



RE: Madoff Production

From: Suh, Simona
To: Cheung, Meaghan S. [CheungM@SEC.GOV]

6/26/2006 11:55:05 AM

Or of anything. Even if he can say that he did not disclose these 5 accounts because they are not discretionary, what about the other, passive accounts - they are still part of his firm's business, they are not part of market-making or proprietary trading operations, so it still is not clear to me on what grounds he did not disclose them when we had that is there anything else exchange of letters.

From: Cheung, Meaghan S.
Sent: Monday, June 26, 2006 12:52 PM
To: Suh, Simona
Subject: RE: Madoff Production

He has a Clintonian definition of discretionary.

From: Suh, Simona
Sent: Monday, June 26, 2006 12:49 PM
To: Cheung, Meaghan S.
Cc: Lamore, Peter; Johnson, Stephen
Subject: Madoff Production

On Friday, I received from Madoff documents concerning the mysterious other accounts that came up during Bernie's testimony.

1. For the 5 non-institutional accounts that Bernie admits are traded pursuant to the split strike conversion strategy, Madoff produced account opening documents and account statements for 2004-2005.

a. The account opening documents are virtually identical to those for the institutional customers. The only relevant difference is that the two documents defining the scope of Bernard Madoff's discretion and describing the parameters of the strategy, the much-discussed Trading Authorization Directives and Terms and Conditions for Option Hedging Transactions, include the statement that the transactions executed pursuant to these documents are subject to the client's rejection in their entirety upon receipt of confirmation(s). I assume that this is the basis of Bernie's statement to me, during our most recent telephone conversation, that he has no discretion over the non-institutional accounts. I will try to get input from our contact in IM about this position.

i. Unfortunately, because we did not have these documents during Bernie's testimony, we do not know much about the operation of these provisions. Given the absence of any limitation on the time during which a customer may reject a transaction, or of any provisions describing the procedure for the rejection, I suspect that neither Bernie nor the customers ever intended for these provisions to be enforced - but, of course, we do not really know that.

ii. We could try to interview/take testimony of one of these customers (one of them is a founding partner of a personal injury law firm right here downtown, on Maiden Lane) - or we could bring back Bernie. On the one hand, we do not really need these accounts or the recently invalidated look-through rules to get past the relevant exemption from IA registration. On the other hand, when we ultimately do talk to Bernie about registration, it may be helpful to know if we should consider these accounts to be advisory accounts. For now, we can wait to see what IM says on this issue.

b. I quickly compared a couple of trading days' transactions in one of these accounts to the data we have for the institutional accounts, and the trading does in fact appear to be the same.

c. The balances in these five accounts are as follows:

Acct No	Acct Name	4/30/06 Value
Personal Privacy	<input type="checkbox"/>	26,149,005.31
Personal Privacy	<input type="checkbox"/>	26,815,667.19
Personal Privacy	<input type="checkbox"/>	37,537,966.95
Personal Privacy	<input type="checkbox"/>	25,509,776.73

Personal Privacy

42,338,659.24

158,351,075.42

2. For the remaining accounts that Bernie provided to us earlier this month, his cover letter states that these accounts have been holding long term investment positions exclusively in NASDAQ equities and have had no activity for the last 36 months.

RE: Madoff Production

6/26/2006 2:16:59 PM

From:
To: Suh, Simona [SuhS@SEC.GOV]

I don't understand why these accounts were excluded during our exam when we asked for a list of all customers?

From: Suh, Simona
Sent: Monday, June 26, 2006 12:49 PM
To: Cheung, Meaghan S.
Cc: Lamore, Peter; Johnson, Stephen
Subject: Madoff Production

On Friday, I received from Madoff documents concerning the mysterious other accounts that came up during Bernie's testimony.

1. For the 5 non-institutional accounts that Bernie admits are traded pursuant to the split strike conversion strategy, Madoff produced account opening documents and account statements for 2004-2005.
 - a. The account opening documents are virtually identical to those for the institutional customers. The only relevant difference is that the two documents defining the scope of Bernard Madoff's discretion and describing the parameters of the strategy, the much-discussed Trading Authorization Directives and Terms and Conditions for Option Hedging Transactions, include the statement that the transactions executed pursuant to these documents are subject to the client's rejection in their entirety upon receipt of confirmation(s). I assume that this is the basis of Bernie's statement to me, during our most recent telephone conversation, that he has no discretion over the non-institutional accounts. I will try to get input from our contact in IM about this position.
 - i. Unfortunately, because we did not have these documents during Bernie's testimony, we do not know much about the operation of these provisions. Given the absence of any limitation on the time during which a customer may reject a transaction, or of any provisions describing the procedure for the rejection ^{Law Enforcement} [REDACTED] ^{Law Enforcement} [REDACTED] I suspect that neither Bernie nor the customers ever intended for these provisions to be enforced - but, of course, we do not really know that.
 - ii. We could try to interview/take testimony of one of these customers (one of them is a founding partner of a personal injury law firm right here downtown, on Maiden Lane) - or we could bring back Bernie. On the one hand, we do not really need these accounts or the recently invalidated look-through rules to get past the relevant exemption from IA registration. On the other hand, when we ultimately do talk to Bernie about registration, it may be helpful to know if we should consider these accounts to be advisory accounts. For now, we can wait to see what IM says on this issue.
 - b. I quickly compared a couple of trading days' transactions in one of these accounts to the data we have for the institutional accounts, and the trading does in fact appear to be the same.
 - c. The balances in these five accounts are as follows:

Acct No	Acct Name	4/30/06 Value
Personal Privacy	[REDACTED]	26,149,005.31
	[REDACTED]	26,815,667.19
Personal Privacy	[REDACTED]	37,537,966.95
Personal Privacy	[REDACTED]	25,509,776.73
Personal Privacy	[REDACTED]	42,338,659.24
	[REDACTED]	158,351,075.42

2. For the remaining accounts that Bernie provided to us earlier this month, his cover letter states that these accounts have been holding long term investment positions exclusively in NASDAQ equities and have had no activity for the last 36 months.