

MNY 07563 – Certain Hedge Fund Trading Practices

Miscellaneous Calls Starting 1/12/06- Notes

Date & Approx. Time:	Call to/from:	Notes:
1/12/06 10:25 am	From Bernard Madoff	All documents in response to our request will be delivered tomorrow 11/13/06; most are in electronic format. No email: as a matter of policy, BLM does not use email to communicate with customers. [Need to confirm whether there is internal email]
1/18/06 11:20am	Voice message to Mark McKeefry	Pointing out that the Relevant Period described in his cover letter of 1/12/06 does not match the time frame for draft PPMs in our request dated 12/29/05.
1/18/06	McKeefry	Re my call earlier: will check if there were drafts for 2004-2005 and will get back to us.
1/23/06 10:10am	VM to McKeefry	Request voluntary on the record testimony of a witness most knowledgeable about changes between 2000 and 2005 in the Sentry Funds' disclosures about BLM.
1/23/06 10:15am	Call to BMadoff	1. Option contracts with counter-parties, sub-item (f) in 1/29/05 requests – BMadoff says they do not have documentation beyond that produced. 2. Request voluntary testimony of Frank DiPascali – on the record, sworn, with court reporter; may be represented by counsel, but no other persons may be present (BMadoff may not attend). BMadoff says will get back to me.
1/23/06 1:45 pm	Call from McKeefry	Re: my call earlier; will get back shortly on the name of the witness. Re: more recent Sentry PPM drafts – have found some; they will be delivered to us.
1/31/06 11:12 am	VM to McKeefry	Call me back re Tucker compensation and the 1/25/06 production.
2/1/06	VM to James McCormick of Tremont	Doc request is coming; call me to discuss electronic production.
2/1/06	Call with Tremont's McCormick and Siciliano	Limit request 8 (see email); electronic production discussed.
2/1/06	Law Enforcement	[Redacted]
2/3/06	Call from McKeefry	To inform us that they decided to register their Bermuda entity under the new rules, but wanted to make clear that we should not perceive this decision as intended to affect this investigation. Told him that I cannot advise them whether to register or not, but they should not be concerned that the staff will perceive this decision as a response to our investigation, unless we see any evidence to this effect.
2/10/06	Call from Bernard Madoff	He received our request of 2/10 – will get the documents to us in time.
2/22/06	Call from [Redacted] Personal Privacy	Re Tremont production: will deliver one DVD tomorrow.
Approx. 2/28-3/1/06	Call from [Redacted] Personal Privacy	Tremont discovered one more hard copy document responsive to our request and will deliver it tomorrow. (Was delivered with

Law Enforcement

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3/8/06	Helpern Call with <small>Personal Privacy</small> 	3/1/06.) Search for responsive electronic documents at Tremont: Using names of funds and Madoff: 46,000 documents for 2000-present; 24,000 documents for 2004-present, 20,000 documents for 2005-present. Using Madoff and BLM: about 3,455 + 263 documents for 2000-present. To produce just this: 7 attorney/days (1 attorney reviews 500 docs a day) – can do within two weeks; the whole thing – will
3/10/06	<small>Law Enforcement</small> 	
3/20/06, 10:35 am	Call with <small>Personal Privacy</small> 	confirmed that there is no formal order; then asked about the focus of the inquiry (client asked to ask). Said I cannot disclose that.
	<small>Law Enforcement</small> 	
4/13/06	Message to FGG's McKeeffry	Asked for an update on the status of revising the Sentry Funds' disclosures concerning Madoff.
4/14/06	<small>Law Enforcement</small> 	
4/17/06	Message from McKeeffry	FSL & GSLP have revised their PPMs but not distributed yet; waiting for ADV to become effective.
4/17/06	Message to McKeeffry	Asked to send us the current drafts of the PPMs and also to confirm whether any other documents (e.g., tear sheets) are being revised.
4/17/06	Call from McKeeffry	Will send to me today by email: updated pitch book and revised marketing document entitled the Madoff Edge; draft of updated tear sheets and RFPs current drafts of PPMs for three funds: FSL, GSLP (which will be converted into a 3c7 fund), and a new domesticating 3c1 fund; Greenwich Sentry Partners. Also will send one page of minor corrections to the Tucker
	<small>Law Enforcement</small> 	

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	Personal Privacy	
4/18/06	Law Enforcement	
5/9/06	Call with Bernard Madoff	<p>Questions re accounts produced in Feb: DTC/NSCC, Bank of New York and Barclays – all three accounts are not solely for the institutional trading but for all BLM business. Requested to produce account statements for BLM account 290003 (per BMadoff, this one is solely for the institutional trading), Jan-Dec 2005.</p> <p>Scheduled testimony for 5/18/06. Warned Madoff that this is voluntary and he can have counsel represent him. BMadoff said he understands but is “perfectly capable of representing himself”. Madoff asked why I referred to this as investigation rather than inquiry. Explained that the distinction is administrative, based on the passage of time, but there has been no substantive change in status – e.g. no formal order.</p> <p>Said will send him a form with additional information.</p>
5/22/06, 1:45 pm	Call to Bernard Madoff	<ol style="list-style-type: none"> 1. Confirm request, from testimony, for the list of other persons for whom he trades “the strategy”. 2. Request, as discussed in testimony, narrative explanation how the following trades fit into the strategy: t/d 4/22/04, s/d 4/23/04, buy May 560 calls at 3 t/d 4/23/04, s/d 4/26/04, sell May 560 calls at 5.4 t/d 3/4/05, s/d 3/7/05, buy Mar 585 calls at 2.9 t/d 3/7/05, s/d 3/8/05, sell Mar 585 calls at 5.1 3. Request the “affirmations” data for 1/1/05 to present, i.e., for all options trades: t/d, counterparty, what option traded, number of contracts, price. <p>Will provide in two weeks from today. [6/5/06]</p>
6/2/06	Message for McKeefry	Requested final versions of the three PPMs, the revised tear sheets and the revised RFP.
6/5/06	Message from McKeefry	<p>Will email the final PPMs tomorrow (6/6); they have been sent out to all investors.</p> <p>RFP: has not been used and not yet updated; expects it will be updated by 6/24/06.</p> <p>Tear sheets – is looking at them right now. If updated, will send.</p>
6/8/06	Conversation with Bernard Madoff	<p>I called BM to tell him that, in our view, the accounts he produced on Monday (cover letter dated 6/2/06) were covered by our previous document requests because, from what he told us in testimony, we understand them to be traded pursuant to the same strategy as the institutional accounts. <u>His response was:</u></p> <ol style="list-style-type: none"> 1. Only 5 of those 86 accounts are in fact traded pursuant to the same strategy. (This seems to be correct: The options trading data shows allocations of options positions to only 5 of the newly disclosed accounts.) 2. He did not provide us with information about these 5 accounts

Law Enforcement

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		<p>earlier because Madoff does not view these accounts as discretionary. (I suspect that the implied classification of the institutional accounts as discretionary was not intentional.) Apparently, for these 5 accounts, the customer gives approval for each trade – after each trade.</p> <p>3. The other 81 accounts are fairly inactive accounts that hold baskets of Nasdaq stocks; this trading has nothing to do with options or with the strategy and the computer model used for the institutional business.</p> <p><u>I told BM that:</u></p> <p>1. For the 5 accounts that do employ the split strike conversion strategy, rather than quibble over the terms of the document requests, he can voluntarily provide us with the same information he gave us on the institutional accounts (operative account documents, including trading authorizations, and trading data) – and hopefully that will clarify the situation for us.</p> <p>2. For the other 81 accounts, the testimony did create the impression that they were traded pursuant to the same strategy. He can provide us with a letter explaining why that is not the case and outlining how those accounts are traded.</p> <p><u>Bernie agreed to provide us with this information in 2 weeks.</u></p>
6/9/06	Message for McKeefry	Why did FGG send us GSLP PPM dated April 2004? We thought there was supposed to be a new version.
6/22/06	Personal Privacy	Asked to call back re potential issues with a document request not yet due.
6/22/06	Personal Privacy	Said we should deal with Doug Cohen. Privacy knows that there is someone with UBS in Stamford that handles requests such as ours, but it is not UBS FS. He will find out who that person is and Doug Cohen will contact us about it. (DC is out until Monday 6/26.)
6/26/06	Call from Doug Cohen at UBS	<p>- Will reach out to people in Stamford who handle requests for data at foreign affiliates; will call me when knows more about this. (I told him that we know for sure that account specified in the request is with the Zurich affiliate)</p> <p>- Has some data on a Madoff DTC account, stock in/stock out (no cash movement) – will provide that.</p>
6/27/06	Call with Personal Privacy from Greenwich Capital (RBS) and Meaghan Cheung.	Said they have no records for our request; we explained to her that we are interested in the specified account with RBS in Edinburgh and that we believe it is an options trading account, for over-the-counter options, with RBS as the option writer/counterparty. She said she will find out what can be done to get those records and that she will send us a letter stating that Greenwich Capital has no such records.
6/29/06	Call from Personal Privacy at RBSGC.	They are not comfortable coordinating production on behalf of the Edinburgh branch because they are not familiar with the systems and cannot be sure it will be complete. Suggested we contact Personal Privacy at the New York branch of RBS – same organization (bank), so likely more in touch with the Edinburgh affiliate.
6/30/06	Message for Personal Privacy of RBS	Ask to call back about our document request.
6/30/06	Message from Personal of RBS	His colleague David Meisel will call me on Wed 7/5.
7/5/06	Call from David	Normal procedure for obtaining records from UK branch (one they

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	Meisels of RBS	<p>use for DOJ requests): they ask customer for consent, and then the overseas provides documents directly to the requesting agency. The other option is to seek an order in UK.</p> <p>I will email him our request and get back to him on whether we want to use this procedure.</p>

Law Enforcement



7/13/06	<p>Conversation with [redacted] of IM</p> <p>Personal Privacy</p>	<p>He has shown the Madoff contracts to the "rule-making" people in IM, and the consensus was that the accounts at issue are definitely discretionary, both for institutional and for individual customers. First, there is no merit to the argument that Madoff's discretion is "limited" within the meaning of Rule 202(a)(11)-1(d). The situation envisioned by that provision is more like a situation when a customer tells a broker which securities to buy/sell but gives the broker discretion to look for the best price the broker can get during the day. Second, as to individual accounts, their view was that, even if the provision for after-the-fact trade rejection by customers is not a sham, the provision does not defeat the discretionary nature of the accounts, since Madoff still does not need the customer's specific authorization before each trade. (Therefore, [redacted] view was that it is not crucial for us to get additional evidence on how the provisions operate in reality. He did suggest that we use the argument that the provisions on their face appear to be a sham, not intended to be enforced, as an alternative.)</p> <p>[redacted] also said that we can argue that the Madoff firm is an adviser not only because it has investment discretion but also because the trading authorizations may be viewed as separate</p> <p>Personal Privacy</p>
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		contracts for advisory services. (According to Rule 202(a)(11)-1(b)(1), a broker-dealer's advisory services are also not solely incidental to the brokerage services if the broker contracts separately for the advisory services.)
7/13/06	Doug Cohen from UBS	Told him that what we received from Stamford is not the data we were looking for from the Zurich branch. He said he will find out to whom to speak about that and will call me back.
7/13/06	David Meisels of RBS	He will send me draft of their letter to Bernie asking for the permission to send us the documents from the Edinburgh branch. I told him that at that point, we might call Bernie as a courtesy to let him know that he'll be getting the request.
7/14/06	Doug Cohen of UBS	DC: UBS AG is a separate legal entity and, under Swiss law, cannot provide the information we are looking for (providing this information may be a violation of Swiss law). SKS: Informed DC that, under these circumstances (cases involving foreign affiliates of domestic companies), SEC usually takes the position that foreign and domestic affiliates are under common control – but that for the purposes of this request, we can leave things where they are for now; no need to take any further steps.
7/19/06	Call to Personal Privacy	Told him that we are missing docs with Bates Nos. TMT00214881-214912. Asked to send them to me as a PDF file. [email of 7/21/06: such docs do not exist]
7/21/06, 10am	<div style="background-color: black; color: white; padding: 2px;">Law Enforcement</div> <div style="background-color: black; height: 350px; width: 100%;"></div>	

Law Enforcement

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		Law Enforcement
7/21/06	Call from Bernard Madoff	BM called me to say that he and his counsel do not agree with our interpretation of the rule (which he learned of from McKeeffry) and do not believe the accounts are advisory accounts. (His counsel is Brandon Becker of Wilmer Hale in DC – former director of Market Reg. BM emphasized, however, that the representation is limited to this issue.) I suggested that it might make sense to schedule a more detailed discussion for next week – with his counsel and, hopefully, with IM representatives. I also told him that, since he has retained counsel, it is not appropriate for me to talk to him directly and that in the future I would have to contact his counsel. BM said he wants to call Becker first to let him know that we will be contacting him. BM said he will call me on Monday to let me know when he has talked to Becker.
7/21/06	Call from Bernard Madoff	BM called again. He gave me an OK to call Becker, but then kept pressing me – “what do you want me to do?” I told him that I was really not comfortable discussing this with him for two reasons: (1) the question really needs to be addressed with IM representatives; (2) because he is represented, it is not appropriate for me to talk to him rather than to his counsel.
7/21/06	Left message for Brandon Becker of Wilmer Hale	The call will be no earlier than the week of 7/31.
7/24/06	Conversation with Brandon Becker	Confirmed that Wilmer Hale’s representation of Madoff is limited to application of Rule 202(a)(11)-1 and that we will continue to talk to Madoff directly on other issues; agreed to get a letter from Madoff confirming the scope.
7/27/06	Message for David Meisels of RBS	Thank him for sending us draft of letter to Madoff, asking release of information; told him that we decided not to pursue the request at the moment and asked him not to send the letter to Madoff unless he hears from us again.
7/31/06	Left message for Brandon Becker of Wilmer Hale	The call will have to be week of 8/7 – asked to call me back with times.
8/1/06	Call from [Redacted] of Wilmer Hale	Gave me times at which they are available for a call during the week of 8/7/06.
1/8/07	Call to Brandon Becker at Wilmer Hale	Asked to find out from Bernie whether he ever managed money for Norman F. Levy and, if so, what happened to the money after Mr. Levy passed away in 2005.
1/9/07	Call from Brandon Becker	Brandon Becker has called me to report that Bernie says he has not managed money for Norman F. Levy, the investor referenced in the anonymous letter.
11/27/07	Call from Brandon Becker	Brandon Becker called with 2 questions from Bernard Madoff in connection with the termination letter: <ul style="list-style-type: none"> • is there a difference between NY-7563 on the termination letter and NY-07563-A on some of our prior correspondence? (My answer – NY-7563 encompasses NY-07563-A; the zero and the A are added in certain circumstances for internal administrative reasons); • does this letter mean that the investigation is “done”? (My answer – the letter is not an endorsement of any

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		conduct nor a stamp of approval, but we have no plans to continue investigating and, as the letter says, there will be no enforcement recommendation).

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