

# EXHIBIT P

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. 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           A.           It could have come from anywhere. It  
2 could have been from a redemption from the SSP  
3 account. It could have been excess funds in the  
4 Madoff account. It could have been from the sale of  
5 a property.

6                       Excess funds in general were  
7 accumulated, and then a decision would have been  
8 made, you know, let's double it up.

9           Q.           And who played a role in that  
10 decision to double it up?

11          A.           It would have been the partners who  
12 made that decision.

13          Q.           All of them together?

14          A.           All decisions are made by all the  
15 partners. It's a very unique organization.

16          Q.           It sounds like it. I'm just trying  
17 to get a better understanding of the decision-making  
18 process of the double-ups.

19                       So who determined when there was an  
20 excess of funds?

21          A.           The individual partners knew their  
22 own personal accounts. When there was -- people  
23 wouldn't realize there were excesses.

24                       Arthur would be in charge to call up  
25 the capital accounts. He would know, and he would

1 say, hey, everybody has a little bit more money than  
2 expected. What do you want to do with it?

3 And this would be usually done either  
4 at a management meeting or over a lunch or just  
5 walking around the office.

6 I'd say it's a very unique office.  
7 It's small enough that you can still talk to your  
8 partners one-on-one either by walking down the hall  
9 or making a quick phone call.

10 And decisions are made by the  
11 partners. So you want to come in, great. You don't  
12 want to come in, that's okay, also. And they would  
13 form a pool of money to be doubled up.

14 Q. And did there come a time when  
15 non-partners were invested in these double-up  
16 accounts?

17 A. Yes.

18 Q. So who solicited or who spoke with  
19 the non-partner investors to see if they wanted to  
20 get -- to invest in a double-up?

21 MS. SESHENS: Objection to the form.  
22 You can answer.

23 Q. You can answer.

24 A. The -- that was -- non-partners could  
25 be children of the partners. It could be their

1 double-up entity, have different levels of  
2 investment?

3 A. Yes.

4 Q. Okay. And how was that determined?

5 A. It's whatever that individual thought  
6 they could afford to lock away, to lock up for a  
7 period of time.

8 Q. And that was based on -- on the  
9 excess analysis?

10 A. It was -- I don't know what the  
11 excess analysis is, but it was based upon that  
12 person's understanding of what their needs were,  
13 short-term, long-term.

14 And based upon that, you can say I  
15 can put away X dollars for a longer period of time.

16 Q. Well, what I mean by the excess  
17 analysis is what you were referring to earlier, that  
18 you said that there were excess funds that were then  
19 pooled.

20 A. Right, okay. I don't know if it was  
21 a formal analysis versus a thought process that went  
22 through each person's mind.

23 Q. So Mr. Friedman would notify the  
24 partners and executives that they had excess funds,  
25 and those funds could or could not have been used to

1 invest in the Sterling --

2 A. Correct. It was up to the individual  
3 partner to make that decision.

4 Q. And when you said locked, locked up,  
5 you used the term "locked up," what did you mean by  
6 that?

7 A. The nature of a double-up account is  
8 that you would take money and put it into a pooled  
9 account, and then you would borrow money and also  
10 put it in the pool account.

11 And that borrowed money had a term,  
12 three years usually. So you didn't necessarily want  
13 to break the loan because we would fix the rate on  
14 the loan. And if you -- if you want to come out, it  
15 means you're breaking the rate lock, you're pulling  
16 funds out that have been set aside and given a  
17 certain rate for a three-year period.

18 Depending upon where interest rates  
19 are in the market, you could either make money or  
20 lose money doing that.

21 Q. I see. Now, what is SEF, Sterling  
22 Equities Funding?

23 A. Sterling Equities Funding is -- call  
24 it the internal bank of the firm. Rather than each  
25 partner borrowing money from banks, it borrows its

1 in connection with Sterling's Madoff investments?

2 MS. SESHENS: Objection to the form.

3 A. He's an investor. He's a direct  
4 investor, an indirect investor through business  
5 entities.

6 On a day-to-day basis he didn't do  
7 anything. That was Arthur who did that, Arthur  
8 Friedman.

9 He would perhaps talk to Mr. Madoff  
10 from time to time. But I don't know of any other  
11 role that he had.

12 Q. What was your understanding of Mr. --  
13 Mr. Fred Wilpon's role with respect to Sterling's  
14 Madoff investments?

15 A. Same as -- as Saul Katz's role. He  
16 is a direct investor and an indirect investor, as we  
17 call it, through business entities.

18 And he spoke from time to time with  
19 Mr. Madoff. I would say that -- I would put it on  
20 an infrequent basis. And that all the clerical  
21 administrative responsibilities were the  
22 responsibility of Arthur Friedman.

23 Q. What was Mr. Katz's criteria for  
24 determining whether a Sterling employee could open  
25 an account with Madoff?

1           A.           Up to Total - Bernie Madoff --  
2 "Total - Bernard Madoff."

3           Q.           All right. So you don't recall  
4 receiving a hell sheet that breaks down the totals  
5 by securities investment?

6           A.           If I did, I just don't recall. I do  
7 have schedules that have these investments on it,  
8 but I never saw it in this format.

9           Q.           Okay.

10          A.           I don't think I've ever seen it in  
11 this format.

12          Q.           Okay. All right. Thank you,  
13 Mr. Peskin.

14          A.           You're welcome.

15                       MR. BOHORQUEZ: Why don't we do  
16 Tab 10. If you can mark that as Exhibit 6, I  
17 believe.

18          Q.           You will be receiving a copy of that  
19 at some point, so you can review it to your heart's  
20 delight.

21                       (Exhibit MP-6 marked for  
22 identification.)

23          A.           Thank you.

24          Q.           All right. Mr. Peskin, I've handed  
25 you what's been marked as Exhibit 6. It's a



1 Sterling Equities Partners analysis of liquidity for  
2 Citibank.

3 A. Yup, yes.

4 Q. Please take a moment to review the  
5 document, and let me know when you're ready.

6 A. I'm generally -- generally familiar  
7 with the document, yes.

8 Q. Okay, good. Did you prepare this  
9 document?

10 A. I don't prepare any documents of this  
11 nature. I have an accounting group that prepares  
12 the document.

13 Q. Did you direct the accounting group  
14 to prepare this document?

15 A. It would be automatically prepared on  
16 a monthly and quarterly basis by partnership  
17 accounting.

18 Q. And why was it prepared automatically  
19 on a -- what did you say, quarterly and monthly?

20 A. It was required by the bank as part  
21 of our compliance with the line of debt that we had  
22 with them, Citibank being one of the banks  
23 participating in our line.

24 Q. And what line of debt did you have  
25 with Citibank?

1           A.           This is the SEF lines of credit that  
2 we spoke of before.

3           Q.           Okay. Did you have any credit  
4 facilities with Citibank that had a Madoff account  
5 as collateral?

6           A.           I don't think we did.

7           Q.           Okay.

8           A.           I don't think -- as collateral? No,  
9 that was B of A.

10          Q.           Bank of America?

11          A.           Yeah, yeah.

12          Q.           Okay. Thank you. So if we go back  
13 to Exhibit 6 --

14          A.           Yeah.

15          Q.           -- under "Liquidity," there is  
16 included a Madoff securities and SSP Capital?

17          A.           Correct.

18          Q.           "SSP Capital" refers to Sterling  
19 Stamos?

20          A.           Correct.

21          Q.           Why did you need to include Madoff in  
22 this liquidity analysis?

23          A.           Well, I spoke about it before, that  
24 the lines of credit required us to have so much  
25 liquidity available if the line was called to be

1 paid back.

2 Q. This is the line of credit for the  
3 SEF?

4 A. We're only talking about SEF now.

5 Q. Right.

6 A. There were several banks in the --  
7 call it a syndicate of banks that gave us this  
8 credit.

9 Citibank -- in this particular case,  
10 Citibank asked us to please present in their -- with  
11 their definition of liquidity -- with their  
12 definition of liquidity a statement as to where we  
13 were on a monthly basis or quarterly basis. I can't  
14 remember whether it was monthly or quarterly.

15 This indicates June 30th. I know  
16 that's a quarter. I can't remember if there's a May  
17 or July. But this is very formulaic, is very  
18 negotiated. So this doesn't necessarily follow a  
19 form of accounting. It is what Citibank agreed on  
20 as to what their definition of compliance is.

21 So Madoff was considered liquid  
22 because it's a brokerage account. You would call up  
23 your broker and say I need my money back, and they  
24 would sell securities and readily give it back to  
25 you with short notice. It took time to clear

1 through the process.

2 But the banks knew that Madoff was a  
3 liquid -- you know, a liquid, you know, account and  
4 near an equivalent, cash equivalent, because it was  
5 short-term notice and easily liquidatable.

6 SSP capital, certain accounts within  
7 certain fund investments that we had were more  
8 liquid than others.

9 I'm not quite sure what the others  
10 were, but we had other brokerage accounts.

11 Q. Like Prudential or --

12 A. It was Maxim, it was Long Island  
13 Investors, it was a whole bunch of other typical  
14 brokerage accounts, no different than the Madoff  
15 account, that we would call upon in need of cash if  
16 we were in need of cash. So that was the liquidity  
17 basis.

18 Q. And let me back up to one thing you  
19 mentioned, and we can get two more questions in  
20 before --

21 A. Sure.

22 Q. -- we have to change the tape.

23 What was your understanding of how  
24 long -- let me back up.

25 What did Madoff represent to Sterling

1 as to how long it would take to liquidate funds --

2 MS. SESHENS: Objection to the form.

3 Q. -- from Sterling's accounts?

4 A. It's hard to say what he represented  
5 because I never had a conversation with him.

6 Q. What was your understanding?

7 A. From my understanding was that if you  
8 needed money and you couldn't wait until he was out  
9 of the market, as you used that term, you can always  
10 call upon him to liquidate an account. It was a  
11 brokerage, after all.

12 He didn't want to necessarily do that  
13 because he had a concept of how to invest and how to  
14 go in and come out of the market, and he liked to do  
15 that on a uniform basis with all of his accounts --  
16 at least all of our accounts.

17 But if you needed the money, you  
18 called upon him. I don't know how often -- if  
19 Arthur ever did it or whether he did do it. But if  
20 necessary, you called upon him to do it.

21 We, at least I, especially at the  
22 Mets, tried to stagger our requests for when he was  
23 out of the market so he wouldn't have to,  
24 quote/unquote, liquidate an account.

25 But I assumed it was like any other

1 brokerage account because we got brokerage  
2 statements.

3 Q. What was your understanding as to how  
4 long it would take from when you made a request to  
5 liquidate funds to when the funds could actually be  
6 provided from the Madoff account?

7 A. Again, it's not because I know  
8 specifically, but I know when I ask my broker to  
9 sell something, sell a share of, you know, JPMorgan  
10 stock, just, you know, you put in the order, it's  
11 sold moments later via, you know, computers.

12 Three or four days later, it clears.  
13 It's available in your account three or four days  
14 later.

15 I don't know what it was in 2004. I  
16 think the process has been sped up. But my  
17 understanding is within the week, certainly your  
18 money is available to you.

19 Q. Okay. So just to clarify, you were  
20 referencing discussions or your experiences with  
21 your own personal broker. Is that right?

22 A. Correct.

23 Q. Okay. And that would -- in your  
24 experience, it would take typically three or four  
25 days from when you requested to withdraw funds?

1 broker who had a great reputation. It's like asking  
2 me am I worried that I had \$181 million in JPMorgan.

3 I mean, I'm giving it to Citibank.  
4 They're not concerned.

5 Q. So that was my follow-up question.  
6 Did Citibank ever raise any questions about the --

7 A. No. To the contrary, I think they  
8 were very secure knowing that the money was in a --  
9 a liquid asset.

10 If you also look at the right-hand --  
11 excuse me, the left-hand column, "Fleet margin,  
12 Fleet margin, Fleet margin," I mean, all of these  
13 Fleet, which is now B of A, was exceedingly secure.  
14 They gave us loans supported, collateralized by  
15 Madoff.

16 That's how I understand first --  
17 understood Madoff or got comfortable with Madoff,  
18 because these double-up loans you talk about, it  
19 took me, like, three seconds -- exaggeration -- ten  
20 minutes to negotiate them because B of A was so  
21 comfortable using Madoff.

22 It wasn't a matter of marking to  
23 market. It wasn't a matter of understanding the  
24 collateral. Oh, Madoff. Okay, fine, yeah, put it  
25 in Madoff. It's going to be liquid.

1 Q. And why was BOA so comfortable with  
2 Madoff?

3 A. B of A, I have to -- you have to ask  
4 them. I mean, they had other clients with Madoff.  
5 They had other -- I believe other loans, tri-party  
6 agreement type loans with Madoff.

7 If it was good enough for them, it  
8 was sort of good enough for me.

9 Q. And then last question on this  
10 document --

11 (Comments off the record.)

12 MR. BOHORQUEZ: Why don't we take a  
13 break. We'll change tapes.

14 THE VIDEOGRAPHER: Going off the  
15 record. The time is 2:46. This ends tape number 3.

16 (Brief recess.)

17 THE VIDEOGRAPHER: We are back on the  
18 record. The time is 3:02. This is tape number 4.

19 MR. BOHORQUEZ: This is Exhibit  
20 No. 7.

21 (Exhibit MP-7 marked for  
22 identification.)

23 BY MR. BOHORQUEZ:

24 Q. Actually, I'm going to ask you one  
25 more question on that and then we'll move on.



1                   Did you play any role or do you play  
2 any role in terms of identifying new investment  
3 opportunities for Sterling?

4           A.       No, no. That was done by Saul.

5           Q.       Okay. Anyone -- is there anyone  
6 other than Saul involved in identifying new  
7 investment opportunities for Sterling?

8           A.       Within the firm?

9           Q.       Yes.

10          A.       Well, any partner could -- or  
11 anybody, I guess I should say, including me, if I  
12 had the opportunity, could bring forth an investment  
13 as a -- an idea as a potential investment.

14                   In a sense, Saul brought forth the  
15 idea -- Saul and David brought forth the idea of  
16 creating Sterling Stamos Partners.

17                   So on that level, anybody could bring  
18 that forward. If it was an investment in a specific  
19 fund or a stock, that would be basically Saul's.  
20 Saul -- Saul and -- no, just Saul basically, you  
21 know. Arthur might have an idea, Michael might have  
22 an idea, but it was basically Saul who made the  
23 decision.

24          Q.       Now, in terms of diversifying  
25 Sterling's --

1           A.       Right.

2           Q.       -- non-real estate investments --

3           A.       Right.

4           Q.       -- and creating Sterling Stamos as a  
5 vehicle --

6           A.       Right.

7           Q.       -- as part of that diversification,  
8 was part of that rationale to have less money  
9 invested in Madoff?

10                   MS. SESHENS:  Objection to the form.

11           A.       That was a consequence.  The  
12 rationale was to create a new source of revenue,  
13 both as a limited partner and as a general partner.

14                   The consequence of doing that -- of  
15 doing that was you had less money being diverted --  
16 diverted to Madoff.  It was now going to a Sterling  
17 Stamos fund to start building assets under  
18 management.

19                   We -- "we," the firm, its friends and  
20 family -- were the seed capital of Sterling Stamos  
21 Partners.

22           Q.       Now, when you say that less money was  
23 being invested in -- as a consequence --

24           A.       Correct.

25           Q.       -- of this diversification in

1 creating Sterling Stamos, less money was being  
2 invested in Madoff --

3 A. Right.

4 Q. -- do you mean that money was being  
5 moved from the Madoff investments into Sterling  
6 Stamos?

7 A. No. I said money wasn't being  
8 diverted to Stamos for investment. It was now going  
9 to SSP for investment.

10 Monies were being reinvested in  
11 Madoff if it was necessary. All doubled-up things  
12 went to Madoff.

13 Q. Right.

14 A. Or double-up investments went to  
15 Madoff.

16 You're asking if we took money out of  
17 Madoff to put into SSP? If we saw an opportunity in  
18 SSP, and we had excess funds in Madoff, we might  
19 then say all right, you know, we could have put it  
20 into a new doubled-up account. No. Let's put it  
21 into the Sterling Stamos endowment fund because we  
22 need seed capital for that to get a track record  
23 going so they can then market that fund to other  
24 individuals or companies or endowments or  
25 foundations, whoever was the potential investor.

1                   So, again, we acted as the seed  
2 capital, along with maybe, you know, Peter Stamos to  
3 create a track -- you know, you have to invest money  
4 before you can create a track record. So you invest  
5 the money, a year goes by or six months go by, and  
6 you say, oh, this money is making money. This  
7 invested money is making money.

8                   And, so, they can go out to the  
9 public and say, you know, we have a 15 percent  
10 return on the money in this fund. Would you like to  
11 invest?

12                Q.           And if you wanted to determine what  
13 money was withdrawn from Sterling's Madoff accounts  
14 and then invested in Sterling Stamos, how would you  
15 go about determining that?

16                A.           How would I determine it? I thought  
17 you would already have such information.

18                Q.           What's that?

19                A.           I thought you would already have such  
20 information.

21                Q.           I might, but I'm not answering any  
22 questions today.

23                A.           Okay.

24                Q.           I'm asking you: If you wanted to  
25 know, how would you do it?

1           A.           There's Sterling Stamos, our general  
2 partner investment. We get information from  
3 Sterling Stamos to account for our general  
4 partnership investment. We own now 25 percent of  
5 that.

6                        When it comes to our limited partner  
7 investments, we get K-1s and whatever financial  
8 statements, as any other -- if you invested in  
9 Sterling Stamos, you'd get the exact same  
10 information as I get in Sterling Stamos and as the  
11 firm Sterling -- as the partnership group that may  
12 own an investment in Sterling Stamos will get,  
13 correct.

14           Q.           Okay.

15           A.           It's thoroughly confusing. It took  
16 me quite a while to understand it, a lot of  
17 hand-holding before I understood it completely.

18           Q.           I think you've done a pretty good job  
19 of explaining the overview. I appreciate that.

20           A.           Okay.

21           Q.           Are you aware if there was any  
22 conscious efforts to withdraw money from Madoff and  
23 move it into Sterling Stamos?

24                        MS. SESHENS: Objection to the form.

25           A.           Conscious effort? No. The conscious

1 effort was to build up SSP to a point where it  
2 had to have -- it had substance.

3 It wasn't just, you know, 10 or 15 or  
4 \$20 million under -- assets under management, AUM;  
5 that it had billions of dollars under management.  
6 And we were a real fund, you know, to be reckoned  
7 with.

8 And Sterling Stamos -- Sterling  
9 Stamos, the entity, that job was to market those  
10 funds and to help create a track -- and to create  
11 the track record.

12 So they had all the investment people  
13 and all of the -- you know, the -- the advisors unto  
14 themselves. We -- I say "we," Sterling Equities --  
15 had nothing to do with that from a day-to-day  
16 transaction basis. Although, I had mentioned that  
17 Saul was a member of their board of directors.

18 Q. But Madoff, along with any of the  
19 other sources of liquidity, was one of the areas  
20 from which you would draw funds to build up Sterling  
21 Stamos?

22 MS. SESHENS: Objection to the form.

23 A. As I -- as I said, if there was  
24 excess funds available. And from there, for any  
25 other investment that we had, we would -- we would

1 perhaps put it into SSP.

2 I can't say for certain if we ever  
3 closed an account on purpose at Madoff so we can  
4 transfer those funds dollar for dollar into SSP.

5 Q. And if you don't know, who -- who  
6 would know if the Madoff account was closed for the  
7 purpose of transferring money to Sterling Stamos?

8 A. You can talk to Saul or Arthur. I  
9 would go back and look at the transaction registers  
10 to see if we ever saw such a transaction.

11 But remember, it's a two-step  
12 process. You have to withdraw the funds. You have  
13 to put it into SEF. You have to accumulate various  
14 bits and then put it into SSP.

15 Things happen in between. Partners  
16 pay their bills, their mortgages. I get paid, as an  
17 employee. And, you know -- and, so, it's -- again,  
18 it's a -- it's a fungible dollar. I don't -- can't  
19 say, at least I don't ever remember a dollar from  
20 SSP coming directly and going -- excuse me -- Madoff  
21 and directly going into SSP.

22 How would I do that, know that? I  
23 would go back into the transaction registers and --  
24 and look.

25 Q. And who maintains the transaction

1 look like. We had deals with -- we had loans  
2 outstanding already with Bank of America, so it just  
3 wouldn't have dawned upon me to insist or demand or  
4 ask to go to another bank.

5 Q. Do you know any diligence -- of any  
6 diligence that Bank of America did of Madoff before  
7 entering into any of these double-up loans with  
8 Sterling?

9 A. No. You would have to ask them. I  
10 don't know.

11 Q. Well, did Bank of America ever ask  
12 you questions about Madoff as the quality of the  
13 collateral in the Madoff accounts?

14 A. No. They would get statements.  
15 Remember that we had -- by the time I got to  
16 Sterling Equities in 2003 there were a number of  
17 these doubled-up and collateral-type loans. They  
18 were very familiar with Mr. Madoff. They had other  
19 clients investing with Mr. Madoff. And they got  
20 monthly statements, so they knew what the quality of  
21 the collateral was. It was those, you know, the  
22 stocks or the Treasuries or the Fidelity account.  
23 You know, they were very satisfied. They gave us a  
24 dollar-for-dollar loan for every dollar we invested  
25 with him.



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EXHIBIT A

PAGE	LINE	ORIGINAL	CHANGE	REASON
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EXHIBIT A

PAGE	LINE	ORIGINAL	CHANGE	REASON
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REDACTED

181	4	near an equivalent, cash equivalent, because it was	near equivalent, cash equivalent, because it was	Transcription Error
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REDACTED

186	12	Fleet margin, Fleet margin," I mean, all of these	Fleet margin, Fleet margin," I mean, all of these--	Grammitcal Error
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PAGE	LINE	ORIGINAL	CHANGE	REASON
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Rule 2004 Examination of Mark Peskin

PRIVILEGED CONFIDENTIAL  
ATTORNEY WORK PRODUCT

EXHIBIT A

PAGE	LINE	ORIGINAL	CHANGE	REASON
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REDACTED

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