

**RE: Madoff - revised closing recommendation for your review**

11/20/2007 5:48:53 PM

From: Suh, Simona

To: Cheung, Meaghan S Personal Privacy

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Done. When you have a chance, could you add me to the staff on this case, so that I can enter updates?  
Thanks.

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From: Cheung, Meaghan S.

Sent: Tuesday, November 20, 2007 5:35 PM

To: Suh, Simona

Subject: RE: Madoff - revised closing recommendation for your review

I would say that Bernie did not fully disclose to the exam staff rather than misrepresented to the exam staff.

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From: Suh, Simona

Sent: Tuesday, November 20, 2007 5:30 PM

To: Cheung, Meaghan S.

Subject: Madoff - revised closing recommendation for your review

<< File: NY-7563 Closing Recommendation.doc >>

## **Investigation Closing Narrative**

### **NY-7563/Certain Hedge Fund Trading Practices**

#### **I. Reason Opened:**

The staff opened this case on January 4, 2006, to investigate (1) whether Bernard L. Madoff Investment Securities LLC ("BLM"), a registered broker-dealer, provided investment advisory services to large hedge funds in violation of the registration requirements of the Investment Advisers Act of 1940, and (2) whether BLM engaged in any fraudulent activities in connection with these services. The investigation was prompted, first, by a letter from an "independent fraud investigator," a person who had previously provided helpful information to the enforcement staff at BDO, alleging that the returns reported by BLM's hedge fund clients were the result of fraud perpetrated by BLM. Second, in the course of a preliminary inquiry into these allegations, the staff learned that, during a recent examination of BLM by NERO's broker-dealer examination staff, Bernard Madoff, the sole owner of BLM, misrepresented to the examination staff both the nature of the trading conducted in the hedge fund accounts and also the number of such accounts at BLM.

#### **II. Work Performed:**

BLM and two of its largest hedge fund clients voluntarily produced documents to the staff. The staff took the voluntary testimony of Bernard Madoff, his assistant, and a principal of BLM's largest hedge fund client, Fairfield Greenwich Group ("FGG"). The staff also interviewed a FGG employee.

#### **III. Conclusions Reached:**

The staff found no evidence of fraud. The staff did find, however, that BLM acted as an investment adviser to certain hedge funds, institutions and high net worth individuals in violation of the registration requirements of the Advisers Act. The staff also found that FGG's disclosures to its investors did not adequately describe BLM's advisory role and described BLM as merely an executing broker to FGG's accounts. As a result of discussions with the staff, BLM registered with the Commission as an investment adviser, and FGG revised its disclosures to investors to reflect BLM's advisory role.

#### **IV. Reasons for Closing:**

We recommend closing this investigation because both BLM and FGG voluntarily remedied the uncovered violations, and because those violations were not so serious as to warrant an enforcement action.

**V. Compliance Requirements:**

All files have been prepared for closing in accordance with the procedures set forth in the McLucas and Butler memorandum dated August 20th, 1993, concerning the disposition of records upon the closing of cases. No access requests or protective orders governing the case records are outstanding. According to the Commission's FOIA office, as of January 10, 2007, the most recent denial of a FOIA request (request number 07-01646-FOIA) in this matter was on January 3, 2007. The request remains a FOIA concern as the requester has six years to appeal the denial. Accordingly, any materials the staff is not otherwise required to retain will be retained upon closing as Category F records. There are no Category E records. Termination letters have been sent to Bernard L. Madoff Investment Securities LLC, Bernard L. Madoff, and Fairfield Greenwich Group. The staff has no objection to the eventual destruction of the files and has no knowledge of any impediment to such a disposition.

**VI. Names and Titles of Staff:**

This closing recommendation was prepared by Simona Suh, Staff Attorney, and reviewed and approved by Doria Bachenheimer, Assistant Regional Director, and Meaghan Cheung, Branch Chief.