

# Exhibit 1

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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,  
  
Plaintiff,  
  
v.  
  
SAUL B. KATZ, et al.,  
  
Defendants.

Videotaped  
Deposition of:  
  
KEVIN DUNLEAVY

-----x

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 Wednesday,  
December 21, 2011, commencing at 9:13 a.m.

## 1       A P P E A R A N C E S:

2

3           BAKER & HOSTETLER, LLP  
4           45 Rockefeller Plaza  
5           New York, New York 10111  
6           BY: REGINA L. GRIFFIN, ESQ.  
7                 STACEY A. BELL, ESQ.  
8                 AMANDA E. FEIN, ESQ.  
9           For Plaintiff, Irving Picard, Trustee

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8           DAVIS, POLK & WARDWELL, LLP  
9           450 Lexington Avenue  
10           New York, New York 10017  
11           BY: KAREN E. WAGNER, ESQ.  
12                 ALEX A. CROHN, ESQ.  
13           For Sterling Equities and certain  
14           affiliated entities

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12           LOEB & LOEB, LLP  
13           345 Park Avenue  
14           New York, New York 10154-1895  
15           BY: ALYSON M. WEISS, ESQ.  
16           For the witness, Kevin Dunleavy

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14

## ALSO PRESENT:

15

16           DANIEL McCLUTCHY, Videographer

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1 Q. Okay. Did there come a time that you  
2 held a different position than account representative?

3 A. Yes.

4 Q. And what position did you then take on?

5 A. I was at some point in my career in  
6 the -- call it -- I don't know the exact time frame,  
7 but at some point I was made a manager of the sales  
8 group.

9 Q. And I take it from your answer that  
10 you -- you're having trouble recollecting approximately  
11 when that was.

12 A. Yes.

13 Q. Okay. Did there come a time that you  
14 held a different position?

15 A. I was then elevated to run the  
16 national sales force.

17 Q. And do you know approximately when  
18 that was?

19 A. Mid-'90s.

20 Q. And what position -- I'm sorry, what  
21 was the title of that position?

22 A. Managing director in charge of fixed  
23 income sales.

24 Q. Did there come a time after that you  
25 held a different position?

1 A. Yes.

2 Q. And what position was that?

3 A. Co-head of the global rates and  
4 securities business.

5 Q. And could you tell me what you did as  
6 the co-head of the global rates and securities  
7 business?

8 A. It was a business that predominantly  
9 looked at sovereign bonds, trading, sales and  
10 financing.

11 Q. And how long did you hold that  
12 position?

13 A. Two years.

14 Q. And did you move into a new position?

15 A. Yes.

16 Q. And what position was that?

17 A. It was a -- it was a -- it was a  
18 special assignment where I was asked to put together  
19 with outside consultants a client relationship  
20 management software system to be able to track and  
21 understand our client flows and information.

22 Q. And approximately what time period are  
23 we talking about that you held that position?

24 A. Approximately, you know, somewhere in  
25 1999, 2000.

1 Q. Did there come a time after that that  
2 you held a different position at Merrill Lynch?

3 A. Yes.

4 Q. And what position was that?

5 A. The next position I then held was in  
6 relationship management, focused on all hedge funds.

7 Q. Can you tell me what you did in regard  
8 to that position in relationship management focused  
9 on all hedge funds?

10 A. Broadly, it was looking at hedge  
11 funds, their business, their interactions with  
12 Merrill Lynch, connecting in as many parts of our  
13 firm as we could to those clients appropriately to  
14 garner the greatest amount of market share and  
15 revenue.

16 Q. In your answer you just referred to  
17 clients. Who do you mean by clients? Or who are you  
18 referring to as clients?

19 A. Broadly, anybody that could have a  
20 relationship with Merrill Lynch to pay them revenues.

21 Q. Would that cover both institutional  
22 and individual clients?

23 A. No, institutional only.

24 Q. Did there come a -- how long did you  
25 hold that position?

1 A. For several years.

2 Q. Did there come a time after that that  
3 you held a different position at Merrill Lynch?

4 A. Yes.

5 Q. And could you tell me what that was?

6 A. In charge of all global client  
7 relationships, hedge funds, non-hedge funds, all  
8 institutional.

9 Q. And how long did you hold that  
10 position?

11 A. Until I left.

12 Q. And what were your responsibilities  
13 when you were in charge of all global client  
14 relationships?

15 A. Again, principally overseeing a group  
16 of senior managing directors whose principal  
17 responsibility was to connect in Merrill Lynch and  
18 all of its capabilities and resources to  
19 institutional clients to garner the greatest amount  
20 of market share and revenue possible.

21 Q. While you were at Merrill Lynch, did  
22 there come a time that you became acquainted with  
23 Sterling Stamos?

24 A. Yes.

25 Q. And do you remember approximately when

1 that was?

2 A. Early 2000s.

3 Q. And at that time your position -- do  
4 you recall what your position was?

5 A. My position was in relationship  
6 management focused on hedge funds, is what I believe  
7 was the -- was my position at that time.

8 Q. Can you tell me how you came to be  
9 acquainted with Sterling Stamos?

10 A. An individual by the name of Kirk  
11 Rostron, who worked for Merrill Lynch in an area we  
12 call Capital Introduction, met -- excuse me, met  
13 Peter Stamos, and he recommended -- he was impressed  
14 by Peter, and he recommended, as I recall, for me to  
15 meet with Peter.

16 Q. Did you meet with Mr. Stamos?

17 A. Yes, I did.

18 Q. And, again, was that in the early  
19 2000s, as you testified previously?

20 A. Yes.

21 Q. And did you discuss -- well, what was  
22 that meeting about with Mr. Stamos?

23 A. You know, to the best of my  
24 recollection, the first meeting was essentially just  
25 that, an introductory meeting, where, you know, there



1 MS. WAGNER: Objection.

2 A. My recollection is we marketed and  
3 represented Sterling Stamos in trying to raise  
4 outside capital for them from institutional investors  
5 for a fee.

6 Q. Were you involved in those efforts  
7 that you just described?

8 A. Yes.

9 Q. How were you involved?

10 A. Broadly, as the proponent for the deal  
11 coming into Merrill Lynch, and in a couple of  
12 isolated cases where I had client relationships,  
13 helping the sales force directly in discussions at a  
14 high level with institutions.

15 Q. What did you do when you were acting  
16 as the proponent for the deal coming in?

17 MS. WEISS: Object to the form.

18 A. It was my business view that this was  
19 a good product; that in consultation with Mike  
20 Ricciardi and Dave Barrett, we could sell this for a  
21 reasonable, you know, amount of capital and receive a  
22 fee that would be a, you know, appropriate revenue  
23 for Merrill Lynch.

24 Q. When you say this was a good product,  
25 what were you referring to?

1           A.           I don't recall.

2           Q.           During your time that you were  
3 involved with Sterling Stamos, did there come a time  
4 that it moved offices?

5           A.           Yes.

6           Q.           Did there come a time during your  
7 involvement with Sterling Stamos that some of the  
8 individuals' e-mail addresses at Sterling Stamos  
9 changed?

10          A.           That I don't recall.

11          Q.           Do you have any understanding as to  
12 the reason why Sterling Stamos moved offices?

13          A.           No.

14          Q.           You testified earlier that there came  
15 a time when Merrill Lynch acquired an ownership  
16 interest in Sterling Stamos.

17          A.           Yes.

18          Q.           When was that?

19          A.           Approximately 2007.

20          Q.           Did you have a role in Merrill Lynch  
21 acquiring an ownership interest in Sterling Stamos?

22          A.           Yes.

23          Q.           What was that role?

24          A.           It was identifying that this was a  
25 potentially good investment for us. Merrill Lynch

1           A.           I don't recall the specifics.

2           Q.           You said it would make sense to both  
3 parties. What did you mean by that?

4           A.           That I think that -- I thought that  
5 Merrill Lynch could provide distribution mass and  
6 also could provide an institutional, you know, an  
7 institutional statement, you know, that this was, you  
8 know, a recognizable institution with Merrill Lynch  
9 behind it and, therefore, would give it greater  
10 credence in a marketing world institutionally.

11                       And, you know, I thought it would make  
12 sense for Merrill Lynch because I truly thought it  
13 was a good product that, you know, we would be able  
14 to sell and grow and have an ownership stake in the  
15 future growth and revenues of a growing concern.

16           Q.           And what was Peter's response?

17           A.           Favorable.

18           Q.           Anything else?

19           A.           Not that I can recall specifically.

20           Q.           Do you know if Merrill Lynch conducted  
21 any due diligence in connection with acquiring an  
22 ownership interest in Sterling Stamos?

23           A.           Yes.

24           Q.           And what due diligence did Merrill  
25 Lynch conduct?

1           A.           We conducted investment due diligence,  
2           operational due diligence, you know, background  
3           checks on individuals. I'm sure there is a variety  
4           of things I'm missing there that also were done by  
5           the due diligence team.

6           Q.           What do you mean by investment due  
7           diligence?

8           A.           Who they include -- who they were  
9           invested in, their performance and track record, the  
10          volatility of the fund, the rate of return on the  
11          fund on a risk-adjusted basis.

12          Q.           Who conducted the investment due  
13          diligence of Sterling Stamos?

14          A.           It was a team of people that worked  
15          for Will Eisenbeis, and an individual by the name of  
16          Josh Shapiro, I believe, was the head of that group.

17          Q.           And did they report to you?

18          A.           No. They reported to Will Eisenbeis.

19          Q.           Did they keep you apprised of their  
20          due diligence, investment due diligence?

21          A.           Yes, you know, I'm sure, you know,  
22          through some e-mails and other methods.

23          Q.           Do you know whether any reports were  
24          prepared concerning Merrill Lynch's investment due  
25          diligence of Sterling Stamos?

1 A. Yes.

2 Q. Do you know who prepared those reports?

3 A. Not specifically.

4 Q. Do you know who else saw the reports  
5 of the due diligence, the investment due diligence on  
6 Sterling Stamos?

7 MS. WAGNER: Objection.

8 Q. If you know.

9 MS. WEISS: Objection.

10 A. I don't know.

11 MS. GRIFFIN: Alyson, I would like to  
12 call for the production of this report. We haven't  
13 seen it yet amongst the things that have been  
14 produced yet.

15 MS. WEISS: We have not, "we" meaning  
16 my firm, Mr. Dunleavy, have no documents to produce.  
17 As you might imagine --

18 MS. GRIFFIN: You're right.

19 MS. WEISS: -- any documents relating  
20 to, you know, Merrill Lynch's activities in  
21 connection with the matters you're discussing today  
22 would be retained to the extent they are retained at  
23 Merrill Lynch. My understanding is Merrill Lynch  
24 produced documents to you.

25 MS. GRIFFIN: You're absolutely right.

1                   Could you do me a favor, just mark  
2 this part of the transcript for me.

3           Q.           Did you come to learn who -- who  
4 Sterling Stamos was invested in?

5                   MS. WAGNER:  Objection.

6                   MS. WEISS:  Objection.

7           Q.           Through the due diligence process that  
8 you just described, did you come to learn --

9           A.           I'm sure at some point someone showed  
10 me a list of their investments, but I don't recall  
11 specifically.

12          Q.           Did there come a time through the due  
13 diligence process that -- whether you learned that  
14 Sterling Stamos had investments directly or  
15 indirectly in Bernard Madoff?

16          A.           Yes.

17          Q.           And what did you learn about Sterling  
18 Stamos' investments directly or indirectly in Bernard  
19 Madoff?

20          A.           It's my recollection that they had,  
21 you know, a large investment in Madoff.

22          Q.           What do you mean by a large  
23 investment?

24          A.           It was one of their larger holdings.

25          Q.           Do you know how much you are talking

1 about?

2 A. No.

3 Q. Are we talking tens of millions or  
4 hundreds of millions?

5 A. The latter.

6 Q. How did you come to learn that  
7 Madoff -- that Sterling Stamos had a large investment  
8 in Madoff?

9 A. Again, my recollection is that  
10 somewhere through our due diligence, but also in  
11 conversations with Peter Stamos.

12 Q. And in those conversations with Peter  
13 Stamos about Sterling Stamos' investment in Madoff,  
14 what did Peter Stamos say to you?

15 A. I can't specifically recall anything  
16 directly.

17 Q. Did you discuss the extent of Sterling  
18 Stamos' investment in Madoff with Mr. Stamos?

19 A. I can't specifically recall, but I  
20 think I -- I remember more of it kind of coming from  
21 the due diligence and it was a large holding.

22 Q. Do you know was Sterling Stamos'  
23 investment in Madoff direct or indirect?

24 MS. WAGNER: Objection.

25 MS. WEISS: Objection.

1           A.           I don't understand the question.

2           Q.           In the course of the investment due  
3 diligence that was conducted by Merrill Lynch, did  
4 you come to learn whether or not Sterling Stamos held  
5 an account at Madoff B -- I'm sorry, Bernard L.  
6 Madoff Investments Securities, LLC?

7           A.           I don't know the specificity to that  
8 level of BL -- whatever that is that, you know, the  
9 acronym you just gave.

10                       My recollection is that in our due  
11 diligence there was an investment in Madoff, broadly  
12 stated, and that it was a large portion of their  
13 investment and, you know, it was not viewed favorably  
14 out of the due diligence.

15           Q.           Why was it not viewed favorably out of  
16 the due diligence?

17           A.           They did their own clearing.

18           Q.           They being -- excuse me --

19           A.           Madoff, Madoff did its own clearing,  
20 its own custody, and they transacted with their own  
21 broker-dealer.

22           Q.           Were there any other reasons that it  
23 was not viewed favorably out of due diligence?

24           A.           No, but those specific areas were an  
25 issue for us.



1 investment into Madoff have any impact on the  
2 negotiations between Merrill and Sterling Stamos  
3 concerning the acquisition of an ownership interest?

4 MS. WEISS: Object to the form.

5 MS. WAGNER: Objection.

6 A. It's my recollection that we wanted  
7 them to divest before we would take over our stake.

8 Q. And why was that?

9 A. Again, because we hadn't seen this  
10 self-clearing, self-custody, and didn't want that as  
11 part of a program that we would look to, you know,  
12 have Merrill Lynch Retail invest in.

13 Q. Even in spite of the outstanding  
14 performance of Madoff's fund as you just testified to?

15 A. Yes.

16 Q. And did you communicate or did Merrill  
17 Lynch communicate to Sterling Stamos that it wanted  
18 them to divest from their investments in Madoff to  
19 Sterling Stamos?

20 A. That is my recollection.

21 Q. And do you know who communicated that  
22 to Sterling Stamos?

23 A. Not specifically.

24 Q. Do you recall having conversations  
25 with anybody at Sterling Stamos about Merrill Lynch

1 wanting them to divest from their investments in  
2 Madoff?

3 A. I can't recall a specific conversation.

4 Q. Do you remember any general  
5 conversations with anybody about that?

6 A. No.

7 Q. What is the basis for your recollection  
8 that Merrill Lynch communicated to Sterling Stamos  
9 that it wanted them to divest from their investments  
10 in Madoff?

11 A. My recollection is -- is that it was a  
12 large holding. We were uncomfortable with the  
13 structure and how they did it through the custody,  
14 the clearing and the self-dealing, and this was not  
15 something that fit into the parameters of something  
16 we would want distributed into retail, and they would  
17 have to divest of this before we could purchase it  
18 and move it into Merrill Lynch Retail. And by moving  
19 it into Merrill Lynch Retail, I mean selling that  
20 product.

21 Q. Did Sterling Stamos divest itself from  
22 its investments in Madoff?

23 A. That is my belief, yes.

24 Q. And did Merrill Lynch thereafter  
25 proceed to acquire an ownership interest in Sterling

1           A.           Mr. Katz at a board meeting,  
2           post-Merrill Lynch's, obviously, because of the board  
3           meeting ownership stake in Sterling Stamos, threw out  
4           a suggestion that we should re-look at investing in  
5           Madoff because Stamos' capital returns were somewhere  
6           low single-digit returns, and he referenced a number,  
7           I'm not sure specifically, but memory serves me in  
8           the low double-digits returns and, hence, an  
9           investment into Madoff would help the overall  
10          performance of Sterling.

11          Q.           And what did you say to Mr. Katz?

12          A.           I referred back to our original issue  
13          with their self-clearing, self-custody, self-dealing  
14          and that that would not be acceptable for Merrill  
15          Lynch Retail.

16          Q.           When you referred to their  
17          self-clearing --

18          A.           Madoff's self-clearing, self-dealing  
19          and self --

20                        MS. WEISS: I'm sorry. You said  
21          self-dealing, I think you meant --

22          A.           Self -- well, yes, self-dealing,  
23          self-custody and self-clearing, all three, because  
24          they also dealt with their own broker-dealer.

25          Q.           I'm sorry. What do you mean they also

1 dealt with their own broker-dealer?

2 A. It was our understanding that their  
3 execution for the fund was done all through their own  
4 broker-dealer.

5 Q. And when you said that Madoff's  
6 self-clearing, self-custody, self-dealing would not  
7 be acceptable for Merrill Lynch, what did you mean by  
8 that?

9 A. As I stated earlier, this is something  
10 that's not the norm practice that we have seen with  
11 other asset managers in the industry, and we were not  
12 comfortable with it for a product that was going to  
13 be distributed through the Merrill Lynch retail  
14 system.

15 Q. Did you discuss Madoff's performance  
16 with Mr. Katz at that board meeting?

17 A. Other than just the generic numbers  
18 that came out that I just discussed, no.

19 Q. What is front-running?

20 MS. WEISS: I'm just going to object.

21 A. Yeah, I don't know if I can answer  
22 that; I'm not a lawyer.

23 MS. WEISS: To the extent he's not a  
24 lawyer.

25 Q. Have you ever heard of the term