

PLANNING MEMORANDUM

12/16/2003 3:25:21 PM

From: Wood, Jacqueline

To: Walker, Genevieve Personal Privacy

Attachments: Planning Memorandum (Madoff Securities).doc

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PLANNING MEMORANDUM

TO: Eric Swanson

FROM: Mark Donohue
Genevieve Walker
Jackie Wood

RE: Examination of Bernard L. Madoff Investment Securities LLC

DATE: December 16, 2003

I. Purpose of Examination.

To examine trade orders executed by Bernard L. Madoff Investment Securities LLC ("Madoff Securities") in its capacity as a market maker and to determine whether Madoff Securities took positions in various equities in advance of its own customer orders (known as "front running").

II. Course of Action.

The Staff should request that Madoff Securities produce the following documents prior to the Staff's examination visit:

1. A list of its Board of Directors;
2. All customer orders executed by Madoff Securities for broker-dealers, banking and other financial institutions;
3. All customer orders executed by Madoff Securities for hedge funds;
- 4.
- 5.

DRAFT PLANNING MEMORANDUM

12/17/2003 3:05:13 PM

From: Wood, Jacqueline

Personal Privacy

To: Walker, Genevieve

Attachments: Planning Memorandum (Madoff Securities).doc

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PLANNING MEMORANDUM

OFFICE OF COMPLIANCE
INSPECTIONS AND EXAMINATIONS

TO: Lori Richards

FROM: John McCarthy
Eric Swanson
Mark Donohue
Genevieve Walker
Jackie Wood

RE: Bernard L. Madoff and Bernard L. Madoff Investment Securities LLC

DATE: December __, 2003

I. Background.

The Staff recently received information from an outside source alleging that Bernard Madoff ("Madoff"), through Bernard L. Madoff Securities LLC ("Madoff Securities"), one of the leading market makers of NASDAQ securities, was assisting affiliated hedge fund and investment advisor firms in committing frontrunning violations. As a result of receiving this information, the Staff intends to conduct an investigation of the alleged frontrunning activities of Madoff, as well as to investigate the extent of Madoff Securities' involvement.

II. Purpose of the Inspection.

To examine [see Walker's letter].

To examine customer orders received by Madoff Securities for the time period January 1, 2001 through December 31, 2002 in order to determine whether Madoff and/or Madoff Securities (i) has utilized nonpublic information to trade ahead of the firm's customer orders in the same or a related equity and (ii) has purchased options based on nonpublic information regarding an impending block transaction in the underlying equity in order to obtain a profit when the option market adjusts to the price at which the block trades.

III. Course of Action.

1. The Staff intends to send a letter to NASDAQ requesting that it produce documents relating to [see Walker's letter]. The Staff will review and analyze the execution data produced by NASDAQ to determine which trades or series of trades Madoff Securities may have assisted affiliated hedge funds and investment advisor firms in committing frontrunning violations.
2. The Staff intends to send a letter to Madoff Securities requesting that it produce documents relating to, among other things, all customer orders over 50,000 shares received by Madoff Securities and all order executions for the relevant time period. The Staff will review and analyze the execution data produced by Madoff Securities in order to ascertain whether the firm may have executed trades or a series of trades in the same or a related equity ahead of the firm's customer orders.
3. The Staff intends to send a letter to Madoff requesting that he produce, among other things, a list of prime brokers utilized in connection with his hedge fund activities and a list of affiliated hedge funds. The Staff will review the information produced by Madoff in order to ascertain which Madoff-managed hedge funds may have received nonpublic information regarding block transactions and, based on such information, executed trades or a series of trades in the same or a related equity ahead of the firm's customer orders.
4. The Staff intends to send a letter to those investment advisor firms known to market Madoff-managed hedge funds. The Staff will request that each firm produce, among other things, a list of hedge funds that the firm markets to its customers and to produce documents relating to any Madoff-managed hedge funds that the firm markets to its customers.

IV. Potential Issues.

Attachments:

Tab A: NASDAQ Document Request Letter

Planning Memo #3

12/17/2003 5:22:07 PM

From: Walker, Genevieve

To: Wood, Jacqueline Personal Privacy

Attachments: Planning Memorandum (Madoff Securities) III.doc

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Genevieve Walker

Attorney

U.S. Securities & Exchange Commission

Office of Compliance Inspections and Examinations

Personal Privacy



PLANNING MEMORANDUM

OFFICE OF COMPLIANCE
INSPECTIONS AND EXAMINATIONS

TO: Lori Richards

FROM: John McCarthy
Eric Swanson
Mark Donohue
Genevieve Walker
Jackie Wood

RE: Bernard L. Madoff and Bernard L. Madoff Investment Securities, LLC

DATE: December __, 2003

I. Background.

The Staff recently received information from an outside source alleging that Bernard L. Madoff ("Madoff"), principal of Bernard L. Madoff Investment Securities, LLC ("Madoff Securities"), a leading market maker in NASDAQ securities, has been committing frontrunning violations. According to the information received, Madoff is allegedly effecting either equity or option security transactions via Madoff-managed hedge fund accounts based on inside market moving information regarding equity block trades effected through Madoff Securities and possibly other unknown broker-dealers.

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II. Scope of the Inspection.

The Staff intends to examine customer orders received by Madoff Securities for the time period of January 1, 2001 through December 31, 2002 in order to determine whether Madoff is frontrunning impending Madoff Securities block transactions through his Madoff-managed fund accounts.

III. Course of Action.

- A. The Staff intends to send a letter to NASD requesting execution data for Madoff Securities for the time period of January 1, 2001 through December 31, 2002. The Staff will review and analyze the execution data produced by NASD to identify which trades or series of trades may have been utilized to commit the alleged frontrunning violations.

- B. The Staff intends to send a letter to Madoff Securities requesting that it produce documents relating to, among other things, all customer orders over 50,000 shares received by Madoff Securities and all order executions for the relevant time period. The Staff will review and analyze the execution data produced by Madoff Securities in order to ascertain whether the firm may have executed trades or a series of trades in the same or a related security ahead of the firm's customer orders. Additionally, the Staff will request a list of prime brokerage firms utilized in connection with Madoff's hedge fund accounts.
- C. The Staff intends to send a letter to Madoff requesting that he produce copies of personal account opening documentation, as well as any account opening documentation for any proprietary accounts, including hedge funds in which he has an ownership interest or trading authority. The Staff will review the information produced by Madoff in order to ascertain which Madoff-managed hedge funds may have received inside market moving information regarding impending block transactions and, based on such information, executed trades or a series of trades in the same or a related security ahead of the firm's customer orders.
- D. The Staff intends to send a letter to those investment advisor firms that market Madoff-managed hedge funds. The Staff will request that each firm produce, among other things, a list of Madoff-managed hedge funds that the firm markets to its customers.

IV. Potential Issues.

The Staff anticipates that the following issues may arise:

- A. Inability to obtain execution data from hedge funds
- B. Inability to identify which securities comprise the hedge fund portfolios
- C. Inability to identify the investors in the hedge funds
- D. Inability to determine the identity of both sides of the frontrunning strategy due to the inability to obtain the execution data from the hedge funds

Attachments:

Tab A: NASD Document Request Letter, dated December __, 2003