

Exhibit 5

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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,
Defendant.

ARTHUR FRIEDMAN
(Volume I)

-----x
In Re:

BERNARD L. MADOFF,
Debtor.
-----x

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 Tuesday,
June 22, 2010, commencing at 10:11 a.m.

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1 A. I really don't recollect exactly.

2 Q. Did you check all of the trades for
3 all of the accounts at that, whatever time period
4 you were doing it, or did you just pick one account?

5 A. No, I checked -- no, not all of the
6 accounts because everything was a mirror image.

7 Q. Fair enough.

8 A. In other words, he would buy seven --
9 if he bought seven securities, it would be seven
10 securities in each account. So I only had to do one
11 account. I wouldn't have done every other account.

12 Q. But you would have done --

13 A. I would have done every trade, yes.

14 Q. So, you indicated that you attempted
15 to replicate Madoff's strategy. What did you do?
16 Tell me.

17 A. Trying to recollect exactly what I
18 did.

19 I would take the stocks that he
20 purchased, and I believe what I did was to follow
21 the strategy. What I'd want to see is I wasn't
22 testing what he did that he's giving us accurate
23 numbers, but if I utilize his strategy, let's say
24 when I got the slips that said this is what he
25 bought, I would take that information and then try

1 to enact it on my own account. Different
2 quantities, didn't matter the quantity, but just to
3 take what to buy, but I would always be lagging
4 behind him. Just to get a general idea of how I
5 would do, and I found that he did, I'm making up,
6 say 15 percent. I did more like six percent. I
7 made a profit. I determined in my own mind that the
8 strategy was good, it worked, but not to the extent
9 that it worked for him.

10 One of the major reasons was the
11 commission. When I did the strategy I determined
12 somehow what the commission would be, what I'd have
13 to pay if I did this on my own. Whereas he had
14 little or no commission, and that made a big
15 difference when you're dealing with, just looking to
16 try to make one percent a month, that made a
17 difference.

18 Q. So your understanding was that the
19 difference between the -- I know you made these
20 numbers up, but your six percent return that you
21 were able to accomplish and his 14 or 16, whatever
22 you said, was primarily driven by the absence of
23 commission costs?

24 MS. SESHENS: Objection to the form.

25 A. That was one of --

1 MS. SESHENS: Sorry. Go ahead.

2 A. That was one major factor. It could
3 also -- again, I'm doing it after the fact, just
4 using his information, that could change my result
5 either way. I mean, if the next day or two days
6 later using his strategy the market -- I was able to
7 make a better purchase than he did, then, you know,
8 it could have gone either way.

9 Q. If Madoff wasn't charging a
10 commission, is that what you told me? Your
11 understanding was he wasn't charging you a
12 commission?

13 A. My understanding was that he was
14 making a market in some or all of these stocks and
15 he was making money but he determined the price. If
16 he could buy it at one and sell it to us, in effect,
17 at one-and-1/16th, but the one-and-1/16th was
18 certainly a fair price and certainly it traded
19 during the day well above one-and-1/16th -- these
20 are all examples, of course -- he was making a
21 commission or a substitute for commission, the
22 1/16th. But I would actually have to go and buy it
23 at whatever price, one-and-1/16th, and then pay a
24 commission on top of that.

25 Q. If you bought it from someone other

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ARTHUR FRIEDMAN

(Volume II)

-----x
In Re:

BERNARD L. MADOFF,

Debtor.

-----x

TRANSCRIPT of videotaped testimony as taken by
and before PATRICIA MULLIGAN CARRUTHERS, Certified
Court Reporter, RPR, RMR, RDR, 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, June 23, 2010,
commencing at 10:07 a.m.

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1 break, that is the hell sheet. Correct?

2 A. That is correct.

3 Q. What is the hell sheet intended to
4 be? What does it represent? What's shown on that
5 document?

6 A. It's all of the accounts listed
7 numerically. The 1KW numbers. The name of the
8 account, the total amount on -- in the account as of
9 the date in question spread across the top by who
10 the owners are. So allocating their percentage
11 times the total, the numbers will equal that total
12 column when you add them up.

13 Q. Okay. And as we talked about before,
14 the way this printed out, you would actually have to
15 take the page where the control number ends with 266
16 and line that up next to the first page of the
17 printout which is Control 260, right, because
18 there's more things going out this way to the right.

19 A. Uh-huh.

20 Q. Is that correct? Because you'll note
21 the account numbers repeat themselves. They start
22 over at one.

23 So what was the -- Was this done
24 every month?

25 A. Yes.

1 Q. By you or your staff?

2 A. Yes.

3 Q. What was this used for each month, if
4 anything?

5 A. Well, the -- seeing how we did on a
6 month-to-month basis percentagewise, what was the
7 profit, and for each individual account holder, each
8 partner would get an idea or check the amount in
9 particular accounts, but it was a reference to the
10 balances in every account.

11 Q. Okay. Now, when you say "every
12 account," would this -- this would include then
13 the -- what you call "the outsiders"?

14 A. Yes.

15 Q. And why were they included, if they
16 were outsiders, in the totals?

17 A. Well, it was a separate total, but I
18 personally would use them because I would have
19 questions, people calling, What is the -- how did we
20 do this month or what's the balance in my account or
21 I would like to withdraw a certain amount or the
22 efficiency factor, whatever it might be. I had a
23 reference that I used on a monthly basis.

24 Q. Okay. And you mentioned "efficiency
25 factor." What was that?