

MEMORANDUM

November 16, 1992

TO: **Demetrios Vasilakis**
Former Examiner #2

SUBJECT: Bernard L. Madoff
885 Third Avenue
New York, NY 10022
File #8-08132

NASD CAUSE EXAMINATION
Exam No.: 93-
Category: A

John J. Gentile

John J. Gentile, Chief
Broker-Dealer Inspection Program
Branch #6

CC:

Personal Privacy
[Redacted]

BERNARD L. MADOFF
885 Third Avenue
New York, NY 10022
Exam # 93-015
File # 8-8132
November 20, 1992

C O M M E N T S

Pursuant to an assignment memorandum dated November 16, 1992 a cause examination of Bernard L. Madoff ("BLM") was conducted to verify certain security positions carried for the accounts of Avellino & Bienes ("A&B"). The need for the examination was triggered by events involving an investigation (NY-6066) of A&B; specifically, the staff filed court papers seeking a preliminary injunction, on November 18, 1992, in U.S. District Court, Southern District of New York.

I. Background

BLM has been a registered broker-dealer with the Commission since January 19, 1960. BLM is a member of the NASD, as well as the Cincinnati Stock Exchange. As of April 1992, BLM had \$73.3 million total equity capital and \$56.3 million excess net capital. The firm has 50 registered traders and 50 computer systems staff.

BLM has in place a proprietary, state-of-the-art automated trading system that allows them to bypass the exchange floor for transactions in exchange listed securities.^{1/} Approximately 90 percent of the firm's securities transactions are automatically executed via Computer to Computer Interface ("CTCI"). CTCI acts as a link between the firm's in-house computer and NASDAQ and allows for the simultaneous reporting of securities transactions internally for recordkeeping purposes as well as for trade reporting requirements. On a busy trading day, BLM may handle up to 5% of the volume in NYSE listed stocks. BLM pays approximately a penny a share for orders and profits off the spread between the bid and asked price for a security.

II. Scope

As noted previously, the staff's review was a direct result of the NYRO's investigation of A&B. In short, A&B is a CPA firm that was pooling funds, borrowed from various clients in the form of demand notes, and investing those funds primarily into NYSE

^{1/} Such trading is referred to as the "third market".

listed securities via seven discretionary accounts at BLM. This arrangement in effect created an unregistered offering of these notes and an unregistered investment company, thereby violating Section 5 of the Securities Act of 1933 and Section 7 of the Investment Company Act of 1940, respectively.

Through prior requests, made to BLM, the staff obtained A&B's customer account statements for August, September, and October 1992. The staff's examination was conducted to verify BLM's proper segregation, of A&B's October 1992 month end securities positions, in BLM's segregated accounts at DTC. In order to facilitate the staff's review a meeting was held with Bernard Madoff ("Madoff").

Madoff informed the staff that there was no activity in any of the A&B accounts in question since October 31, 1992. Madoff also furnished the staff with BLM's stock record and DTC participant statement as of the previous day's close of business, November 12, 1992 (the staff visited the firm on November 13). The staff traced all of A&B's positions to BLM's stock record. All of the securities in A&B's accounts were listed on the November 12, 1992 stock record. The staff then traced all of BLM's stock record positions to the DTC participant statement for November 12, 1992. The staff observed that BLM's stock record exactly matched the DTC participant statement. It was also noted that all positions were segregated at DTC and not in any type of loan account.

III. Conclusion

The staff's review of BLM's books and records disclosed that all A&B securities were being held at DTC in BLM's name as of November 12, 1992. No exceptions were noted.

Examiners

Former Examiner #2

Demetrios Vasilakis