

Exhibit A

C O N F I D E N T I A L
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
11-CV-03605 (JSR) (HBP)

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IRVING H. PICARD, Trustee for
the Liquidation of Bernard L.
Madoff Investment Securities LLC,

Videotaped
Deposition of:

Plaintiff,

v.

NOREEN HARRINGTON

SAUL B. KATZ, et al.,

Defendants.

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TRANSCRIPT of testimony as taken by and before
NANCY C. BENDISH, Certified Court Reporter, RMR, CRR
and Notary Public of the States of New York and New
Jersey, at the offices of Baker & Hostetler, 45
Rockefeller Plaza, New York, New York on Friday,
December 30, 2011, commencing at 9:34 a.m.

1 have to talk in general terms because I do not
2 remember the exact back-and-forth questions. It's
3 easier for me to describe what I thought I had
4 ascertained in that meeting. So let me just finish
5 what I thought I ascertained in the meeting, because
6 it's just easier for me --

7 Q. Sure.

8 A. -- on that front.

9 So, I walked out of the meeting. I
10 said to Ashok, that didn't go well and it's not
11 going to go well. And I meant at SP Capital, this
12 isn't going to go well.

13 Peter and Saul want to make this
14 investment and my immediate reaction to the meeting
15 is, we cannot go forward. And the reason we cannot
16 go forward is we have an obligation to our investors
17 to do the work. As we've talked about earlier, we
18 charge a pretty hefty fee to our investors to do
19 work for them. We tell them that our investments
20 are transparent to the investment team and that
21 we're earning our fee by doing work.

22 So, given Merkin's comments, it
23 looked like a non-starter to me, and I mean that
24 unless things were to reverse themselves from the
25 way this meeting went, it would be very difficult to

1 make this investment.

2 So, I did tell Ashok we're going to
3 have to do some work, you know, to sort of justify a
4 negative recommendation. And so I walked out of the
5 meeting with a couple of other things. I walked out
6 of the meeting knowing they went to cash at the end
7 of a quarter.

8 Q. "They" being?

9 A. You know, my recollection is there
10 was -- one of the things we looked at before meeting
11 was to -- you know, we looked if we could garner any
12 information on the fund, and I'm not totally -- I
13 think we asked a 13D question to him, because the
14 answer -- I know the answer, I know the answer was
15 we go to cash at the end of the quarter. Do I
16 remember specifically asking that question? I
17 believe I did. That's my best recollection. But I
18 definitely remember an answer that we go to cash at
19 the end of a quarter.

20 Q. "We" being?

21 A. Merkin or Madoff, and I have to tell
22 you, they were joined at the hip in this
23 conversation.

24 The question -- the other thing I
25 walked out of the office remembering is I had tried

1 A. SP Capital. I'm sorry.

2 Q. And was it your understanding that
3 that's what Peter Stamos and Saul Katz wanted?

4 A. That was my understanding.

5 Q. After this meeting, did you do any
6 additional work in connection with this to justify
7 your negative recommendation?

8 A. Yes.

9 Q. What did you do?

10 A. You know, again, I can only talk in
11 general terms, because I don't remember exactly what
12 I did, but I will tell you I thought a great deal
13 about it, and I also -- and I did some work. There
14 was a little bit -- well, I'll put it in these
15 terms, not very professional, but there was a little
16 bit of stink around Merkin in a man named Victor
17 Teichers (phonetic) or -- I'm slaughtering his last
18 name, but there were a couple of things we could
19 find that were a little bit negative or -- about a
20 person who worked with or for him that had a bit of
21 a checkered past, might be a way to put it.

22 You know, one of the things that I've
23 relied on in my past, in my career, is numbers don't
24 often lie, people can. And so I'm generally more
25 comfortable with math anyway. So the one thing I

1 would say to you is I think I looked at -- again,
2 this is in general terms, but I think I looked at
3 options at the end of a month, see if there was any
4 increased volume. I think -- I thought a lot about
5 the issue of why would somebody go to cash to avoid
6 regulatory authorities at the end of a quarter.

7 Q. Are you referring to Merkin or are
8 you referring to Madoff when you looked into this?

9 A. I looked into -- at this point, now
10 I'm trying to educate myself on both people.

11 Q. And was it your understanding that
12 Madoff went to cash at the end of the month?

13 A. That was my understanding. I knew
14 there was some explanation I had garnered about cash
15 at the end of a quarter. So, not on regulatory
16 filings, and it is my recollection that that fell
17 out of the meeting, although I don't remember all
18 the specific verbiage around it. But I do remember
19 specifically asking myself why somebody would, you
20 know, do that. I mean, I can give you a reason.
21 You could say, you know, that they wanted to fly
22 below the radar. You know, they don't want to
23 really have regulators know who they are.

24 Q. When you say a reason, are you
25 talking about going to cash --

1 A. Yeah.

2 Q. -- at the end of the quarter?

3 A. So that your name might not fall out
4 on a regulatory report, like a 13D, as to a holding
5 in a stock.

6 Q. Could you explain what you mean by a
7 13D?

8 A. Well, it's just a regulatory filing
9 if you own more than a certain percent of any
10 outstanding company's stock that you file as a
11 significant investor in that company. And, you
12 know, there were things around this investment that
13 didn't add up in my own mind, and I know I tried to
14 do research at the time. I don't remember exactly
15 what I looked at.

16 We did prepare notes for this
17 investment meeting. If I could have them, it would
18 be really helpful.

19 Q. When you say "we" did prepare notes
20 for this meeting, could you tell me who that would
21 be?

22 A. That would be Ashok and myself. I
23 don't, I don't think we walked into any investment
24 meeting on a hedge fund in my entire time there that
25 didn't have paperwork attached to it.

1 So, in other words, there would be
2 these charts, I recommended how it would look in our
3 fund, Sharpe Ratios. You know, there was always a
4 lot of data that we would discuss in these meetings.
5 So, there -- if I could see that, it might help my
6 recollection. But without it, it's difficult eight
7 years later to tell you what --

8 Q. Would it have resided on your
9 computer or did you have hard copy files of this?

10 A. The answer to that question would
11 have been SP Capital was still in its infancy and we
12 did have a lot of paper. So I'm fully going to say
13 there was a lot of paper. But we were creating
14 files for hedge fund managers. Okay, so we're
15 creating a file.

16 So you'd have a portfolio file on the
17 computer and then you could have the drop-downs to
18 the individual investments. It would include things
19 like notes from meetings, it would include their
20 letters to investors, their returns. You know, it
21 would have -- in my opinion, this file was meant to
22 be justification to our investors as to the due
23 diligence we did to make a recommendation for that
24 investment.

25 Q. This would have -- you said you had a

1 lot of paper. That was a paper file. Did you keep
2 it?

3 A. We, in the meeting, in the investment
4 meeting we would have had, there would have been
5 handouts normally or paper in those meetings. Ashok
6 Chachra would have driven the charts and the data.
7 I would have reviewed it before the meeting.

8 So, again, I'm not sure I can
9 differentiate exactly how much of that would have
10 been computerized at that point, but there is no way
11 we walked into this meeting with nothing in our
12 hands. No, no way.

13 Q. Did you communicate frequently with
14 people at SP Capital by email?

15 A. It's, again, it's a small
16 organization and it's really me and Ashok. If we
17 were talking to Ellen, it most likely was email or a
18 phone call. If we were -- if it were Ashok and I,
19 no, I am not a -- I am not a person who writes you
20 if you're next door. I'm sort of older than that,
21 maybe, one way to put it. I don't tweet or -- but
22 the thing is, I would normally not be the person
23 sending Ashok email if he was across the hall from
24 me. I would have just got up and went to talk to
25 him personally.

1 that every quarter somebody owns Coca-Cola stock and
2 they liquidate it before the end of the quarter
3 because they want to avoid a regulatory report, you
4 know, the volume at the end of the quarter probably
5 would have gone up if they had, you know, if they
6 were a reasonably sized player in the market.

7 So, I was just trying to see if any
8 of the things Ezra Merkin had said during the
9 meeting -- again, I rather like numbers, so if there
10 was any way that I could maybe see numbers showing
11 me that. To no avail.

12 So, these were exercises -- you said
13 was I doing anything after the meeting. I was
14 trying to think about this investment and trying to
15 see if there was any way that I could see somebody
16 doing -- liquidating at the end of a quarter.

17 Q. When you say to no avail, what do you
18 mean by that? First of all, let me ask you this:
19 Did you see a footprint in the marketplace of any
20 surge in volume options?

21 A. No.

22 Q. Did you look at anything else after
23 this meeting with Merkin?

24 A. The answer to that is yes, I think we
25 looked at -- we looked more closely at 13Ds.

1 Q. When you say "we"?

2 A. You know, I'm not sure who did it,
3 whether it was Ashok or me. And I know I did more
4 than this, but I actually don't remember all the
5 things I did. So, I -- I'm sorry.

6 Q. That's all right.

7 Did you try at all to reverse
8 engineer Merkin's strategy?

9 A. No. I thought a lot about this
10 strategy. I had asked -- I believe, my recollection
11 is I asked Ashok, who was my analyst, to see if this
12 made sense to him. But I have to tell you --

13 Q. When you say "this" made sense to
14 him?

15 A. The returns.

16 Q. The returns. Whose returns?

17 A. I believe we looked at both Merkin
18 and Madoff then.

19 But I definitely -- my recollection
20 is -- I have one strong recollection, which I
21 mentioned in the meeting, that the numbers were too
22 good.

23 Q. The numbers meaning?

24 A. The returns were too flat -- well,
25 going back to volatility, not very volatile, and

1 A. That's correct.

2 Q. Did you ever look into the growth of
3 Merkin's organization?

4 A. It would have been on -- most likely
5 it would have been on a pitch book that I had seen,
6 but I don't remember what that growth was.

7 Q. Did you ever look at the growth of
8 Madoff's organization?

9 A. I don't recollect.

10 Q. After your meeting with Merkin, did
11 you have the sense of whether or not he gave money
12 to any other third parties besides Madoff?

13 A. I recollect that he had the ability
14 to do it. I don't recollect -- I actually -- I
15 don't recollect any other names mentioned.

16 Q. And when you mean -- when you say
17 names, do you mean any other -- well, what do you
18 mean?

19 A. Well, Merkin didn't give me the name
20 of another entity that he was giving money to. I
21 understood that to be your question.

22 Q. Right.

23 A. Was there -- okay.

24 Q. Other than Madoff?

25 A. Other than Madoff.

1 Q. Did you look into the investment
2 history of Madoff at that time, after the meeting
3 with Merkin?

4 A. Again, without the documents, I don't
5 remember everything that we looked at. But I
6 definitely, I definitely looked at something or --
7 to have the opinion that the investments were not
8 volatile and positively skewed.

9 Q. And when you say investments, who --

10 A. Madoff.

11 Q. Madoff.

12 A. Madoff investments.

13 Q. Did you do a correlation analysis at
14 the time into Merkin's fund?

15 A. You know, my recollection would be
16 that we did.

17 Q. Do you recall what the results of
18 that correlation analyses were?

19 A. You know, my recollection probably is
20 that it was good, but I have absolutely no -- I
21 haven't looked at anything for eight years, so my
22 recollection is that it was probably good, but it
23 was -- it's not a number I remember.

24 Q. And when you say it's probably good,
25 could you explain what you mean by that?

1 A. That it -- similar to what I said
2 earlier, that the Sharpe Ratios would be high and
3 the volatility would be low and therefore the
4 portfolio, adding it to the portfolio would be more
5 positive than negative.

6 Q. And when you're referring to the
7 Sharpe Ratios would be high and the volatility would
8 be low, which investment are you referring to?

9 A. Either person.

10 Q. Either --

11 A. Either Merkin or Madoff at that
12 point.

13 Q. Did you do a liquidity analysis of
14 Merkin's funds?

15 A. Again, it's -- you know, I don't have
16 the data. If I had these documents, it would be
17 much easier for me to recollect, but without the
18 documents, the only thing I can tell you is it's
19 something that we always looked at. So I would --
20 it would be, you know, my normal process, so I would
21 have -- I believe I would have done it.

22 Q. The files for the diligence that you
23 conducted, do you recall who maintained them?

24 A. The -- Ashok would have had the data
25 coming to him, more than me. Although -- they would

1 come to him directly and he would collate them, but
2 I believe I would have most of that data secondhand
3 from him.

4 Q. Would you keep this data, these
5 files -- would SP Capital keep these files with the
6 results of your diligence, while you were there?

7 A. Would we keep them? Yes.

8 Q. And do you know where they would be
9 kept, when you were there?

10 A. Would have had a drawer with files in
11 it. There would have been files on the hedge funds
12 and they would have been also on the computer.

13 Q. And when you say on the computer, do
14 you mean your computer?

15 A. It would have been on my computer,
16 Ashok's computer. Again, the organization was in
17 its infancy and we were working out exactly how we
18 were going to keep these files, but it is my
19 recollection that we had created these files already
20 for the hedge fund managers, that we could draw down
21 the information on any one of the investments we had
22 in the portfolio.

23 Q. What kind of files would you keep on
24 your computer?

25 A. Documents from our own fund,

1 documents from the hedge funds, again, although
2 Ashok would have all of that. I might not have all
3 of the individual documents, but we would keep
4 letters that the hedge fund sent us on a monthly
5 basis, returns, we would have returns. We would
6 keep documents on our own clients. We would post
7 notes. I mean, there would be --

8 Q. When you say post notes, what do you
9 mean?

10 A. Our cliff notes from meetings or if
11 we, if we -- even if you had a phone conversation
12 with an investor and he said, this is why our
13 performance was X at the end of the month, there
14 would either be some record to a file or if I had
15 the conversation, I probably would have posted Ashok
16 and he may have posted a file. But we would have,
17 if we had attribution or conversations with hedge
18 funds, we would normally keep that, some of that
19 information.

20 Q. When you say you would post them, how
21 would that physically work?

22 A. Again, you can, you can write them
23 down on a piece of paper and put them in paper file.
24 Or, as I believe we were in the stages of making all
25 this electronic when I was there, so we could just

1 pull down a file on a hedge fund and make some
2 notes. But that was sort of a work in progress at
3 the time, and I'm more of a paper person, so most
4 likely I would have -- I probably would have hand
5 written. The idea was that this was supposed to be
6 all automated at some point.

7 Q. Was -- when you were at SP Capital,
8 were the computers on a network?

9 A. Now you're getting really, really
10 over me. A network, you mean like Microsoft?

11 Q. Were you connected to one another,
12 could you email one another?

13 A. Oh, yeah, we could email, we all had
14 email addresses at SP Capital.

15 Q. Could you access documents that Ashok
16 was working on on his computer from your computer?

17 A. Yes. We had -- that was what we were
18 working on, shared files and things like that. So
19 that was a work in progress.

20 Q. The work that you did after the
21 meeting with Merkin, and those documents that you
22 keep referring to that you'd like to see, where
23 would they have been located at the time that you
24 worked at SP Capital?

25 A. We would have had the pitch books,