

08 MAG 2735

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Approved:

*Marc Litt*

MARC LITT  
Assistant United States Attorney

Before: HONORABLE DOUGLAS F. EATON  
United States Magistrate Judge  
Southern District of New York

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UNITED STATES OF AMERICA

: COMPLAINT

- v. -

: Violation of  
15 U.S.C. §§ 78j(b),  
78ff; 17 C.F.R. §  
240.10b-5

BERNARD L. MADOFF,

:  
240.10b-5

Defendant.

:  
: COUNTY OF OFFENSE:  
NEW YORK

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SOUTHERN DISTRICT OF NEW YORK, ss.:

THEODORE CACIOPPI, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation, and charges as follows:

COUNT ONE  
(Securities Fraud)

1. From at least in or about December 2008 through the present, in the Southern District of New York and elsewhere, BERNARD L. MADOFF, the defendant, unlawfully, wilfully and knowingly, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, in connection with the purchase and sale of securities, would and did use and employ manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, MADOFF deceived investors by operating a securities business in which he traded and lost investor money, and then paid certain

investors purported returns on investment with the principal received from other, different investors, which resulted in losses of approximately billions of dollars.

(Title 15, United States Code, Sections 78j(b) & 78ff;  
Title 17, Code of Federal Regulations, Section 240.10b-5;  
and Title 18, United States Code, Section 2.)

The bases for my knowledge and the foregoing charges are, in part, as follows:

2. I have been a Special Agent with the Federal Bureau of Investigation ("FBI") for approximately six and one-half years, and I have been personally involved in the investigation of this matter. The information contained in this Complaint is based upon my personal knowledge, as well as information obtained from other sources, including: a) statements made or reported by various witnesses with knowledge of relevant facts; and b) my review of publicly available information relating to BERNARD L. MADOFF, the defendant. Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include every fact that I have learned during the course of the investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

3. I have reviewed the publicly available web site of a securities broker dealer named Bernard L. Madoff Investment Securities LLC, from which I have learned the following: (a) BERNARD L. MADOFF, the defendant, is the founder of Bernard L. Madoff Investment Securities LLC; (b) Bernard L. Madoff Investment Securities LLC is a securities broker dealer with its principal office in New York, New York; (c) Bernard L. Madoff Investment Securities LLC "is a leading international market maker. The firm has been providing quality executions for broker-dealers, banks and financial institutions since its inception in 1960;" (d) "[w]ith more than \$700 million in firm capital, Madoff currently ranks among the top 1% of US Securities firms; (e) BERNARD L. MADOFF, the defendant, is a former Chairman of the board of directors of the NASDAQ stock market; and (f) "Clients know that Bernard Madoff has a personal interest in maintaining an unblemished record of value, fair-dealing, and high ethical standards that has always been the firm's hallmark."

4. I have interviewed two senior employees of Bernard L. Madoff Investment Securities LLC ("Senior Employee No. 1", and "Senior Employee No. 2", collectively the "Senior Employees").

The Senior Employees informed me, in substance, of the following:

a. The Senior Employees are employed by Bernard L. Madoff Investment Securities LLC, in a proprietary trading, and market making capacity. According to the Senior Employees, BERNARD L. MADOFF, the defendant, conducts certain investment advisory business for clients that is separate from the firm's proprietary trading and market making activities. According to the Senior Employees, MADOFF ran his investment adviser business from a separate floor in the New York offices of Bernard L. Madoff Investment Securities LLC. According to Senior Employee No. 1, MADOFF kept the financial statements for the firm under lock and key, and stated that MADOFF was "cryptic" about the firm's investment advisory business.

b. In or about the first week of December, BERNARD L. MADOFF, the defendant, told Senior Employee No. 2 that there had been requests from clients for approximately \$7 billion in redemptions, that he was struggling to obtain the liquidity necessary to meet those obligations, but that he thought that he would be able to do so. According to the Senior Employees, they had previously understood that the investment advisory business had assets under management on the order of between approximately \$8-15 billion. According to a Form ADV filed by MADOFF on behalf of Bernard L. Madoff Investment Securities LLC with the SEC on or about January 7, 2008, MADOFF's investment advisory business served between 11 and 25 clients and had a total of approximately \$17.1 billion in assets under management.

c. On or about December 9, 2008, MADOFF informed Senior Employee No. 1 that he wanted to pay bonuses to employees of the firm in December, which was earlier than employee bonuses are usually paid. Accordingly to the Senior Employees, bonuses traditionally have been paid in February of each year. On or about December 10, 2008, the Senior Employees visited MADOFF at the offices of Bernard L. Madoff Investment Securities LLC to discuss the situation further, particularly because it MADOFF had appeared to the Senior Employees to have been under great stress in the prior weeks. At that time, MADOFF informed the Senior Employees that he had recently made profits through business operations, and that now was a good time to distribute it. When the Senior Employees challenged his explanation, MADOFF said that he did not want to talk to them at the office, and arranged a meeting at MADOFF's apartment in Manhattan. According to Senior Employee No. 2, MADOFF stated, in substance, that he "wasn't sure he would be able to hold it together" if they continued to discuss the issue at the office.

d. At MADOFF's Manhattan apartment, MADOFF informed the Senior Employees, in substance, that his investment advisory business was a fraud. MADOFF stated that he was "finished," that he had "absolutely nothing," that "it's all just one big lie," and that it was "basically, a giant Ponzi scheme." The Senior Employees understood MADOFF to be saying, in substance, that he had for years been paying returns to certain investors out of the principal received from other, different, investors. MADOFF stated that the business was insolvent, and that it had been for years. MADOFF also stated that he estimated the losses from this fraud to be at least approximately \$50 billion. One of the Senior Employees has a personal account at Bernard L. Madoff Investment Securities LLC in which several million had been invested under the management of MADOFF.

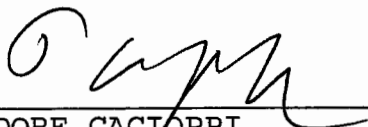
e. At MADOFF's Manhattan apartment, MADOFF further informed the Senior Employees that, in approximately one week, he planned to surrender to authorities, but before he did that, he had approximately \$200-300 million left, and he planned to use that money to make payments to certain selected employees, family, and friends.

f. At MADOFF's Manhattan apartment, MADOFF further informed the Senior Employees that he had also recently informed a third senior employee ("Senior Employee No. 3"), of the facts that MADOFF had just told the Senior Employees.


5. On December 11, 2008, I spoke to BERNARD L. MADOFF, the defendant. After identifying myself, MADOFF invited me, and the FBI agent who accompanied me, into his apartment. He acknowledged knowing why we were there. After I stated, "we're here to find out if there's an innocent explanation." MADOFF stated, "There is no innocent explanation." MADOFF stated, in substance, that he had personally traded and lost money for institutional clients, and that it was all his fault. MADOFF further stated, in substance, that he "paid investors with money that wasn't there." MADOFF also said that he was "broke" and "insolvent" and that he had decided that "it could not go on," and that he expected to go to jail. MADOFF also stated that he had recently admitted what he had done to Senior Employee Nos. 1, 2, and 3.

WHEREFORE, deponent prays that BERNARD L. MADOFF, the defendant, be imprisoned, or bailed, as the case may be.

DEC 11 2008

  
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THEODORE CACIOPPI  
Special Agent  
Federal Bureau of Investigation

Sworn to before me this  
\_\_\_\_\_ day of December, 2008

  
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HONORABLE DOUGLAS F. EATON  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK