

Exhibit 9

C O N F I D E N T I A L

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
ADV. PRO. NO. 08-01789 (BRL)

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SECURITIES INVESTOR PROTECTION
CORPORATION,

Videotaped

Plaintiff-Applicant,
v.

Rule 2004
Examination of:

BERNARD L. MADOFF INVESTMENT
SECURITIES, LLC,

MARK PESKIN
(Vol. I)

Defendant.

-----x
In Re:

BERNARD L. MADOFF,

Debtor.

-----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,
LLP, 45 Rockefeller Plaza, New York, New York on
Thursday, July 29, 2010, commencing at 10:15 a.m.

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1	results at these meetings?	10:40:14	1	25 percent at some point?	10:42:24
2	A. No. No. That's not discussed at the	10:40:16	2	A. A 50 percent interest in the -- in	10:42:26
3	meetings.	10:40:18	3	the firm was sold to Merrill Lynch.	10:42:30
4	Q. Okay. What type of general matters	10:40:18	4	Q. Why was it sold to Merrill Lynch?	10:42:34
5	are discussed at these meetings?	10:40:22	5	A. It was a liquidity event. It was --	10:42:36
6	A. Matters, status of Sterling American	10:40:24	6	it made sense at the time to sell it.	10:42:40
7	Property, SAP, Sterling American Property funds, the	10:40:30	7	Q. And when was that? Do you recall?	10:42:42
8	marketing of the funds, properties being bought and	10:40:32	8	A. I can't recall the date.	10:42:44
9	sold, the status of our Sterling Stamos Partners	10:40:34	9	Q. What's the difference between --	10:42:46
10	investments, status of taxes, Madoff status, other	10:40:38	10	well, let me back up.	10:42:48
11	open items.	10:40:50	11	There's a Sterling Stamos LP. Is --	10:42:50
12	What else is there? We have a number	10:40:52	12	A. Right.	
13	of investments that are discussed.	10:40:54	13	Q. -- that right?	
14	Q. Okay. So you just listed a -- a long	10:40:56	14	And there's a Sterling Stamos GP?	10:42:54
15	list of issues --	10:41:00	15	A. Correct.	10:42:54
16	A. Sure.	10:41:02	16	Q. What is Sterling Stamos GP?	10:42:56
17	Q. -- that are discussed at these	10:41:02	17	A. We own Sterling Stamos through our GP	10:43:00
18	meetings. Who presents on the SAP funds?	10:41:04	18	interest.	10:43:04
19	A. Michael and -- Michael Katz and	10:41:10	19	Q. Okay. And then what is the Sterling	10:43:04
20	Richard Wilpon.	10:41:12	20	Stamos LP?	10:43:06
21	Q. And who presents on the -- would	10:41:14	21	A. We invest in Sterling Stamos as	10:43:08
22	present, past tense, on the Madoff investments?	10:41:18	22	individuals as a group, and it shows up as an LP.	10:43:14
23	A. Arthur Friedman.	10:41:22	23	Q. And are all -- are all the Sterling	10:43:18
24	Q. Would anyone else, other than Arthur?	10:41:24	24	partners invested in Sterling Stamos?	10:43:22
25	A. Arthur would report on the results	10:41:28	25	A. Yeah, yeah.	10:43:24
		29			31
1	for the prior two weeks if he knew them.	10:41:30	1	Q. And what is your --	10:43:28
2	Q. And what kind of results would	10:41:32	2	A. Yes. Excuse me.	10:43:30
3	Mr. Friedman report?	10:41:34	3	Q. Thank you. Are you invested in	10:43:30
4	A. A yield to -- for the month and a	10:41:34	4	Sterling Stamos?	10:43:32
5	yield to date.	10:41:40	5	A. I am. But I'm not a partner, just	10:43:34
6	Q. Anything else?	10:41:42	6	for --	10:43:38
7	A. That was basically what it was	10:41:44	7	Q. I know. Let's ask the follow-up	10:43:40
8	limited to.	10:41:46	8	question. And are there various -- are there	10:43:44
9	Q. Okay.	10:41:46	9	Sterling entities that are invested in Sterling	10:43:46
10	A. There may have been exceptions. I	10:41:46	10	Stamos?	10:43:50
11	don't -- I don't recall any, though.	10:41:48	11	A. Are there Sterling entities? Yes.	10:43:50
12	Q. Now, you mentioned Sterling Stamos.	10:41:48	12	Or Sterling-related entities, yeah.	10:43:54
13	A. Um-hmm.	10:41:52	13	Q. Do you know who they are -- or what	10:43:56
14	Q. What is Sterling Stamos?	10:41:52	14	they are, rather?	10:43:58
15	A. Sterling Stamos is a fund of funds.	10:41:54	15	A. I can't -- off the top of my head, I	10:44:00
16	The S in Sterling is a -- was a part -- is still a	10:42:00	16	remember one. See HoldCo is an entity that is owned	10:44:02
17	part owner of Sterling Stamos.	10:42:02	17	by the partners eventually, and it's an investor in	10:44:08
18	Q. You say -- let me back up.	10:42:06	18	Sterling Stamos.	10:44:12
19	When Sterling -- Sterling Stamos	10:42:12	19	Q. Does See HoldCo have a relationship	10:44:14
20	started in June of '02. Is that right?	10:42:14	20	to SNY?	10:44:16
21	A. Approximately.	10:42:18	21	A. Correct.	10:44:18
22	Q. Okay. When Sterling Stamos started,	10:42:18	22	Q. What's the relationship?	10:44:18
23	how much interest did Sterling have?	10:42:20	23	A. It holds our interest in SNY.	10:44:18
24	A. 50 percent.	10:42:22	24	Q. If you wanted to know what Sterling	10:44:26
25	Q. Okay. And then it changed to	10:42:22	25	entities were invested in Sterling Stamos, what	10:44:28

36			38		
1	A. How the fund was growing, investors	10:48:58	1	20 to 30 investments.	10:51:30
2	in the fund. The limited partnership investments	10:49:02	2	And then those funds invest	10:51:32
3	were growing. The assets under management is	10:49:04	3	themselves in various investments. So I -- I can't	10:51:34
4	another way of putting that. And that's what they'd	10:49:08	4	tell you who would have such knowledge.	10:51:38
5	talk about.	10:49:14	5	Q. Do you know what transparency	10:51:42
6	Q. Did they ever report on Sterling	10:49:14	6	Sterling had at any level in Sterling Stamos's	10:51:46
7	Stamos's -- actually, let me back up. Withdrawn.	10:49:20	7	investments or investment strategy?	10:51:50
8	Do you know if Sterling Stamos	10:49:24	8	A. They would publish what funds they	10:51:50
9	withdrew investments from a fund called Bayou? Are	10:49:32	9	were invested in, but I don't recall what they were.	10:51:56
10	you familiar with that?	10:49:36	10	I know on a yearly basis, I believe	10:51:58
11	A. I heard about it.	10:49:36	11	they published a book of investments and where those	10:52:00
12	Q. Okay. How did you hear about that?	10:49:38	12	investments were. But I can't tell you who saw	10:52:06
13	A. I probably first read about it in the	10:49:40	13	that.	10:52:10
14	paper. But I heard about it probably at a -- well,	10:49:44	14	Q. But you received these, these yearly	10:52:10
15	it's only speculation -- at one of these meetings,	10:49:52	15	reports?	10:52:14
16	management meetings.	10:49:54	16	A. I would receive a yearly compendium	10:52:14
17	Q. When you say you read about it in the	10:49:56	17	of returns for the various funds.	10:52:16
18	paper, what do you recall reading?	10:49:58	18	Q. Okay. And did the --	10:52:18
19	A. That there was a Bayou suit, and that	10:49:58	19	A. All the investors did.	10:52:20
20	we had been investors.	10:50:02	20	Q. Okay.	
21	Q. So prior to the suit being filed	10:50:04	21	A. Yeah.	10:52:22
22	against Sterling Stamos in the Bayou case, did you	10:50:08	22	Q. And that yearly compendium included	10:52:24
23	have any knowledge of Sterling Stamos being invested	10:50:12	23	the funds in which Sterling Stamos was invested?	10:52:26
24	in Bayou?	10:50:16	24	A. Um-hmm. I believe so, yeah.	10:52:28
25	A. Specifically, I don't know any of the	10:50:16	25	Q. A while back in this line of	10:52:30
37			39		
1	investments. Specifically no. And I'm not familiar	10:50:18	1	questioning, you mentioned David Katz --	10:52:34
2	with any of the investments of any of the funds	10:50:22	2	A. Yeah.	10:52:36
3	with -- that Sterling Stamos invests in.	10:50:26	3	Q. -- in connection with Sterling	10:52:38
4	Q. Who at Sterling would know what funds	10:50:30	4	Stamos. What was David or what is David Katz's role	10:52:40
5	Sterling Stamos was invested in?	10:50:36	5	with respect to Sterling Stamos?	10:52:46
6	MS. SESHENS: Objection to the form.	10:50:38	6	A. He -- David is Saul's son. And the	10:52:46
7	You can answer.	10:50:38	7	two of them were the people that helped formulate	10:52:50
8	Q. You can answer.	10:50:40	8	Sterling Stamos Partners; "formulate," bring	10:52:54
9	A. Thank you. I -- I just -- I don't	10:50:40	9	together the concept.	10:53:00
10	know. I don't know the answer to that.	10:50:48	10	Q. So was it Saul's idea to form	10:53:02
11	Q. Would it be Saul Katz?	10:50:50	11	Sterling Stamos, or was it David's idea?	10:53:06
12	MS. SESHENS: Objection to the form.	10:50:54	12	A. I don't know. That was before my	10:53:08
13	Q. You can answer.	10:50:56	13	time.	10:53:10
14	A. It could be Saul Katz, a logical	10:50:56	14	Q. Did you have -- ever have -- did you	10:53:10
15	choice, but I would have no idea whether he knew	10:51:00	15	ever come to know whose idea it was to form Sterling	10:53:14
16	each of the individual investments. I doubt it.	10:51:02	16	Stamos?	10:53:16
17	Q. Okay. Who else would be a logical	10:51:04	17	A. No, I don't know who had the original	10:53:18
18	choice to know what the individual investments were?	10:51:08	18	thought.	10:53:20
19	MS. SESHENS: Objection to the form.	10:51:10	19	Q. Okay. And who reported Sterling	10:53:20
20	A. When you're dealing with a fund of	10:51:12	20	Stamos matters at the -- at the management meetings?	10:53:26
21	funds, it's -- you're giving your dollar to the XYZ	10:51:14	21	A. As I mentioned before, it was Saul	10:53:30
22	fund, and they go out and could invest in 20 or 30	10:51:18	22	Katz and/or David Katz.	10:53:32
23	other funds.	10:51:22	23	Q. And/or David, right. Okay. Do you	10:53:34
24	So it would be pretty hard, unless	10:51:22	24	know if Sterling ever compared the rate of returns	10:53:42
25	you were intimately involved, to know exactly those	10:51:26	25	from Sterling Stamos to its Madoff rate of returns?	10:53:44

		40			42	
1	A.	Specifically, they were discussed at	10:53:48	1	Did anyone at Sterling Stamos ever do	10:56:26
2		the same time, you know, in the same time, within	10:53:52	2	any due diligence of Madoff?	10:56:30
3		the same meeting.	10:53:54	3	A. I have no idea. Due diligence? Can	10:56:34
4		So comparisons were made by virtue of	10:53:56	4	you explain that?	10:56:38
5		the fact that Arthur would report the Madoff	10:54:00	5	Q. Well, did anyone at -- at Stamos	10:56:38
6		returns, and David and Saul would report -- would	10:54:02	6	undertake any analysis of Madoff's investment	10:56:42
7		report the SSP returns. So there was comparison at	10:54:04	7	strategy?	10:56:46
8		all times.	10:54:08	8	A. I wouldn't know what they did on a	10:56:48
9	Q.	Okay. And generally speaking,	10:54:08	9	daily basis at Stamos.	10:56:50
10		what -- what were the results of those comparisons?	10:54:12	10	Q. Pardon?	10:56:52
11	A.	There were many, many different funds	10:54:14	11	A. I wouldn't know what they did on any	10:56:52
12		in Sterling Stamos, from very liquid to -- to very	10:54:16	12	basis at Stamos, what they did.	10:56:54
13		long-term. So there was a whole range of potential	10:54:24	13	Q. Okay. But I'm just asking you if you	10:56:58
14		yields.	10:54:28	14	know if Stamos ever did any analysis of Madoff's	10:57:00
15	Q.	And were those yields then compared	10:54:30	15	investment strategy.	10:57:04
16		to the Madoff yields?	10:54:32	16	A. I have no idea. I do not know.	10:57:06
17	A.	It wasn't compared. It was just you	10:54:34	17	Q. You do not know, okay. And you	10:57:08
18		have a discussion about Madoff, and then three or	10:54:38	18	certainly did not -- strike that.	10:57:10
19		four issues later, you have a discussion about SSP.	10:54:40	19	So you did not have any discussions	10:57:14
20		So if people made comparisons in	10:54:42	20	with anyone at Stamos concerning any analysis of	10:57:16
21		their mind, I can't tell you if they did or didn't.	10:54:46	21	Madoff's investment strategy?	10:57:18
22		But they were -- they weren't necessarily	10:54:48	22	A. No analysis, no.	10:57:20
23		discussions, oh, Madoff did this and SSP did that.	10:54:52	23	Q. Okay. Any discussions concerning	10:57:22
24	Q.	That's what I'm asking.	10:54:56	24	any -- any due diligence of Madoff at all with	10:57:28
25	A.	Right. There weren't -- you know, if	10:54:58	25	Stamos?	10:57:30
		41			43	
1		there were, I can't recall any. But people probably	10:54:58	1	A. No.	10:57:30
2		thought about it in their minds.	10:55:02	2	Q. Okay. Was the topic of Stamos's	10:57:32
3	Q.	And what was your recollection of how	10:55:04	3	analysis or due diligence of Madoff ever raised at a	10:57:40
4		the Madoff returns compared to the Sterling Stamos	10:55:06	4	management meeting?	10:57:46
5		returns?	10:55:12	5	MS. SESHENS: Objection to the form.	10:57:46
6	A.	Madoff returns were slightly higher,	10:55:12	6	A. Not that I ever recall, no.	10:57:50
7		not much, than the funds of a similar nature that --	10:55:18	7	Q. If you wanted to -- if you wanted to	10:57:54
8		that we were invested in in SSP, Sterling Stamos.	10:55:24	8	see if any of those issues were raised, what records	10:57:56
9	Q.	So Madoff was invested in similar --	10:55:28	9	would you review?	10:58:00
10	A.	No.		10	A. If I wanted to see what analysis SSP	10:58:00
11	Q.	-- funds as Sterling Stamos?	10:55:32	11	made of Madoff?	10:58:08
12	A.	No, no, no, no, no.	10:55:34	12	Q. Yeah. Let me back up. If you wanted	10:58:10
13	Q.	I'm confused.	10:55:36	13	to know if Stamos had ever done any analysis or due	10:58:12
14	A.	There were funds in Sterling Stamos	10:55:38	14	diligence of Madoff, what records would you review?	10:58:18
15		that -- you know, high liquidity, what you would	10:55:40	15	MS. SESHENS: Objection to the form.	10:58:22
16		think -- same type of -- no, I shouldn't say same	10:55:48	16	A. I have no idea what records they	10:58:22
17		type of investment.	10:55:50	17	have. I would call up somebody at Stamos and say	10:58:24
18		It was a higher liquidity fund. So	10:55:52	18	have you ever done it? I don't have access to any	10:58:28
19		you can -- you might compare in your minds the	10:55:54	19	of their records.	10:58:30
20		results from one against the results of the other.	10:55:56	20	Q. Putting aside Sterling Stamos's	10:58:32
21		I wouldn't compare Sterling Madoff to	10:55:58	21	records --	10:58:36
22		the long-term SSP funds at a much longer-term	10:56:02	22	A. Right.	10:58:36
23		horizon, a five-year horizon.	10:56:08	23	Q. -- what Sterling records would you	10:58:36
24	Q.	Did anyone at Stamos ever provide or	10:56:12	24	review to see if Stamos had provided Sterling with	10:58:38
25		do -- strike that.	10:56:26	25	an analysis or due diligence of Madoff investments?	10:58:42

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1	MS. SESHENS: Objection to the form.	11:03:44	1	believe it was the bank who called me and said, you	11:06:10
2	A. There were several changes in the	11:03:48	2	know, it's time to renew, it's time to extend.	11:06:14
3	document, the plan document. So I don't know what	11:03:50	3	Q. And after the bank called you to tell	11:06:18
4	the original one said versus the one today says.	11:03:52	4	you that it was time to renew the loan, did you then	11:06:22
5	So it's -- it's difficult for me to	11:03:56	5	have a discussion with other folks at Sterling to	11:06:26
6	remember which one said what. But over -- over	11:03:58	6	get a better understanding of the loans?	11:06:30
7	time, it discussed the strategy of investing.	11:04:02	7	A. It's a pretty simple concept. You	11:06:32
8	But I don't know if that was the	11:04:06	8	know, you put a dollar in, you borrow a dollar, you	11:06:34
9	first document I ever saw or the second document or	11:04:08	9	leverage up the yield.	11:06:38
10	third document.	11:04:10	10	And the bank was -- was very prepared	11:06:40
11	Q. Okay. We'll probably be getting to	11:04:10	11	to move forward with it, so it was just a matter of	11:06:42
12	that --	11:04:14	12	paperwork.	11:06:46
13	A. Okay.		13	Q. Okay. And did there come a time when	11:06:46
14	Q. -- later today.	11:04:14	14	you created new double-up loans?	11:06:54
15	Did you have any job responsibilities	11:04:22	15	A. Yes.	11:06:58
16	with respect to Madoff investments in any way?	11:04:24	16	Q. Okay. When did that happen?	11:06:58
17	A. Only on a tangential basis when I did	11:04:32	17	A. I can't be specific, but there were a	11:07:02
18	my financings that involved a Madoff account. But	11:04:40	18	number of new double-up loans that would come from	11:07:04
19	the firm's relationship with Madoff was something I	11:04:42	19	time to time whenever funds were accumulated,	11:07:14
20	never went near. It was always Arthur, Saul and	11:04:46	20	sufficient funds were accumulated to do it, that	11:07:16
21	Fred who had that relationship.	11:04:50	21	made sense to do it.	11:07:18
22	Q. Okay. Now, explain to me how the	11:04:52	22	Q. And when you're referring to funds	11:07:20
23	financing that you -- that you were involved in, how	11:04:58	23	accumulating, are you referencing funds accumulating	11:07:22
24	the Madoff investments played a role in the	11:05:00	24	within the Madoff accounts or some other source of	11:07:24
25	financing that you undertook.	11:05:04	25	liquidity?	11:07:28
49			51		
1	A. There was the concept -- as an	11:05:10	1	A. It could have come from anywhere. It	11:07:28
2	example, there was a concept where if you had a	11:05:12	2	could have been from a redemption from the SSP	11:07:30
3	dollar in Madoff, and you borrowed a dollar from a	11:05:14	3	account. It could have been excess funds in the	11:07:32
4	bank and put it in Madoff, the doubled-up dollar	11:05:20	4	Madoff account. It could have been from the sale of	11:07:36
5	would act as collateral for the borrowing. So you	11:05:24	5	a property.	11:07:38
6	would be leveraging up your investment.	11:05:26	6	Excess funds in general were	11:07:38
7	That's how I first got involved with	11:05:30	7	accumulated, and then a decision would have been	11:07:40
8	a Madoff concept.	11:05:32	8	made, you know, let's double it up.	11:07:42
9	Q. That's the -- the double-up loans?	11:05:34	9	Q. And who played a role in that	11:07:44
10	Is that how it's --	11:05:38	10	decision to double it up?	11:07:46
11	A. Um-hmm.		11	A. It would have been the partners who	11:07:48
12	Q. -- referred to in shorthand?	11:05:40	12	made that decision.	11:07:50
13	A. Right.	11:05:42	13	Q. All of them together?	11:07:52
14	Q. Who first came up with the idea of	11:05:42	14	A. All decisions are made by all the	11:07:54
15	the double-up loans?	11:05:46	15	partners. It's a very unique organization.	11:07:56
16	A. Who originated the thought of	11:05:48	16	Q. It sounds like it. I'm just trying	11:07:58
17	leveraging?	11:05:50	17	to get a better understanding of the decision-making	11:08:02
18	Q. Yeah.	11:05:50	18	process of the double-ups.	11:08:04
19	A. They were doing it well before I got	11:05:52	19	So who determined when there was an	11:08:10
20	there. I don't know who had the original original	11:05:56	20	excess of funds?	11:08:10
21	idea.	11:05:58	21	A. The individual partners knew their	11:08:12
22	Q. And when did you become involved with	11:05:58	22	own personal accounts. When there was -- people	11:08:16
23	the Madoff double-up loans?	11:06:00	23	wouldn't realize there were excesses.	11:08:22
24	A. When the first loan came up, you	11:06:04	24	Arthur would be in charge to call up	11:08:24
25	know, matured and was coming up for extension, I	11:06:06	25	the capital accounts. He would know, and he would	11:08:26

		52			54
1	say, hey, everybody has a little bit more money than	11:08:28	1	executives?	11:10:52
2	expected. What do you want to do with it?	11:08:32	2	A. Yeah.	11:10:54
3	And this would be usually done either	11:08:34	3	Q. Were you offered an opportunity to	11:10:54
4	at a management meeting or over a lunch or just	11:08:36	4	invest in the double-ups?	11:10:56
5	walking around the office.	11:08:40	5	A. Yes.	11:11:00
6	I'd say it's a very unique office.	11:08:42	6	Q. And who -- who approached you to	11:11:00
7	It's small enough that you can still talk to your	11:08:44	7	invest in the double-up account?	11:11:02
8	partners one-on-one either by walking down the hall	11:08:46	8	A. I can't remember who, but at some	11:11:04
9	or making a quick phone call.	11:08:50	9	point in time they said, Mark, do you want to invest	11:11:06
10	And decisions are made by the	11:08:52	10	in XYZ? And I said yeah, sure. Why not?	11:11:10
11	partners. So you want to come in, great. You don't	11:08:54	11	Q. And after the decision is made to	11:11:14
12	want to come in, that's okay, also. And they would	11:08:58	12	pool the -- pool funds, excuse me, to invest in the	11:11:18
13	form a pool of money to be doubled up.	11:09:02	13	double-up account, who is involved in the formation	11:11:22
14	Q. And did there come a time when	11:09:06	14	of the entity that is actually going to be doing the	11:11:28
15	non-partners were invested in these double-up	11:09:10	15	taking out the loan?	11:11:32
16	accounts?	11:09:14	16	A. General counsel would form the	11:11:32
17	A. Yes.	11:09:14	17	entity.	11:11:34
18	Q. So who solicited or who spoke with	11:09:16	18	Q. Okay. And by general counsel, you're	11:11:36
19	the non-partner investors to see if they wanted to	11:09:22	19	referring to Mr. Nero?	11:11:38
20	get -- to invest in a double-up?	11:09:24	20	A. Correct.	11:11:40
21	MS. SESHENS: Objection to the form.	11:09:26	21	Q. Anyone else?	11:11:40
22	You can answer.	11:09:28	22	A. No. It was Greg that would form it.	11:11:40
23	Q. You can answer.	11:09:28	23	Q. Okay. And how is it determined --	11:11:44
24	A. The -- that was -- non-partners could	11:09:30	24	strike that.	
25	be children of the partners. It could be their	11:09:36	25	Did each investor have -- in the	11:11:50
		53			55
1	trusts. It could be senior employees.	11:09:40	1	double-up entity, have different levels of	11:11:54
2	Obviously, the partners can talk for	11:09:44	2	investment?	11:11:58
3	their own children. Or if they had internal --	11:09:46	3	A. Yes.	11:12:00
4	family discussions, I wouldn't know about it.	11:09:50	4	Q. Okay. And how was that determined?	11:12:00
5	The trustees would say yes if the	11:09:54	5	A. It's whatever that individual thought	11:12:02
6	trust had extra cash.	11:09:58	6	they could afford to lock away, to lock up for a	11:12:04
7	And then there was a conscious effort	11:10:00	7	period of time.	11:12:08
8	on, you know, the partners to either invite an	11:10:02	8	Q. And that was based on -- on the	11:12:10
9	employee or not invite an employee in or offer it to	11:10:04	9	excess analysis?	11:12:12
10	them, offer to invite. It was never a you have to.	11:10:10	10	A. It was -- I don't know what the	11:12:14
11	Q. What did you mean by a conscious	11:10:14	11	excess analysis is, but it was based upon that	11:12:16
12	effort to reach out to employees?	11:10:16	12	person's understanding of what their needs were,	11:12:18
13	A. Well, it was part of a -- a -- it was	11:10:18	13	short-term, long-term.	11:12:20
14	part of a -- a perk to an employee as an -- as an --	11:10:22	14	And based upon that, you can say I	11:12:22
15	not an alternative, but as a means of increasing, in	11:10:30	15	can put away X dollars for a longer period of time.	11:12:26
16	a sense, your compensation. I shouldn't say	11:10:32	16	Q. Well, what I mean by the excess	11:12:30
17	compensation; an investment vehicle that you can	11:10:34	17	analysis is what you were referring to earlier, that	11:12:32
18	invest some money that would otherwise not be	11:10:36	18	you said that there were excess funds that were then	11:12:32
19	available to you, as an employee or as an	11:10:40	19	pooled.	11:12:36
20	individual.	11:10:42	20	A. Right, okay. I don't know if it was	11:12:36
21	Q. Was this offered to all Sterling	11:10:42	21	a formal analysis versus a thought process that went	11:12:38
22	employees?	11:10:48	22	through each person's mind.	11:12:42
23	A. No. I said certain executives,	11:10:48	23	Q. So Mr. Friedman would notify the	11:12:46
24	senior executives.	11:10:50	24	partners and executives that they had excess funds,	11:12:48
25	Q. You said it was limited to senior	11:10:50	25	and those funds could or could not have been used to	11:12:52

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1	depending upon if they had an excess or a need for	11:32:28	1	A. Both ways. You paid interest if you	11:35:00
2	cash.	11:32:32	2	have excesses that you deposit into SEF. And if you	11:35:02
3	So it's a constant back-and-forth	11:32:32	3	owed it, you had interest the other way.	11:35:06
4	depending upon time of the month or time of the year	11:32:36	4	Q. And who determined the interest that	11:35:08
5	or time of the quarter, whether they needed a --	11:32:40	5	would be charged?	11:35:10
6	funds to pay a mortgage with.	11:32:42	6	A. It was a partnership matter. The	11:35:12
7	If they didn't have excess funds	11:32:46	7	partners decided that. Not on an individual basis;	11:35:14
8	to -- for their personal expenses, they would borrow	11:32:48	8	as a group, that they said okay, if you borrow it,	11:35:18
9	money from SEF until which time they would have	11:32:52	9	you know, you can borrow it at X percent, and -- and	11:35:22
10	excess funds and they would pay SEF back. Call it a	11:32:54	10	we can lend it to you at Y -- excuse me.	11:35:24
11	clearing account.	11:33:00	11	There's a difference between	11:35:26
12	Q. And what were the terms of the loan	11:33:02	12	borrowing and lending. So depending upon which one	11:35:28
13	from SEF to a partner?	11:33:06	13	it is, you either got interest or you paid interest.	11:35:32
14	A. I'm not a lawyer; I don't know	11:33:12	14	Q. And you said that the partners	11:35:36
15	whether you would formally call it a loan. But it	11:33:14	15	determined the interest. What -- what did you mean	11:35:42
16	was a payable and a receivable.	11:33:16	16	by that?	11:35:44
17	Q. Well, let me back up, just so we're	11:33:18	17	A. I said it was a very unique	11:35:44
18	not confused.	11:33:22	18	organization. The partners make decisions as a	11:35:46
19	How would you describe the transfer	11:33:22	19	group. Individually, they come together and they	11:35:50
20	of money from SEF to the partner?	11:33:24	20	make decisions as a group.	11:35:52
21	A. It was a payable receivable. It	11:33:26	21	So the decision was made, made on a	11:35:54
22	was -- could be for a day, could be for a month.	11:33:30	22	regular basis, that we'll charge -- I'm making up	11:35:58
23	But on a quarterly basis, SEF partners would have to	11:33:32	23	numbers -- 6 percent if you want to borrow, if you	11:36:00
24	come down to a certain balance.	11:33:36	24	want to borrow money, but we'll pay out 5 percent if	11:36:04
25	And they would come down to that --	11:33:40	25	you are lending the firm money.	11:36:08
		61			63
1	to that balance by using their funds that have come	11:33:42	1	Q. And I know you're using hypothetical	11:36:10
2	in from various investments to true up that account,	11:33:48	2	numbers.	11:36:14
3	true up their balance within the SEF account.	11:33:54	3	A. Examples.	11:36:14
4	Q. Okay. So on a quarterly basis,	11:33:58	4	Q. Examples. Were those, then, rates	11:36:16
5	who -- who performed the analysis of determining how	11:34:02	5	applied across the board for all SEF transactions	11:36:18
6	much the partner owed to SEF?	11:34:08	6	with the partners for a period of time?	11:36:22
7	A. Arthur Friedman.	11:34:10	7	A. Yeah, yes.	11:36:24
8	Q. What role did you play in that	11:34:12	8	Q. Okay. And that rate was used until	11:36:24
9	analysis?	11:34:14	9	the next time that the partners decided to change	11:36:26
10	A. I would look at it from time to time,	11:34:16	10	the rates?	11:36:30
11	but it really wasn't my responsibility to handle	11:34:20	11	A. It was usually in conjunction with a	11:36:30
12	that, like a capital account. Arthur did that.	11:34:24	12	rate change that the SEF was borrowing from the	11:36:32
13	Q. And when you say look at it, what are	11:34:26	13	bank.	11:36:38
14	you referring to? What records?	11:34:30	14	Q. And what records maintain the -- what	11:36:42
15	A. He would -- he would have a capital	11:34:30	15	are the records that maintain the -- the payables	11:36:48
16	account statement summary -- call, a capital call	11:34:34	16	and the receivables related to SEF?	11:36:52
17	summary that he would present to the partners. I	11:34:38	17	A. It's part of our Navigator system,	11:36:54
18	would always be cc'd on it. I would normally be	11:34:42	18	our accounting system. We keep detailed records of	11:36:58
19	cc'd on it.	11:34:44	19	every transaction. And part of those transactions	11:37:02
20	And it would be discussed at the --	11:34:46	20	are what you owe SEF or what SEF owes you.	11:37:06
21	the next partnership meeting -- or management	11:34:48	21	Q. Okay. And was that -- would that --	11:37:10
22	meeting, excuse me.	11:34:50	22	is that information contained in the blue book, as	11:37:12
23	Q. Was there interest charged on --	11:34:52	23	well?	11:37:16
24	A. Yeah.	11:35:00	24	A. Yes.	11:37:16
25	Q. Okay.	11:35:00	25	Q. Now, you said on a quarterly basis,	11:37:18

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1	Q.	Elaine Solomon?	01:35:26	1	it's catalogued.		01:37:48
2	A.	No.	01:35:28	2	Partnership accounting is in charge		01:37:52
3	Q.	Robert Cardile?	01:35:30	3	of the catalog, is in charge of the books and		01:37:54
4	A.	No.	01:35:34	4	records of the firm.		01:37:58
5	Q.	And Eric Lipkind?	01:35:36	5	Q. And what documents or records did		01:38:00
6	A.	I have not heard of those people's	01:35:40	6	partners accounting generate in its ordinary course		01:38:08
7		names.	01:35:42	7	of business to monitor or track the Sterling		01:38:14
8	Q.	Okay. So not only have you never	01:35:42	8	partners' investments in Madoff?		01:38:16
9		spoken to them, you've never heard the names before	01:35:44	9	MS. SESHENS: Objection to the form.		01:38:18
10		today?	01:35:46	10	A. We've talked about the Navigator		01:38:20
11	A.	Best of my belief, I've never -- I	01:35:46	11	system, the accounting system. It's a brand name,		01:38:24
12		don't know who they are and I've never spoken to	01:35:50	12	that's all it is.		01:38:26
13		them.	01:35:52	13	Q. Right.		01:38:26
14	Q.	Okay. Fair enough.	01:35:52	14	A. We would use the Navigator system to		01:38:30
15		With respect to the -- the referral	01:36:04	15	record investments in Madoff.		01:38:32
16		accounts that we discussed this morning, the friends	01:36:08	16	You talked about previously the hell		01:38:36
17		and family, non-Sterling --	01:36:10	17	sheet produced by Helene Kravitz. That was a		01:38:38
18	A.	Okay.	01:36:12	18	summary of that information.		01:38:42
19	Q.	-- accounts.	01:36:14	19	So we would track it -- we would		01:38:44
20		MS. SESHENS: Objection to the form.	01:36:16	20	track it month by month on the summary sheet and		01:38:46
21	Q.	But you understand what I'm	01:36:16	21	record the balances, activity during the month in		01:38:50
22		referencing. Right?	01:36:18	22	the books and records, you know, the Navigator		01:38:54
23	A.	Yes.	01:36:20	23	system.		01:38:56
24	Q.	Okay. What benefit, if any, did	01:36:20	24	Q. And when you're saying "tracking,"		01:38:58
25		Sterling gain from referring these accounts to	01:36:24	25	what -- what data was partners accounting reviewing		01:39:00
			129				131
1		Madoff?	01:36:28	1	in order to track the investments?		01:39:04
2		MS. SESHENS: Objection to the form,	01:36:28	2	A. They would take the -- I'm sorry.		01:39:08
3		and asked and answered.	01:36:28	3	Q. Go ahead.		01:39:10
4	A.	I can answer?	01:36:32	4	A. They would take the monthly		01:39:10
5		MS. SESHENS: You can answer.	01:36:32	5	statements, or somebody would take the monthly		01:39:12
6	Q.	You can answer.	01:36:34	6	statements and, say, start with \$100. It ended with		01:39:14
7		MS. SESHENS: Yes.		7	\$300 in it, hypothetically speaking. We made \$100		01:39:18
8	Q.	I don't think you answered that	01:36:36	8	deposit. So, therefore, you had \$100 earnings.		01:39:22
9		specific question. But go ahead.	01:36:36	9	And it would track that information.		01:39:26
10	A.	No benefit to the firm, other than in	01:36:40	10	Or we had \$100 deposit, a \$50 withdrawal and 150		01:39:28
11		a sense helping people, providing an opportunity to	01:36:42	11	earnings. It would track all that type of		01:39:32
12		make some additional dollars.	01:36:44	12	information.		01:39:36
13	Q.	And did Sterling receive any benefit	01:36:48	13	Q. And someone in partners accounting,		01:39:36
14		for administering these accounts?	01:36:52	14	after reviewing the monthly statement for each		01:39:40
15	A.	No.	01:36:56	15	particular account, would have to manually input the		01:39:42
16	Q.	Okay. I want to go back to partners	01:36:58	16	data into the system?		01:39:46
17		accounting for -- for a few minutes.	01:37:12	17	A. Yeah, that's the only way you can get		01:39:48
18		What was partners accounting's role	01:37:16	18	into it.		01:39:50
19		with respect to the Madoff investments?	01:37:20	19	Q. And there were hundreds of these		01:39:50
20	A.	Everything the firm does of a	01:37:22	20	accounts. Right?		01:39:56
21		monetary nature on behalf of the firm, versus the	01:37:28	21	A. Correct. And -- and it was recorded		01:39:56
22		real estate funds, is catalogued by partnership	01:37:34	22	by partnership accounting, but if I'm not		01:40:00
23		accounting.	01:37:40	23	mistaken -- again, it wasn't what I did -- Cindy --		01:40:06
24		Madoff investments were part of the	01:37:42	24	Cynthia Bernstein actually tracked the ins and the		01:40:08
25		firm's dealings with its money; and so, therefore,	01:37:46	25	outs and then presented that to partnership		01:40:14

C O N F I D E N T I A L

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
ADV. PRO. NO. 08-01789 (BRL)

-----x
SECURITIES INVESTOR PROTECTION
CORPORATION,

Videotaped

Plaintiff-Applicant,
v.

Rule 2004
Examination of:

BERNARD L. MADOFF INVESTMENT
SECURITIES, LLC,

MARK PESKIN
(Vol. II)

Defendant.

-----x
In Re:

BERNARD L. MADOFF,

Debtor.
-----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,
LLP, 45 Rockefeller Plaza, New York, New York on
Friday, July 30, 2010, commencing at 10:13 a.m.

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1 A. I don't recall that. I don't recall
 2 such a conversation. Two different sides of the
 3 banks, two different kinds of loan exposure.
 4 Q. Is there anything you would -- would
 5 review to -- that you think may have that
 6 information?
 7 MS. SESHENS: Objection to the form.
 8 Q. Any documents or anything?
 9 A. Whether he wrote me an e-mail or a
 10 message that said you're too heavily -- we've loaned
 11 too much money to you on Madoff because of our
 12 increasing -- your exposure to SSP?
 13 Q. No. We loaned too much money on
 14 Madoff, and now since we're loaning money on
 15 Sterling Stamos, we want to cut back on Madoff.
 16 A. I -- I don't know of any such letter,
 17 and you have all of my e-mails, so I would only go
 18 back to my e-mail chain.
 19 Q. But you don't recall having a
 20 discussion --
 21 A. No.
 22 Q. -- of that issue with Mr. Kenny?
 23 A. I mean, there is always an issue as
 24 to how much capacity the bank has --
 25 Q. Right.

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1 A. -- for the -- you know, under the
 2 Sterling umbrella, how much they would make
 3 available. That's an ongoing discussion that I have
 4 with all banks at all times, do you look at this as
 5 different silos or do you look at it as just one.
 6 Q. So you would have general -- general
 7 discussions with the bank about the whole --
 8 A. That's not unusual.
 9 Q. Okay. And within those discussions,
 10 obviously, the Madoff exposure would -- would come
 11 up?
 12 A. Total bank exposure would come up and
 13 how much they are willing to lend us in total under
 14 the Sterling umbrella.
 15 Q. And in discussions with -- sorry.
 16 In discussions with concerning the
 17 total amount that the -- that the bank would loan to
 18 you, did any of the banks ever raise the issue of
 19 the Madoff exposure?
 20 A. Not that I can remember it.
 21 Q. Are you aware of a special investment
 22 opportunity that was offered by Madoff in and around
 23 November 2005? Do you recall that?
 24 A. The answer is -- yes, there was one
 25 special opportunity that I was -- I don't know

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1 whether it was 2005.
 2 Q. And you invested in that opportunity?
 3 A. Yes.
 4 Q. Okay. What did -- what did you know
 5 about the special investment opportunity before you
 6 invested?
 7 A. Other than the fact that it was
 8 brought up at a management meeting, Saul Katz -- I
 9 don't know how the opportunity came to Saul, but he
 10 said there was a special investment opportunity, a
 11 change of formula, a change of thought process. He
 12 said the firm -- you know, he thought it was a
 13 reasonable opportunity. It turned out to be no
 14 better, I think, than any other opportunity, than
 15 any other normal account. Supposed to be for a
 16 short duration of time. We tried it. We needed the
 17 money at a later date so we withdrew it. I can't
 18 remember how long the account -- the opportunity was
 19 invested in, but it turned out to be not so much of
 20 a great opportunity.
 21 Q. Do you remember anything else that
 22 Mr. Saul Katz said about the type of strategy that
 23 was being used for the special investment?
 24 A. No. It was just a different kind of
 25 strategy that was being tested.

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1 Q. Did he say anything about the special
 2 strategy using like a non-hedge option investment
 3 strategy?
 4 A. Oh, no, he didn't talk about it. It
 5 was just a different strategy.
 6 Q. Okay. As part of the special
 7 investment, was -- was part of the terms of the
 8 special investment that the Sterling investors could
 9 not use existing money from other Madoff accounts?
 10 Do you remember that?
 11 A. I was not aware of that.
 12 Q. How did you --
 13 A. Are you asking me that?
 14 Q. Yeah, I'm asking.
 15 A. I was not aware of that.
 16 Q. Okay. How did you fund your
 17 investment in the special account?
 18 A. I mean, well, either from another
 19 account, Madoff account, which I don't think I
 20 did -- no, I did not do that. No, I didn't do that.
 21 Either -- so I wrote a check from my -- from my
 22 personal checking account to put the money in. I
 23 personally only made one transfer and it wasn't into
 24 that account.
 25 Q. It wasn't into what?