

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
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 3 In the Matter of:)
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 6 SUBJECT: Telephone Conversation with John Guthery
 7 PAGES: 1 through 13
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TAPE TRANSCRIPTION

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1 P R O C E E D I N G S

2 VOICE: This will be the interview of John Guthery,
3 G-u-t-h-r-y, and he is employed at LPL Financial. That's L,
4 as in long; P, as in profits; L, as in long, Financial.

5 The date is April 9, 2009 the time is 2:30 p.m.

6 If you could just -- I think John give me your name
7 and your background, and where you work that would be
8 helpful.

9 MR. GUTHERY: Sure. My name is G-u-t-h-e-r-y, and
10 I head up manager research and due diligence for
11 LPL Financial, where I have worked for about 13 years now.
12 And we do -- and as a firm, we do mostly, I would say mutual
13 fund management research and separate accounts, and have a
14 fund-to-fund, fund-to-hedge-fund business, and we have a
15 small number of single-manager hedge funds on our platform,
16 but not many.

17 VOICE: And at some point, did you perform due
18 diligence on Madoff?

19 MR. GUTHERY: Well, I performed due diligence on
20 the Rye Select Broad Fund.

21 VOICE: I'm sorry, I couldn't understand the name
22 of that fund.

23 MR. GUTHERY: The Rye Select Broad Markets Fund.

24 VOICE: Is that R-y-e?

25 MR. GUTHERY: Yes.

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1 VOICE: And could you just describe what occurred?

2 MR. GUTHERY: Sure. So we had an advisor who had a
3 high net worth client who had purchased this particular

4 product through another company, and the advisor was
5 interested in one -- because the client had become his
6 client, and the client was interested in purchasing
7 additional -- putting more money with this fund. And the
8 advisor, upon looking at the performance, thought it would be
9 an attractive fund to potentially sell to other clients
10 who -- you know, other high net worth clients who, in a very
11 difficult market, are looking for something more stable.

12 And that's when it came to my attention. And we
13 have a -- the Rye group is owned by Treemont, which is a
14 subsidiary of Mex (inaudible) Mutual, and connected to the
15 Oppenheimer Fund. We have a relationship with Treemont Group
16 through Oppenheimer Funds, primarily.

17 VOICE: Okay.

18 MR. GUTHERY: And so, the marketing folks from the
19 Rye Group contacted me and sent me over some -- you know,
20 just basic information on the product.

21 VOICE: Okay.

22 MR. GUTHERY: And that's sort of when the due
23 diligence piece of this began.

24 VOICE: Okay, so it began with you reviewing these
25 marketing materials?

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1 MR. GUTHERY: That's right.

2 VOICE: Do you recall if there was anything in the
3 marketing materials that raised red flags? Anything about
4 the fee structure or on the returns or anything else?

5 MR. GUTHERY: Yeah, at first, I wouldn't say -- I
6 looked at the returns and they looked stable, but I hadn't
7 looked at them too closely, at first. I think the first

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8 thing that really raised a red flag -- there were two things
9 that raised an initial red flag with me. One was the type of
10 trades they said they said they were doing, which was a split
11 strike synthetic conversion.

12 VOICE: So they said it was "synthetic" conversion?

13 MR. GUTHERY: That's what it's called here.

14 VOICE: Okay.

15 MR. GUTHERY: It's an options trading strategy,
16 split strike synthetic conversion.

17 VOICE: Yeah, I just haven't heard the "synthetic"
18 in there. That was a specific term instead of just split
19 strike conversion strategy?

20 MR. GUTHERY: Yeah, that's what it says here.

21 VOICE: And what year was this?

22 MR. GUTHERY: This was last year.

23 VOICE: This was last year, okay.

24 MR. GUTHERY: And you know, quite frankly, that
25 trade -- that line of words did not mean anything to me. So

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1 when they started to explain it to me, it didn't mean a lot
2 to me. They eventually --

3 Actually, let me stop there, because the other
4 thing that happened was that I was looking at the TPM and
5 there was no listed manager for this particular strategy.

6 VOICE: No listed manager in the TPM, okay.

7 MR. GUTHERY: Right. No CM (inaudible) listed, no
8 sub-advisor listed.

9 VOICE: And that was unusual?

10 MR. GUTHERY: Well, yeah. Usually you know who is

11 managing your money. And they had other funds -- they have a
12 fund run by Investment Adviser #1

13 VOICE: Investment Adviser #1 ?

14 MR. GUTHERY: Yup, and that was listed. So I found
15 it was unusual -- I thought it was strange that one was and
16 one wasn't. How's that?

17 VOICE: Okay, yeah.

18 MR. GUTHERY: And so, the next step was really
19 after I found out who the manager was -- and I can't say that
20 the name meant much to me personally, but I made some calls
21 to people I work with in the industry, and they really
22 informally said the same thing, which was -- you know, "the
23 manager doesn't allow for enough access to become fully
24 educated on what he does for what's going on in his firm."

25 Two, they pointed out that there was a Barron's

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1 article, which I think I -- several years ago, which I think
2 I read at the time.

3 VOICE: Are you talking about the Erin Arvedlund
4 article from 2001?

5 MR. GUTHERY: Yes, which just raised questions
6 about -- you know, if the returns -- how they were being
7 generated (inaudible).

8 VOICE: What did you understand the article to be
9 stating?

10 MR. GUTHERY: You know, I haven't read that article
11 recently. I can't --

12 VOICE: Okay. So this was last year, you're
13 looking at the marketing materials. You're not really
14 familiar with the split strike, synthetic conversion

15 strategy, and then you call a couple of people. Were these
16 people who were at investment banks, were they similarly
17 situated to you, running a fund-to-fund?

18 MR. GUTHERY: Yeah, one of them runs a
19 fund-to-fund, and one of them is a -- helps run a platform
20 which sells long-term investments.

21 VOICE: Okay.

22 MR. GUTHERY: He wrote back, "Hey, yeah, we know we
23 think it's a Ponzi scheme. Don't do it." But they all said
24 "I'd look pretty closely at it. He's known for not providing
25 enough information to make a great decision."

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1 VOICE: Okay. So at that point, what did you do?

2 MR. GUTHERY: So at that point, I started asking
3 additional questions. One I tried to figure out how he was
4 managing the money. And I guess what I got out of that was
5 that he was doing a hedged covered call strategy.

6 VOICE: Wait, who did you ask these questions to?

7 MR. GUTHERY: The folks at Rye.

8 VOICE: Okay.

9 MR. GUTHERY: And I guess I should say I asked to
10 speak to the manager and was told that I couldn't have access
11 to the manager.

12 VOICE: Interesting. And in your experience, have
13 you ever had a fund say that you can't have access to the
14 manager?

15 MR. GUTHERY: No, no one has ever said you can't
16 have access -- they certainly said -- you know, you certainly
17 had times where they said, "well, we're not going to be able

18 to set it up immediately."

19 VOICE: Right.

20 MR. GUTHERY: But no -- usually, you're allowed to
21 have access.

22 VOICE: This was a blanket, "You can't meet with
23 them."

24 MR. GUTHERY: That's right.

25 VOICE: So you had these additional questions,

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1 and --

2 I'm sorry I interrupted you, you were saying?

3 MR. GUTHERY: So we were talking about the trade,
4 and I guess the way it was described to me was a hedged
5 covered call strategy. You go in without any real -- any
6 risk on the downside, but if you're hedging your strategies,
7 you obviously have very little upside potential. So --

8 And I guess the answer that was given to me about
9 how it's making money is that he has a proprietary system of
10 moving in and out of the market.

11 And so that leads you to say, "well, then I need to
12 understand a little bit more about that." Looking at the
13 returns -- and if you're looking at the returns, you know,
14 you could just see it (inaudible).

15 VOICE: And do you think this lack of volatility in
16 his returns was a red flag?

17 MR. GUTHERY: Yeah, well, at this point in time,
18 yes. So at this point in time, I started to get more
19 concerned about not being able to get access -- the trade
20 itself (inaudible).

21 VOICE: I'm sorry. Could somebody typing in the
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22 background -- could they mute or something? Because it's
23 hard for me to hear, because somebody is typing.

24 MR. GUTHERY: No problem.

25 At this point in time, I do start to wonder a

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1 little bit more about the results, just because -- without
2 any specific concept of what's going on at all. But the
3 trade's hard to understand. The concept of trading in and
4 out that successfully makes you wonder a little bit more.
5 The thing that had been thrown out there that maybe he was
6 front-running -- you know, from his clearing house or
7 something like that.

8 VOICE: Who threw that out that he was
9 front-running? Was it the people at Rye?

10 MR. GUTHERY: No. Oh, no, certainly not. It was
11 the people I contacted to ask about the fund was that -- that
12 was -- not that anybody knew that that was going on, but that
13 was one of the things that people speculated on how he got
14 his returns.

15 VOICE: At any time, did the people at Rye ever
16 bring up the fact that Madoff had been looked by the SEC and
17 was cleared as marketing? We've heard from other people that
18 sometimes they would say, "Yeah, he just got through an exam
19 and nothing was found."

20 Did they say anything like that to you?

21 MR. GUTHERY: I'm going to say I don't know. They
22 certainly might have, but I'm going to say that I can't say
23 specifically that they said that.

24 VOICE: Okay -- I'm sorry. And then did you

25 remember anything else about your conversation with them at Rye?

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1 MR. GUTHERY: Yeah, so at that point in time, I
2 started asking for additional information on where the money
3 was custodied, who their -- what their -- how Rye got their
4 information about trades and performance. And that's when it
5 became clear that -- you know, that everything was happening
6 in some way shape or form in-house with the Madoff
7 organization. And -- you know --

8 VOICE: And why is that a concern to you? That
9 it's all in-house, meaning that it's self custodied?

10 MR. GUTHERY: I guess it's just one of the things
11 that we look for is that assets can be confirmed by
12 outside -- by -- you know, well-known outside parties, and
13 that pricing is confirmed by well-known outside parties, so
14 there's checks and balances and transparency.
15 Exactly -- checks and balances and transparency.

16 VOICE: And is this just part of your standard due
17 diligence procedure?

18 MR. GUTHERY: That's right.

19 VOICE: And so it's a significant -- is it such a
20 red flag that everything was in-house that you would not
21 invest at all, or is it something that leads to a concern
22 that you ask other questions?

23 MR. GUTHERY: well, it's probably -- I can't
24 imagine what would get me to the point where that was --

25 It's hard to say --

4 VOICE: By Madoff. So this was your one
5 experience --
6 MR. GUTHERY: Yes.
7 VOICE: -- doing due diligence? At any point with
8 Rye, did you ask them for trade tickets? Did they ever
9 produce any trade tickets or any other supposedly (inaudible)
10 docs?
11 MR. GUTHERY: I didn't --
12 I had made a decision before I got that into the
13 weeds, you know, so I really didn't go that far.
14 VOICE: Okay, so I can't think of any other
15 questions for you. So you're saying at not the time --
16 You haven't met Madoff since then --
17 MR. GUTHERY: I've never met him.
18 VOICE: -- or before then?
19 MR. GUTHERY: Right.
20 VOICE: And this was the one fund that you had done
21 due diligence upon and the main red flags that you saw were
22 the lack of transparency, and then the lack of a third-party
23 administrator?
24 MR. GUTHERY: Right.
25 VOICE: Was there anything else?

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1 MR. GUTHERY: I'd say that and lack of access to
2 the manager, and lack -- I couldn't understand the trades
3 that they were doing --
4 VOICE: Okay.
5 MR. GUTHERY: -- or how they were getting the
6 results for the trades they were doing.

7 VOICE: Okay, great. As part of the process, we're
8 looking for recommendations or ways to maybe improve the exam
9 program, et cetera. Have you gone through an SEC exam? I
10 mean, you personally; have you had any involvement with it?

11 MR. GUTHERY: No.

12 VOICE: Do you have any other thoughts that you
13 wanted to share?

14 MR. GUTHERY: No, that's it.

15 VOICE: Okay, great.

16 (End of conversation.)

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