

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

 ORIGINAL

In the Matter of:                    )  
  ) File No. OIG-509  
OIG-509                                )

WITNESS:   Number 22  
PAGES:       1 through 53  
PLACE:       33 Arch Street  
              Boston, Massachusetts  
DATE:        Thursday, April 2, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 1:15 p.m.

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1 APPEARANCES:

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3 On behalf of the Securities and Exchange Commission:

4 JAMES D. FIELDER, ESQ., ASST. INSPECTOR GENERAL

5 DAVID B. WITHERSPOON, ESQ.

6 Securities and Exchange Commission

7 Office of Inspector General

8 100 F Street, N.E.

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12 On behalf of the Witness:

13 ANDREW DYER CAVERLY, PRO SE

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P R O C E E D I N G S

MR. WITHERSPOON: Why don't we go on the record.

We're on the record at 1:15 p.m., Thursday, April 2nd, 2009, at the United States Securities and Exchange Commission.

Would the court reporter please swear in the witness at this time.

ANDREW DYER CAVERLY

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

EXAMINATION

BY MR. WITHERSPOON:

Q Good afternoon, Mr. Caverly.

A Good afternoon.

Q My name is David Witherspoon, and I am an attorney in the Office of the Inspector General, United States Securities and Exchange Commission. With me today is my colleague, David Fielder, who is Assistant Inspector General.

This is an investigation by the Office of Inspector General, Case Number OIG-509, regarding Madoff Securities and Bernard L. Madoff.

I'm going to ask you certain questions, and you're going to provide answers under oath. The court reporter will record and later transcribe everything that is said.

Please provide verbal answers to my questions. If

1 table for an hour and someone handing you a piece of paper. I  
2 mean, you know, it's hard to say it can really, you know,  
3 make a definitive assessment. But that being said, you know,  
4 obviously the detail that he had I thought was somewhat  
5 unusual. You know, because quite often you'll have people in  
6 and they'll have one nugget or one fact that they're, you  
7 know, throwing at you and you might have some questions  
8 about. But I think clearly, I mean he had spent a lot of  
9 work -- you know, spent a lot of time on this, and it was a  
10 series of things that it wasn't somebody just happening to  
11 hear something and coming in and passing it along. So, you  
12 know, I think that that clearly weighed in.

13           The other thing I had heard about him, and I can't  
14 remember, you know, as I'm thinking about this, I mean I had  
15 heard that in the past times he was in, he had expressed that  
16 he was interested in a bounty. So I mean that's something  
17 else that -- I mean clearly if someone thinks they're getting  
18 a bounty, you know, it's more incentive to spend the amount  
19 of time studying. It's not to say that, you know, his  
20 credibility is completely undermined, but it would explain or  
21 help explain why somebody would go to those types of lengths  
22 to do that kind of study.

23           Q     Okay. What was your impression of the others in  
24 attendance at the meeting in terms of how they were taking  
25 what Harry was saying and what Harry had written? Do you

1 Q Right. And just in general, if they're running a  
2 Ponzi, they're willing to lie and falsify records, then they  
3 would be willing to falsify statements or trade confirms that  
4 went out to their customers for their internal purposes,  
5 right?

6 A Sure.

7 Q Now, the wrinkle is if they self-cleared then,  
8 staff is not going to be able to go to a clearing broker,  
9 right, to get that independent verification that those trades  
10 are happening at the times and the prices that they claim,  
11 right?

12 A Right.

13 Q Is there a source, though, that you could go and  
14 get independent confirmation that trades were occurring?

15 A Well, I mean if they're trading stocks, you can go  
16 to DTC or someplace like that --

17 Q Okay.

18 A -- and see what they have there. You find out who  
19 the ultimate custodian is.

20 Q Right.

21 A You know, where are the stocks sitting, and, you  
22 know, for stocks, it would most likely be DTC, so you would  
23 go there.

24 Q Okay. Now, since he's a market maker, I'll  
25 represent to you -- and it's not a hypothetical; I just would

1 appreciate it if you would keep this, all of our discussion  
2 today confidential.

3 A Sure.

4 Q But I'll represent to you that New York did not go  
5 to DTC and get the records. And what I'm trying to ascertain  
6 is: Had they gone and got the records, what could they have  
7 seen? And by that I mean, we know now, of course, with the  
8 benefit of hindsight that in terms of the money that he was  
9 managing, he was executing no trades. If he wasn't a market  
10 maker or had a broker/dealer that was doing some kind of  
11 trading activity, then it would be easy: You go to DTC, and  
12 there's nothing. There's nothing.

13 A Right.

14 Q But I'm assuming, and I really -- it is an  
15 assumption; I've never had to go on an enforcement case  
16 before to the DTC, because I've never had a case where  
17 someone self-cleared.

18 A Right.

19 Q So would the volume of activity from his market-  
20 making activity have made it impossible to determine that he  
21 wasn't executing trades on behalf of the money that he was  
22 managing? Do you have a sense of that?

23 A I don't have a real good sense, because our firms  
24 up here, I'll have to confess that, you know, our firm  
25 population being somewhat provincial in a sense, so we don't