

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. OIG-509

5 OIG-509)

6 PAGES: 1 through 66

7 PLACE: 225 Park Avenue, South

8 New York, New York

9 DATE: Monday, January 12, 2009

10

11 The above-entitled matter came on for interview,
12 pursuant to notice, at 2:00 p.m.

13

14

15

16

17

18

19

20

21

22

23

24 Diversified Reporting Services, Inc.

25 (202) 467-9200

□

2

1 APPEARANCES:

Page 1

2
3 On behalf of the Securities and Exchange Commission:
4 DAVID KOTZ, Inspector General
5 HEIDI STEIBER, Investigator
6 Office of the Inspector General
7 Securities and Exchange Commission
8 100 F Street, NE
9 Washington, D.C. 20549
10 (202) 551-5067

11
12 On behalf of the witness:
13 MICHAEL OCRANT, Journalist
14 Institutional Investor
15 225 Park Avenue, South
16 New York, New York

17
18
19
20
21
22
23
24
25

□

1 PROCEEDINGS
2 MR. OCRANT: But, also, you know, I'm trying in
3 whatever small way to educate folks, too, because, you know,
4 really I don't think anybody, even the most prescient Harry

1 was repeated time and again by all kinds of people, look,
2 it's impossible. You could be the greatest computer genius
3 in the world and have access to all the super computers in
4 the world and the market just won't let you perform like
5 that.

6 MR. KOTZ: Right.

7 MR. OCRANT: You'd see more volatility. You'd
8 see -- you'd see -- and particularly with this strategy.
9 This was an options expert, too. That was the other thing.
10 You don't see the volume. If there's this kind of trading
11 activity, you're going to see volume and you're going to see
12 market impact and I said, which later, many months later,
13 Bernie would say to me, -- I said, "Well, what if it's being
14 done over-the-counter?" Well, even if it's done
15 over-the-counter, -- first of all, you have counterparties,
16 you know. Where are they?

17 MR. KOTZ: Right.

18 MR. OCRANT: And secondly, at some point you have
19 to lay off the risk and a good amount of that trade's going
20 to go to the illicit market.

21 MR. KOTZ: Right.

22 MR. OCRANT: It just doesn't exist.

23 MR. KOTZ: Right.

24 MR. OCRANT: The trading volume doesn't exist.

25 Those were, you know, -- the other thing was the fees that he

12

1 was giving back. Why would you structure yourself in this
2 weird way and give up tens of millions in fees? Why would
3 you possibly do that? Bernie said to make commission. Well,
4 you could still make commissions.

Page 10

5 MR. KOTZ: Right.

6 MS. STEIBER: Right.

7 MR. OCRANT: They could potentially set themselves
8 up as broker-dealers like buyers do, right? But, you know,
9 legitimate hedge funds could do that as well. So why not do
10 both? why not -- so those were probably the really big
11 things, you know, and then just the conversion strategy in
12 general, you know. He said again some kind of options
13 experts. You can't -- other people have tried that strategy
14 in the past, some very good people, and what they said was
15 you can't manage that much money using that strategy, which
16 is basically a detailed kind of strategy, of course, --

17 MR. KOTZ: Right.

18 MR. OCRANT: -- and be that successful at managing
19 that kind of capital, and in doing what he was doing, also,
20 you know, you would have had to be right on picking the
21 stocks themselves about, you know, 90-95 percent of the time.
22 Again, people said it's not possible. You can't be that
23 good.

24 MR. KOTZ: So this information you got from -- was
25 it a number of people who called?

13

1 MR. OCRANT: Yeah. Well, he gave me this tip and
2 gave me this -- these returns, gave me a few contacts, and
3 then I used my own contacts and I just started asking people.
4 In some cases, just giving them the -- in one particular
5 case, I gave the terms and strategies to a guy who ran a
6 quantitative analysis with a Japanese bank for a Fund to
7 funds they ran and I said can you take this data and can

8 you -- have you crunch it and let me know what you think and
9 I didn't give any further information and I said this is the
10 strategy.

11 He got back to me like a week to 10 days later and
12 he said, "well, the team came back and they said this could
13 be done by a market-maker, probably have to use front money
14 to do it," and I said, "Oh, that's interesting," and I said,
15 "what would you say if I told you this guy was managing maybe
16 \$5-6-7 billion?" He said, "Impossible. It has to be a Ponzi
17 scheme."

18 MR. KOTZ: Really?

19 MR. OCRANT: And I said, "Oh, okay. That's
20 interesting," and I said, "well, what about this? You don't
21 think it would be a front-running?" well, he said, "It's a
22 Ponzi. It's gotta be. That's an awful lot of front-running
23 for that much money for management and to get those kind of
24 returns."

25 So, you know, it was time and again -- what was so

14

1 striking to me as a journalist was in -- even in some of the
2 most egregious cases, you oftentimes get people, you know,
3 who are experts, say, well, you know, could be this or could
4 be that. In this case, it was just consistent with
5 everybody, saying no, it has to be the front money or Ponzi.
6 There's no other possibility.

7 MR. KOTZ: How many people would you say that you
8 spoke to at that time?

9 MR. OCRANT: I'd say -- I haven't had a chance to
10 go back and find my notes which are buried in a box in my
11 reporter's notebooks in my storage basement, but I know it

Page 12

12 was at least a dozen and probably more like 14-16 people.

13 MR. KOTZ: Were those people that you kind of ran
14 the scenario or strategy by?

15 MR. OCRANT: No. I mean, I did different things.
16 In one case, I just happened to be talking to a guy who I
17 knew, a guy who's since died, but he was a former senior
18 executive at one of the futures exchanges and traded on the
19 floor, ran a couple of Fund to funds, a guy who's been around
20 a long, long time, and I said, "Hey, have you looked at
21 Madoff managing money?" He said, "You know, it's funny you
22 mention that. I was just in a conference and we were sitting
23 around" -- this is my Blackberry. "We were sitting around
24 the table, me and three or four guys, and we were saying --
25 somebody mentioned Madoff and we started talking and one guy

15

1 said, well, I know so and so at Fairfield got this much, so
2 and so got this much, and we got up to like \$4 or \$5 billion.
3 It was amazing." I said, "Oh, so what do you think of
4 Madoff?" He started laughing. He said, "Everybody knows
5 this isn't real." I said, "What do you mean this isn't real?
6 He said, "Well, everybody knows he can't possibly be
7 producing these kind of" -- I said, "Have you ever looked
8 that closely?" He said, "We actually haven't," which was
9 unusual because usually Fund to funds look at everything.

10 I said, "I've heard enough," you know, from that
11 prequel that I wouldn't even bother looking at it. There's
12 no way that he's getting these kind of returns.

13 MS. STEIBER: And what do you think that the
14 speculation was? The front-running or the Ponzi scheme or

15 something else?

16 MR. OCRANT: Well, I think most people believed it
17 was a front -- it was front-running. I think with rare
18 exception, again because people just couldn't imagine, since
19 he was a huge market-maker and had access to this data.

20 The only caveat, there were those like, you know,
21 Harry who kept saying if it's front-running, that would have
22 been caught sooner because that's just a lot more difficult
23 to hide, especially if it's market-making activity and would
24 have been subject to more closer audits and scrutiny.

25 So I think most people believed it was more likely

16

1 front-running with a little bit of actual money management
2 but using front-running to ensure smoother returns and ensure
3 positive returns. It was kind of my belief of the
4 fiduciaries, too. I think most of them knew something wasn't
5 right, but it's just my opinion, so I have no evidence, but I
6 believe most of them knew something's not right. He might be
7 front-running, but the money will be there anyway. We may
8 have to distort some profits, he might fined and, you know,
9 it may be more serious, but, you know, the money will be
10 there, so no need to worry.

11 I think my gut tells me that, you know, these
12 fiduciaries could have really for a second believed it might
13 have been a Ponzi scheme.

14 MR. KOTZ: Right. So of these 14 to 16 people that
15 you spoke to at that time, approximately, did anybody not
16 come to the same realization, the same --

17 MR. OCRANT: No. That's what was so amazing. It
18 was just so consistent. It was so, so consistent. I tried

4 MR. OCRANT: Exactly, exactly. It was -- it was
5 also there was no -- there was no surprise in his voice, no
6 hesitation. Again, you know, as a journalist, I like to
7 think if you're good, you develop certain instincts and you
8 sort of get, even on the phone, when people get a little
9 uptight or concerned or, you know, there's sort of a gotcha
10 moment, and with him, there was nothing. It was just so, so
11 smooth and when I met him, you know, it was just very
12 nonchalant almost.

13 As I said elsewhere, I think I said it was like
14 being invited to Sunday tea, you know. It was like --

15 MR. KOTZ: Just you two?

16 MR. OCRANT: It was just us two. His assistant had
17 left. It was later in the day. There were some people
18 hanging around. He asked if he could get me coffee or water
19 or anything, him personally, and at one point one of his
20 sons, I don't remember which one, it was so long ago, he was
21 in sort of a glass office, one of his sons passed by and he
22 said, "Oh, you want me to meet my son?" "Oh, yeah." Told me
23 a story, you know, and I was with him like two hours.

24 At another point, we talked down on the trading
25 floor and almost everybody was gone. There was a couple

22

1 people hanging out and he introduced me. "Oh, you know,
2 Mike's doing a story on me."

3 MS. STEIBER: And his office at the time was on the
4 same floor as the trading floor?

5 MR. OCRANT: I don't remember exactly what floor it
6 was, but, yeah, there was a trading -- there was a trading
7 operation. I don't think it was the -- I think it was the

8 market-making operation. It was like a big, you know, floor
9 to ceiling glass and him sitting at his desk.

10 MS. STEIBER: Was he very likeable? Charming?

11 MR. OCRANT: Oh, yeah. I would say in this case, I
12 wouldn't say he was charming, but he was very forthcoming,
13 very easy-going, very -- you know, what struck me again,
14 more in retrospect but even then, that he responded to each
15 and every question. It was as if, you know, when I view
16 interviews and, you know, I always keep in mind, I always
17 look at it as being on trial and testifying, in the sense
18 that you always want to listen carefully to the question
19 being asked and respond to that question and say only what
20 you really know or what you think you know. Sometimes it may
21 be an opinion, but what you think you know and not try to
22 guess. It's always a lot more powerful.

23 In his case, that's exactly what he did. I mean,
24 every question I put to him, and being a journalist I would
25 repeat the same question a different way to try to get him,

23

1 he responded to every one. He was patient, you know. Even
2 if I asked the same question three times, he didn't suddenly
3 say asked again. Senior executives might say, look, I've
4 answered enough, get the hell out of here, you know, I'm
5 tired of your questions. No, he was like is there anything
6 else I can do for you? Do you have any more questions?

7 In fact, I called him a week later. Barron's
8 plagiarized the story that we ran and I'm not joking about
9 that. They really did.

10 MS. STEIBER: They plagiarized?

11 MR. OCRANT: They plagiarized, yes, the story on
12 Tuesday after my story appeared on Monday, the next Monday
13 and here was this story that pretty much took relatively
14 verbatim with some slight -- two changes were made and she
15 got things wrong, too, and I actually called his apartment
16 because I wanted to sort of keep that door open in case there
17 was an initial follow-up and I called and I said -- I asked
18 for his assistant, saying I just wanted to push for that.
19 They took the story and the things they got wrong in the
20 story, you know, I'm a little embarrassed by.

21 I think one of the things was the way the
22 commissions are generated. I haven't had a chance to look at
23 that Barron's story in awhile, and so I just want to tell him
24 I'm sorry about that, it wasn't, you know, it wasn't me,
25 and --

24

1 MS. STEIBER: Now, why did you do that?

2 MR. OCRANT: Well, partly to keep the door open and
3 partly because I didn't want him to -- I wanted to maintain
4 that relationship, if I needed it, so I didn't want him to
5 think I was outright peddling the story and getting people to
6 beat up on him --

7 MR. KOTZ: Right.

8 MR. OCRANT: -- just, you know, to sort of keep it
9 fresh and feeding it for no good reason, and his assistant
10 said, "Well, he's actually at a conference in Europe right
11 now, but I'll leave a message," and a couple hours later, I
12 got a call from him on a golf course somewhere in Europe, you
13 know, part of the conference, and he called me and I told him
14 this.

15 I said, "Look, I'm sorry about this." He said,
16 "Oh, no, you're just doing your job. She's doing her job,
17 you know. Anything else you need, you know, feel free to
18 give me a call." He was just again not in the least
19 concerned.

20 MR. KOTZ: What did he say in the two hours? He
21 answered the questions. What was his explanation?

22 MR. OCRANT: Well, the explanation for the returns
23 was, like I said, a great infrastructure, their expertise,
24 their market knowledge, all that kind of good stuff, the
25 options trading that was all done over the counter. A big

25

1 portion was done over the counter, so you didn't really see
2 that volume.

3 The only thing he wouldn't answer is really exactly
4 how it's done, but, you know, he answered again in a way that
5 if you're familiar with Wall Street, it was -- it was
6 something that you couldn't dismiss entirely either and
7 that's that we have a proprietary system. We spent a lot of
8 money developing it and we're not going to reveal proprietary
9 secrets for the benefit of all our competitors who want to
10 copy us. Why should we do that when it was done to benefit
11 us? And, you know, that wasn't an implausible answer. It
12 was certainly believable.

13 MR. KOTZ: What about the fees? How did he explain
14 the fees?

15 MR. OCRANT: The fees, he basically said was that
16 the commissions were sufficient for him, that it was an
17 ancillary business that sort of added another stream of

18 revenue, and kept him from the hassle of having to market
19 funds and having to have a whole team to be out there selling
20 it and running it and this way people ran it as a broker, as
21 your own broker might, I want to do this options strategy and
22 I'm giving you permission to execute it for me every month,
23 I'm giving you discretionary authority to do that. It's no
24 different than that, and, you know, he did say, "we still
25 want to concentrate on our core business which is

26

1 market-making and this just, you know, adds another revenue
2 stream for us and helps our business."

3 Again very smooth, I mean not -- I mean pretty much
4 every answer he gave, you could say had a degree of reality
5 to it --

6 MR. KOTZ: Right.

7 MR. OCRANT: -- and couldn't entirely dismiss it.

8 MR. KOTZ: Did you ever say to him in that meeting,
9 you know, the concern is that it may be a Ponzi scheme?

10 MR. OCRANT: A lot of people have asked that. I
11 never did deliberately. For one thing, I used all
12 confidential sources in the story.

13 MR. KOTZ: Right.

14 MR. OCRANT: So in retrospect, I probably should
15 have said that. Instead, what I really did and did in the
16 story, too, because I thought in the story it was more
17 powerful, I just laid out, you know, the concerns people had
18 about why whatever he said he was doing couldn't be what he
19 says he's doing.

20 MR. KOTZ: Right.

21 MR. OCRANT: And also, I didn't want to get in a
Page 23

22 position, you know, retrospect maybe at the end I should have
23 raised that, I didn't want to get in the position where I
24 raised that and he said, okay, conversation over.

25 MR. KOTZ: Right.

27

1 MR. OCRANT: Because that's a pretty strong word to
2 use with anybody.

3 MR. KOTZ: Right.

4 MR. OCRANT: He did mention front-running, you
5 know, the subject, and then he said, --

6 MR. KOTZ: Did he mention the SEC at all?

7 MR. OCRANT: No. No, he never mentioned regulators
8 at all.

9 MS. STEIBER: And at the time, did you think that
10 he had set up his operation, he had done it in order to avoid
11 any type of regulation or was that something that was on the
12 horizon at the time or --

13 MR. OCRANT: No, because, you know, hedge funds
14 weren't regulated anyway. It wasn't set up as a hedge fund.
15 I assumed that these -- just because it was part of the
16 operations as a whole and he was, you know, subjected to NASD
17 and NYSE and SROs and SEC regulations, that, you know, at
18 least superficially, that the regulators were aware of that,
19 that he had this operation.

20 I had no reason to assume they wouldn't be since it
21 was so big, but how could they not be aware it existed
22 anyway?

23 MR. KOTZ: Right.

24 MR. OCRANT: So I never thought that it was set up

24 cases literally suspect or want to look more closely at one
25 more firm and you say, hey, look, I've got to -- this guy I

46

1 gotta look at, too, and, you know, there's always that, I
2 think, in every business, no matter what it is, government.
3 No matter how much resources you have, they're finite, and,
4 you know, you have to move on to the next one.

5 We're -- you know, we get -- we're working -- we're
6 always working, but, you know, at the time we're always
7 working on other, you know, profiles or other investigative
8 pieces and we're covering different parts of the industry,
9 too. Hedge funds, so Fund to funds. There was always new
10 things going on. I was doing some reporting but not much. I
11 was picking stories like that when I could spend more time,
12 so I could sort of oversee publications as a whole. So I
13 didn't really -- I didn't really -- I mean, it was always
14 interesting to think about, but I didn't really have the time
15 to oversee it and then I came here and I had the conferences.

16 MS. STEIBER: Yeah.

17 MR. KOTZ: So what is your kind of theory? Do you
18 have a theory as to why Harry's complaint brought to the SEC
19 Enforcement never went anywhere?

20 MR. OCRANT: Well, I can't say precisely. I think
21 there you have to talk to -- actually, I'm sure you have --
22 the person that actually went in and did the inspection
23 itself to find out what that person said to them, but my
24 theory in general is, not the SEC, but -- but all regulatory
25 agencies, particularly in financial services, it's an open

1 secret on wall street, those who do inspections usually are
2 relatively young attorneys who come with an attorney mindset
3 which means they have a rule book and a checklist. They look
4 at the rule book. They look at the checklist. They say,
5 well, I have Rule A and I have Checklist A. Okay. They're
6 complying with Rule A, so I can check that box off, and they
7 go through and they check off the boxes and they may find a
8 violation, say okay, here's a violation, you have to do this
9 or you have to pay a fine, something like that, but they
10 don't come in with a mindset of, you know, guys I talk to,
11 you know, capital markets experience, with financial trading
12 experience, with a real understanding of what's possible and
13 not possible in any given market or any given strategy.

14 They don't really know to ask those questions even
15 if they somehow came upon it or thought they had something
16 because they don't have the experience to do so. So my
17 opinion is, in general, that, you know, in talking about from
18 their, you know, sort of what needs to be done or what should
19 have been, is you need people like that.

20 You need people, again focusing on wall street, but
21 most of the inspectors or at least it's the perception that
22 the inspectors, you know, what they mostly want is a job in
23 the private sector and they're there to kill a little time
24 until they get an offer from a security firm which is --

25 MR. KOTZ: Right.

1 MR. OCRANT: Firms love hiring former SEC
2 inspectors.