

**GEORGE S. CANELLOS**  
**REGIONAL DIRECTOR**  
**Andrew M. Calamari**  
**Robert J. Burson** (*Not admitted in New York*)  
**Alexander M. Vasilescu**  
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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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:  
SECURITIES AND EXCHANGE COMMISSION,  
:

**Plaintiff,**  
:

**- against -**  
:

**ENRICA COTELLESSA-PITZ,**  
:

**Defendant.**  
:  
-----X

**\_\_\_ Civ. \_\_\_**

**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendant Enrica Cotellessa-Pitz (“Cotellessa-Pitz,” or the “Defendant”), alleges:

**SUMMARY**

1. Cotellessa-Pitz was the Controller for Bernard L. Madoff Investment Securities LLC (“BMIS”), and worked with other BMIS employees in falsifying documents that Bernard L. Madoff (“Madoff”) used to hide his massive Ponzi scheme. While Cotellessa-Pitz may not have been aware of the Ponzi scheme, she nevertheless assisted in falsifying, among other things, BMIS’s internal accounting journals and

ledgers in order to misclassify, and obfuscate, hundreds of millions of dollars of income purportedly generated by BMIS's investment advisory operations (the "IA Operations"). Cotellessa-Pitz also falsified financial statements filed with the Commission and other regulators, as well as materials that were prepared to mislead Commission staff examiners and other external reviewers, including federal and state tax auditors.

### **VIOLATIONS**

2. By virtue of the conduct alleged herein, Defendant directly or indirectly, singly or in concert, has engaged in acts, practices, schemes and courses of business that aided and abetted violations of Section 17(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78q(a)] and Rules 17a-3, 17a-4, and 17a-5 thereunder [17 C.F.R. §§ 240.17a-3, 240.17a-4 and 240.17a-5], and Section 204 of the Investment Advisers Act of 1940 (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 her ill-gotten gains with prejudgment interest thereon; (ii) a final judgment ordering Defendant to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of

the Advisers Act [15 U.S.C. § 80b-9(d)]; and (iii) 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].

6. 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 fraudulent activities giving rise to the Commission's claims occurred in this District, and Defendant committed her fraudulent activities while working in a business office in this District.

### **THE DEFENDANT**

7. **Cotellessa-Pitz**, age 53, began working at BMIS in 1978. Over time, she gained increasing levels of responsibility and, in 1998, became the firm's Controller. After passing the Series 27 exam, Cotellessa-Pitz registered as BMIS's Financial and Operations Principal. Cotellessa-Pitz has an undergraduate degree in economics.

### **RELEVANT INDIVIDUALS AND ENTITIES**

8. **Madoff**, age 73, was, until 2009, a resident of New York City and the sole owner of BMIS. Until December 11, 2008, Madoff, a former chairman of the board of directors of the NASDAQ stock market, oversaw and controlled the fraudulent investment advisory operations at BMIS as well as the overall finances of BMIS. Civil

and criminal charges were brought against Madoff for his role in a multi-billion dollar Ponzi scheme. See S.E.C. v. Bernard L. Madoff and Bernard L. Madoff Investment Securities LLC, No. 08-CV-10791 (S.D.N.Y.) (LLS) (the “Civil Action”) and United States v. Bernard L. Madoff, No. 09 Cr. 213 (S.D.N.Y.) (DC) (the “Criminal Action”).

On February 9, 2009, in the Civil Action against Madoff, the District Court, with Madoff’s consent, entered a partial judgment in the Commission’s case against Madoff. On March 12, 2009, Madoff pleaded guilty to eleven felony counts in the Criminal Action against him. In his allocution, Madoff admitted that he orchestrated the massive Ponzi scheme that is the subject of the present charges. On June 29, 2009, Madoff was sentenced to 150 years in prison and ordered to forfeit his assets. Madoff is currently incarcerated in a federal prison in North Carolina.

9. **Frank DiPascali, Jr.**, age 55, was, until recently, a resident of Bridgewater, New Jersey. DiPascali, who never graduated college, began working at BMIS in 1975. Over the years, at Madoff’s direction, DiPascali became involved in, and eventually oversaw, the day-to-day operations of the bulk of BMIS’ multi-billion dollar advisory operations. On August 11, 2009, DiPascali pled guilty to ten felony counts relating to his role in Madoff’s Ponzi scheme. See United States v. Frank DiPascali, Jr., No. 09 Cr. 764 (S.D.N.Y.) (RJS). DiPascali admitted in his allocution that, among other things, he and others were involved in creating false account statements and trade confirmations for customers, lying to auditors and regulators who reviewed BMIS’s operations and books and records, and that he knew that purported trades in investor accounts never took place. In addition, the Commission filed civil charges against DiPascali on August 11, 2009. See S.E.C. v. Frank DiPascali, Jr., No. 09-CV-7085

(S.D.N.Y.) (LLS). On August 13, 2009, the District Court, with DiPascali's consent, entered a partial judgment in the Commission's case against him.

10. **Daniel Bonventre** ("Bonventre"), age 63, resides in New York City. Before starting at BMIS, Bonventre worked as an auditor at a large bank in New York City while studying for an Associate's Degree in Accounting, which he eventually obtained. Bonventre began working for BMIS as an auditor in 1968, and was the firm's Director of Operations from at least 1978 until shortly after BMIS' fraud came to light in December 2008. The Commission filed civil charges against Bonventre on February 25, 2010 for his alleged role in Madoff's fraud.

11. **David G. Friehling** ("Friehling"), age 51, is a resident of New City, New York. Friehling was licensed in the State of New York as a Certified Public Accountant ("CPA"), and was the sole shareholder of Friehling & Horowitz, CPA's, P.C. ("F&H"), the firm that purported to audit BMIS's financial statements from 1991 - 2008. On November 3, 2009, Friehling pleaded guilty to criminal charges related to false representations that he audited BMIS when, in fact, no such audit was ever performed. The Commission filed civil charges against Friehling on March 18, 2009 for his alleged role in Madoff's fraud and, on November 3, 2009, the District Court, with Friehling's consent, entered a partial judgment in the Commission's case against him.

12. **BMIS** registered with the Commission as a broker-dealer in 1960 and as an investment adviser in September 2006, and had its principal place of business in New York, New York. BMIS purportedly engaged in three different operations – the IA Operations, market-making, and proprietary trading. BMIS is currently under the control

of a trustee appointed pursuant to the Securities Investor Protection Act of 1970 (15 U.S.C. § 78aaa et seq.).

## **FACTS**

### **I. BMIS's Investment Advisory Accounts and Ponzi Scheme**

13. 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, and thereby make certain rates of return.

14. In fact, however, 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 were used to pay investor redemption requests and to line Madoff's pockets and the pockets of those around him.

15. Cotellessa-Pitz helped shield Madoff's IA Operations from scrutiny by falsifying: (a) BMIS's internal books and records; (b) the periodic financial statements that BMIS filed with the Commission and other regulators; and (c) materials that BMIS provided to external reviewers, including Commission examiners and federal and state tax auditors.

### **II. Cotellessa-Pitz's Roles and Responsibilities**

16. Cotellessa-Pitz was a long-time employee of BMIS. In 1978, while working toward an undergraduate degree in economics, Cotellessa-Pitz was hired by BMIS. She gained increasing levels of responsibility over time, and in or around 1998,

Cotellessa-Pitz became BMIS's Controller. Both before and after Cotellessa-Pitz became Controller, she reported to Daniel Bonventre, the firm's Director of Operations.

17. In connection with becoming BMIS's Controller, Cotellessa-Pitz took and passed the National Association of Securities Dealers, Inc.'s ("NASD") Series 27 exam for financial and operations principals (the "Series 27 Exam"). The Series 27 Exam is designed to test a candidate's knowledge of applicable rules and statutory provisions relating to broker-dealer financial responsibility and recordkeeping and the protection afforded investors under the Securities Investor Protection Act of 1970.

18. As Controller, Cotellessa-Pitz was responsible for accounting for aspects of BMIS's market-making and proprietary trading operations and, at times, engaged in accounting activities related to the IA Operations. Cotellessa-Pitz assisted Bonventre in maintaining BMIS's general ledger and supporting books and records and was responsible for preparing the firm's financial statements. These financial statements were included in the quarterly Financial and Operational Combined Uniform Single reports ("FOCUS Reports") that BMIS filed with the Financial Industry Regulatory Authority ("FINRA"), and before that with NASD, pursuant to Rule 17a-5 under the Exchange Act, and in the annual audited financial statements that BMIS filed with the Commission, also pursuant to Rule 17a-5 under the Exchange Act.

19. In carrying out her duties as Controller, Cotellessa-Pitz knowingly or recklessly created false and misleading accounting entries that inaccurately recorded the transfer of funds from the bank accounts used by the IA Operations to hold investor deposits (the "Ponzi Scheme Bank Accounts") to bank accounts used in the market-making and proprietary trading operations (the "Operating Bank Accounts"). In addition,

Cotellessa-Pitz helped to falsify records that were supplied to the Commission's staff during an examination of BMIS, and records that were supplied to federal and state tax auditors who reviewed Madoff's personal tax returns.

20. By 2008, Cotellessa-Pitz's annual compensation exceeded \$450,000. In addition, she and her husband maintained two IA accounts at BMIS. Between 1986 and December 2008, Cotellessa-Pitz and her husband deposited approximately \$251,000 into, and withdrew over \$485,000 from these accounts, which had a purported value of over \$3 million as of November 30, 2008.

**III. Cotellessa-Pitz Falsely Accounted for Investor Funds Transferred From BMIS's Ponzi Scheme Bank Accounts to its Operating Bank Accounts.**

21. In order to cover up his massive Ponzi Scheme, Madoff directed Bonventre, Cotellessa-Pitz and others to manipulate the firm's accounting ledgers and related books and records, which Madoff used to hide, obfuscate and misrepresent the advisory operations from/to investors, auditors and regulators.

22. Madoff, Bonventre and Cotellessa-Pitz furthered this goal by, among other things, falsely accounting for investor funds that were transferred to and used in the firm's market-making and proprietary trading operations.

23. BMIS's market-making and proprietary trading operations frequently produced significant losses. Madoff hid this fact by using investor funds to artificially make these operations appear to be profitable. From at least in or around March 1998 through December 2008, BMIS transferred hundreds of millions of dollars of investor funds held in the Ponzi Scheme Bank Accounts, which were not reflected on the firm's general ledger or financial statements, to the Operating Bank Accounts, which were

reflected on the firm's general ledger and financial statements. These transfers are referred to herein as the "Investor Fund Transfers."

24. Cotellessa-Pitz typically learned from Madoff, Bonventre, or DiPascali that BMIS had executed specific Investor Fund Transfers. These transfers usually occurred at or near the end of a given month, and ranged from thousands to tens of millions of dollars.

25. From at least in or around January 2000 through in or around September 2006, Cotellessa-Pitz, at Bonventre's instruction, falsely accounted for these transfers as adjustments to certain securities positions on BMIS's stock record. As Cotellessa-Pitz knew or recklessly disregarded, the Investor Fund Transfers had no actual connection with the securities positions she adjusted on the stock record.

26. Near the end of most or all months between in or around January 2000 and in or around September 2006, Cotellessa-Pitz used reports summarizing the firm's adjusted securities positions to calculate BMIS's profits or losses generated through its trading activities. Because Cotellessa-Pitz had falsified adjustments to certain securities positions in connection with the Investor Fund Transfers, as alleged in the preceding paragraph, BMIS's trading income as calculated by Cotellessa-Pitz was materially overstated.

27. Cotellessa-Pitz then made accounting entries to reflect the overstated trading income amounts on BMIS's general ledger, which she assisted Bonventre in maintaining. Cotellessa-Pitz knew or recklessly disregarded that the Investor Fund Transfers did not represent trading income from the market-making or proprietary trading

operations as she falsely reflected in the firm's ledger, and that her classification of these amounts was inaccurate and misleading.

28. Cotellessa-Pitz, in turn, used the misstated general ledger, stock record, and related reports to prepare BMIS's statements of income, which were included in the firm's quarterly FOCUS Reports and annual audited financial statements. Specifically with respect to reporting BMIS's revenue, Cotellessa-Pitz used the overstated trading income amounts reflected in BMIS's general ledger to determine the amount to record as trading revenue in the statements of income included in the quarterly FOCUS Reports that BMIS filed with FINRA, and before that with NASD, and the annual audited financial statements that BMIS filed with the Commission between in or around March 2000 and in or around December 2006.

29. An example of the transfers and accounting related to Investor Fund Transfers, as alleged above, took place at or around the end of March 2005. On or about March 30, 2005, BMIS transferred approximately \$1.8 million from the Ponzi Scheme Bank Accounts to the Operating Bank Accounts. On or about that same day, Cotellessa-Pitz, at Bonventre's instruction, booked approximately \$1.8 million as an adjustment to an option on a major market index, which option was held by BMIS's proprietary trading operations. Cotellessa-Pitz knew or recklessly disregarded that the \$1.8 million transfer had no connection with her adjustment to such option position.

30. A few days later, Cotellessa-Pitz calculated the firm's trading income by referencing, *inter alia*, a month-end summary of adjusted securities positions, which included the misstated option position alleged above. As a result of her \$1.8 million adjustment on March 30, 2005, BMIS's trading income for March 2005, as calculated by

Cotellessa-Pitz, was overstated by approximately \$1.8 million. Cotellessa-Pitz then made one or more accounting entries that overstated trading income on the firm's March 31, 2005 general ledger by approximately \$1.8 million. Cotellessa-Pitz, in turn, used the general ledger to create the firm's March 2005 FOCUS Report, which overstated trading revenue by at least \$1.8 million. BMIS filed its March 2005 FOCUS Report with FINRA. BMIS's audited annual financial statements for the fiscal year ended October 31, 2005, which BMIS filed with the Commission, also overstated trading revenue as a result of the same false \$1.8 million adjustment.

31. As Cotellessa-Pitz knew or recklessly disregarded, as a result of her false adjustments to securities positions, as alleged above, the trading revenue reported on BMIS's statements of income included in its quarterly FOCUS Reports and annual audited financial statements were materially overstated.

#### **IV. Cotellessa-Pitz's Preparation of False Materials Provided to the Commission's Examination Staff**

32. Over the course of Madoff's long-standing fraud, BMIS was subjected to several external reviews by investor representatives and regulators. When BMIS received requests for information from external reviewers, Madoff responded not only with oral misrepresentations, but also with an impressive array of falsified reports and data.

33. Cotellessa-Pitz knowingly or recklessly played a role in creating false documents in response to actual or expected information requests submitted during the course of some of these reviews.

**A. Falsified List of BMIS Bank Accounts**

34. During a 2005 examination of BMIS conducted by the Commission's staff, examiners requested a "listing of all bank accounts with description of use for each account." Examiners submitted this request before Madoff had admitted to them that BMIS managed investor funds. Cotellessa-Pitz prepared the list provided in response to this request, but excluded from the list the Ponzi Scheme Bank Accounts. The omission of the Ponzi Scheme Bank Accounts served to hide and/or obfuscate the IA Operations.

35. Cotellessa-Pitz knew or recklessly disregarded that BMIS maintained the Ponzi Scheme Bank Accounts, and that the omission of the Ponzi Scheme Bank Accounts rendered the list that BMIS provided to the examiners inaccurate and misleading.

**B. Falsified List of BMIS's Trading Accounts**

36. During the same examination, examiners also requested a list of the firm's trading accounts. This request, too, was submitted before Madoff had admitted to the examination team that BMIS managed investor funds. The list that BMIS provided in response to this request did not include three trading accounts into which Cotellessa-Pitz and Bonventre had falsely booked Investor Fund Transfers as adjustments to securities positions, as alleged in paragraph 25, above.

37. BMIS subsequently submitted to the examination staff a revised list that Cotellessa-Pitz helped to create and that included two of the three previously-omitted trading accounts. On information and belief, these two accounts were added back to the list because Madoff was concerned that the examiners would note the omissions, insofar as the substantial balances in both accounts were reflected in, and directly traceable to, specific line items in the firm's financial statements. The revised list omitted the third

account through which Bonventre and Cotellessa-Pitz had falsely booked tens of millions of dollars of Investor Fund Transfers as adjustments to securities position.

38. By providing these falsified documents to the examiners, Madoff intended, again, to hide and/or obfuscate the IA Operations. As Cotellessa-Pitz knew or recklessly disregarded, the omission of one of the accounts through which Investor Fund Transfers were booked rendered the report she prepared and that was provided to the Commission's examiners false and misleading.

**C. Falsified Report of Profits and Losses in BMIS's Trading Accounts**

39. During the same examination and, again, before Madoff admitted that BMIS managed investor funds, examiners also requested from BMIS a "monthly P&L for all trading accounts." Cotellessa-Pitz helped to create a misleading report in response to this request, too. In preparing this response, Madoff, Bonventre, Cotellessa-Pitz and others began with a report showing each trading account's gross (as opposed to net) revenue. Several accounts were then manipulated to reach net profit and loss figures that were consistent with other information BMIS had previously provided to the Commission and the examiners. Specifically, the report omitted a trading account into which Cotellessa-Pitz and Bonventre had falsely booked Investor Fund Transfers as adjustments to securities positions, as alleged above. The report included a separate trading account into which some Investor Fund Transfers were booked, but BMIS deducted the amount of such transfers from the profit and loss associated with this trading account in order to hide and/or obfuscate information concerning the IA Operations.

40. Further, to make the report supplied to the examiners consistent with totals on the firm's previously-filed FOCUS Reports, to which the examiners had access, and

with other reports produced during the examination, BMIS allocated the deleted/deducted income associated with the Investor Fund Transfers to two other large, active trading accounts that were specifically associated with market-making and proprietary trading activity.

41. These deletions, deductions and reallocations were carried out, once again, for the sole purpose of misleading the examiners and hiding BMIS's IA Operations. As Cotellessa-Pitz knew or recklessly disregarded, the reports she created were inaccurate and misleading.

**D. Falsified Report of Profits and Losses Across BMIS's Operations**

42. Before Madoff had fully admitted to the examiners that BMIS managed investor funds, the examination team also requested a report showing the profit or loss generated by each of BMIS's operations. Cotellessa-Pitz participated in preparing the report that BMIS provided in response. This report concealed the existence of the IA Operations by combining purported profits from both the IA Operations and proprietary trading operations in a single column entitled "Proprietary."

43. BMIS's report provided in response to this request included two additional columns, one entitled "Market-Making" and another entitled "Debt." Madoff and Bonventre instructed Cotellessa-Pitz to allocate between approximately 85-92% of the firm's general expenses to the proprietary column, with the remainder split between the market-making and debt columns. As a result, and as Cotellessa-Pitz knew or recklessly disregarded, the figures reported in these columns reflected an extremely lopsided, and misleading, allocation of expenses that created the impression that BMIS's market-making operations were more profitable than they actually were.

### **E. Falsified Report of Revenues Across BMIS's Operations**

44. More than midway through the 2005 examination, Madoff acknowledged to the examiners that he managed some investor funds. The examination staff then submitted to BMIS a request for a "revenue breakdown (gross) for Market Making, Proprietary (including debt, derivatives, etc.) and Commission Equivalent business for Fiscal Years 2002, 2003, and 2004." The staff and BMIS personnel understood the term "Commission Equivalent business" to refer to BMIS's IA Operations.

45. Cotellessa-Pitz was given responsibility for creating the report to respond to this request, and had ready access to the information needed to do so accurately. Instead, Cotellessa-Pitz included on the report manipulated figures that were provided to her by Madoff, DiPascali and others.

46. Madoff, DiPascali, and others, created these manipulated figures in order to support the fiction then-recently advanced by Madoff that BMIS managed money for a small number of "special" clients. In truth, BMIS managed thousands of IA accounts at the time. Madoff, DiPascali, and others calculated the commission income that BMIS would have earned on trades supposedly executed on behalf of these "special" clients. Madoff then instructed Cotellessa-Pitz to reflect these figures as revenue from the "Commission Equivalent business" on the report provided to the examination staff. These figures were substantially different from accurate information that Cotellessa-Pitz maintained in her office files.

47. Cotellessa-Pitz knew or recklessly disregarded the fact that the report that BMIS provided to the Commission's examiners in response to this request was inaccurate and misleading.

**V. Cotellessa-Pitz's Preparation of False Documents Designed to Cover-Up Madoff's Massive Tax Evasion Scheme**

48. Cotellessa-Pitz also falsified documents in order to assist Madoff in covering up a scheme to evade his federal and state income taxes.

49. Madoff was the sole proprietor of BMIS, and reported BMIS's income on his personal income tax return. Madoff periodically reviewed the income reported on BMIS's financial statements, and instructed David Friehling, BMIS's outside auditor and Madoff's tax preparer, to report a lower amount on Madoff's income tax forms. Consistent with this instruction, Friehling made unsupported adjustments to Madoff's tax forms for the sole purpose of artificially reducing Madoff's tax liability. As a result, BMIS's income as reported on the firm's FOCUS Reports from year to year differed substantially from BMIS's income as reported in Madoff's tax returns.

50. Cotellessa-Pitz became involved when BMIS was subjected to federal and state tax audits. When Madoff became aware of a tax audit, he and Friehling instructed Cotellessa-Pitz and Bonventre to falsify internal BMIS documents to support the under-reported tax figures.

51. For example, in 2004, New York State tax authorities notified Madoff that they intended to audit his 2001, 2002, and 2003 tax returns, on which he under-reported gross receipts by tens of millions of dollars. In advance of the audit, Madoff and Friehling instructed Bonventre and Cotellessa-Pitz to generate new, backdated general ledger reports for each year-end at issue. The trading assets and trading profit and loss accounts reported in each of these general ledger reports were reduced, after the fact, so that the falsified general ledger reports would match the previously reported gross receipts on Madoff's tax returns.

52. Cotellessa-Pitz and Bonventre then worked together in making significant adjustments to a report detailing BMIS's purported securities positions in order to support the falsified general ledger reports. As Cotellessa-Pitz knew or recklessly disregarded, the adjustments to the general ledger, stock record, and related reports were false and misleading.

53. A similar cover-up effort took place in 2007, when the Internal Revenue Service audited Madoff's 2004 tax return, on which Madoff had under-reported gross receipts by tens of millions of dollars. Much like the previous effort, Bonventre directed Cotellessa-Pitz to falsify BMIS's 2004 year-end general ledger, stock record, and related reports. Cotellessa-Pitz knew or recklessly disregarded that these reports were also false and misleading.

#### **FIRST CLAIM FOR RELIEF**

##### **Aiding and Abetting Violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 (Broker-Dealer Books and Records Violations)**

54. Paragraphs 1 through 53 are realleged and incorporated by reference as if set forth fully herein.

55. 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 Rules 17a-3 and 17a-4 thereunder [17 C.F.R. §§ 240.17a-3 and 240.17a-4]. Further, when subject to one or more examinations under Section 17(b) of the Exchange Act [15 U.S.C. § 78q(b)], BMIS was required to produce true, complete, and current copies of records requested by representatives of the Commission.

56. As alleged above, BMIS failed to make and keep certain books and records current and accurate. BMIS, among other things, manufactured and maintained

blotters, ledgers, journals and other records omitting, misstating and mischaracterizing material transactions, assets, liabilities, income, expenses, and capital accounts. Further, when subject to one or more examinations under Section 17(b) of the Exchange Act [15 U.S.C. § 78q(b)], BMIS failed to produce true, complete, and current copies of records requested by representatives of the Commission.

57. As a result, BMIS violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 promulgated thereunder [15 U.S.C. § 78q(a) and 17 C.F.R. §§ 240.17a-3 and 240.17a-4].

58. The Defendant knew that BMIS manufactured and maintained blotters, ledgers, journals and other records omitting, misstating and mischaracterizing material transactions, assets, liabilities, income, expenses, and capital accounts. Further, the Defendant knew that, when subject to one or more examinations under Section 17(b) of the Exchange Act, BMIS failed to produce true, complete, and current copies of records requested by representatives of the Commission. In addition, Defendant knowingly provided substantial assistance to BMIS in committing such violations.

59. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], the Defendant aided and abetted the violations of Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rules 17a-3 and 17a-4 thereunder [17 C.F.R. §§ 240.17a-3 and 240.17a-4].

### **SECOND CLAIM FOR RELIEF**

#### **Aiding and Abetting Violations of Section 204 of the Advisers Act and Rule 204-2 (Adviser Books and Records Violations)**

60. Paragraphs 1 through 53 are realleged and incorporated by reference as if set forth fully herein.

61. 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)]. As such, BMIS was required to make and keep true, accurate and current certain books and records pursuant to Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 C.F.R. § 275.204-2].

62. As alleged above, BMIS failed to make and keep certain books and records true, current and accurate. BMIS, among other things, manufactured and maintained blotters, ledgers, journals and other records omitting, misstating and mischaracterizing material transactions, assets, liabilities, income, expenses, and capital accounts.

63. The Defendant knew that BMIS manufactured and maintained blotters, ledgers, journals and other records omitting, misstating and mischaracterizing material transactions, assets, liabilities, income, expenses, and capital accounts. Further, Defendant knowingly provided substantial assistance to BMIS in committing such violations.

64. 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 the Defendant aided and abetted such violations.

### **THIRD CLAIM FOR RELIEF**

#### **Aiding and Abetting Violations of Section 17(a) of the Exchange Act and Rule 17a-5 (Broker-Dealer Reporting Violations)**

65. Paragraphs 1 through 53 are realleged and incorporated by reference as if set forth fully herein.

66. As a registered broker-dealer, BMIS was required to file with the Commission, FINRA, and NASD, on a periodic basis, certain reports that were true and accurate in all material respects pursuant to Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-5 thereunder [17 C.F.R. § 240.17a-5].

67. BMIS filed with the Commission, FINRA, and NASD certain reports pursuant to Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-5 thereunder [17 C.F.R. § 240.17a-5] that were materially false and misleading.

68. As a result, BMIS violated Section 17(a) of the Exchange Act and Rule 17a-5 promulgated thereunder [15 U.S.C. § 78q(a) and 17 C.F.R. § 240.17a-5].

69. The Defendant knew that BMIS filed with the Commission, FINRA, and NASD certain reports pursuant to Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-5 thereunder [17 C.F.R. § 240.17a-5] that were materially false and misleading. Further, Defendant knowingly provided substantial assistance to BMIS in committing such violations.

70. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], the Defendant aided and abetted BMIS's violations of Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-5 thereunder [17 C.F.R. § 240.17a-5].

#### **PRAYER FOR RELIEF**

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

**I.**

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

**II.**

Permanently restraining and enjoining the Defendant, her 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 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rules 17a-3, 17a-4, and 17a-5 thereunder [17 C.F.R. §§ 240.17a-3, 240.17a-4, and 240.17a-5].

**III.**

Permanently restraining and enjoining the Defendant, her 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 204 of the Advisers Act [15 U.S.C. § 80b-4], and Rule 204-2 thereunder [17 C.F.R. § 275.204-2].

**IV.**

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

**V.**

Directing the Defendant to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9].<sup>4</sup>

VI.

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

Dated: New York, New York  
December 19, 2011

SECURITIES AND EXCHANGE COMMISSION

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