FGG "actually [had] copies of those option agreements, to ensure that they are virtually identical to regular options?," Vijayvergiya responded "[y]es, I'd have, to check with my accounting

⁶³² Email from Amit Vijayvergiya to Dan Lipton, Jeffrey Tucker, and Rob Blum, FW: Info on Madoff, March 30, 2005 [FG-00178602-604 at -602].

⁶³³ Amit Vijayvergiya's Notebook, February 2006 - May 2006 [FGG00098291-391 at -340 / SECSEL0001209-309 at -258]. ("They are very concerned about the credit risk of the derivatives counterparties. [W]anted to know how we learned that ML and Deutsche were counterparties --> anecdotally or from inspection of docs.").

⁶³⁴ Email from Amit Vijayvergiya to Ornella Fenman, re: Help!, June 13, 2007 [FGGE000313362-364 at -362 / SECSEV0890885-887 at -885].

⁶³⁵ FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -618] (*emphasis added*).

group on that...Let me get back to you on that.”⁶³⁶

457. None of the information provided by FGG regarding counterparties, their existence, or their identities was true. There were no counterparties to the purported options trades. The counterparties were not the biggest derivative dealers. The counterparties were not 9 or 10 of the biggest banks. There were no option agreements. After Madoff’s Ponzi scheme was revealed, Tucker admitted to the Massachusetts Securities Division (“MSD”) that he did not know who any of the purported options counterparties were:

*Q. ...[I]t asks to describe the procedures relating to collection of performance assurance from options counterparties. The answer, the third paragraph down, says (as read:) BLM will not disclose the names of the CPs, which I assume means counterparties, for obvious reasons; i.e., confidentiality. **Who were some of Madoff's options counterparties?***

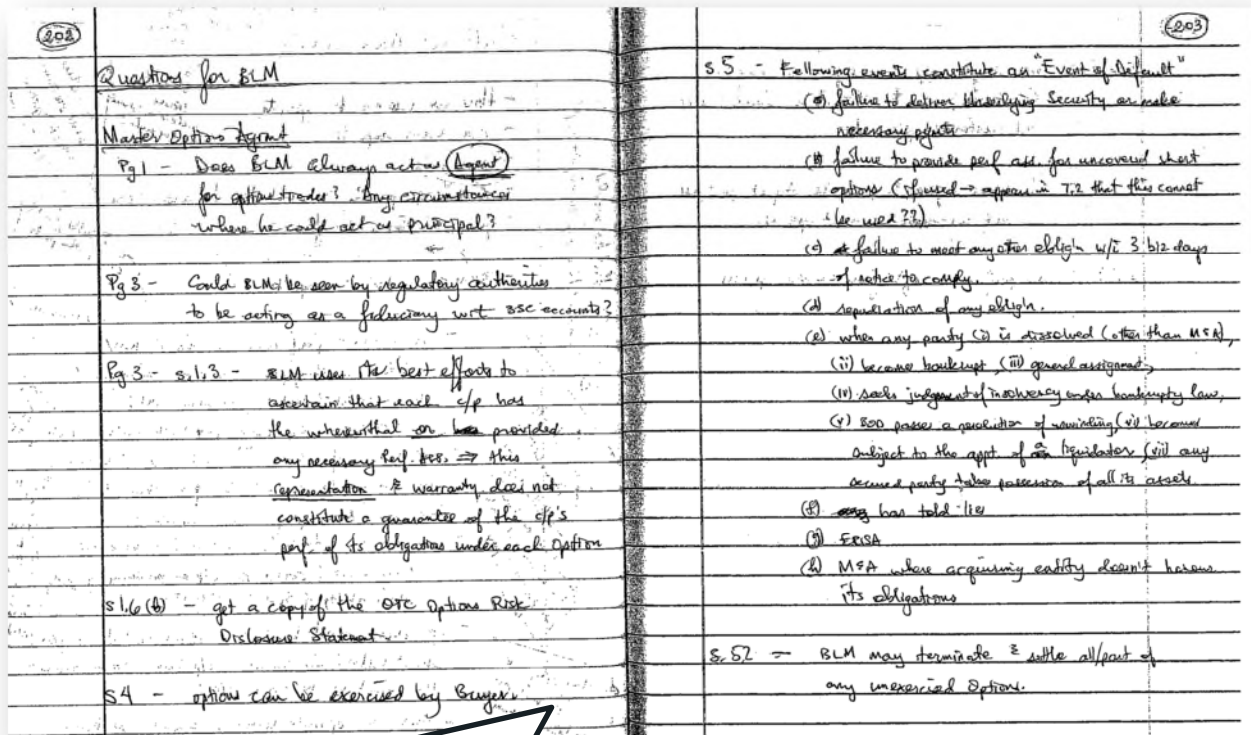
*A. **I don't know.***⁶³⁷

458. Consistent with this, it was not until 2008 that FGG had seemingly reviewed the Master Option Agreement and had numerous questions regarding the options counterparties, as shown in **Figure 119**.

⁶³⁶ FGG Training - Mock Due Diligence Meeting, May 16, 2005 [FG-00001613-640 at -618-619] (*emphasis added*).

⁶³⁷ Tucker MSD Dep., 1/12/09, 114:20-115:7 (*emphasis added*). *See also*, email from Amit Vijayvergiya to Sentry Team and Risk Group, Subject: BLM counterparty risk assessment, August 20, 2008 [FGGSAB0008264-267 at -264]. (“I think the larger question is if the Risk Group is comfortable with BLM counterparty risk. I’d like to schedule some time during the first week of Sep (perhaps with GM, DA, BA, AV to start, and then the Risk Group as a whole after we’ve drafted a first pass report) to more formally study BLM risk and prepare a comprehensive Risk Group assessment of BLM counterparty risk.”). *See also* Email from McKeefry to IXIS [FG-00656352-357 at -352] (when asked about counterparties, McKeefry said “Our understanding is that in the event of a BLM bankruptcy event, the counterparties would be made known to us.”).

Figure 119: Excerpt from Vijayvergia Notebook: Questions for BLM⁶³⁸



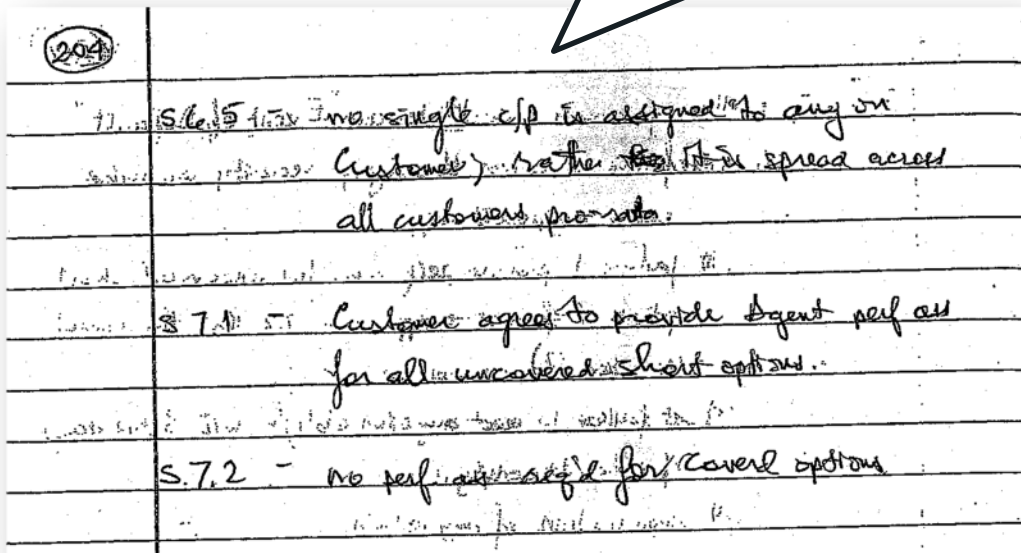
"Questions for BLM

Master Options Agrmt

- Pg 1 - Does BLM always act as Agent for option trades? Any circumstances where he could act as principal?
 - Pg 3 - Could BLM be seen by regulatory authorities to be acting as a fiduciary wrt SSC accounts?"
- etc...

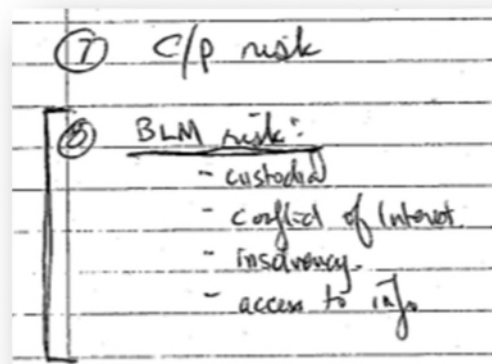
⁶³⁸ Amit Vijayvergiya's Notebook, February 2008 – June 2008 [FGG00099079-196 at -179-180 / SECSEL0001898-015 at -998-999].

"S6.5 - no single c/p is assigned to any on [sic] customer rather it[']s spread across all customers pro-rata."



459. In 2008, FGG acknowledged that counterparty risk was a reason for redemptions in 2008, along with other BLMIS risks, including "custodial" and conflicts of interest, as shown in **Figure 120**.

Figure 120: Excerpt from Vijayvergia Notebook: Reasons for Redemptions⁶³⁹



⁶³⁹ Amit Vijayvergiya's Notebook, June 2008 – November 2008 [FGG00099197-297 at -277 / SECSEL0002016-116 at -096].

460. Any representation of the existence or identity of a counterparty was a blatant lie.

i) FGG's Misrepresentation of Gil Berman's Responsibilities

461. As discussed above, Berman, an experienced options trader, was a consultant to FGG from 1995 until December 2008.⁶⁴⁰ Berman was hired by FGG, at Tucker's direction, to summarize the monthly BLMIS statements for Fairfield Sentry and Greenwich Sentry.⁶⁴¹ However, there was a huge difference between Berman's actual role and what FGG told investors and others. Misrepresenting a consultant's responsibilities only makes sense if you were trying to hide the fact that trading was not taking place in the Fairfield BLMIS Accounts.

462. In my experience, it makes no sense at all to hire someone with a particular expertise and not use it. Beyond not making sense, it is astonishing that FGG made representations regarding Berman's activities, as well as FGG's relationship with BLMIS, namely regarding the type of account held at BLMIS, the trading activity, the trading strategy, the counterparties, and the execution of the trades when they were refuted by Berman himself.

(1) Berman's Responsibilities

463. In a letter dated July 2, 1998, from Citco to Lloyds Bank Plc Zurich Branch ("Lloyds"), Citco provided Fairfield Sentry's responses to Lloyds questions, which stated that "all trades in the account are confirmed" and that Berman was analyzing the hedging of the trades in the stock portfolio in accordance with the strategy:

The Fund maintains a conventional brokerage account at Madoff Securities. Accordingly, ***all trades in the account are confirmed***, and a monthly statement is provided. All confirmations are forwarded to an individual in Colorado who reviews them to determine whether the price of each trade is within the range of actual prices for that day. ***The review***

⁶⁴⁰ See Section V.D.8.

⁶⁴¹ See Berman Anwar Dep., 6/20/13, 301:11-302:11 ("...my assignment was to prepare a monthly summary of the trading activity...My assignment early on, even from the beginning, as it was conveyed to me by Jeff Tucker, was please just report the activity. Don't provide any editorial commentary. I don't know about emphasis, but just report what happened as you see it on the statements, without any commentary."); see also, e.g., Berman Anwar Dep., 6/20/13, at 345:3-7 ("...I would like to, I guess, clarify in regards to your statement that I wasn't—I would not even characterize what I was doing as 'analysis.' I would characterize it as summarization.").

process includes an analysis of the trades, calculation of the components of profit and loss for the month, and verification that the stock portfolio was hedged in accordance with the strategy. Gil Berman, who provides these services, was formerly a spread trader on the American Stock Exchange and is highly knowledgeable about this subject.⁶⁴²

464. This is not true for two reasons, first the Sentry Funds did not maintain conventional brokerage accounts. A conventional brokerage account would simply be an account controlled and traded by the owner of the account. But here, the Sentry Funds held non-discretionary accounts – as represented by FGG above – and had granted full trading authority to the brokerage firm, BLMIS.

465. Second, in a letter dated July 1, 1995, from Berman to his brother Ed, Berman acknowledged the narrow and ministerial scope of his work – *summarizing* the prior month’s trading activity:

Now that I’ve been doing work for FGG for almost six months, I have a proposal that I think would be mutually beneficial. I’m currently doing work for [FGG] in the following five areas, with approximate estimates of the hours spent monthly on each:
1. Ongoing review of all incoming Sentry confirmations and statements (including comparison, matching and analysis of trades for each account), detailed overall monthly review and reconciliation, and preparation of summary memo (5-7 hours).⁶⁴³

466. Berman, however, makes clear in his email to Vijayvergiya, to whom he starts addressing his reports, the limitations that are placed on his work: “my consulting assignment is (and has always been) only to *summarize* the previous month’s trading activity without providing editorial commentary . . . ”⁶⁴⁴

467. Notwithstanding these limitations on his work, Berman points to the “unusual transactions”– purported trading inconsistent with the split strike conversion strategy and “difficult to explain” options trading activity—in the BLMIS Sentry accounts:

⁶⁴² Memo to Wolfgang G. Isler, Lloyds Bank Plc Zurich Branch, from Roger Steenberg, July 2, 1998 [ANWAR-CCI-00082596-597 at -596] (*emphasis added*).

⁶⁴³ Letter from Gil Berman to Ed Berman (FGG), July 1, 1995 [FG-00134840-860 at -848-849] (*emphasis added*).

⁶⁴⁴ Email from Gil Berman to Amit Vijayvergiya, Subject: Sentry report for May, June 13, 2008 [FGGE000633382-383 / SECSEV1210905-906] (*emphasis added*).

Figure 121: Email from Berman to Vijayvergiya, June 13, 2008⁶⁴⁵

Hi Amit,

Attached are my Sentry reports for May. It was a complex month in terms of options activity and, as my memo indicates, there were several unusual transactions relative to the typical matching of stock and options positions in executing the split-strike conversion strategy. All of the trades produced excess profits, as OEX traded higher on May 14th (after the early call repurchase on May 13th) and traded lower on May 20th (after the accounts had doubled up on long puts the previous day) and was also lower on May 23rd (when the accounts sold all their puts, though most of the stock and calls had been liquidated the previous day).

Though my consulting assignment is (and has always been) only to summarize the previous month's trading activity without providing editorial commentary, I must mention to you that I find the May options trading activity to be unusual and difficult to explain, and would encourage you to investigate it further. Please call me if you'd like to discuss this in more detail.

Best Regards,

Gil

(2) The Fairfield BLMIS Accounts

468. Citco provided a response from Fairfield Sentry, which misrepresented the type of accounts held at BLMIS. The July 2, 1998, letter from Citco to Lloyds, described above, stated:

*With regard to regulatory oversight, Madoff Securities is a member of the NASD, DTC (a clearing corporation) and the Cincinnati Stock Exchange. Through these memberships they are subject to filing reports of financial condition and to audit. We calculate the NAV every Friday as of the close of business the night before. The account balances are provided to us by Madoff Securities. In the event the equity changes meaningfully during the week we would follow up to determine the reason. **We do look at each confirmation when received to make sure the trade is consistent with the Fund's strategy.***⁶⁴⁶

469. The later statement is not true. FGG siloed Berman, but presented him as an integral part

⁶⁴⁵ Email from Gil Berman to Amit Vijayvergiya, Subject: Sentry reports for May, June 13, 2008 [FGGE000633382-383 / SECSEV1210905-906 at -905]; [SECSEV1210866-867 at -866] (*emphasis added*). See also, Berman Report May 2008 Trading Activity [SECSEV1210868-869].

⁶⁴⁶ Memo to Wolfgang G. Isler, Lloyds Bank Plc Zurich Branch, from Roger Steenberg, July 2, 1998 [ANWAR-CCI-00082596-597 at -596] (*emphasis added*).

of its risk management. Berman never had the BLMIS strategy documentation – the trading directive, or the PPM for Fairfield Sentry. In his 2013 and 2024 testimony, Berman confirmed he was never given a copy of the trading directive or any other parameters.⁶⁴⁷ It would be impossible for Berman to determine if the transactions in the Fairfield BLMIS Accounts Berman reviewed met the requirements set forth in the parameters for the fund.⁶⁴⁸ As Berman admitted, he was instructed by FGG to summarize, not editorialize.⁶⁴⁹

470. It is important to bear in mind that the SSC strategy is in fact a real strategy used for hedging purposes. If the underlying components are not executed on the same day, you are left with a speculative position, which is not part of the strategy and did not conform with FGG's guidelines. Even if the trades were executed on the same day, there is a specific order in which the trades are executed. Berman and FGG acknowledged they had no idea when the purported trades took place and therefore could not verify that they were trading an SSC strategy.⁶⁵⁰

(3) Options Trading and Counterparties

471. The July 2, 1998, letter from Citco to Lloyds further discussed BLMIS's option trading and counterparties:

⁶⁴⁷ Dep., 7/1/24, at 62:12-63:10; Berman Anwar Dep., 6/20/13, at 325:9-326:2.

⁶⁴⁸ *See also*, Berman Dep., 7/1/24, 62:12-63:10 (“(Q: Without knowing those requirements, could you accurately analyze whether the purported trading conformed to the SSC strategy? A. No. No, based on those parameters you just mentioned.”).

⁶⁴⁹ *See* Berman Anwar Dep., 6/20/13, 301:11-302:11 (“...my assignment was to prepare a monthly summary of the trading activity...My assignment early on, even from the beginning, as it was conveyed to me by Jeff Tucker, was please just report the activity. Don’t provide any editorial commentary. I don’t know about emphasis, but just report what happened as you see it on the statements, without any commentary.”); *see also, e.g.*, Berman Anwar Dep., 6/20/13, 344:23-345:7 (“...I would like to, I guess, clarify in regards to your statement that I wasn’t—I would not even characterize what I was doing as ‘analysis.’ I would characterize it as summarization.”).

⁶⁵⁰ Berman Dep., 7/1/24, 30:20-31:12; Vijayvergiya SEC Dep., 10/20/09, 102:15-103:5.

Figure 122: Excerpt from July 2, 1998, letter from Citco to Lloyds⁶⁵¹

All trades in the index options are either exchange traded or done in the over the counter market. The over the counter options are done with a variety of counterparties. Madoff Securities is not a counterparty to these trades. The Information Memorandum has been changed to be consistent with the foregoing.

472. This was not true. Additionally, the same letter erroneously implies that trades were verified against the daily price range.⁶⁵² In reality, the only mention in any Berman reports of trades being in the daily price range was to samples checked from October 1995 to January 1997.⁶⁵³ However, these references state that only “samples” were verified, not *all* of the trades.

Figure 123: Berman October 1995 Report⁶⁵⁴

Sentry-October 1995 Page 2

Price comparison and checking for a statistical sample of October's transactions for the Sentry accounts reveals that all of the month's trades took place within the published high/low ranges for the securities traded on the relevant trade dates.

473. Examining only samples for a limited period of time is not what FGG said Berman was doing.

(4) Verification of Trading and Reported Performance

474. Meeting Minutes of a May 2004 meeting of the Board of Directors of Fairfield Sentry

⁶⁵¹ Memo to Wolfgang G. Isler, Lloyds Bank Plc Zurich Branch, from Roger Steenberg, July 2, 1998 [ANWAR-CCI-00082596-597 at -597].

⁶⁵² Memo to Wolfgang G. Isler, Lloyds Bank Plc Zurich Branch, from Roger Steenberg, July 2, 1998 [ANWAR-CCI-00082596-597 at -596], (“All confirmations are forwarded to an individual in Colorado who reviews them to determine whether the price of each trade is within the range of actual prices for that day.”).

⁶⁵³ Berman Reports: October 1995 – December 1995 [FG-00134840-860 at -840-845]; Berman Reports: January 1996 – December 1996 [FGGE000263785-808 / SECSEV0841308-331]; January 1997 Berman Report, February 18, 1997 [FGGE000263745-783 at -781-783 / SECSEV0841268-306 at -304-306].

⁶⁵⁴ October 1995 Berman Report, November 15, 1995 [FG-00134840-860 at -844-845], (*emphasis added*). See also November 1995 Berman Report, December 15, 1995 [FG-00134840-860 at -842-843], (“An analysis of prices for a sample of November's transactions for the Sentry accounts reveals that all of the month's trades took place within the published high/low ranges for the securities traded on the relevant trade dates.”).

stated: “[t]he Fund has also continued the relationship with Gil Berman, to confirm accountability of performance figures.”⁶⁵⁵ In an email to Rob Blum and Richard Landsberger, Vijayvergiya stated: “Gil Berman receives trade tickets and independently checks trading, volume and prices.”⁶⁵⁶ When asked whether FGG used external consultants and for what, FGG stated:

*The Fund has retained Mr. Gil Berman to independently review and verify all portfolio activity and proper pricing to market each month. Mr. Berman has been performing these duties for the Fund for more than 7 years. Each month, he reconstitutes the profit and loss to substantiate the trading activity. Mr. Berman was previously a trader on the floor of the CBOE. His brother, Ed Berman, was an ex-partner of FGL.*⁶⁵⁷

475. However, the Berman reports do not contain any confirmation about the trading performance or volume of the securities, calls, or puts. There was no mention of volume in any regard. As noted above, Berman acknowledges that he is simply taking the information from trade confirmations and customer statements issued by BLMIS and that is exactly what is in his reports - simply regurgitating the same information in a condensed format.

⁶⁵⁵ Fairfield Sentry Limited Board of Directors Meeting Minutes, May 18, 2004 [ANWAR-C-ESI-00366544-552 at -545].

⁶⁵⁶ Email from Amit Vijayvergiya to Richard Landsberger (Rob Blum cc'ed), RE: sentry transparency [FGGE000168319-320 at -319 / SECSEV0745842-843 at -842].

⁶⁵⁷ Questions for Fairfield Sentry [FGGE000791444-452 at -452 / SECSEV1368967-975 at -975], (Q. “Do you use external consultants? If so, what is their role”). *See also*, Email from Vijayvergiya to Lakshmi Chaudhuri RE: Fairfield Sentry Ltd. Q&A, Amit Anwar Dep., 6/20/13, Ex. 15 [10-03800_FGG_0022456-467 at -466]. (“Attached is the the [sic] Q&A sheet that you had prepared for Swiss Capital Ltd. We would like to share this with Banco Atlantico”).

Figure 124: Excerpt from June 1997 Berman Report⁶⁵⁸

I have reviewed all of the June transactions for the Sentry accounts. On June 11th, the Sentry accounts sold their Treasury bill holdings and purchased typical portfolios of S&P 100 stocks. The Fairfield Sentry accounts purchased additional quantities of the same stocks on June 13th to move to a fully invested position. On June 20th, the Sentry accounts sold their holdings of Monsanto and Dow Chemical. On June 25th, Greenwich Sentry sold small quantities of stocks in its portfolio. There were no other stock transactions during the month.

On June 11th, in conjunction with that day's stock purchases, the Sentry accounts bought an aggregate total of 4,772 OEX June 845 puts while on June 12th selling an equivalent number of OEX June 860 calls. On June 13th, to match the portfolio additions made that day, the Fairfield Sentry accounts purchased a total of 4,398 OEX June 855 puts while selling the OEX June 870 calls. On June 20th (expiration day), the Sentry accounts were assigned on their short OEX June 860 and June 870 calls, while both series of long puts expired worthless. On the same day, the Sentry accounts initiated a roll into the new spot month by purchasing an aggregate total of 9,170 OEX July 870 puts.

476. First and foremost, no investment manager who claims to have discretion over a portfolio should need a third party to merely summarize the trading activity. This is one of the key responsibilities of the operations group: trade reconciliation. At the very least, the risk manager should be able to do this. If you must have a third-party review trading, they should be looking for anomalies and problems and verifying the trading activity against independent, reliable sources.
477. There was a clear contradiction between Berman's limited responsibilities and FGG's representations to investors, prospective investors, and the Fairfield Sentry board about his responsibilities. Why lie? As a fund manager or an investment manager or advisor, you have a duty to tell the truth when you make disclosures or are asked by investors or potential investors. Berman's reports did not confirm all trades in the Fairfield BLMIS Accounts, and there was no analysis of the trades, calculation of the components of profit

⁶⁵⁸ June 1997 Berman Report, July 16, 1997 [FGGE000263745-783 at -764-767 / SECSEV0841268-306 at -287-290].

and loss for the month, or verification that the stock portfolio was hedged in accordance with the strategy. Rather, his reports were merely a condensed summary of the statements; Berman's only source of information was the monthly BLMIS reports he received from FGG. Even when he did receive trade confirmations, he confirmed that he did not rely on them.⁶⁵⁹ There was no independent verification.

**j) FGG's Misrepresentations about Friehling & Horowitz,
BLMIS's Audit Firm**

478. Friehling & Horowitz C.P.A., P.C. ("F&H") served as BLMIS's auditor from 1991 through its collapse in December 2008. FGG made misrepresentations about F&H to investors. FGG also followed Madoff's direction in order to deflect unwanted inquiries into the credibility and qualifications of F&H and to give investors confidence that there was a reputable, independent auditor checking BLMIS.
479. As early as 1998, however, F&H was a one-person audit firm with one working CPA, operating out of a small storefront in a strip mall.⁶⁶⁰ Horowitz, a C.P.A., worked for Madoff's father-in-law's accounting firm.⁶⁶¹ When Horowitz formerly retired in 1998, his partner (and son-in-law) Friehling, became the sole active accountant at the firm and continued to perform the tax and audit services for BLMIS.⁶⁶² F&H had no other accounting staff.⁶⁶³ As FGG acknowledged, this information was readily obtainable from a search of the New York State Society of CPAs (<https://www.nysscpa.org/>), the American Institute of Certified Public Accountants (<https://www.aicpa-cima.com/>), or by simply calling or visiting F&H.⁶⁶⁴
480. It would have been easy for FGG to conduct an investigation of F&H. In fact, in 2005,

⁶⁵⁹ Berman Anwar Dep., 6/20/13, 67:15-72:21.

⁶⁶⁰ *United States of America v. David Friehling*, Plea (Change of Plea), November 3, 2009 ("Friehling Plea"), 26:3-22; 35:5-15 [PUBLIC0003332-380 at -357, 366]; [FGGE001772981-991 / SECSEV2349931-941]; D&B Business Background Report, September 14, 2005 [FGGE001772992 / SECSEV2349942].

⁶⁶¹ Friehling Plea, 36:7-15 [PUBLIC0003332 at -367].

⁶⁶² Although Horowitz formally retired in 1998, he unofficially retired in 1991. Friehling Plea, 35:5-18 [PUBLIC0003332 at -357, -366]

⁶⁶³ Friehling Plea, 26:3-13 [PUBLIC0003332 at -357].

⁶⁶⁴ Emails between Julia Luongo and Amit Vijayvergiya, September 9, 2005 - October 14, 2005 [FG-05783079-082]; Email from Dan Lipton to Amit Vijayvergiya, Subject: auditors, November 26, 2003, Lipton Anwar Dep., 5/14/13, Ex. 37 [FG-00001782].

FGG reviewed the D&B Report on F&H, which noted that F&H started in 1989, was located in New City, New York, provided accounting services, had one employee (David Friehling), and generated sales of \$180,000.⁶⁶⁵

481. FGG received numerous inquiries from investors regarding accounting-related procedures at BLMIS and their auditor, F&H.
482. Subsequent to a meeting in November 2003, representatives of FGG investor Atlantic Security Bank twice followed up with FGG multiple times to “remind [them] of a few follow-up items that [they] agreed upon” regarding F&H, including any available references, how long F&H audited BLMIS, and the availability of “complete (rather than just abbreviated) audited financial statements” on Madoff.⁶⁶⁶
483. In March 2004, Atlantic Security Bank again contacted FGG for two references for F&H, BLMIS’s income statement, and articles discussing BLMIS and its employees.⁶⁶⁷
484. FGG investors also raised concerns regarding the qualifications of F&H.⁶⁶⁸ For example, Capital Research Sweden AB emailed FGG in September of 2005 regarding “perceived conflicts of interest” in the Bayou Fraud and how they potentially related to FGG’s investment into BLMIS.⁶⁶⁹ The investor detailed their concerns, noting that “we can recognise certain similarities with Bayou” and BLMIS.⁶⁷⁰ As a response to Capital Research Sweden AB’s request, FGG attempted to find more information on F&H with

⁶⁶⁵ Email from McKenzie to Tucker, Lipton, and Castillo confirming that according to the D&B Business Background Report, Friehling was F&H’s only employee, Lipton Anwar Dep., 5/14/13, Ex. 40 [FG-00001788-799 at -788]; D&B Business Background Report, September 14, 2005 [FG00037518-575 at -518 / SECSEV0034431-488 at -431].

⁶⁶⁶ Email from Benjamin Schliemann to FGG, November 24, 2003, Lipton Anwar Dep., 5/14/13, Ex. 83 [FG-00002894-896 at -896]; Email from Dan Lipton to Veronica Barco, RE: Info, November 26, 2003, Vijayvergiya Anwar Dep., 6/17/13, Ex. 51 [FG-00008914-915].

⁶⁶⁷ Email from Veronica Barco to Amit Vijayvergiya, RE: Info, March 31, 2004, Vijayvergiya Anwar Dep., 6/17/13, Ex. 83 [FG-00009246-248 at -247].

⁶⁶⁸ Email from Benjamin Schliemann to FGG, November 24, 2003 [FGGE000798764-768 at -767 / SECSEV1376287-291 at -290]; Email from Veronica Barco to Amit Vijayvergiya, March 26, 2004 [FGGE001830105-106 at -105 / SECSEV2407056-057 at -056]; Rule 2004 Examination of Christopher Cutler, January 21, 2010 [CUCCAA0000001-328 at -109-110, -166, -194-196, -234-240, -249-250, -270-271].

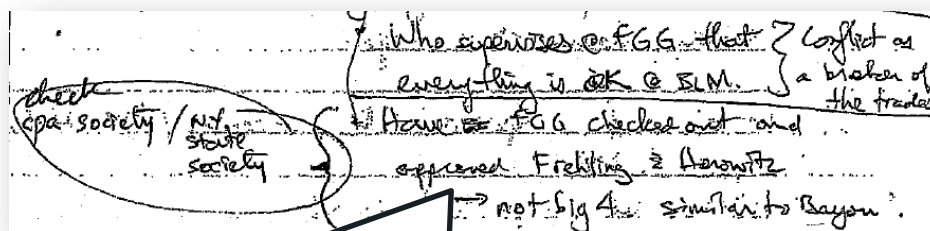
⁶⁶⁹ Email from Carla Castillo to Jan Buren, et al., re: Bayou Hedge Fund, September 1, 2005 [FG00037518-575 at -546-551 / SECSEV0034431-488 at -459-464].

⁶⁷⁰ Email from Jan Buren to Carla Castillo, re: Bayou Hedge Fund, September 5, 2005 [FG00037518-575 at -543, -549, -554, -561, -571 / SECSEV0034431-488 at -456, -462, -467, -474, -484].

Gordon McKenzie first stating that he could not “find much information” on the accounting firm and later circulating the D&B Business Background Report on F&H internally at FGG.⁶⁷¹

485. In response to another investor request, Carla Castillo, a Vice President of FGG’s investor relations, wrote to Vijayvergiya: “[d]oes this ‘perceived conflict of interest with two relationships (broker and auditing)’ sound familiar? Hehehe.”⁶⁷²
486. As seen in **Figure 125**, Vijayvergiya highlighted this similarity to Bayou in his 2005 notebook.

Figure 125: Excerpt from Vijayvergiya’s Notebook, August 2005 – December 2005⁶⁷³



- “Who supervises @ FGG that everything is OK @ BLM. (Conflict as a broker of the trades)”
- “Have FGG checked out and approved Frehling [sic] & Horowitz – not big 4. *similar to Bayou*. (check cpa society / NY state society)”

487. In August 2005, Capital Research Sweden AB first reached out to FGG with concerns regarding Sentry’s broker and Madoff’s auditor, in light of the Bayou Fund fraud.⁶⁷⁴ In regard to the auditor concerns, Capital Research Sweden AB notes BLMIS “has

⁶⁷¹ Email Gordon McKenzie to Jeffrey Tucker, et al., re: Bayou Hedge Fund, September 14, 2005 [FG00037518-575 at -540, -546, -567-568 / SECSEV0034431-488 at -453, -459, 480-481].

⁶⁷² Email from Carla Castillo to Amit Vijayvergiya re: Taylor Update on Bayou Management LLC, September 1, 2005 [SECSEV0637858-863 at -858].

⁶⁷³ Amit Vijayvergiya’s Notebook, August 2005 - December 2005 [FGG00098087-187 at -096 / SECSEL0000807-907 at -816] (*emphasis added*).

⁶⁷⁴ Email from Jan Buren to Carla Castillo, Subject: Bayou Hedge Fund, August 29, 2005 [FG-00014270-276 at -275-276]; Email from Jan Buren to Carla Castillo, Subject: Bayou Hedge Fund, September 2005 [FG-00050813-870 at -865-866].

employed a small accounting firm. Is the accounting firm checked and approved by Fairfield Greenwich Group?”⁶⁷⁵ As mentioned previously, Capital Research Sweden AB noted certain “similarities” between Fairfield Sentry and Bayou, including BLMIS using its own brokerage firm and the auditor being a “small firm.”⁶⁷⁶

488. In April 2006, Citigroup requested documents “describing tests PwC [had] done overall as part of their audit. Same for [Friedling] & Horowitz. They want some background / color on F&H – who are they, how big, how many clients, have we spoken to them.”⁶⁷⁷
489. In August 2008, Unigestion redeemed \$74.5 million from Sentry.⁶⁷⁸ Prior to that, in July 2008, Unigestion inquired about an audit of BLMIS, stating that they would like to see the annual audited financials prepared by F&H and submitted to the SEC.⁶⁷⁹
490. FGG acknowledged that it was essential that there was a proper audit of BLMIS by a reputable firm.⁶⁸⁰ As discussed previously in Section VII.B.3.g), in February 2004, Banknord (now BANOR SIM Spa) noted that they had heard Madoff’s returns were not audited.⁶⁸¹ In response, “Dan [Lipton] and Amit [Vijayvergiya] assured [Banknord] they were (by Price Waterhouse Coopers) and that it would be a violation of SEC regulations if they weren’t.”⁶⁸² Upon receiving these meeting notes, Blum acknowledged internally

⁶⁷⁵ Email from Jan Buren to Carla Castillo, Subject: Bayou Hedge Fund, September 2005 [FG-00050813-870 at -865-866].

⁶⁷⁶ Email from Jan Buren to Carla Castillo, Subject: Bayou Hedge Fund, September 2005 [FG-00050813-870 at -865-866].

⁶⁷⁷ Amit Vijayvergiya’s Notebook, February 2006 - May 2006 [FGG00098291-391 at -340 / SECSEL0001209-309 at -258].

⁶⁷⁸ MSD Interview of Amit Vijayvergiya, March 6, 2009 [FGG00104735-5091 at -042-043 / FG-06612968-324 at -275-276] *see also* [SECSEL0002155-511 at -462-463] (MSD Exhibit 3).

⁶⁷⁹ MSD Interview of Amit Vijayvergiya, March 6, 2009 [FGG00104735-5091 at -040 / FG-06612968-324 at -273] *see also* [SECSEL0002155-511 at -460] (MSD Exhibit 3). *See also*, Email from Nicolas Rousselet to Lauren Ross, Subject: Fairfield Sentry - Questions from Unigestion, May 27, 2008 [FG-00014193-197]; Email Chain RE: Volatility Alpha Enhanced Fund, July – August 2008 [FG-00014427-434].

⁶⁸⁰ Amit Vijayvergiya’s Notebook, February 2006 - May 2006 [FGG00098291-391 at -340 / SECSEL0001209-309 at -258]. (“BLM is a regulated entity & its service providers must be credible.”)

⁶⁸¹ Email from Patrick Blake to Yanko della Schiava, re: Banknord meeting notes, February 24, 2004 [FGGE000264323-325 at -324-325 / SECSEV0841846-848 at -847-848].

⁶⁸² Email from Patrick Blake to Yanko della Schiava, re: Banknord meeting notes, February 24, 2004 [FGGE000264323-325 at -324-325 / SECSEV0841846-848 at -847-848].

that PwC audits the Sentry Funds but “some small acctg firm does Madoff.”⁶⁸³

491. In a February 2006 issue of Hedge Fund Manager magazine, FGG described that, as part of its due diligence process, “FGG researchers speak to all the service providers associated with the manager, run a professional background check on them and speak to industry contacts, referees and investors.”⁶⁸⁴
492. In 2006, FGG met with a consultant named Chris Cutler in connection with Cutler’s due diligence on behalf of a potential investor. Notwithstanding the information and concerns relating to F&H, FGG informed Cutler that F&H checked BLMIS’s policies and controls, had 20 partners, focused on broker-dealers, and was completely independent.⁶⁸⁵
493. As late as August 2008, Vijayvergiya acknowledged the importance of a reputable audit firm in response to an inquiry from HSBC. When asked if FGG had information about F&H, Vijayvergiya said he would be interested in obtaining information regarding F&H’s other clients but that he did not “have info at all on F&H.”⁶⁸⁶
494. Yet, FGG claimed to investors that F&H was a solid and reputable audit firm.
495. In response to Atlantic Security Bank’s November 2003 inquiries regarding F&H, Lipton responded to Veronica Barco stating that: “Amit and I called today and we accidentally got transferred to the Man [Madoff] himself. He told us that they have been in business for over 30 years and have audited his firm for over 25 years. They have 100’s of clients and numerous broker-dealers. I don’t know if that is good enough. We could try some

⁶⁸³ Email from Rob Blum to Richard Landsberger and Patrick Blake, re: Banknord meeting notes - confidential, February 25, 2004 [FGGE000264323-325 at -323-324 / SECSEV0841846-848 at -846-847].

⁶⁸⁴ Hedge Fund Manager Magazine, *Let the light shine in, Fairfield Greenwich says its transparency requirement reduces risk and enables it to realise steadier returns. John Butcher explains how it works*, February 2006 [FG-05574622-623].

⁶⁸⁵ Rule 2004 Examination of Christopher Cutler, January 21, 2010 [CUCCAA0000001-328 at -166, -184, -194, -235]; Chris Cutler’s notes from call with Vijayvergiya [CCUSAA0000025.1 at -026, -030].

⁶⁸⁶ Email from Amit Vijayvergiya to Dan Lipton, RE: HSBC Sentry Operational DD, August 21, 2008 [FGGE000493616-624 at -616 / SECSEV1071139-147 at -139].

other methods if that does not suffice.”⁶⁸⁷

496. In March 2004, Vijayvergiya provided Veronica Barco his responses to Atlantic Security Bank’s questions, stating that “Friedling & Horowitz is a reputable CPA firm that has been in in business for over 30 years. They have audited BLM for over 25 years and have hundreds of clients including numerous broker/dealers.”⁶⁸⁸
497. In a June 2005 meeting, Jon Clark, and his colleague Claire Ikeda-Thew of Optimal, were advised by Vijayvergiya that FGG had F&H’s independent auditor’s report on BLMIS, as well as PWC notes regarding a meeting with Madoff in Bermuda, and that F&H “is an accounting firm often used by broker dealers, which should alleviate some of the concern about their legitimacy.”⁶⁸⁹
498. As seen in **Figure 126**, Vijayvergiya’s notes on F&H were that it “has over 200 clients; [has] been their auditor for > 45 y[ea]rs; have more than 20 [a]cc[oun]ts; they have many broker/dealer clients; BLM is a regulated entity & its service providers must be credible.”⁶⁹⁰ The notes continue: “HF[hedge funds] concerns over self-dealing . . . w/ auditors are greater than w/ b/d [broker dealers] b/c HF’s [hedge funds] are unregulated.”⁶⁹¹

⁶⁸⁷ Email from Dan Lipton to Veronica Barco, RE: Info, November 26, 2003 [FG-00008914-915], (Anwar Deposition, Vijayvergiya Exhibit 51 / [Anwar Deposition of Daniel Lipton, Ex. 39 [FG-00001785-787]]). *See also*, MSD Interview of Amit Vijayvergiya, March 6, 2009 [FGG00104735-5091 at 859 / FG-06612968-324 at -092] *see also* [SECSEL0002155-511 at -279].

⁶⁸⁸ Email from Amit Vijayvergiya to Veronica Barco, RE: Info, March 30, 2004 [Vijayvergiya Anwar Dep., 6/17/13, Ex. 83 / FG-00009246-248 at -247].

⁶⁸⁹ Notes from Conversation with Vijayvergiya, June 3, 2005 [GENP0535131].

⁶⁹⁰ Amit Vijayvergiya’s Notebook, February 2006 - May 2006 [FGG00098291-391 at -340 / SECSEL0001209-309 at -258].

⁶⁹¹ Amit Vijayvergiya’s Notebook, February 2006 - May 2006 [FGG00098291-391 at -340 / SECSEL0001209-309 at -258].

Figure 126: Excerpt from Vijayvergiya's Notebook, April 6, 2006⁶⁹²

1) One of gals came up in audit →
Sophia client → b/c that always
leads to audit → anything we could
do to stop this, even to audit

2) Capen & Lang of BLM

Meeting w/ Vishal & Samir of Citigroup

* They are very concerned about the credit
risk of the derivatives counterparties.
+ wanted to know if ML & Deutsche
were counterparties → anecdotally
on fraud inspection of hedge funds.

* They want to know what, if any,
particulars could be verified the derivatives
counterparties.

* They'd like to see docs describing their
tests & C have done overall as part of
their audit.

* Same for Furling & Horowitz

* They want some background/color on
F & H → who are they, how big, how
many clients, have we spoken to them

Marty Bach Handler 20

they have many
broker/dealer
clients.

BLM is a regulated
entity & its
service providers
must be credible → HF concerns over self-dealing w/ auditors are greater than w/ b/d b/c HF's are unregulated.

has over
200 clients
been their
auditor for 7 yrs
have more
than 20
acc[oun]ts
when?

only the
one
partner
to
BLM
the audit

“has over 200 clients; [has] been their auditor for > 45 y[ea]rs; have more than 20 [a]cc[oun]ts; they have many broker/dealer clients; BLM is a regulated entity & its service providers must be credible → HF [hedge funds] concerns over self-dealing . . . w/ auditors are greater than w/ b/d [broker dealers] b/c HF's [hedge funds] are unregulated.”

499. Vijayvergiya's notes further reflect a call with Madoff (“BLM”) on March 17, 2008,

⁶⁹² Amit Vijayvergiya's Notebook, February 2006 - May 2006 [FGG00098291-391 at -340 / SECSEL0001209-309 at -258].

where F&H was discussed. Vijayvergiya notes: “no relationship w/ F&H; fully independent; AICPA reg’d; been auditor for 40 y[ea]rs.”⁶⁹³ This discussion resulted in Vijayvergiya’s March 26, 2008, email to FGG’s executive committee with the subject: “[r]ecap of conversation with Bernie,” which detailed the following regarding F&H.⁶⁹⁴

Figure 127: Excerpt from Vijayvergiya’s March 26, 2008, email to FGG⁶⁹⁵

3) on Relationship with Accountants Freihling & Horowitz:
- BLM has used F&H for over 40 years as their auditor
- F&H is completely independent; there is no family relationship
- F&H is a registered member of the American Institute of Certified Public Accountants

500. As discussed above, F&H was a one-person audit firm, operating out of a small storefront in a strip mall. There is simply no way that a firm with one working CPA could audit a broker-dealer the size of BLMIS. In my experience, the audits of investment managers and funds generally require a significant team of professionals, including but not limited to, an audit partner, senior manager, audit staff, and specialized professionals in the investment industry or tax. At a minimum, any audit firm should have enough employees to do the audit, separately verify the results, and oversee the audit report. F&H was one person.
501. The greater the assets under management held by the investment firm, the more members of an audit team are needed in order to perform a proper audit. As of 2001, public estimates of BLMIS’s AUM were in the range of \$6-7 billion.⁶⁹⁶ As of 2007, BLMIS’s

⁶⁹³ Amit Vijayvergiya’s Notebook, February 2008 - June 2008 [FGG00099097-196 at -112 / SECSEL0001898-015 at -931].

⁶⁹⁴ Email from Amit Vijayvergiya to FGG’s Executive Committee, RE: Recap of conversation with Bernie, March 26, 2008, Vijayvergiya Anwar Dep., 6/17/13, Ex. 84 [FG-00009249-252 at -251].

⁶⁹⁵ Email from Amit Vijayvergiya to FGG’s Executive Committee, RE: Recap of conversation with Bernie, March 26, 2008, Vijayvergiya Anwar Dep., 6/17/13, Ex. 84 [FG-00009249-252 at -251].

⁶⁹⁶ Michael Ocrant, *Madoff tops charts; skeptics ask how*, MAR/Hedge (RIP) No. 89, May 2001 [PUBLIC0018782-786 at -782-783].

AUM was approximately \$13 billion, increasing to over \$17 billion in 2008.⁶⁹⁷ In addition, BLMIS handled hundreds of thousands of transactions, money transfers, margin calls, etc. which needed to be audited.

502. While there is no way to quantify the exact number of staff needed for an audit of a broker-dealer the size of BLMIS, I would expect a minimum of at least three to four staff members made up of qualified and experienced CPAs and accountants. In addition to a CPA, there should be staff for a supervisory review and a quality control review.
503. FGG made the claim that F&H had hundreds of clients.⁶⁹⁸ **Figure 128** shown below, lists the 25 largest accounting firms, by total revenue, from 2002 and the number of employees, which ranged from 251 to over 22,000.⁶⁹⁹ In the late 1990s and early 2000s, the funds we invested in typically used the top tier audit firms, such as Deloitte & Touche, PwC, Ernst & Young, KPMG, etc.

⁶⁹⁷ SEC Form ADV, Bernard L. Madoff Investment Securities, January 24, 2007 [PUBLIC0003763-796 at -771]; SEC Form ADV, Bernard L. Madoff Investment Securities, January 7, 2008 [PUBLIC0003834-864 at -840].

⁶⁹⁸ Email from Amit Vijayvergiya to Veronica Barco, March 30, 2004 [FG-00006849-859 at - 849]. (“Frehling & Horowitz is a reputable CPA firm that has been in business for over 30 years. They have audited BLM for over 25 years and have hundreds of clients including numerous broker/dealers.”). *See also*, email from Dan Lipton to Jeffrey Tucker and Carla Castillo, RE: Bayou Hedge Fund, September 12, 2005 [FG-00050813-870-at -854]. (“Frehling [sic]& Horowitz, CPAs are a small to medium size financial services audit and tax firm, specializing in broker-dealers and other financial services firms. They are located in Rockland County, NY. They have 100s of clients and are well respected in the local community.”); Email from Dan Lipton to Veronica Barco, November 26, 2003 [FG-00006849-859 at -850] (“Amit and I called today and we accidentally got transferred to the Man himself. He told us that they have been in business for over 30 years and have audited his firm for over 25 years. They have 100’s of clients and numerous broker-dealers. I don’t know if that is good enough. We could try some other methods if that does not suffice.”).

⁶⁹⁹ U.S. General Accounting Office (GAO), Report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services, Public Accounting Firms Mandated Study on Consolidation and Competition, July 2003, [PUBLIC0707167-313 at -189].

Figure 128: Largest Public Accounting Firms (Total Revenue) in 2002⁷⁰⁰

Table 1: Twenty-five Largest Accounting Firms by Total Revenue, Partners, and Staff Resources (U.S. Operations), 2002

Firm	Total revenue (dollars in millions)	Audit and attest revenue (dollars in millions)	Tax revenue (dollars in millions)	MCS revenue (dollars in millions)	Professional Staff	Partners	Total staff	Offices
Deloitte & Touche	\$5,900	\$2,124	\$1,239	\$2,006	19,835	2,618	22,453	81
Ernst & Young	4,515	2,664	1,716	0	15,078	2,118	17,196	86
PricewaterhouseCoopers	4,256	2,596	979	0	16,774	2,027	18,801	113
KPMG	3,200	2,016	1,184	0	10,967	1,535	12,502	122
Grant Thornton	400	200	136	64	2,068	312	2,380	51
BDO Seidman	353	145	145	64	1,229	281	1,510	37
BKD	211	93	65	53	972	193	1,165	26
Crowe, Chizek and Co.	205	45	37	88	936	101	1,037	12
McGladrey & Pullen	203	187	16	0	1,894	475	2,369	86
Moss Adams	163	64	62	37	758	179	937	25
Plante & Moran	161	79	45	37	714	161	875	15
Clifton Gunderson	137	55	36	48	850	140	990	39
Virchow, Krause & Co.	96	35	32	21	536	60	596	11
Larson Allen	79	27	21	23	401	73	474	8
Richard A. Eisner & Co.	69	30	20	18	280	70	350	3
Eide Bailly	62	25	11	13	464	59	523	13
J.H. Cohn	60	30	16	4	193	58	251	8
Reznick Fedder & Silverman	58	33	18	8	350	32	382	4
Cherry, Bekaert & Holland	54	26	19	6	363	45	408	23
Berdon	54	20	19	14	289	38	327	2
Wipfli Ullrich Bertelson	52	27	16	8	335	62	397	16
M.R.Weiser & Co.	51	29	18	4	248	32	280	3
Rothstein, Kass & Co.	50	39	11	1	303	16	319	4
Goodman & Co.	49	26	22	1	450	69	519	9
Schenck Business Solutions	48	16	16	7	267	41	308	12

504. The purported annual audits were nothing more than reconciling financial numbers provided by Madoff to documents created and provided by Madoff. There was simply no legitimate audit. There was no independent review of BLMIS's financial statements pursuant to industry standards. There was no verification from third parties or institutions regarding the assets purportedly held by BLMIS. One example of the lack of a real audit is in the omission of material information that BLMIS became a registered investment manager with the SEC in 2006. The BLMIS audit made no mention of the

⁷⁰⁰ U.S. General Accounting Office (GAO), Report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services, Public Accounting Firms Mandated Study on Consolidation and Competition, July 2003, [PUBLIC0707167-313 at -189].

investment management activities.⁷⁰¹ This is a red flag.

505. FGG made material misrepresentations to its investors about BLMIS's auditors and followed Madoff's directions in order to shield the reality of F&H's small operation and lack of independence. F&H never verified BLMIS's assets. FGG's misrepresentations to investors about F&H helped BLMIS hide the fact that it did not have the securities it claimed to purchase in its custody.
506. BLMIS's lack of a well-known and established auditor was a red flag that FGG acknowledged. The purpose of the auditor is to review the financial statements of the audited firm and determine that the financial statements are reasonably free of material misstatements.⁷⁰²
507. FGG touted in presentations that their diligence process would have led them to question the obscure auditing firm in the Bayou Fund fraud.⁷⁰³
508. In fact, Keeney made the point in a presentation that FGG would not have been caught in the Bayou fraud since they had an unknown auditor and would not have invested with them. Ironically, F&H was also unknown. In a September 2005 email, Keeney wrote that "[t]hat is a definite red flag. The accounting firm was a very little-known firm, which would have raised further questions from us. Furthermore, we always ask if there is any kinship among the service providers and this fact would deter us from the fund."⁷⁰⁴
509. It was revealed that Bayou relied on a fabricated auditor in order to help perpetrate its fraud.⁷⁰⁵ It is easier for an investment advisor to produce fictitious numbers or fraudulent

⁷⁰¹ BLMIS Annual Audited Report for Period Ending October 31, 2006 [FG-00056877-884].

⁷⁰² Occupational Outlook Handbook: Accountants and Auditors, Bureau of Labor Statistics [PUBLIC0704510-516 at -511].

⁷⁰³ FGG Investment Team Presentation, November 2, 2005 [FGGE001120789-806 at -803 / SECSEV1698312-329 at -326].

⁷⁰⁴ Email from Jennifer Keeney to Carla Castillo, et al., September 9, 2005, re: Taylor Update on Bayou Management LLC, Keeney Dep., 3/1/24, Ex. 18 [FGGE001832016-020 at -016 / SECSEV2408967-971 at -967]; *see also* email from Ronald Irausquin to Larry Luckmann, December 18, 2002, re: Visit Madoff [ANWAR-C-ESI-00357244-247 at -245] ("it is rumoured that [F&H] is also (family) related to Madoff.").

⁷⁰⁵ Complaint for Injunctive and Other Equitable Relief at 6, *Commodity Futures Trading Comm'n v. Bayou Mgmt. et al.* No. 05 Civ. 8374 (S.D.N.Y. Sept. 29, 2005), ECF No. 1 [PUBLIC0706549]; Gretchen Morgenson, Jenny Anderson and Geraldine Fabrikant, *Clues to a Hedge Fund's Collapse*, The New York Times, September 17,

financial statements if the auditor is not equipped or does not have the requisite expertise to identify fraudulent activity. Pursuant to industry customs and practices, auditors are expected to act as a significant check on the financial transactions of their clients – and without a capable auditor behind BLMIS there was an opportunity for fraud to be committed.⁷⁰⁶

k) FGL and FGBL Breached Their Fiduciary Duties to Fairfield Sentry⁷⁰⁷

510. In my opinion, FGL's and FGBL's decision to maintain Fairfield Sentry's investment with BLMIS despite the documents and information in their possession over the 18-year investment was inconsistent with and contradictory to all aspects of the fiduciary duties of care and loyalty owed to the investors of Fairfield Sentry.
511. FGL was the investment manager of Fairfield Sentry from 1998 through June 2003, as documented in the Investment Management Agreement, which was subsequently amended and restated on October 1, 2002 (the "2002 IMA").⁷⁰⁸
512. In 2003, FGG formed defendant FGBL under Bermuda law.⁷⁰⁹ FGBL was, until

2005 [PUBLIC0703275-284]; Fairfield Greenwich Group Due Diligence Process presentation, July 2007 [SECSEV1987570-600 at -597].

⁷⁰⁶ In 2006, when BLMIS registered as an investment advisor it reported \$11.7 billion AUM and still did not use a well-known and established auditor. Nor did BLMIS change auditors in 2007 or 2008 when AUM reported to rise to \$13 billion and \$17 billion, respectively. SEC Form ADV, Bernard L. Madoff Investment Securities, August 25, 2006 [PUBLIC0003729-762 at -736]; SEC Form ADV, Bernard L. Madoff Investment Securities, January 24, 2007 [PUBLIC0003763-796 at -771]; SEC Form ADV, Bernard L. Madoff Investment Securities, January 7, 2008 [PUBLIC0003834-864 at -840].

⁷⁰⁷ The Trustee's counsel has advised me that the current issues before the Court concern only the Trustee's bankruptcy claims against the Defendants and the Defendants' defense of good faith. My discussion here of the investment management agreement pertains to the Defendants' conduct and the defense of good faith. Order Modifying the Expert Discovery Schedule and Establishing a Briefing Schedule for Partial Summary Judgment, *Picard v. Fairfield Investment Fund Ltd., et al.*, Adv. Pro. No. 09-01239 (LGB), ECF No. 416 (May 5, 2025) (ordering the schedule for expert discovery and summary judgment on the "Actual Knowledge Issue"). I have been advised that the breach of contract and the duty of care claims set forth in *Picard v. Fairfield Greenwich Group, et al.*, Adv. Pro. No. 10-03800 (JPM), will be addressed at a future date and therefore I reserve the right to submit my expert opinion on those claims at the appropriate time.

⁷⁰⁸ Investment Management Agreement, December 31, 2001 [ANWAR-CCI-00074996-002]; Amended and Restated Investment Management Agreement, October 1, 2002 [SECSCM0003972-4005 at -990-997]; Fairfield Sigma Limited Unanimous Written Consent of the Board of Directors, December 1, 2001 [ANWAR-C-ESI-00462831-836].

⁷⁰⁹ See Sentry Franchise Agreement, January 1, 2008 [FG-02744127-131].

December 31, 2007, wholly owned by FG Limited.⁷¹⁰ On July 1, 2003, FG Bermuda replaced FG Limited as the investment manager of Fairfield Sentry under a new agreement (the “2003 IMA”).⁷¹¹ The parties entered into a subsequent agreement on October 1, 2004, to reduce the number of share classes from two to one (the “2004 IMA”).⁷¹²

513. The 2002 IMA required FGL to use “its best efforts to monitor the activities and performance of BLM and any Non-BLM Investments.”⁷¹³ The 2003 IMA and 2004 IMA both required FGBL to use best efforts to, among other things, “seek suitable investment opportunities and manage Fairfield Sentry’s investment portfolio” and “act as Fairfield Sentry’s investment adviser in connection with investment decisions.”⁷¹⁴
514. The fiduciary obligations of investment advisors are to “use reasonable care and prudent judgment when managing client assets.”⁷¹⁵ These obligations, existing as far back as 1963,⁷¹⁶ were reinforced in 2004 when the SEC adopted Rule 204A-1 of the Investment Advisers Act of 1940 and related amendments, which are commonly referred to as the Investment Adviser Code of Ethics (“Rule 204A-1”),⁷¹⁷ and the issuance of the CFA Institute Asset Manager Code, which outlines the “the ethical and professional responsibilities of firms (‘Managers’) that manage assets on behalf of clients.”⁷¹⁸
515. As an investment manager, guided by the fiduciary duties of care and loyalty owed to

⁷¹⁰ See Sentry Franchise Agreement, January 1, 2008 [FG-02744127-131].

⁷¹¹ Investment Management Agreement, July 1, 2003 [ANWAR-C-ESI-00147351-360]

⁷¹² Investment Management Agreement, October 1, 2004 [ANWAR-CCI-00074985-994].

⁷¹³ Amended and Restated Investment Management Agreement, October 1, 2002 [SECSCM0003972-4005 at -992].

⁷¹⁴ Investment Management Agreement, July 1, 2003 [ANWAR-C-ESI-00147351-360]; Investment Management Agreement, October 1, 2004 [ANWAR-CCI-00074985-994 at -986]

⁷¹⁵ CFA Institute, Asset Manager Code [PUBLIC0706357].

⁷¹⁶ See *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963) [PUBLIC0708494] (quoting Prosser, *Law of Torts* (1955), 534-535 (citing cases). See generally Keeton, *Fraud -- Concealment and Non-Disclosure*, 15 *Texas L. Rev.* 1. and Harper and James, *The Law of Torts* (1956), 541) (“Courts have imposed on a fiduciary an affirmative duty of ‘utmost good faith, and full and fair disclosure of all material facts,’ as well as an affirmative obligation ‘to employ reasonable care to avoid misleading’ his clients.”).

⁷¹⁷ 17 CFR § 275.204A-1 – Investment adviser codes of ethics; 69 FR 41708, July 9, 2004, as amended at 76 FR 81806, Dec. 29, 2011; 81 FR 83554, Nov. 21, 2016 [PUBLIC0706596].

⁷¹⁸ CFA Institute, Asset Manager Code [PUBLIC0706357].

investors, I would have expected FGL and FGBL to redeem the Sentry Funds' investment with BLMIS as early as 1996, if not earlier, when documents and information in their possession first showed that BLMIS was not trading securities.⁷¹⁹ The ability to reap management and investment fees can never outweigh the best interest of the investor. In my experience, using basic common sense, and as a fiduciary, it is never in the best interest of the investor to remain invested in an enterprise that purports to trade securities but does not. When the enterprise collapses, the investors lose, and that is exactly what happened here – Fairfield Sentry collapsed shortly after BLMIS collapsed.

VIII. Conclusion

516. It is my opinion that the contemporaneous documents and information in FGG's possession, as well as contemporaneous publicly available information, showed that BLMIS was not trading securities as of 1997, if not earlier. That did not change through 2008, as additional information and documents and cumulative red flags only confirmed the absence of real trading at BLMIS.
517. FGG had better access to the purported "trades," and other information than almost any other investment group. FGG had direct access to Madoff and almost two decades of information, documents, and cumulative red flags confirming that BLMIS's reported trades were impossible, and additional red flags confirming the lack of trading, including:
- impossible option volumes;
 - out of range trades;
 - source of returns were inconsistent with the SSC strategy;
 - impossible execution of trades;
 - out of the market at year-end and quarter-end;
 - lack of scalability;
 - speculative option trades;
 - returns far exceeding returns of peers;
 - during periods of market stress, returns were inconsistent with the SSC strategy;
 - no correlation to the index they were replicating;
 - lack of downside risk;

⁷¹⁹ See *supra*, Section VII.B.2.b).

- excessive concentration of duties;
- BLMIS not charging fees other than commissions;
- lack of volatility;
- unknown counterparties;
- lack of real-time access to accounts;
- backward trade confirmations;
- lack of credentials;
- reporting a security that no longer existed; and
- atypical frequency of dividends.

518. In addition, my opinion is based on the misrepresentations and actions taken by FGG related to its investments with BLMIS, including:

- changing the description of the Sentry Funds' relation with Madoff;
- moving Fairfield Sentry's investment management company offshore at Madoff's request, to avoid regulatory scrutiny;
- changing the description of the BLMIS SSC strategy over the years;
- misrepresentations regarding the services performed by Citco;
- response to industry rumors;
- misrepresentations to the ISE;
- following Madoff's script during the SEC's investigation of concerns regarding Madoff;
- misrepresentations regarding the scope of the audit of FGG by PwC, namely that it did not extend to the underlying securities purportedly held by BLMIS;
- misrepresentations regarding counterparties;
- misrepresentations regarding BLMIS's auditor, F&H, and its inability to audit a firm with assets the size of those under management at BLMIS; and
- the breach of fiduciary duties by FG Limited and FG Bermuda

519. Against the existence of the foregoing, FGG kept investor assets invested in BLMIS through the time of its collapse in December 2008. Following BLMIS's collapse, the Sentry Funds went into liquidation because at least 95% of the funds were investments in BLMIS.⁷²⁰ During the life of the investments with BLMIS, FGG reaped the benefit of

⁷²⁰ On April 21, 2009, Fairfield Sentry's liquidation proceedings commenced in the Commercial Division of the Eastern Caribbean High Court of Justice, British Virgin Islands. *See* Certified Order Transferring Case No. 10-

over \$800 million in management and performance fees from Fairfield Sentry alone.

520. All opinions set forth in this report are based upon my experience in the hedge fund, fund-of-funds, and alternative investment industry, and in particular, my comprehensive knowledge of the investor operational and investment due diligence process for hedge funds, operational structure and processes of hedge funds and fund-of-funds, brokerage operations, as well as overall knowledge of industry regulations, standards, customs, and practices. All of the opinions in this report are statements that are based upon a reasonable degree of professional certainty.



Amy B. Hirsch

August 22, 2025

Amy B. Hirsch

Assumptions and Limiting Conditions

1. The conclusions arrived at herein are valid only for the stated purpose of this report.
2. Public information and industry and statistical information have been obtained from sources I believe to be reliable. However, I make no representation as to the accuracy or completeness of such information and have performed no procedures to corroborate the information. All information obtained from databases is deemed to be complete and accurate unless otherwise noted. All performance numbers are estimates until final audit.
3. Financial statements, portfolio information, track records, marketing material, and other related information in the course of this engagement, have been accepted without any verification as fully and correctly reflecting the portfolio, fund, or program's financial performance and/or operating results and/or AUM, etc., for the respective period, except as specifically noted herein.
4. This report is for the exclusive use in the referenced matter for the sole and specific purposes noted herein. It may not be used for any other purpose or by any other party for any purpose. Furthermore the report is not intended by the author or should not be construed by the reader to be investment advice in any manner whatsoever.
5. Neither all nor any part of the contents of this report should be disseminated to the public through advertising media, public relations, news media, sales media, mail, direct transmittal, or any other means of communication without our prior written consent and approval.
6. No change of any item in this report shall be made by anyone other than me, and I shall have no responsibility for any such unauthorized change.
7. My compensation is fee-based and is not contingent on the outcome of the litigation.
8. I have no obligation to update the report or the opinion for information that comes to our attention after the date of the report. However, I reserve the right to amend or supplement this report should documents or information come to my attention which would have a material impact on our analysis and/or conclusions.
9. I am not an attorney or legal expert. Nothing contained in this report shall be construed to constitute legal advice or legal opinion.