

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, ESQ.

5 DAVID WITHERSPOON, ESQ.

6 HEIDI STEIBER, ESQ.

7 CHRISTOPHER WILSON, ESQ.

8 Securities and Exchange Commission

9 100 F Street, NE

10 Washington, DC 20549

11

12 On behalf of the Witness:

13 ANDREW SPIWAK, ESQ.

14 Chicago Board of Options Exchange

15 400 South LaSalle Street

16 Chicago, IL 60605

17 (312) 786-5600

18

19 Also present: April Elliott and Kristina Katz, SEC interns

20

21

22

23

24

25

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. WITHERSPOON: Okay, we are on the record at 2:35 p.m. on Monday, June 22, 2009, at the United States Securities and Exchange Commission Office of Inspector General. I'm now going to swear you in at this time. Now could you please right hand for me?

THE WITNESS: Okay.

Whereupon,

JORDAN MATERNA

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. WITHERSPOON:

Q Okay, thank you. Please state and spell your full name for the record.

A Jordan Scott Materna, spelled -- last name is spelled M-a-t-e-r-n-a.

Q Okay. Good afternoon. My name is David Witherspoon. I'm an attorney in the office of Inspector General of the United States Securities and Exchange Commission. With me today is David Kotz, Inspector General, and also with me today are April Elliott, Kristina Katz, Heidi Steiber, and Christopher Wilson.

This is an investigation by the office of Inspector General, case number OIG-509 regarding Madoff Securities and

1 A I was an examiner in the department of -- in our
2 financial department.

3 Q Okay. How long did you serve as an examiner for?

4 A About one year.

5 Q Okay. And then what was your position in 1995?

6 A I was a trading floor liaison.

7 Q Okay. How long did you serve in that capacity?

8 A Until 1999, I believe.

9 Q Okay. And then what position did you obtain in
10 1999?

11 A I assumed the role of manager of the
12 group -- insider trading group.

13 Q Is that the position you hold today?

14 A Correct.

15 Q Okay.

16 A Currently I'm a director.

17 Q Okay. What year did you become a director?

18 A In -- I'm sorry, 2005.

19 Q Okay. What are your duties in connection with your
20 current position, either as a manager or director?

21 A I am currently responsible for viewing stock picks
22 every morning to determine which classes need to be open for
23 investigation, and I also have a group of four people who
24 report to me, and I'm responsible for supervising their work

1 MR. WITHERSPOON: Okay.

2 MR. SPIWAK: They're not effected at CBOE, so we
3 would not have any records relating to over the counter
4 options.

5 MR. WITHERSPOON: Okay. What about with -- I'm
6 sorry, go ahead.

7 THE WITNESS: Well, currently we have started to
8 receive large option -- on our large option position report,
9 over the counter positions, so that we can see the positions
10 if a customer does in fact hold those OTC positions. And
11 that's been recent. That only came within the last, I'd say,
12 year, year and a half.

13 BY MR. FIELDER:

14 Q Is that from FINRA?

15 A I assume it comes from FINRA or NASDAQ.

16 BY MR. WITHERSPOON:

17 Q Okay. So for the 2003 time frame up to, let's say,
18 2006, 2007, that was not the case?

19 A Correct.

20 Q All right. So there would be nothing produced to
21 CBOE at all regarding any over the counter options trade, be
22 it foreign or domestic, or anywhere?

23 A I can't answer for the -- all of CBOE, I only know
24 for my particular group that we were only able to see it in

1 the last year and a half.

2 Q Okay. And that's the insider trading group, is
3 that correct?

4 A Trading group, correct.

5 BY MR. WILSON:

6 Q You mentioned that you're in the insider trading
7 group. Do you know why you were contacted regarding an
8 inquiry into verifying whether someone was trading OEX
9 options through the CBOE?

10 A I don't recall. Can you -- is there more
11 specifics?

12 Q No. I guess we're just trying to figure out if you
13 were the right person to actually -- to be taking that phone
14 call, because you've mentioned that you're in the insider
15 trading group. Is there another group that might have
16 been --

17 A There is another group in the department of market
18 regulation, if not more than one group, that would possibly
19 surveil for OEX option trading.

20 MR. SPIWAK: Well, hang on a -- were you
21 contacted --

22 THE WITNESS: I cannot recall any call that I
23 received regarding a complaint about OEX trading, regarding
24 an insider trading matter.

1 BY MR. WITHERSPOON:

2 Q All right. Do you recall -- and this is something
3 I think we covered earlier with you and counsel, but just to
4 get it on the record --

5 A Sure.

6 Q -- do you recall any call coming from enforcement
7 in the New York regional office with the SEC regarding over
8 the counter options trading? This would have been sometime
9 in May 2006.

10 A Yeah. I don't recall it.

11 Q Okay.

12 A No, I don't remember it. Just -- that they brought
13 up.

14 Q Okay.

15 A They reminded me of it, but I do not recall the
16 specific conversation.

17 Q Okay. So outside of what we reminded you of, you
18 don't have an independent recollection of that conversation
19 ever taking place.

20 A I do not.

21 Q Okay.

22 BY MS. STEIBER:

23 Q Are you the SEC contact?

24 A I'm one of the SEC contacts, yes.

1 Q Are there other SEC contacts that are outside the
2 insider trading group?

3 A I'm not aware of any. That doesn't mean there
4 aren't any, but by the nature of what we do, and because when
5 we submit a formal referral to the SEC, then we have probably
6 more contact than any other group in the division. So it's
7 either myself or [Personal Privacy], [Personal Privacy], or [Personal Privacy].

8 BY MR. WITHERSPOON:

9 Q Okay. You had said earlier that there is a
10 requirement, I guess, that large options positions of
11 200 contracts or more be reported.

12 A Yes.

13 Q Are you aware of any requirement or regulation that
14 applies to contracts of 100,000 or more, in terms of daily
15 reporting to CBOE?

16 A I am not.

17 Q So that's the first time you've heard that?

18 A Yes.

19 BY MR. FIELDER:

20 Q Let me jump in here, Mr. Materna. This is Dave
21 Fielder. I'm sorry to tag team you, I just want to go back
22 and go over some of the same stuff we've covered before, and
23 clarify the record.

24 Earlier when you were answering Mr. Kotz's

1 questions, and you told him that you would be able to tell
2 whether or not a customer who placed an order on the
3 exchange, you would have records indicating or reflecting
4 that trade, I want to make clear that we're talking about the
5 type of entities that are relevant for this investigation.

6 So Bernard Madoff Securities, did they have a
7 position on the exchange there?

8 A What do you mean, a position? As a specialist, is
9 that what you mean? Are you talking about option position,
10 or are you talking about membership status?

11 Q Membership.

12 A According to our records, it does not appear that
13 Bernard Madoff LLC or Bernard Madoff Investments had any kind
14 of standing in our membership.

15 Q So am I correct that if he were placing, or he were
16 purchasing OEX options through the exchange, that would have
17 been done through another broker?

18 A I assume so, yes.

19 Q And then cleared by OCC, is that correct?

20 A Correct.

21 Q Okay. So if, say, just a hypothetical day on, you
22 know, January 1, 2004, Bernard Madoff Securities had placed
23 an order for 5,000 OEX options which had been executed on
24 your exchange and then cleared through OCC through another

1 broker, an entity that was a member, and on January 2nd,
2 someone had called from the SEC and said, "Can you tell me if
3 Bernard Madoff Securities purchased OEX options on your
4 exchange yesterday," you wouldn't be able to ascertain that
5 answer, correct?

6 A Can you please repeat that question?

7 Q Okay. Let's say Bernard Madoff Securities
8 purchases through a broker, since he didn't have a membership
9 there, over your exchange, 5,000 OEX options on January 1st
10 of 2004, just to pick a date at random, okay?

11 A Right.

12 Q And then someone from the SEC calls CBOE on January
13 2nd, the very next day, and says, "I want to know if you have
14 any records of Bernard Madoff Securities purchasing OEX
15 options on your exchange," would you be able to answer that
16 question?

17 A I might be, because it appears that at some point
18 Bernard Madoff's LLC was an OCC clearing member, and listed
19 their number as -- clearing number as 646. So they may have
20 been an OCC member, but not a CBOE member.

21 Q Okay. So that's -- but that's necessary, right,
22 for you to be able to -- they have to be either a member of
23 OCC or a member of CBOE for you to look them up and see what
24 trades they've placed, correct?

1 A Correct.

2 BY MS. STEIBER:

3 Q Do you know when they became an OCC member?

4 A Unfortunately I do not.

5 BY MR. FIELDER:

6 Q Now let's say that they weren't a member of
7 each -- of either, and they had placed a trade through
8 another broker. Would someone be able to call OCC and ask
9 for any options that were traded and cleared -- again we're
10 talking about OEX options for which Bernard Madoff Securities
11 was the ultimate customer.

12 A I cannot say whether OCC would give out that
13 information.

14 Q Well, they would have that information, correct?

15 A Well, if that -- if you're saying that the trade
16 was effected by -- was not effected by a CBOE member or an
17 OCC member?

18 Q No, I'm saying the ultimate customer was not a CBOE
19 member or an OCC --

20 A Well, see, when we have -- by -- what we have on
21 our large option position report, even if you are not an OCC
22 member or a CBOE member, the clearing firm that reports that
23 trade would report that trade, even if you're neither of
24 those entities.

1 Q Correct, that's --

2 MR. SPIWAK: Because of the size?

3 THE WITNESS: Because of the size. So you could be
4 a public customer who has no affiliation with a member firm
5 or with an OCC firm, but because of your size, you will
6 be -- if the clearing firm reports it correctly, you will be
7 on the large option position report.

8 BY MR. FIELDER:

9 Q Correct, but that's the clearing firm's record, is
10 it not, that's provided to CBOE?

11 A It is the clearing firm's -- from what I
12 understand, it is the clearing firm's responsibility.

13 Q Okay. So other than that LOPR report that comes
14 from the clearing firm over to CBOE, I want to make sure that
15 earlier when you testified that CBOE would have records of a
16 transaction in OEX options on the exchange, is there any
17 record other than the LOPR report provided by the clearing
18 firm, that would reflect that transaction?

19 A I'm sorry, you're throwing me off. Could you
20 repeat the question, please?

21 Q Earlier you testified that for any trade that was
22 placed on the CBOE exchange in OEX options, you would be able
23 to tell all the transactions that particular customer had
24 placed on the exchange. You said there was a CBOE record of

1 that transaction.

2 A Yes.

3 Q Here's where I think the confusion comes in, and I
4 think your counsel tried to clear it up once before. If I
5 understand correctly, there's no CBOE record that is
6 associated with the ultimate customer if that customer is not
7 a member of CBOE or as you correctly pointed out, the
8 clearing firm. There is a record of the transaction
9 showing --

10 A Yes.

11 Q -- the brokers involved, the times, the terms, et
12 cetera, et cetera.

13 A Correct.

14 Q But it's the clearing firm that is in possession of
15 the information about who the ultimate customer is, correct?

16 A Correct.

17 Q The clearing firm has a record of who the ultimate
18 customers are and what the positions they hold at the end of
19 the day are, correct?

20 A Correct.

21 Q And they provide the LOPR report to CBOE for any
22 individual or entity that has over 200 contracts open at the
23 end of the day, correct?

24 A Correct.

1 Q Okay, thanks.

2 MR. WITHERSPOON: We're going to go off the record
3 for one second. I'm going to put you guys on mute, and we
4 can hear you, okay, just to let you know.

5 (Off the record.)

6 MR. WITHERSPOON: All right, we're back on the
7 record.

8 BY MR. FIELDER:

9 Q Okay, Mr. Materna, just -- we had one, I know at
10 least one follow up question with respect to the last
11 question I asked you about the OCC LOPR report that's
12 provided to CBOE. You with us?

13 A Yes.

14 MR. FIELDER: Okay, go ahead.

15 BY MS. STEIBER:

16 Q You were saying that the LOPR reports would come
17 back from OCC to CBOE, would show who the ultimate customer
18 was who the options were traded for?

19 A Yes.

20 Q Would you have had those records back in 2003 and
21 2004?

22 A Yes.

23 BY MR. WITHERSPOON:

24 A So just to be clear, it's only for over the counter

1 that you just recently started getting those, right, because
2 that was not the case back in '03 and '04 --

3 A Yes, that our group would receive those. Whether
4 any other group received those, I'm not aware.

5 Q Okay. Let's go off the record one more time.

6 (Off the record.)

7 BY MR. WITHERSPOON:

8 Q Okay, we're back on the record. Just one more
9 closing question for you, Mr. Materna, and we understand that
10 your recollection of the phone call that purportedly occurred
11 in 2006 is not something that you can recall at the moment.
12 But I'm just curious in terms of just to pose in -- maybe in
13 hypothetical form, somebody calls you and wants to know if
14 they can demonstrate or confirm that there has been over the
15 counter trading, back in 2003, 2004, 2006. They want to know
16 that information from you.

17 What could you tell them in terms of, if you don't
18 have it, where to go, what to do next?

19 A I would refer them to the NASDAQ.

20 Q Okay. Any particular part of NASDAQ? Any
21 particular office or division?

22 A No, I just give the name out generally, say NASDAQ.
23 If they needed a contact, then I would call one of my
24 counterparties at the NASDAQ and ask them who they should