

Exhibit C

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.

KEVIN BARCELONA

SAUL B. KATZ, et al.,

Defendants.

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TRANSCRIPT of testimony as taken by and before
MONIQUE VOUTHOURIS, Certified Court Reporter, RPR,
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 Thursday,
January 12, 2012, commencing at 9:51 a.m.

01:36:48 1 documents?

01:36:48 2 A. No, I'm not.

01:36:50 3 Q. Do you know just as a practical matter
01:36:53 4 whether hard copy documents have been destroyed?

01:36:55 5 A. No, I'm not aware and I don't believe
01:36:58 6 that we would have. We have records literally going
01:37:01 7 back to day one on all of our funds, even though our
01:37:05 8 policy says we don't have to retain them for that
01:37:07 9 long.

01:37:15 10 Q. And with respect to the hard copy
01:37:16 11 documents that you referred to as being in an
01:37:19 12 individual employee's office, what would happen to
01:37:23 13 those files should that employee leave Sterling
01:37:27 14 Stamos?

01:37:27 15 A. Well, if for whatever reason if an
01:37:32 16 employee had, you know, working files, business files
01:37:34 17 in their office, you know, perhaps they were -- they
01:37:40 18 were working on, you know, diligence on a manager and
01:37:44 19 those files were still there, we would -- their
01:37:46 20 office would be reviewed for any materials and then
01:37:48 21 they would be brought back to their appropriate
01:37:51 22 filing place.

01:37:52 23 Q. And who would review those documents?

01:37:54 24 A. It depended on the individual. If it
01:37:56 25 was a portfolio team member that was no longer with

02:46:45 1 record, the time is 2:46.

02:46:51 2 (Recess.)

03:44:02 3 THE VIDEOGRAPHER: We are back on the
03:44:07 4 record. The time is 3:44. This is disk number 4.

03:44:12 5 MS. FEIN: Welcome back, Mr.

03:44:14 6 Barcelona. I want to thank you for your time today.

03:44:17 7 The 30(b)(6) deposition will remain open, but you're
03:44:20 8 excused for today. So thank you very much.

03:44:23 9 I have a few matters that I'm going
03:44:26 10 to put on the record with counsel present, but,
03:44:29 11 please, you can either go back to 1148 or wait in
03:44:34 12 the lobby, whatever you prefer.

03:44:36 13 THE WITNESS: I will excuse myself
03:44:37 14 and go.

15 MS. FEIN: Thank you.

16 (The witness leaves the deposition
03:44:47 17 room.)

03:44:47 18 (Comments off the record.)

03:44:51 19 THE VIDEOGRAPHER: Going off the video
03:44:53 20 record, the time is 3:44.

21 (The following takes place off the
03:44:57 22 video record.)

03:44:57 23 MS. FEIN: So, just to summarize what
03:44:59 24 we discussed off the record, the 30(b)(6) witness you
03:45:04 25 provided today was unable to speak on behalf of the

03:45:07 1 corporation with respect to three issues we
03:45:10 2 identified to you: The retention of Noreen
03:45:13 3 Harrington's file data and the data collection and
03:45:15 4 preservation that took place pre-2004 before his
03:45:19 5 arrival, as well as the document collection process
03:45:22 6 with respect to either the 2004 subpoena or the Rule
03:45:26 7 45 subpoena.

03:45:29 8 Just to summarize what we discussed
03:45:31 9 off the record, we talked about ways that we could
03:45:34 10 continue to work out these issues with you since they
03:45:37 11 were not cleared up during this 30(b)(6) deposition.
03:45:40 12 You informed us that you recently discovered that two
03:45:43 13 boxes of due diligence materials relating to Ezra
03:45:46 14 Merkin's Ascot and Gabriel Funds were removed from
03:45:50 15 Iron Mountain storage by Jennifer O'Neill, a Sterling
03:45:54 16 Stamos analyst, on December 22nd, 2008.

03:45:57 17 You also informed us that these boxes
03:46:00 18 have not been located since that time. You informed
03:46:03 19 us that you have looked for the boxes and that at
03:46:07 20 this point they have not been located.

03:46:10 21 You have also agreed to provide us
03:46:11 22 with a log of hard copy documents that tracks a
03:46:15 23 description of these documents that are maintained at
03:46:17 24 Iron Mountain, as well as a log that reflects when
03:46:22 25 certain boxes were removed. So whether boxes were

03:46:25 1 checked out or however that process exists, you
03:46:29 2 agreed to provide that to us.

03:46:32 3 We would like to know at whose
03:46:35 4 direction Ms. O'Neill removed these boxes, and in
03:46:40 5 accordance with today's 30(b)(6) testimony and its
03:46:45 6 deficiencies, we've agreed that -- that you will look
03:46:48 7 for these items for us.

03:46:52 8 We also are curious to know in
03:46:54 9 addition to at whose direction Ms. O'Neill removed
03:46:58 10 the boxes, who you spoke to to inform yourself about
03:47:01 11 these issues, where the documents were looked for,
03:47:04 12 what documents were looked for and any discussions
03:47:07 13 you had with Sterling Equities on these issues.

03:47:11 14 Based on the deficiencies today, we
03:47:13 15 reserve all rights to continue the 30(b)(6)
03:47:16 16 deposition at a later time. Thank you.

03:47:21 17 MR. GOUDISS: We respectfully
03:47:23 18 disagree. We think that the witness was more than
03:47:26 19 adequate for purposes of the 30(b)(6) and addressed
03:47:29 20 all of the areas covered by the 30(b)(6) notice,
03:47:32 21 including the three areas just identified. We, too,
03:47:35 22 reserve all of our rights.

03:47:37 23 With respect to the 2002-2004 period
03:47:40 24 in particular, we think in context, particularly
03:47:43 25 given that this was a small family office as the

03:47:46 1 witness testified, a not terribly savvy or
03:47:51 2 sophisticated organization at the time, in its
03:47:53 3 infancy, we believe that any purported or alleged
03:47:58 4 gaps in production misstate both the record, the
03:48:02 5 efforts that we went to locate responsive documents,
03:48:07 6 and the inherent limitations, given the fact that
03:48:10 7 during that period of time the record well
03:48:13 8 establishes that the host system was, in fact,
03:48:18 9 Sterling Equities' host system, and that the best
03:48:20 10 evidence of that technology and retention would be
03:48:24 11 from Sterling Equities. And we presume, without
03:48:27 12 knowing, that that is -- those are matters that have
03:48:29 13 been fully covered in the expansive discovery in this
03:48:33 14 matter.

03:48:34 15 Where we do agree is that we will
03:48:36 16 continue to work with you to try to resolve any
03:48:40 17 legitimate disputes that we have so that you have all
03:48:43 18 the information that we have in our possession, or at
03:48:46 19 least reasonable and understandable answers as to the
03:48:51 20 efforts we took to locate documents that no longer
03:48:54 21 exist or maybe never existed.

03:48:56 22 With that, I'll turn it over to Ms.
03:48:59 23 Bieber, because I think we do have an update on the
03:49:02 24 boxes.

03:49:02 25 MS. BIEBER: So during the break we

03:49:04 1 have located a box that has the -- apparently the
03:49:09 2 diligence files and five notebooks which look like
03:49:15 3 Ashok's notes that are actually tagged, so I believe
03:49:18 4 those were the notes that were previously provided.
03:49:20 5 We believe that everything in that box has probably
03:49:23 6 been produced based on the description, but I will go
03:49:26 7 over there this afternoon, or somebody will go over,
03:49:29 8 and check and make sure that that's the case, and if
9 so, we will get what was in the box.

10 MS. GRIFFIN: And just to be clear --

03:49:33 11 MS. BIEBER: If you want to understand
03:49:34 12 what happened with the box --

03:49:37 13 MS. GRIFFIN: You're saying one box?

03:49:39 14 MS. BIEBER: Yeah, one box. One box.

03:49:40 15 It looks like what was in the two boxes was
03:49:42 16 consolidated. The two Iron Mountain boxes that we
03:49:46 17 discussed, one had the Ascot files as well as other
03:49:49 18 managers, the other had the Gabriel file, Gabriel
03:49:52 19 Ariel, as well as other managers, because they are in
03:49:54 20 alphabetical order. So it looks like what happened
03:49:57 21 was they were all put into one box, as well as with
03:50:02 22 Ashok's notebooks of his notes from meetings.

03:50:07 23 MS. GRIFFIN: And where was the box
03:50:08 24 found?

03:50:09 25 MS. BIEBER: The box was found in the

03:50:10 1 basement, which we went through the other day when,
03:50:13 2 as you know, we learned about the off-site storage in
03:50:17 3 Chris Stamos' deposition, we pulled the documents.
03:50:19 4 We then learned there was basement storage. I
03:50:23 5 physically went down to the basement with Caroline
03:50:26 6 Quirke from Sterling Stamos and we went through about
7 80 boxes down there, in addition to the Iron Mountain
03:50:29 8 boxes, in which we didn't find anything.

03:50:31 9 When this issue came up later that
03:50:33 10 these were absent, she agreed to go back down and
03:50:36 11 look to make sure we hadn't missed anything down
03:50:40 12 there, that they weren't mixed in with some other
13 file or that we missed something in one of those
14 boxes.

15 MR. BOHORQUEZ: For the record, this
03:50:46 16 is Mr. Bohorquez. I understand that you have a log
03:50:47 17 and index for the Iron Mountain documents.

03:50:52 18 MS. BIEBER: Yes.

03:50:52 19 MR. BOHORQUEZ: Do you have a log or
03:50:55 20 index for the documents in the basement?

03:50:56 21 MS. BIEBER: No, there is no log or
03:50:58 22 index for those documents. They seem to be mostly
03:50:59 23 invoices and that type of thing. My understanding is
03:51:02 24 they are documents that they may need more for audit
03:51:05 25 work; it's not really investment documents so much.

03:51:08 1 There were 13 boxes relating to investments, as I
03:51:12 2 recall, but we didn't find anything relevant to any
03:51:14 3 matters in this case in those boxes.

03:51:18 4 MR. BOHORQUEZ: And who was the person
03:51:19 5 that identified the basement boxes?

03:51:22 6 MS. BIEBER: Caroline -- Caroline
03:51:25 7 Quirke, she's the head of the New York office as --

03:51:27 8 MR. GOUDISS: The office manager.

9 MS. BIEBER: The office manager.

03:51:28 10 MR. BOHORQUEZ: And you said there
03:51:29 11 were 13 boxes related to investment managers?

03:51:31 12 MS. BIEBER: Generally.

03:51:32 13 MR. BOHORQUEZ: Could you identify for
03:51:33 14 us who those investment managers were?

03:51:34 15 MS. BIEBER: I don't remember off the
03:51:36 16 top of my head.

17 MR. BOHORQUEZ: If we ask you in a
18 letter --

03:51:37 19 MS. BIEBER: I'm happy to give you a
03:51:38 20 list of them, and we can go back to the basement and
03:51:40 21 pull them again. They are unrelated to this case, as
03:51:46 22 far as I know.

03:51:46 23 MS. GRIFFIN: Tammy, would you be
03:51:48 24 acceptable to us coming to see the boxes right now, I
25 mean, not right this second, but seeing it the way it

03:51:53 1 exists might be easier --

03:51:53 2 MS. BIEBER: I think we need to
03:51:54 3 discuss that first, but we're certainly welcome to
03:51:55 4 talk about it.

03:51:55 5 MS. GRIFFIN: I would rather see the
03:51:56 6 way they were kept in the ordinary course, but, okay.

03:52:00 7 MR. GOUDISS: We'll take that under
03:52:01 8 advisement.

03:52:02 9 MS. BIEBER: And in terms of this one
03:52:03 10 box we're talking about, I don't think we're talking
03:52:06 11 about how it was kept in the ordinary course. As I
03:52:08 12 said, it was pulled December 22nd, these two boxes,
03:52:11 13 and it looks like they were kept for the purpose of
03:52:14 14 the Merkin meeting and things relating to Merkin, so
03:52:16 15 I won't want that deemed the ordinary course.

03:52:20 16 MS. GRIFFIN: Well, however they are
03:52:21 17 being kept in the ordinary course right now, I would
03:52:24 18 like to see the description of the log of the two
03:52:25 19 boxes, and then I would like to see the boxes that
03:52:30 20 are being kept now. And I would like to do that
03:52:31 21 myself, if that's possible, but I understand you're
03:52:33 22 going to take it under advisement.

03:52:35 23 MR. BOHORQUEZ: The last question I
03:52:36 24 have with respect to the documents, the boxes found
03:52:38 25 in the basement, did you identify any boxes that were

03:52:42 1 related to Ms. Harrington in those boxes in the
03:52:45 2 basement?

03:52:46 3 MS. BIEBER: No, we did not.

03:52:51 4 MS. FEIN: All right. Thank you.

03:52:52 5 We're going off the record.

03:52:55 6 (Ending time: 3:52 p.m.)

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