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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- against - :

DAVID KUGEL, :

Defendant. :

11 Civ. ____

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COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendant David Kugel (“Kugel”, or the “Defendant”), alleges:

SUMMARY

1. Kugel was a longtime employee of Bernard L. Madoff Investment Securities LLC (“BMIS”) who began his career at the firm as an arbitrage trader in the firm’s proprietary trading business. From the early 1970s to 2008, Kugel knowingly participated in the creation of false account statements supplied to BMIS’s clients. Kugel helped create fictional “trades” that were recorded on trade tickets, trade confirms, and client account statements, and aided and abetted

the fraud that Madoff and BMIS perpetrated on BMIS's investment advisory ("IA") clients for decades. Moreover, Kugel withdrew the fictional "profits" of these trades, even though he knew that they were not proceeds of actual trading activity, and was reckless in not knowing that these withdrawals represented, at least in part, funds invested by IA clients of BMIS.

2. By virtue of the conduct alleged herein, Defendant directly or indirectly, singly or in concert, violated and aided and abetted violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], aided and abetted violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1) and (2)], Sections 15(c) and 17(a) of the Exchange Act [15 U.S.C. §§ 78o(c) and 78q(a)], and Rules 10b-3 and 17a-3 thereunder [17 C.F.R. §§ 240.10b-3 and 240.17a-3], and Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 C.F.R. § 275.204-2].

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

3. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], seeking to restrain and enjoin permanently Defendant from engaging in the acts, practices and courses of business alleged herein.

4. In addition to the injunctive relief recited above, the Commission seeks: (i) a final judgment ordering Defendant to disgorge his ill-gotten gains with prejudgment interest thereon and (ii) such other relief as the Court deems just and appropriate.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa], and Section 214 of the Advisers Act [15

U.S.C. § 80b-14]. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391. The Defendant, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, or of the mails and wires, in connection with the transactions, acts, practices and courses of business alleged herein. A substantial part of the events comprising Defendant's wrongful conduct giving rise to the Commission's claims occurred in the Southern District of New York, and Defendant engaged in his wrongful conduct while working in a business office in this District.

THE DEFENDANT

6. **Kugel**, age 66, had been an employee of BMIS since 1970. From 1970 to the late-1990s, Kugel was an arbitrage securities trader for BMIS's proprietary trading operations. Thereafter, Kugel was employed as a trading compliance analyst at BMIS. Kugel was a registered representative who held Series 1, 24, and 55 licenses.

OTHER INDIVIDUALS AND ENTITIES

7. **Madoff**, age 73, was the sole owner of BMIS. Until December 12, 2008, Madoff, a former chairman of the board of directors of the NASDAQ stock market, oversaw and controlled the investment adviser services at BMIS as well as the overall finances of BMIS. On February 9, 2009, the District Court, with Madoff's consent, entered a partial judgment in the Commission's case against Madoff. On March 12, 2009, Madoff pled guilty to 11 felony counts relating to his orchestration of the Ponzi scheme. Madoff admitted in his allocution, among other things, that since at least the early 1990s, he had falsely indicated on customer documents that securities transactions had taken place when no such transactions had occurred for investor accounts. On June 29, 2009, Madoff was sentenced to 150 years in prison and ordered to forfeit his assets. Madoff is currently serving his prison term.

8. **BMIS** registered with the Commission as a broker-dealer in 1960 and as an investment adviser in September 2006. BMIS used to occupy floors 17-19 of the Lipstick Building in New York City. BMIS purportedly engaged in three different operations: investment adviser services (housed on the 17th floor), market making services and proprietary trading (housed on the 18th and 19th floors). BMIS's many victims were both brokerage customers and IA clients of BMIS, which operated as both a broker-dealer and an investment adviser in relation to the investor accounts. BMIS is currently under the control of a SIPC trustee.

9. **Annette Bongiorno**, age 63, resides in Manhasset, New York and Boca Raton, Florida. Bongiorno was a longtime employee at BMIS and worked in the IA operations on the 17th floor. Bongiorno was responsible for managing the accounts of Madoff's longtime clients, most of whom were family or friends of Madoff. Bongiorno has been charged by the Commission for her role in the BMIS Ponzi scheme in SEC v. Bongiorno, 10 CV 8701 (S.D.N.Y.).

10. **Joann "Jodi" Crupi**, age 50, resides in Westfield, New Jersey. Crupi was employed at BMIS from July 1983 until December 2008, working in the IA operations in BMIS's 17th floor offices in the "Lipstick Building" in Manhattan. Crupi has been charged by the Commission for her role in the BMIS Ponzi scheme in SEC v. Crupi, 10 CV 8702 (S.D.N.Y.).

FACTS

BMIS's Investment Advisory Accounts and Ponzi Scheme

11. For decades, Madoff and others orchestrated a massive Ponzi scheme through BMIS's IA operations. Madoff solicited funds from direct investors and feeder funds by

promising to invest those funds in equity securities and hedge the related downside risk, thereby generating certain rates of return.

12. In fact, neither Madoff nor BMIS invested these funds in the manner described. Instead, Madoff directed that investor funds be kept in highly liquid form, including cash, certificates of deposit, and treasury bills. A large portion of these funds was used to pay investor redemption requests and to line Madoff's pockets and those of his family and certain employees and associates.

13. BMIS began managing investor accounts in the 1960's. Over time, the advisory operations expanded when various accountants and financial advisors began soliciting individual investors around the country and feeding the investors' money to BMIS. In most cases, Madoff set up aggregate, pooled accounts at BMIS for monies raised by each of these solicitors or "feeders," leaving it to the feeder to deal with the individual investors by issuing statements, making payments, and the like. In some cases, staff in the IA operations designed and entered fake trades in the accounts of specific IA investors. Hardly any actual investments or trading ever occurred in these accounts on behalf of investors.

Kugel's Employment at BMIS

14. Kugel was hired by BMIS as a trader in convertible securities in 1970. Kugel researched, proposed, and entered into convertible arbitrage deals – *i.e.*, the purchase of convertible bonds, warrants, or preferred stock paired with the near-simultaneous short of the underlying equity – for the proprietary trading arm of BMIS. He traded these deals on behalf of BMIS until the late-1990s. Kugel also assisted BMIS staff in supervising the firm's proprietary traders.

15. From around 2003 to 2008, Kugel was a trading compliance analyst at BMIS. His duties included ensuring that the firm's computer systems facilitated compliance with regulations affecting BMIS's market-making and proprietary trading operations.

16. Kugel earned a salary and bonuses for his work at BMIS. From 2004 to 2008, his annual compensation ranged between \$497,000 and \$588,000, and he earned millions of dollars in deferred compensation as a proprietary trader at the firm.

Kugel's Creation of Fake Trades

17. At some time in the early 1970s, Madoff informed Kugel that BMIS managed money for outside clients and asked Kugel to provide the firm's IA operations with historic (*i.e.*, backdated) convertible arbitrage trades for inclusion on investor account statements. Some of these trades replicated successful trades that Kugel had actually made for BMIS's proprietary trading operations; other trades were based on historic information that Kugel obtained from old copies of the *Wall Street Journal*.

18. The staff from the firm's IA operations, including Annette Bongiorno and JoAnn Crupi, regularly asked Kugel for historical (*i.e.*, backdated) trade information for trades amounting to millions of dollars. Kugel would then provided historical (*i.e.*, backdated) trade information to Crupi and Bongiorno, who would then design trades that totaled that amount. These fictitious trades were highly profitable on an annualized basis.

19. These purported "deals" appeared on account statements and trade confirmations sent to investors. Kugel, who opened his own account with BMIS's IA operations, received these statements and confirmations as well.

20. Kugel also provided IA staff with historical (i.e., backdated) trade information for IA accounts, including his own. One such trade in S&P index options in 2007 resulted in a profit for Kugel of over \$375,000 made over the course of a few weeks.

21. From 2001 to 2008, Kugel withdrew almost \$10 million from his BMIS IA accounts.

22. Kugel withdrew the purported “profits” of these trades, even though he knew that they were not proceeds of actual trading activity. He was reckless in not knowing that these withdrawals represented, at least in part, funds invested by IA clients of BMIS.

FIRST CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 (Antifraud violations)

23. Paragraphs 1 through 22 are realleged and incorporated by reference as if set forth fully therein.

24. Defendant, in connection with the purchase and sale of securities, directly or indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails and/or wires, employed devices, schemes and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated as a fraud and deceit upon investors.

25. By reason of the activities herein described, Defendant violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §§ 240.10b-5].

SECOND CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 10(b) and Rule 10b-5 (Antifraud Violations)

26. Paragraphs 1 through 22 are realleged and incorporated by reference as if set forth fully therein.

27. Madoff, and BMIS, in connection with the purchase and sale of securities, directly or indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails and/or wires, employed devices, schemes, and artifices to defraud; made untrue statements of material fact and omitted to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, and courses of business which operated as a fraud and a deceit upon investors.

28. As described in the paragraphs above, Madoff and BMIS violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §§ 240.10b-5].

29. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Defendant aided and abetted Madoff's and BMIS's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §§ 240.10b-5]. Specifically, Defendant knowingly provided substantial assistance to Madoff and BMIS in committing such violations.

THIRD CLAIM FOR RELIEF

Aiding and Abetting Violations of Sections 206(1) and 206(2) of the Advisers Act (Fraud upon Advisory Clients and Breach of Fiduciary Duty by Investment Adviser)

30. Paragraphs 1 through 22 are realleged and incorporated by reference as if set forth fully therein.

31. Madoff and BMIS at all relevant times were investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

32. Madoff and BMIS, directly or indirectly, singly or in concert, knowingly or recklessly, through the use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)]: (a) employed devices, schemes, and artifices to defraud any client or prospective client; or (b) engaged in acts, practices, or courses of business which operate as a fraud or deceit upon any client or prospective client.

33. As described in the paragraphs above, Madoff and BMIS violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

34. By reason of the activities described herein, and pursuant to Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], Defendant aided and abetted Madoff's and BMIS's violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]. Specifically, Defendant knowingly provided substantial assistance to Madoff and BMIS in committing such violations.

FOURTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 15(c) of the Exchange Act and Rule 10b-3 (Fraud Upon Customers by Broker-Dealer)

35. Paragraphs 1 through 22 are realleged and incorporated by reference as if set forth fully therein.

36. BMIS was a broker within the meaning of Section 3(a)(4) of the Exchange Act [15 U.S.C. § 78c(a)(4)].

37. BMIS, while a broker, by engaging in the conduct described above, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of securities (other than commercial paper, bankers' acceptances or commercial bills) otherwise than on a national securities exchange of which BMIS was a member, by means of manipulative, deceptive, or other fraudulent devices or contrivances.

38. BMIS's manipulative, deceptive and fraudulent devices or contrivances included misrepresentations to customers that securities transactions with certain characteristics occurred, and securities were held, in their accounts when no such transactions occurred and no such securities were held in customers' accounts.

39. As described in the paragraphs above, BMIS violated Sections 15(c) of the Exchange Act [15 U.S.C. § 78o(c)] and Rule 10b-3 thereunder [17 C.F.R. § 240.10b-3].

40. By reason of the activities described herein, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Defendant aided and abetted BMIS's violations of Section 15(c) of the Exchange Act [15 U.S.C. § 78o(c)] and Rule 10b-3 thereunder [17 C.F.R. §

240.10b-3]. Specifically, Defendant knowingly provided substantial assistance to BMIS in committing such violations.

FIFTH CLAIM FOR RELIEF

**Aiding and Abetting Violations of Section 17(a)
of the Exchange Act and Rule 17a-3
(Broker-Dealer Books and Records Violations)**

41. Paragraphs 1 through 22 are realleged and incorporated by reference as if set forth fully herein.

42. As a registered broker-dealer, BMIS was required to make and keep certain books and records current and accurate pursuant to Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. § 240.17a-3]. In particular, Rule 17a-3(a)(2) requires broker-dealers to keep current ledgers and all other records that reflect all assets and liabilities, and income and expense and capital accounts.

43. As set forth above, BMIS failed to make and keep certain books and records current and accurate. BMIS, among other things, manufactured and maintained records that falsely reflected BMIS's assets and liabilities, and income and expense and capital accounts.

44. As a result, BMIS violated Section 17(a) of the Exchange Act and Rule 17a-3 promulgated thereunder [15 U.S.C. § 78q(a) and 17 C.F.R. § 240.17a-3].

45. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Defendant aided and abetted the violations of Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. § 240.17a-3]. Specifically, Defendant knowingly provided substantial assistance to BMIS in committing such violations.

SIXTH CLAIM FOR RELIEF

Aiding and abetting violations of Section 204 and Rule 204-2 of the Advisers Act (Adviser Books and Records Violations)

46. Paragraphs 1 through 22 are realleged and incorporated by reference as if set forth fully herein.

47. BMIS at all relevant times was an investment adviser within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

48. BMIS failed to make, maintain on its premises, or keep accurate, certain books and records required by law. For example, BMIS failed to make, maintain on its premises or keep accurate, books and records concerning its assets, liabilities, finances, client accounts, closed client accounts, and correspondence with clients. Among other things, BMIS manufactured and maintained account statements, ledgers, journals and other records reflecting fictitious securities holdings and fictitious securities transactions in investors' accounts, and/or omitting and mischaracterizing material transactions.

49. The Defendant knew that BMIS manufactured and maintained account statements, ledgers, journals and other records reflecting fictitious securities holdings and fictitious securities transactions in investors' accounts, and/or omitting and mischaracterizing material transactions.

50. By reason of the foregoing, BMIS violated Section 204 of the Advisers Act [15 U.S.C. § 80b-4], and Rule 204-2 thereunder [17 C.F.R. § 275.204-2], and Defendant aided and abetted BMIS's violations. Specifically, Defendant knowingly provided substantial assistance to BMIS in committing such violations.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a final judgment against Defendants granting the following relief:

I.

Finding that Defendant violated the securities laws and rules promulgated thereunder as alleged herein.

II.

Permanently restraining and enjoining Defendant, his agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

III.

Permanently restraining and enjoining Defendant, his agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

IV.

Permanently restraining and enjoining Defendant, his agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from aiding and abetting

future violations of Section 15(c) of the Exchange Act [15 U.S.C. § 78o(c)] and Rule 10b-3 thereunder [17 C.F.R. § 240.10b-3].

V.

Permanently restraining and enjoining Defendant, his agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from aiding and abetting future violations of Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. § 240.17a-3].

VI.

Permanently restraining and enjoining Defendant, his agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from aiding and abetting future violations of Section 204 of the Advisers Act [15 U.S.C. § 80b-4], and Rule 204-2 thereunder [17 C.F.R. § 275.204-2].

VII.

Directing Defendant to disgorge his ill-gotten gains, plus prejudgment interest thereon.

VIII.

Granting such other and further relief as to this Court seems just and proper.

Dated: New York, New York
November 21, 2011

SECURITIES AND EXCHANGE COMMISSION

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