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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :
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 Plaintiff, :
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 - against - : **___ Civ. ___**
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 COHMAD SECURITIES CORPORATION, :
 MAURICE J. COHN, MARCIA B. COHN, and :
 ROBERT M. JAFFE, :
 Defendants. :
 :
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COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendants Cohmad Securities Corporation (“Cohmad”), Maurice J. Cohn (“Maurice Cohn”), Marcia B. Cohn (“Marcia Cohn”) and Robert M. Jaffe (“Jaffe,” and collectively with Cohmad, Maurice Cohn, and Marcia Cohn, the “Defendants”), alleges:

SUMMARY

1. This case charges the Defendants with knowingly or recklessly participating in Bernard L. Madoff’s Ponzi scheme by raising billions of dollars from hundreds of investors under a shroud of secrecy.

2. For more than two decades, the Defendants enabled Madoff's fraud by helping to conceal that Madoff was, in fact, aggressively marketing his investment product even while he was projecting a false aura of exclusivity and privilege that came to be associated with the opportunity to invest with the great Madoff. Madoff's secret marketing operations were housed within the offices of Bernard L. Madoff Investment Securities Corporation LLC ("BMIS"), under the façade of a separately registered broker-dealer, defendant Cohmad. As reward for their stunning marketing success, Defendants were paid more than \$100 million through Cohmad. In addition, Maurice Cohn and Jaffe also received millions of dollars in direct payments from BMIS.

3. The Defendants were instrumental to the success of Madoff's scheme. They deceived investors by creating the false impression that investors would be admitted into the Madoff investment only as a special favor, and outside the normal retail brokerage work of Cohmad. Defendants specifically targeted affluent but financially unsophisticated investors, who were unlikely to notice unusual aspects of the Madoff investment. Contrary to the illusion they fostered that only the privileged few could invest with Madoff, the Defendants were, in fact, engaged in a well-organized marketing operation and derived virtually all of their revenues from introducing investors to Madoff.

4. Madoff sought to hide all aspects of his investment advisory business from regulators for fear that regulatory scrutiny would expose his massive fraud. To that end, not only did he conceal the existence and scope of BMIS' advisory business from BMIS' filings, but Cohmad and the Cohns facilitated Madoff's effort by making false regulatory filings on Cohmad's behalf that concealed all of Cohmad's extensive dealings with

BMIS' advisory business, and the fact that Cohmad's representatives (while registered as associated with Cohmad) were actually engaging in activity associated with BMIS and acting on BMIS' behalf.

5. Jaffe also facilitated Madoff's scheme by hiding the fact that he worked for Madoff's marketing operation by holding himself out to regulators as being associated with Cohmad and running Cohmad's Boston office. In fact, Madoff paid Jaffe directly and none of the millions of dollars of compensation that Jaffe received from BMIS flowed through Cohmad. Jaffe alone brought over \$1 billion into BMIS.

6. In the two decades that they were raising money for Madoff, the Cohns were aware of highly suspicious facts and took affirmative steps indicating that they knew or recklessly disregarded that Madoff was engaged in a fraud. Among other things:

- Madoff directed the Cohns to turn away any prospective BMIS investor who worked in the financial industry as such investors would ask "too many questions."
- In order to carry out its marketing operations, Cohmad found it necessary to make repeated false filings and false regulatory disclosures to the Commission and other regulators, concealing the existence of any marketing activity – conduct that put the Defendants' licenses, and the individual defendants' livelihoods, at risk.
- Madoff directed Cohmad and the Cohns to maintain a cloud of secrecy about how BMIS was marketed, banning all written marketing materials, cold calls, and emails.
- Notwithstanding Madoff's purported investment prowess, he paid the Defendants extraordinary sums to engage in stealth marketing and bring in billions of dollars under the false illusion that Madoff did not want or need the money.
- BMIS' compensation arrangement with Cohmad involved annual payments calculated as a percentage of investors' principal investment only, irrespective of the purported profits and offset by any withdrawals from the account, suggesting that BMIS was not providing any real returns

to investors' accounts and that an account was worthless once all its principal had been withdrawn.

7. Jaffe also knew or recklessly disregarded facts that indicated Madoff was engaging in securities fraud. Among other red flags:

- Jaffe was privy to BMIS employees' practice of generating falsified confirmations and statements that reflected backdated trades in Jaffe's own personal accounts at BMIS.
- Although Jaffe was registered as associated with Cohmad, Madoff paid compensation to Jaffe directly.
- Jaffe received compensation in the form of higher returns in some of his personal accounts at BMIS than the returns on the accounts of investors he brought into BMIS.

8. By knowingly or recklessly disregarding these red flags, the Defendants participated in Madoff's fraudulent scheme and the other violations alleged in the Complaint.

VIOLATIONS

9. By virtue of the conduct alleged herein,
- a. Defendants directly or indirectly, singly or in concert, have engaged in acts, practices, schemes and courses of business that violated Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)], violated and aided and abetted violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], aided and abetted violations of Section 15(b)(7) of the Exchange Act [15 U.S.C. § 78o(b)(7)] and Rule 15b7-1 thereunder [17 CFR § 240.15b7-1], and aided and abetted violations of Sections 206(1), 206(2) and

206(4) of the Investment Advisers Act of 1940 (the “Advisers Act”) [15 U.S.C. §§ 80b-6(1), (2) and (4)], and Rule 206(4)-3 thereunder [17 C.F.R. § 275.206(4)-3];

- b. Cohmad violated, and Maurice Cohn and Marcia Cohn each aided and abetted violations of, Section 15(b)(1) of the Exchange Act [15 U.S.C. § 78o(b)(1)] and Rule 15b3-1 thereunder [17 C.F.R. § 240.15b3-1];
and
- c. Cohmad violated, and Maurice Cohn, Marcia Cohn and Jaffe each aided and abetted violations of, Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. § 240.17a-3].

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

10. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], seeking to restrain and enjoin permanently the Defendants from engaging in the acts, practices and courses of business alleged herein.

11. In addition to the injunctive relief recited above, the Commission seeks: (i) final judgments ordering Defendants to disgorge their ill-gotten gains with prejudgment interest thereon; (ii) final judgments ordering Defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(d)] and (iii) such other relief as the Court deems just and appropriate.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

13. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391. The Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, or of the mails and wires, in connection with the transactions, acts, practices and courses of business alleged herein. A substantial part of the events comprising Defendants' fraudulent activities giving rise to the Commission's claims occurred in the Southern District of New York, and Defendants maintain their main office in this District.

THE DEFENDANTS

14. **Cohmad** is a New York corporation with its principal place of business at 885 Third Avenue in New York, NY (the "Lipstick Building"), the same address as BMIS. In 1985, Madoff and Maurice Cohn incorporated and registered Cohmad as a broker-dealer with the Commission and the National Association of Securities Dealers ("NASD"). Cohmad is registered with the Commission and is registered with, and a member of, the Financial Industry Regulatory Authority ("FINRA"), the self-regulatory organization that is NASD's successor. Cohmad is owned by Maurice Cohn (48%), Marcia Cohn (25%), Bernard Madoff (15%), Madoff's brother (9%), Maurice Cohn's brother (1%), Robert Jaffe (1%) and another Cohmad employee (1%). Cohmad had some 600 retail brokerage accounts which, for many years, Cohmad cleared through the

broker-dealer Bear Stearns Securities Corp. (“Bear Stearns”), now J.P. Morgan Clearing Corp.

15. **Maurice “Sonny” Cohn**, age 78, resides in Manhasset, New York. He is an owner of Cohmad and serves as its Chairman, Chief Executive officer and principal. He is a former member of the New York Stock Exchange and specialist at the American Stock Exchange. Prior to forming Cohmad in 1985, Cohn was a principal at a brokerage firm named Cohn, Delaire & Kaufman. He is also Madoff’s former neighbor.

16. **Marcia Cohn**, age 49, is the daughter of Maurice Cohn and resides in New York, New York. She is a registered representative of Cohmad and serves as its President, Chief Operating Officer, Chief Compliance Officer and principal. Marcia passed various licensing exams required for securities professionals, including Series 7, 63, 55, 24, and 4, and the Fin-Op exam. Since at least July 1999 to the present, Marcia Cohn has signed all Forms BD and amendments that Cohmad submitted to the Commission, which number approximately 31 filings. She previously worked at another registered broker-dealer in New York and joined Cohmad in 1988. On various occasions, while she was registered with NASD as associated with Cohmad, Marcia Cohn was also registered with NASD as associated with three other registered broker-dealers, none of which were BMIS.

17. **Jaffe**, age 65, resides in Palm Beach, Florida. He is Vice President of Cohmad, a registered representative and he previously headed Cohmad’s Boston office. Jaffe is the son-in-law of one of Madoff’s longtime investors. Jaffe also owns M/A/S Capital. Jaffe previously worked at Cowen & Company in New York as a managing partner. Jaffe passed various licensing exams required for securities professional, such as

the Series 1, 4, 5, 12, 24, and 63. Jaffe asserted the Fifth Amendment privilege and refused to provide answers to the Commission staff regarding his conduct.

RELEVANT INDIVIDUALS AND ENTITIES

18. **Madoff**, age 70, is a resident of New York City and is the sole owner of BMIS. He is also a director and 15% owner of Cohmad. Until December 11, 2008, Madoff, a former chairman of the board of directors of the NASDAQ stock market, oversaw and controlled the investment adviser services at BMIS as well as the overall finances of BMIS. Madoff currently faces civil and criminal charges for his role in a multi-billion dollar Ponzi scheme orchestrated since at least 1991. (S.E.C. v. Bernard L. Madoff and Bernard L. Madoff Investment Securities LLC, S.D.N.Y. 08 CV 10791 (LLS)(“the Civil Action”); United States v. Bernard L. Madoff, S.D.N.Y. 09 Cr. 213 (DC) (“the Criminal Action”)). On February 9, 2009, in the Civil Action, the District Court, with Madoff’s consent, entered a partial judgment in the Commission’s case against Madoff which deems the facts of the complaint as established and cannot be contested by Madoff. On March 12, 2009, Madoff pled guilty to eleven felonies in the Criminal Action and admitted in his allocution to, among other things, committing a Ponzi scheme, securities fraud, investment advisor fraud, and filing false audited financial statements with the Commission on behalf of BMIS. Madoff is currently in custody pending his sentencing, which is scheduled for June 29, 2009.

19. **BMIS**, located in New York City, registered with the Commission as a broker-dealer in 1960 and as an investment adviser in 2006. BMIS occupies floors 17-19 of the Lipstick Building in New York City. BMIS purportedly engaged in three different operations: investment adviser services (housed on the 17th floor), market making

services, and proprietary trading. BMIS reported to the Commission that it had over \$17 billion in assets under management as of January 2008. BMIS is currently under the control of a trustee appointed pursuant to the Securities Investor Protection Act of 1970.

FACTS

A. Madoff Controlled Cohmad And Used That Broker To Defraud Investors.

20. For more than two decades, the Defendants facilitated Madoff's Ponzi-scheme, and enriched themselves, by allowing Cohmad to be used, in effect, as Madoff's in-house marketing arm. Madoff hid his marketing operation in a distinct legal and regulated entity by design: To hide the nature and scope of his advisory business from regulatory scrutiny.

21. Madoff played a shell game with regulators, concealing the existence of his advisory client business and pretending that Cohmad was primarily a retail brokerage operation. He would parry inquiries into the rumored existence of individual accounts at BMIS by pointing to Cohmad as the onsite retail brokerage where individual accounts were held. And, through Maurice Cohn and Marcia Cohn, Madoff ensured that Cohmad's regulatory filings and books and records were scrubbed of any reference to the billions of dollars of assets and the hundreds of accounts that were brought into BMIS by Cohmad representatives, and the over \$100 million in fees that BMIS had compensated Cohmad for those referrals.

1. Cohmad Marketed BMIS by Helping Cultivate the Madoff Mystique.

22. From Cohmad's inception, Madoff arranged for Cohmad to serve as BMIS' in-house marketing arm, luring retail investors into BMIS' fraudulent advisory

scheme. This BMIS marketing business was Cohmad's primary business from which it derived the vast majority of its revenue.

23. Madoff had a clever marketing strategy. He cultivated an aura of success and secrecy surrounding BMIS, projecting to a social network of wealthy friends and investors that he was highly successful and did not need to market or solicit to obtain investments. Madoff played hard-to-get, shunning one-on-one meetings with most individual investors and arbitrarily refusing prospective investors for what appeared to be whimsical or snobbish reasons.

24. By creating an air of prestige and exclusivity, many of BMIS' victims felt privileged to be allowed to invest with Madoff and BMIS and many prospective investors angled for ways to get in.

25. To maintain this image, Madoff could not secure new money by asking for it. Instead, Madoff used Cohmad to subtly market his advisory business.

26. Cohmad's representatives strategically circulated among wealthy individuals in various exclusive milieus – New Jersey golf clubs, Palm Beach Country Club, and the like – and offhandedly mentioned that they were affiliated with Madoff. The representatives projected themselves as individuals who became wealthy through BMIS, had no need to work, and merely frequented country clubs. When prospective investors asked if the representatives could make an introduction to Madoff so they could invest with BMIS, the Cohmad representatives would agree to try to put in a good word with Madoff and see if they could get the investors in. Cohmad and its representatives would then assist and arrange the opening of accounts with BMIS.

27. The incentive for Cohmad representatives was a rich compensation structure. Madoff compensated Cohmad each year (in monthly installments) with a percentage (declining from 1% to .25% over the years) of the original capital investment brought into BMIS' advisory business by Cohmad representatives for as long as the account was open. However, to the extent that any withdrawals were made from the investor's account, the amount of capital subject to the fee calculation was reduced. The vast majority of these payments was passed on to the representatives in quarterly installments.

28. To maintain the aura of wealth and privilege, neither the compensation for Cohmad representatives, nor their marketing function was formally disclosed. Neither BMIS nor any of the Defendants made any systematic written or oral disclosures to any investors brought in to BMIS by Cohmad and its representatives concerning the compensation paid to Cohmad for these referrals. Moreover, neither BMIS nor any of the Defendants disclosed to investors that BMIS had engaged Cohmad to act as a stealth sales force.

29. By 2008, the investors that Cohmad, the Cohns and Jaffe brought into BMIS became a massive portion of Madoff's investors, and ultimately victims. Cohmad, and those associated with Cohmad, such as the Cohns and Jaffe, accounted for over 800 accounts at BMIS. Over the years, these investors invested billions of dollars in principal with BMIS.

2. Cohmad Was An Integrated and Indistinguishable Part of BMIS and of Madoff's Ponzi Scheme.

30. Far from being a distinct operation, Cohmad was intertwined with BMIS' operation and was under its and Madoff's control:

31. **Ownership.** Madoff and his brother own a combined 24% of Cohmad (15% for Madoff, 9% for Peter) and both serve as directors. Even the name, Cohmad, is a contraction of Cohn and Madoff.

32. **Actual Control.** Madoff was considered the "Boss" by Cohmad representatives. Madoff exercised actual control over Cohmad's operations in areas large and small. For example, to avoid regulatory scrutiny into BMIS, in or around 2006, Madoff dictated to Marcia Cohn that Cohmad representatives would no longer be allowed to use email, for anything. In addition, Madoff set the retirement compensation for a departing Cohmad representative and he unilaterally lowered compensation rates and allocations for Cohmad and its representatives as he saw fit. Compliance questions concerning the Cohmad's retail brokerage business were run by BMIS' legal/compliance department. Jaffe, the son-in-law of one of Madoff's largest and earliest investors, was brought in, at Madoff's direction, as a Cohmad representative. Indeed, Jaffe was also given a 1% stake in Cohmad and he headed up Cohmad's one-man Boston office (which Jaffe funded out of his own pocket), despite generating very little revenue for Cohmad. (In addition, Jaffe did not report to Cohmad the massive commissions he earned from Madoff).

33. **Seamless Integration.** Cohmad was organically integrated into BMIS' operations in every way. Cohmad's offices were embedded within BMIS' offices on the 18th and 19th floors of the Lipstick Building and Cohmad representatives sat either on the

BMIS trading desk or in a single office surrounded by other BMIS offices. Cohmad CEO, Maurice Cohn, had his own office at BMIS that was closer to Madoff's office and not even contiguous to the office where the other Cohmad representatives sat. Cohmad's operations were indistinct from BMIS, sharing everything from reception to photocopiers to bathrooms. Even Cohmad's payroll and health benefits plans were integrated with BMIS until approximately 2002 and until approximately that time Cohmad shared email servers with BMIS. Cohmad was even integrated into BMIS' market-making operation, executing trades on the floor of the NYSE (through Bear Stearns) for positions that the BMIS market-making desk wanted to lay-off its book. In addition, during Cohmad's early years, its representatives were even listed on BMIS account opening forms, but were not identified as associated with Cohmad.

34. **Revenue.** Nearly all of Cohmad's revenue came from BMIS in the form of compensation for bringing customers into BMIS (and, in the earlier years, for execution of layoff trades). For the period 1996 through 2008, payments by BMIS to Cohmad total \$98,448,678.84. For each year from 2000 to 2008, Cohmad's yearly revenue from BMIS ranged from \$10.4 million (year 2000) to \$2.6 million (year 2008), and accounted for as much as 91.2% of Cohmad's total revenue (year 2003) and no less than 63.98% of Cohmad's total revenue (year 1999). These numbers do not include the fees that BMIS paid directly to Maurice Cohn and Jaffe. BMIS direct payments to Maurice Cohn for the period 2001 to 2008 total more than \$14 million. When the revenue BMIS paid directly to Maurice Cohn is included in the analysis concerning the years 2000 through 2008, the percentage of Cohmad's income paid by BMIS is considerably higher, ranging in those same years from 79.98% (year 2001) to 92.82%

(year 2003). The vast majority of Cohmad's income came from BMIS and related to commissions and fees paid by BMIS for investors that Cohmad representatives had found and steered to BMIS. A very small portion of that revenue from BMIS came for the lay-off trades that BMIS' market making operations made through Cohmad.

35. **Customer Service.** Cohmad's relationship with investors was more than merely introductory. Even after Cohmad brought customers into BMIS, Cohmad and its representatives maintained relationships with investors. Customers brought into BMIS by Cohmad called Cohmad for all sorts of questions relating to their BMIS accounts such as what the returns were, whether BMIS accounts were "in the market" at a particular time or in treasuries, how to read the complex BMIS statements, or how to convert direct accounts to trust accounts. The Cohns provided investors with answers to these inquiries, even checking with Madoff or employees on BMIS' 17th floor to find out the answers, particularly since the 17th floor employees were not particularly effective at customer service.

36. Accordingly, Cohmad was controlled by and was indistinguishable from BMIS and, having borne a direct role in soliciting victims for the scheme, bears direct culpability for Madoff's unprecedented fraud.

B. Cohmad, Through the Cohns and Jaffe, Deliberately Concealed Its Relationship With BMIS To Avoid Scrutiny of BMIS' Advisory Business.

37. Through its principals, the Defendants willfully enabled the Madoff Ponzi scheme by knowingly or recklessly concealing BMIS' advisory business from regulatory view. Since its inception, Cohmad held itself out in regulatory filings as an introducing retail brokerage operation that cleared through Bear Stearns.

38. Under the Cohns' oversight, Cohmad did not disclose its business arrangement with BMIS or the substantial compensation that Cohmad received for bringing clients into BMIS, despite specific mandatory disclosures calling for such information.

39. For example, in its Forms BD and amendments for the last six years, which were signed by Marcia Cohn, Cohmad made the following false responses:

- Question 7 on the Form BD asks: "Does *applicant* refer or introduce customers to any broker or dealer?" Cohmad answered "Yes," but only disclosed Bear Stearns, its clearing firm for the retail brokerage business and failed to disclose any reference to BMIS, to which it referred over 800 customers.
- Question 10.A. asks "Directly or indirectly, does *applicant* control, is *applicant* controlled by, is *applicant* under *common control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?" Cohmad answered "No," even though Cohmad was under the control of BMIS and both Cohmad and BMIS were under Madoff's common control. And, although the filing did disclose the Madoff was a control person of Cohmad, it did not fairly disclose the BMIS relationship.
- Question 12 asks the filer to identify "Types of Business" engaged in and Cohmad did not identify its primary business of obtaining investors for BMIS. Although the catchall box for "Other" was checked, Cohmad did not disclose its predominant business referring customers to BMIS in response to the question, but instead identified its business as "Development of Trading, Hedging and Investment Strategies."

40. Since at least 1999, Cohmad filed 31 amendments to the Form BD. None of these filings disclosed the facts identified above, including the enormous number of accounts that Defendants had referred to BMIS.

41. Although Cohmad's Form BD filings identified Madoff as a control person of Cohmad, they failed to accurately identify the nature and scope of the business arrangement between Cohmad and BMIS. By focusing attention on its 600-account retail brokerage operation, Cohmad and the Cohns deflected regulatory scrutiny from their

referral business and shielded their main business of bringing investors into BMIS from regulators' oversight.

42. Cohmad also concealed the BMIS referral business from its financial statements filed with the Commission. For example, in its 2007 Annual Audit Report that Cohmad filed with the Commission, Cohmad's fees from BMIS were simply classified as "brokerage service fees." This left the impression that the fees were for executing BMIS' market-making lay-off business – a business that had become minimal by 2007 – and concealed the true nature of the fees as being for referring customers to Madoff's advisory business. No reference was made to referral of accounts to BMIS and, to the contrary, this disclosure creates the impression that Cohmad was being compensated for executing trades for BMIS.

43. Similarly, in Cohmad's internal books and records, subject to regulatory review, the referral fees were classified as "Fees for Account Supervision" and its quarterly FOCUS reports, which were signed by Marcia Cohn and filed with FINRA, identified these as "Fees for account supervision, investment advisory and administrative services." Again, these statements failed to disclose Cohmad's marketing activities which involved finding investors for BMIS and obtaining commissions and moneys from BMIS for that activity. These incorrect records and disclosures are consistent with Madoff's use of Cohmad to stealthily market the Cohmad name but hide that marketing effort from regulatory scrutiny.

44. In addition to the misleading filings, Cohmad also maintained no books and records reflecting their BMIS solicitation business. Other than an ongoing tally of the amounts invested (less withdrawals of principal), there are no meaningful records at

Cohmad reflecting conversations, account openings, suitability analysis or anything else concerning marketing BMIS' advisory business. This failure to maintain records regarding the business relationship with BMIS was done during both Cohns' longtime supervision of Cohmad, and in the most recent decade, while Marcia Cohn was chief compliance officer for Cohmad. No records of client solicitations relating to the BMIS were maintained. Nor did Maurice Cohn maintain records to track the amount of funds he solicited for BMIS.

45. Finally, Jaffe and the Cohns each knowingly allowed themselves to be held out in regulatory filings with FINRA and its predecessor, NASD, as being registered and associated with Cohmad. In fact, Jaffe and the Cohns engaged in activity, if not their prime activity, that rendered them associated persons of BMIS. Cohmad, Jaffe and the Cohns each knowingly allowed BMIS to fail to register the Cohns, Jaffe and other Cohmad representatives as being associated with BMIS.

46. Through false filings and inadequate books and records, Madoff and the Defendants had succeeded in concealing BMIS' advisory business and its relationship with Cohmad from the various regulators.

47. Through the Cohns and Jaffe, Cohmad was, in effect, part of Madoff's ongoing shell game with regulators:

- To the regulator looking at BMIS, Madoff could deny the existence of individual accounts and claim that the only individual accounts were at Cohmad, an entity in which Madoff had an ownership interest.
- To the regulator looking at Cohmad, only the 600 or so retail brokerage accounts at Bear Stearns were apparent. Any indication of the referral of customers to BMIS' Ponzi-infested 17th floor was concealed.
- To the individual solicited by a specific Cohmad representative looking to conduct due diligence, the individual was assured that the representative was properly registered and in good standing . . . with Cohmad. Since the early

1990s, Madoff and the Cohns were careful to avoid providing written documents from Cohmad concerning BMIS to customers. This obscured from any third party consulted as part of the due diligence that BMIS' advisory business was involved, while assuring them that a properly licensed registered representative was engaged in the solicitation.

48. Madoff communicated to the Defendants that he would not accept investments from anyone who worked in the finance or banking industry. Madoff communicated his concern to Cohmad and the Cohns that sophisticated investors would ask "too many questions." Indeed, the Cohns understood that the BMIS advisory business was not something to be discussed openly.

49. Thus, by knowingly or recklessly hiding Cohmad's and BMIS' true relationship from regulators and anyone else who might ask questions or engage in scrutiny, the Cohns, through Cohmad, further enabled Madoff's fraud by helping to conceal the workings of BMIS' phantom advisory business from any meaningful inspection or examination.

C. The Cohns Themselves Solicited Investors For BMIS While Knowing Or Recklessly Disregarding Facts That Indicated Madoff Was Engaging in Fraud.

50. The Cohns each brought in investors to BMIS while knowing, or recklessly disregarding, facts indicating BMIS and Madoff were engaged in securities fraud.

51. In the 1990s, Maurice Cohn brought investors into retail accounts at BMIS, in which investors were told that Madoff would implement his investment strategy in undertaking securities transactions. Overall, Maurice Cohn brought hundreds of investors into BMIS, for which he received commissions directly from BMIS.

52. Marcia Cohen brought in at least 40 investors to BMIS who opened retail accounts at BMIS and were told that Madoff would implement his investment strategy involving securities transactions.

53. Maurice Cohn and Marcia Cohn each actively brought in investors for BMIS while each knew, or recklessly disregarded, facts indicating that Madoff was conducting a securities fraud:

- Madoff directed the Cohns to turn away any prospective BMIS investor who worked in the financial industry as such investors would ask “too many questions.”
- Madoff directed Cohmad and the Cohns to maintain a cloud of secrecy about how BMIS was marketed, banning all written marketing materials, cold calls, and emails.
- Madoff was eager to secure new investors and to pay handsomely for them, while projecting an image of exclusivity and indifference to new money.
- Madoff’s insisted on keeping the existence of his multi-billion dollar advisory business concealed from regulators and market participants. For example, the Cohns were aware that Madoff avoided registration as an investment advisor for decades and Madoff categorically banned Cohmad representatives from using emails.
- The Cohns willfully caused Cohmad to maintain materially false Forms BD for more than two decades that concealed the existence of the Cohmad’s predominant source of business, the referral of accounts to BMIS. In other words, to continue working for Madoff, the Cohns were willing to put their securities licenses at risk.

54. The structure of the compensation program that Cohmad had with BMIS was itself inherently suspicious.

55. For most of the Relevant Period, Cohmad’s fee was calculated annually and paid in monthly installments. This fee declined over time from 1% of funds secured by Cohmad to .25%. The percentage was calculated based on the cumulative amount of funds that Cohmad representatives (except for Jaffe) had brought into BMIS, not BMIS assets under management for those accounts. Cohmad received no credit for any

purported gains or profits earned on those funds. Moreover, if any portion of the original “cost basis” of funds was withdrawn by clients, Cohmad no longer received commissions on those funds.

56. Cohmad maintained a database tracking the net capital accounts for investors brought into BMIS by Cohmad representatives. The returns that Madoff provided to those investors were not included in the database. For example, if a client placed \$10,000 with BMIS and it grew to \$100,000 through the supposed management of BMIS, and the client withdrew \$15,000, Cohmad no longer received any payments on the funds despite the \$85,000 that remained in the customer accounts. More significantly, on Cohmad’s internal records and database, the above scenario was designated as a negative \$5,000 number (meaning \$5,000 more was withdrawn than placed into the account.) These facts suggested that profits generated by Madoff were fictitious. Ponzi schemes require a net inflow of funds into the scheme and once the amount withdrawn by an account exceeds the amount deposited, the account is a net liability for the Ponzi scheme and of no value. Accordingly, Madoff ceased making payments, and the Cohns, Cohmad and its representatives accepted this arrangement year after year.

57. Indeed, this compensation arrangement provided Cohmad and the Cohns with incentives to discourage investors from withdrawing any funds that might exceed the amount of the individual investments. This compensation to Cohmad was almost entirely passed onto the Cohmad representatives. Beginning in 2002, Madoff changed this arrangement for the accounts brought in by Maurice Cohn and began paying him a flat fee of \$2 million per year.

D. Jaffe Solicited Investors For BMIS While Knowing Or Recklessly Disregarding Facts That Indicated Madoff Was Engaging in Fraud

58. Jaffe brought investors in to BMIS while knowing or disregarding facts indicating BMIS and Madoff were engaged in securities fraud. Jaffe participated in hiding from investors and the regulators that he was part of Madoff's marketing team and responsible for bringing in over \$1 billion into BMIS.

59. From at least 1989 through 2008, Jaffe brought over 150 accounts into BMIS. Jaffe operated principally in two locations. First, Jaffe found investors while operating Cohmad's Boston office. Second, Jaffe traveled to South Florida and networked with investors in the tony Palm Beach area. Jaffe, who projected an air of wealth and success, found many investors from among the Palm Beach society and retiree community.

60. BMIS directly compensated Jaffe for the numerous investors he brought to BMIS. Unlike the other Cohmad representatives, Jaffe's compensation did not come via Cohmad. Instead, Jaffe received compensation directly from BMIS, through his personal BMIS accounts. Through these accounts, BMIS provided Jaffe with outsized returns: Jaffe received annual returns of up to 46% while the investors that Jaffe brought into BMIS received annual returns of only 12-18% percent. Based on these outsized returns, Jaffe made large withdrawals from his BMIS accounts, totaling at least \$150 million between 1996 and 2008.

61. In addition to the amount of the returns in Jaffe's accounts, Jaffe also knew or recklessly disregarded that Madoff generated his outsized returns by using fictitious trades.

62. Jaffe frequently made specific requests to BMIS seeking a specific dollar amount of gains for a given period. Some of these were requests for specific dollar amounts of “long term gains” on specific days. A BMIS employee would then insert a backdated trade going back days, weeks or even months that afforded Jaffe’s account that particular gain and then mailed confirmations and account statements to Jaffe reflecting those trades. This was a highly unusual arrangement, particularly given that the instructions requested specific dollar amounts and were not for the sale of any particular securities, but were followed by confirmations reflecting trades that antedated the requests.

63. As a result of this practice, Jaffe knew or recklessly disregarded that the trades entered by BMIS in his accounts were fictitious. Despite his awareness that BMIS was engaging in fictitious trading in his accounts (on a backward looking basis) and falsifying confirmations and account statements, Jaffe continued to raise money for BMIS and did not disclose this ongoing red flag to investors. When asked about this during testimony before the Commission staff, Jaffe asserted his Fifth Amendment privilege.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a)(1) of the Securities Act (Against all Defendants) (Antifraud violations)

64. Paragraphs 1 through 63 are realleged and incorporated by reference as if set forth fully herein.

65. From at least 1999 through December 11, 2008, the Defendants, in the offer and sale of securities, by the use of the means and instruments of transportation and

communication in interstate commerce or by the use of the mails and/or wires, directly and indirectly, have employed devices, schemes and artifices to defraud.

66. The Defendants knew or were reckless in not knowing of the activities described above.

67. By reason of the activities herein described, the Defendants have violated Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

SECOND CLAIM FOR RELIEF

Violations of Section 17(a)(2) and 17(a)(3) of the Securities Act (Against all Defendants) (Antifraud violations)

68. Paragraphs 1 through 63 are realleged and incorporated by reference as if set forth fully herein.

69. From at least 1999 through December 11, 2008, the Defendants, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce or by the use of the mails and/or wires, directly and indirectly, have obtained money and property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and have engaged in transactions, practices or courses of business which have operated as a fraud and deceit upon investors.

70. The Defendants knew, were reckless in not knowing, or should have known of the activities described above.

71. By reason of the activities herein described, the Defendants have violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(2) and §77q(a)(3)].

THIRD CLAIM FOR RELIEF

Violations of and Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5

(Against all Defendants)

(Antifraud violations)

72. Paragraphs 1 through 63 are realleged and incorporated by reference as if set forth fully herein.

73. From at least 1999 through December 11, 2008, the Defendants, in connection with the purchase and sale of securities, directly and indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails and/or wires, have employed devices, schemes and artifices to defraud; have made untrue statements of material fact and have omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and have engaged in acts, practices and courses of business which operated as a fraud and deceit upon investors.

74. By reason of the activities herein described, the Defendants have violated Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

75. In addition, from at least 1999 through December 11, 2008, Madoff and BMIS, in connection with the purchase and sale of securities, directly and indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails and/or wires, have employed devices, schemes and artifices to defraud; have made untrue

statements of material fact and have omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and have engaged in acts, practices and courses of business which operated as a fraud and deceit upon investors.

76. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Defendants have aided and abetted Madoff's and BMIS' violations of Section 10(b) of the Exchange Act [15 U.S.C. 5 78j(b)] and Rule 10b-5(a), (b) and (c) promulgated thereunder [17 C.F.R. 5240.10b-5(a), (b) and (c)]. Specifically, Defendants knowingly provided substantial assistance to Madoff and BMIS in committing such violations.

FOURTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Sections 206(1) and 206(2) of the Advisers Act
(Against all Defendants)
(Fraud upon Advisory Clients and Breach of Fiduciary Duty
by Investment Adviser)

77. Paragraphs 1 through 63 are realleged and incorporated by reference as if set forth fully herein.

78. Madoff and BMIS at all relevant times were investment advisers within the meaning of Section 201(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

79. Madoff and BMIS directly or indirectly, singly or in concert, knowingly or recklessly, through the use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. §80b-2(11)]: (a) have employed devices, schemes, and artifices to defraud any client or prospective client; or (b) have engaged in acts, practices,

or courses of business which operate as a fraud or deceit upon any client or prospective client.

80. As described in the paragraphs above, Madoff and BMIS violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

81. By reason of the activities described herein, and pursuant to Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], Defendants have aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]. Specifically, Defendants knowingly provided substantial assistance to Madoff and BMIS in committing such violations.

FIFTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 206(4) and of the Advisers Act and Rule 206(4)-3 thereunder

(Against all Defendants)

(Failing to Disclose Compensation Arrangement between Solicitor and Investment Adviser)

82. Paragraphs 1 through 63 are realleged and incorporated by reference as if set forth fully herein.

83. BMIS at all relevant times was an investment adviser within the meaning of Section 201(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

84. Rule 206(4)-3, pursuant to Section 206(4) of the Advisers Act, restricts an investment adviser's ability to pay referral fees to solicitors, and if certain thresholds are met, the solicitor is required "at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's [brochure] and a separate written disclosure document described in paragraph (b) of [Rule 206(4)-3]." Paragraph (b) of Rule 206(4)

requires the additional document to include:

- (1) The name of the solicitor;
- (2) The name of the investment adviser;
- (3) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;
- (4) A statement that the solicitor will be compensated for his solicitation services by the investment adviser;
- (5) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and
- (6) The amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

85. Rule 206(4)-3 applies to investment advisers that are registered or required to be registered. In addition, a solicitor is not required to provide the separate disclosure document if: (a) the solicitor is controlled by the adviser, and (b) that fact is disclosed to the prospective advisory client at the time of the solicitation or referral.

86. BMIS did not disclose to investors that various solicitors, including Cohmad, Maurice Cohn, Marcia Cohn and Jaffe, were controlled by BMIS. Neither BMIS, nor its solicitors, provided investors with the written disclosures required by Rule 206(4)-3.

87. As described in the paragraphs above, BMIS violated Section 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(4)] and Rule 206(4)-3 [75 C.F.R. § 275.206(4)-3].

88. Cohmad, Maurice Cohn, Marcia Cohn, Jaffe and other Cohmad representatives solicited clients on behalf of BMIS while taking compensation from BMIS for such activity and aware that BMIS was an investment adviser. Cohmad,

Maurice Cohn, Marcia Cohn, Jaffe and other Cohmad representatives knowingly did not provide any written disclosures to investors they solicited on behalf of BMIS.

89. Cohmad, Maurice Cohn, Marcia Cohn, Jaffe thus knowingly provided substantial assistance to the violations of Section 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(4)] and Rule 206(4)-3 [75 C.F.R. § 275.206(4)-3], by BMIS.

90. By reason of the foregoing, Cohmad, Maurice Cohn, Marcia Cohn, Jaffe aided and abetted the violations of Section 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(4)] and Rule 206(4)-3 [75 C.F.R. § 275.206(4)-3].

SIXTH CLAIM FOR RELIEF

Violations of and Aiding and Abetting Violations of Section 15(b)(1) of the Exchange Act and Rule 15b-3 (Against Cohmad, Maurice Cohn and Marcia Cohn) (False Forms BD filed by a Broker-Dealer)

91. Paragraphs 1 through 63 are realleged and incorporated by reference as if set forth fully herein.

92. Cohmad is a broker within the meaning of Section 3(a)(4) of the Exchange Act [15. U.S.C. §78c(a)(4)].

93. Cohmad filed Forms BD and amendments with the Commission which failed to disclose that (1) Cohmad was referring and introducing customers to BMIS (question 7); (2) BMIS, another registered broker-dealer, was under the common control with Cohmad (question 10.A.); and (3) Cohmad was in the business of finding investors for BMIS' advisory business and earning fees on such referrals (question 12.z.).

94. By reason of the foregoing, Cohmad violated Section 15(b)(1) of the Exchange Act, 15 U.S.C. §78o(b)(1), and Rule 15b3-1 thereunder, 17 C.F.R. §240.15b3-1.

95. Maurice Cohn, a principal of Cohmad, and Marcia Cohn, filed the Forms BD and amendments with the Commission which failed to disclose that (1) Cohmad was referring and introducing customers to BMIS (question 7); (2) BMIS, another registered broker-dealer, was under the common control with Cohmad (question 10.A.); and (3) Cohmad was in the business of finding investors for BMIS' advisory business and earning fees on such referrals (question 12.z.). Accordingly, Maurice Cohn and Marcia Cohn filed misleading forms with the Commission on behalf of Cohmad.

96. Maurice Cohn and Marcia Cohn thus knowingly provided substantial assistance to the violations of Section 15(b)(1) of the Exchange Act, 15. U.S.C. §78o(b)(1), and Rule 15b3-1 thereunder, 17 C.F.R. §240.15b3-1, by BMIS.

97. By reason of the foregoing, Maurice Cohn and Marcia Cohn aided and abetted the violations of Section 15(b)(1) of the Exchange Act [15§ U.S.C. §78o(b)(1)], and Rule 15b3-1 thereunder, [17 C.F.R. §240.15b3-1].

SEVENTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 (Against all Defendants) (Failing to Register as Associated with a Broker-Dealer)

98. Paragraphs 1 through 65 are realleged and incorporated by reference as if set forth fully herein.

99. BMIS is a broker within the meaning of Section 3(a)(4) of the Exchange Act [15. U.S.C. §78c(a)(4)].

100. BMIS failed to register with the NASD and its successor, FINRA, various representatives who were associated with BMIS, including Maurice Cohn, Marcia Cohn, Jaffe and other Cohmad representatives.

101. By reason of the foregoing, BMIS violated Section 15(b)(7) of the Exchange Act [15. U.S.C. §78o(b)(7)], and Rule 15b7-1 thereunder, [17 C.F.R. §240.15b7-1].

102. Maurice Cohn, Marcia Cohn, Jaffe and other Cohmad representatives associated themselves with BMIS while Cohmad, Maurice Cohn, Marcia Cohn, and Jaffe were each aware that BMIS did not register them, and was required to register them, with the NASD and its successor, FINRA.

103. Cohmad, Maurice Cohn, Marcia Cohn, and Jaffe thus knowingly provided substantial assistance to the violations of Section 15(b)(7) of the Exchange Act [15. U.S.C. §78o(b)(7)], and Rule 15b7-1 thereunder, [17 C.F.R. §240.15b7-1], by BMIS.

104. By reason of the foregoing, Cohmad, Maurice Cohn, Marcia Cohn, and Jaffe aided and abetted the violations of Section 15(b)(7) of the Exchange Act [15. U.S.C. §78o(b)(7)], and Rule 15b7-1 thereunder, [17 C.F.R. §240.15b7-1].

EIGHTH CLAIM FOR RELIEF

**Violations of and Aiding and Abetting Violations
of Section 17(a) of the Exchange Act and
Rule 17a-3 thereunder
(Against all Defendants)
(Inaccurate Books and Records by a Broker-Dealer)**

105. Paragraphs 1 through 65 are realleged and incorporated by reference as if set forth fully herein.

106. As a registered broker-dealer, Cohmad was required to make and keep certain books and records current and accurate pursuant to Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. § 240.17a-3].

107. As set forth above, Cohmad failed to make and keep certain books and records current and accurate. Cohmad, among other things, failed to record in its blotters, ledgers, ledger accounts, and other records, commissions and other compensation that Maurice Cohn and Jaffe received from BMIS relating to obtaining investors for BMIS and overseeing their accounts.

108. As a result, Cohmad violated Section 17(a) of the Exchange Act and Rule 17a-3 promulgated thereunder [15 U.S.C. § 78q(a) and 17 C.F.R. §240.17a-3].

109. Maurice Cohn and Marcia Cohn knew that Maurice Cohn regularly received commissions and compensation directly from BMIS which was not recorded in Cohmad's books and records. The Cohns continued to allow Maurice Cohn to receive such commissions and compensation without recording them on Cohmad's books and records.

110. Jaffe knew that he regularly received commissions and compensation from BMIS which he did not report to Cohmad and Cohmad did not record in its books and records.

111. By reason of the foregoing, Maurice Cohn, Marcia Cohn and Jaffe aided and abetted the violations of Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. § 240.17a-3].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court grant the following relief:

I.

Enter judgments in favor of the Commission finding that the Defendants each violated the securities laws and rules promulgated thereunder as alleged herein;

II.

Final Judgments permanently restraining and enjoining the Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing future violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

III.

Final Judgments permanently restraining and enjoining the Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

IV.

Final Judgments permanently restraining and enjoining the Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2) and (4)] and Rule 206(4)-3 thereunder [17 C.F.R. § 275.206(4)-3].

V.

Final Judgments permanently restraining and enjoining the Defendants Cohmad, Maurice Cohn and Marcia Cohn, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Section 15(b)(1) of the Exchange Act [15. U.S.C. §78o(b)(1)], and Rule 15b3-1 thereunder [17 C.F.R. §240.15b3-1].

VI.

Final Judgments permanently restraining and enjoining the Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Section 15(b)(7) of the Exchange Act [15. U.S.C. §78o(b)(7)], and Rule 15b7-1 thereunder [17 C.F.R. §240.15b7-1].

VII.

Final Judgments permanently restraining and enjoining the Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing or aiding and abetting future violations of Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and Rule 17a-3 thereunder [17 C.F.R. § 240.17a-3]

VIII.

An order directing the Defendants to disgorge their ill-gotten gains, plus prejudgment interest thereon.

IX.

Final Judgments directing the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9].

X.

Granting such other and further relief as to this Court seems just and proper.

Dated: New York,
New York
June 22, 2009

SECURITIES AND EXCHANGE COMMISSION

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