

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - x

UNITED STATES OF AMERICA :
 : INFORMATION
 -v- :
 : 09 Cr.
FRANK DIPASCALI, JR., :
 :
 Defendant. :
- - - - - x

COUNT ONE

(Conspiracy to Commit Securities Fraud, Investment Adviser Fraud,
Falsify Books and Records of a Broker-Dealer, Falsify Books and
Records of an Investment Adviser, Mail Fraud, Wire Fraud, and
International Money Laundering)

The United States Attorney charges:

Relevant Persons and Entities

1. At all times relevant to this Information, Bernard L. Madoff Investment Securities LLC, and its predecessor, Bernard L. Madoff Investment Securities (collectively and separately, "BLMIS"), had its principal place of business in New York, New York, most recently at 885 Third Avenue, New York, New York. BLMIS was a broker-dealer that engaged in three principal types of business: market making; proprietary trading; and investment advisory services ("IA"). BLMIS was registered with the United States Securities and Exchange Commission ("SEC") as a broker-dealer and also, on or about August 25, 2006, registered with the SEC as an investment adviser.

2. At all times relevant to this Information, Madoff Securities International Ltd. ("MSIL") was a corporation

incorporated in the United Kingdom. MSIL was an affiliate of BLMIS that engaged principally in proprietary trading.

3. Bernard L. Madoff ("Madoff") was the founder of BLMIS, and served as its sole member and principal. In that capacity, Madoff controlled the business activities of BLMIS. Madoff owned the majority of the voting shares of MSIL, and served as the Chairman of MSIL's Board of Directors. Madoff also served on the Board of Directors of the National Association of Securities Dealers Automated Quotations ("NASDAQ"), and for a period served as the non-executive Chairman of NASDAQ. On March 12, 2009, in connection with the execution of a massive Ponzi scheme through BLMIS, Madoff pleaded guilty to securities fraud, investment adviser fraud, mail fraud, wire fraud, two counts of international money laundering, money laundering, false statements, perjury, false filings with the SEC, and theft from an employee benefit plan.

4. FRANK DIPASCALI, JR., the defendant, was employed at BLMIS between on or about September 11, 1975 and on or about December 11, 2008, the day that Madoff was arrested. During his employment at BLMIS, DIPASCALI had a variety of duties and responsibilities. By the early 1990s, DIPASCALI was one of the BLMIS employees responsible for managing the vast majority of BLMIS's IA accounts into which thousands of BLMIS clients invested, and eventually lost, billions of dollars. Madoff,

DIPASCALI, and other co-conspirators were responsible for, among other things: receiving funds sent to BLMIS by clients of the investment advisory business (the "IA Clients") for investment; causing the transfer of IA Clients' funds between and among various BLMIS bank accounts; handling requests for redemptions sent to BLMIS by IA Clients; answering IA Clients' questions about their purported investments; and developing the BLMIS computer and other systems that were used to give the false appearance to clients, regulators and others, that client funds were being invested as promised when, in fact, they were not.

The Scheme To Defraud

5. From at least as early as the 1980s through on or about December 11, 2008, Madoff, FRANK DIPASCALI, JR., the defendant, and other co-conspirators perpetrated a scheme to defraud the IA Clients by accepting billions of dollars of IA Clients' funds under false pretenses, failing to invest the IA Clients' funds as promised, creating and disseminating false and fraudulent documents to IA Clients purporting to show that their funds had been invested, and lying to the SEC and an accounting firm to conceal the fraudulent scheme.

6. To execute the scheme, Madoff solicited, and caused others to solicit, prospective clients to open trading accounts with BLMIS, based upon, among other things, a promise to use investor funds to purchase shares of common stock, options,

other securities, and financial instruments, and representations that he would achieve high rates of return for clients, with limited risk. In truth and in fact, as FRANK DIPASCALI, JR., the defendant, well knew, these representations were false. Contrary to representations that DIPASCALI and other co-conspirators caused to be made over the course of the scheme on millions of pages of account statements and other documents sent to IA Clients through the United States Postal Service, Madoff, DIPASCALI, and other co-conspirators knew that the IA Clients' funds were not being invested in securities as promised. Moreover, Madoff, DIPASCALI, and other co-conspirators misappropriated IA Clients' funds and converted those funds to their own use and the use of others.

7. In connection with this scheme, FRANK DIPASCALI, JR., the defendant, knew that BLMIS had accepted billions of dollars of IA Clients' funds, cumulatively, from individual investors, charitable organizations, trusts, pension funds, and hedge funds, among others, and had established on their behalf thousands of accounts at BLMIS. DIPASCALI further knew that those funds were obtained, in substantial part, through interstate wire transfers from financial institutions located outside New York State and through mailings delivered by the United States Postal Service.

The "Split Strike" Strategy

8. Under the direction of Madoff, FRANK DIPASCALI, JR., the defendant, helped to develop a purported investment strategy, referred to as a "split strike conversion" ("Split Strike") strategy, that Madoff used to market the IA business to IA Clients and prospective IA Clients beginning in or about the early 1990s. Current and prospective IA Clients were promised that: (a) their funds would be invested in a basket of approximately 35-50 common stocks within the Standard & Poor's 100 Index (the "S&P 100"), a collection of the 100 largest publicly traded companies in terms of their market capitalization; (b) that basket of stocks would closely mimic the price movements of the S&P 100; (c) the investments would be hedged by using IA Clients' funds to buy and sell option contracts related to those stocks, thereby limiting potential losses caused by unpredictable changes in stock prices; (d) Madoff would opportunistically time the entry and exit from the strategy; and (e) when the IA Clients' funds were not invested in the basket of stocks and options described above, those funds would be invested in money market funds and United States Government-issued securities such as United States Treasury bills.

9. In total, thousands of IA Clients, with billions of dollars of cumulative investments, were told by Madoff, FRANK

DIPASCALI, JR., the defendant, and other co-conspirators, that their funds were invested with BLMIS using the Split Strike strategy. (These clients are herein referred to as, collectively, the "Split Strike Clients".)

10. Madoff, FRANK DIPASCALI, JR., the defendant, and other co-conspirators knew that the Split Strike strategy was a fiction in that the Split Strike Clients' funds were not invested in the securities recorded on those clients' account statements. The reported performance of the Split Strike strategy was fabricated by Madoff, DIPASCALI and other co-conspirators through a process in which transactions were "executed" only on paper, based on historically reported prices of securities, for the purpose of producing and sending to Split Strike Clients documents that falsely made it appear that BLMIS had achieved the promised "returns" of approximately 10 to 17 percent per year.

11. On a regular basis, Madoff provided guidance to FRANK DIPASCALI, JR., the defendant, and, through DIPASCALI, to other co-conspirators, about the gains or losses that Madoff wanted to be reflected in the account statements of the Split Strike Clients. Based on that guidance, DIPASCALI and other co-conspirators prepared model baskets of S&P 100 stocks based on historical market prices and tracked how those hypothetical baskets would have performed in the actual marketplace to determine whether and when to "enter the market." Whenever

Madoff informed DIPASCALI that he had decided to "enter the market," DIPASCALI and other co-conspirators caused BLMIS computer operators to enter the data related to the chosen basket of securities into the computer that maintained the books and records of the IA business. Madoff, DIPASCALI, and other co-conspirators used computer programs to allocate multiples of the chosen basket to Split Strike Clients on a pro rata basis, based on each such client's purported account balance. When Madoff made a final decision to "enter the market," DIPASCALI and other co-conspirators would cause the computer to produce tens of thousands of false documents that purported to confirm the purchases of securities that in fact had not been purchased.

12. The purported trades by which BLMIS supposedly "entered the market" were sometimes priced using data from market activity that occurred one or more days prior to the date on which the decision to "enter the market" was finalized. Because none of the "trades" actually occurred, Madoff, FRANK DIPASCALI, JR., the defendant, and other co-conspirators relied on historical price and trading volume data obtained from published sources of market information. With the benefit of hindsight, Madoff and DIPASCALI chose the prices at which securities purportedly were purchased in light of Madoff's objectives. In doing so, Madoff, DIPASCALI and other co-conspirators attempted to ensure that: (a) the trade confirmation slips sent to Split

Strike Clients reflected prices that fell within the range of prices at which each such security in fact had traded on the pertinent day; and (b) there had been sufficient actual trading volume in the relevant securities so that no client or regulator who came into possession of the Split Strike Clients' confirmation slips or account statements would have reason to question the reported trades.

13. A similar process to that described in paragraphs 11 and 12, above, was used in "exiting the market" by "selling out" of the purported stock and option positions and "buying" United States Treasury bills and shares in a money market fund with the "proceeds" of those purported sales. With the benefit of hindsight, Madoff and FRANK DIPASCALI, JR., the defendant, evaluated whether and when to "sell out" of the securities positions that previously had been reported to Split Strike Clients. After such decisions were made, DIPASCALI and other co-conspirators caused BLMIS computer operators to input data that generated tens of thousands of false confirmations of the purported transactions, which were subsequently printed and sent to Split Strike Clients through the United States mails.

14. On a monthly basis, Madoff, FRANK DIPASCALI, JR., the defendant, and other co-conspirators oversaw the production and mailing of thousands of pages of account statements to Split Strike Clients. Those documents falsely reflected securities

transactions that had not been executed and securities positions that in fact did not exist.

15. In practice, the growth in account values reported on the Split Strike Clients' account statements generally approximated the annualized rates of return that had been targeted by Madoff. As directed by Madoff, FRANK DIPASCALI, JR., the defendant, and other co-conspirators routinely added additional fictitious options "trades" to certain Split Strike Client accounts for the purpose of making it appear that those accounts, among other things, had achieved their respective targeted annual rates of return.

Defrauding The "Non-Split Strike Clients"

16. At all times relevant to this Information, BLMIS had a number of IA Clients other than Split Strike Clients (the "Non-Split Strike Clients"). The Non-Split Strike Clients were promised that their investment funds would be used to buy and sell securities in strategies that would realize annual returns in varying amounts up to at least approximately 53 percent per year.

17. Beginning in or about the 1990s, FRANK DIPASCALI, JR., the defendant, assisted Madoff and other co-conspirators in their efforts to make certain Non-Split Strike Clients believe that their investments with BLMIS had generated the returns they

had been promised by Madoff when, in fact, their funds had not been invested in securities at all.

18. At various times, but particularly in December of each year, at Madoff's direction, FRANK DIPASCALI, JR., the defendant, and other co-conspirators reviewed BLMIS reports comparing year-to-date "returns" with Non-Split Strike Clients' expected returns on an account-by-account basis. When there were shortfalls between the expected returns and those that had been reported to the clients, DIPASCALI provided information to other co-conspirators about hypothetically profitable options and other trades and adjustments. The information provided by DIPASCALI was routinely incorporated as fictitious trades and adjustments in certain of the Non-Split Strike Clients' accounts at or near the year-end to ensure that the annual returns reported to the Non-Split Strike Clients appeared to meet or exceed their expected returns.

19. Some of the Non-Split Strike Clients were provided account statements that showed purported investments in United States Treasury bills for nearly the entire calendar year. At Madoff's direction, FRANK DIPASCALI, JR., the defendant, and other co-conspirators caused fictitious options transactions that showed purported large gains to appear on those clients' statements in December, thereby creating the illusion that the accounts had met or exceeded their expected annual returns.

Deceiving The SEC And A European Accounting Firm

20. From in or about 2004, through on or about December 11, 2008, at Madoff's direction, FRANK DIPASCALI, JR., the defendant, and other co-conspirators deceived both the SEC and a European accounting firm (the "European Accounting Firm") that reviewed BLMIS's operations on behalf of certain European IA Clients, about the true nature and scope of the IA business. Beginning in at least the early 1990s, DIPASCALI knew that none of the books and records generated in the ordinary course of the IA business was accurate, because none of the purported purchases and sales of securities reflected on those documents actually occurred. When the SEC and the European Accounting Firm reviewed the operations of BLMIS, including its IA business, Madoff, DIPASCALI, and other co-conspirators attempted to prevent them from uncovering the fraudulent scheme. Among other things, DIPASCALI and other co-conspirators produced numerous documents created for the sole purpose of misleading the SEC and others about the nature and scale of the IA business.

Deceiving The SEC In 2004

21. In or about 2004, Madoff sought to persuade the SEC that BLMIS was not an investment adviser, but rather operated as a broker-dealer that merely executed trades at the direction of certain hedge fund clients. Madoff's objective was to avoid the additional oversight that would result if BLMIS were

considered to be an investment adviser, and to conceal the scope of BLMIS's IA business. By reducing the scope of the BLMIS business that was exposed to SEC scrutiny, Madoff further sought to reduce the risk that the fraudulent scheme would be revealed. To that end, Madoff also wanted to create the appearance for the SEC that, contrary to what IA Clients had been told - that is, that BLMIS had custody of the securities purchased on their behalf - BLMIS did not have custody of any such clients' securities. By doing so, Madoff intended to reduce the risk that the SEC would uncover, through records it might obtain from third parties such as the Depository Trust Company ("DTC"),¹ the fact that BLMIS held only a handful of securities on behalf of the IA Clients.²

22. To accomplish these objectives, Madoff directed that a wholly new set of books and records be created that pertained only to a small subset of IA Clients, including approximately 16 Split Strike Clients (collectively, the "2004 Special Clients"), even though the IA business had thousands of

¹ DTC, among other things, creates efficiencies in the clearing and settlement of securities transactions by retaining custody of securities on behalf of financial institutions, and recording on its books and records changes in the ownership of those securities.

² The limited number of securities that BLMIS held on behalf of IA Clients were those securities that IA Clients deposited with BLMIS, not securities purchased by BLMIS on behalf of the IA Clients. BLMIS also held securities at DTC for its market making and proprietary trading businesses.

clients at the time. At Madoff's direction, FRANK DIPASCALI, JR., the defendant, and other co-conspirators were responsible for creating fictitious BLMIS books and records that related to the 2004 Special Clients for the purpose of misleading the SEC and concealing the fraudulent scheme.

23. Among other things, at Madoff's direction, FRANK DIPASCALI, JR., the defendant, and other co-conspirators created statements in a format completely different from those that for years had regularly been sent to all IA Clients, including the 2004 Special Clients. The account statements that customarily had been sent to all IA Clients, including the 2004 Special Clients, reflected purported securities trades and showed securities (including stocks, options, and United States Treasury bills) or cash being held by BLMIS in those clients' accounts. By contrast, the statements prepared for the sole purpose of defrauding the SEC were created in a so-called "receive-versus-payment"/"delivery-versus-payment" ("RVP/DVP") format that showed no securities or cash balances in the accounts of the 2004 Special Clients.³ FRANK DIPASCALI, JR., and other co-

³ In a RVP/DVP arrangement, payment for securities purchased is made to the selling customer's agent and/or delivery of securities sold is made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash. Because transactions in RVP/DVP accounts are settled directly with the agent on a transaction-by-transaction basis, account statements sent by a broker-dealer like BLMIS to customers with RVP/DVP accounts generally do not reflect any cash balance or security position at the end of a period.

conspirators involved in the preparation of the 2004 Special Clients' account statements in RVP/DVP format knew that those specially created statements were designed to mislead the SEC about BLMIS's IA business by, among other things, falsely appearing to explain why BLMIS did not hold any securities at DTC on behalf of the 2004 Special Clients. In furtherance of that deception, at Madoff's direction, DIPASCALI and other co-conspirators caused the names of the account holders reflected on the 2004 Special Clients' accounts to be changed so that it would falsely appear that the assets were being held by European financial institutions for the benefit of the 2004 Special Clients, not by BLMIS at DTC.

Deceiving The SEC In 2005

24. In the course of an SEC review of the broker-dealer operations of BLMIS that occurred in or about 2005, and in furtherance of the scheme, at Madoff's direction, FRANK DIPASCALI, JR., the defendant, and other co-conspirators caused additional BLMIS books and records to be created that related to a different subset of IA Clients (collectively, the "2005 Special Clients"). Specifically, DIPASCALI and other co-conspirators created new trade blotters that reflected trading activity purportedly conducted on behalf of the 2005 Special Clients.⁴

⁴ Trade blotters are records that, in a legitimate trading operation, reflect details about the securities transactions actually executed by a broker-dealer.

Among other things, DIPASCALI and other co-conspirators created false entries in BLMIS books and records to make it appear that certain of the counterparties of BLMIS in the fictitious transactions reflected on the RVP/DVP statements were European financial institutions. In fact, as DIPASCALI and his co-conspirators well knew, there were no counterparties because the transactions were entirely fictitious.

25. In a further effort to mislead and deceive the SEC and others, at the direction of Madoff, FRANK DIPASCALI, JR., the defendant, and other co-conspirators created a phony computer trading "platform" for the purpose of making it falsely appear that BLMIS executed securities transactions with European counterparties on behalf of its clients. DIPASCALI and his co-conspirators then practiced using the phony trading platform in preparation for deceiving the SEC and anyone else who demanded evidence of their trading activity by purporting to demonstrate the system in action.

Deceiving The European Accounting Firm In 2005

26. In or about November 2005, the custodian of several European IA Clients (the "European Custodian" and "European Clients," respectively), sent employees of the European Accounting Firm to review BLMIS's operations. Madoff, FRANK DIPASCALI, JR., the defendant, and other co-conspirators took steps to mislead the European Accounting Firm about BLMIS's

operations, knowing that the European Accounting Firm's conclusions would be communicated to their mutual clients. Because the European Accounting Firm, the European Custodian and the European Clients were all based in Europe, Madoff, DIPASCALI, and other co-conspirators used a "domestic scenario" (instead of the "European scenario" that had been employed with the SEC) in an effort to make it less likely that the European Accounting Firm would be able to obtain information that might uncover the fraudulent scheme. Specifically, DIPASCALI, at the direction of Madoff, and with the assistance of other co-conspirators: (a) posed as BLMIS's Head of Institutional Operations when, in fact, he was not; (b) oversaw the production by co-conspirators of counterfeit DTC reports that purported to show that BLMIS had custody of the securities reflected on the account statements that had been sent to the European Clients and/or the European Custodian; (c) oversaw the production by co-conspirators of fraudulent trade blotters that, contrary to those prepared in connection with the SEC's 2005 examination, purported to show domestic counterparties for the securities transactions reported therein; and (d) oversaw the production by other co-conspirators of false and fraudulent documents requested by the European Accounting Firm during its on-site inspection of BLMIS's operations.

Deceiving The SEC In 2006

27. In or about 2006, at the direction of Madoff, FRANK DIPASCALI, JR., the defendant, and other co-conspirators misled and deceived the SEC in connection with its examination of BLMIS's relationship with the hedge fund industry. Among other things, at the direction of Madoff, DIPASCALI oversaw the production by other co-conspirators of false trade blotters in anticipation of inquiries from the SEC when he knew that these trade blotters reflected entirely fictitious transactions because BLMIS was not executing any real securities transactions for its IA Clients.

28. FRANK DIPASCALI, JR., the defendant, at the direction of Madoff, also lied under oath in testimony before the SEC on or about January 26, 2006. Among other things, DIPASCALI lied about the Split Strike strategy, the purported trades that resulted from the execution of that strategy, and the size of the IA business.

Deceiving The European Accounting Firm In 2008

29. In or about 2008, the European Accounting Firm returned to BLMIS to review its operations as related to the European Custodian and the European IA Clients. In connection with that review, at the direction of Madoff, FRANK DIPASCALI, JR., the defendant, and other co-conspirators caused additional false and fraudulent documents to be created and provided to the

European Accounting Firm in an effort to persuade the European Accounting Firm that the securities positions reflected on the European Custodian's account statements actually existed when, in fact, they did not. Specifically, at the direction of Madoff, DIPASCALI oversaw the production by other co-conspirators of counterfeit DTC reports that purported to show BLMIS's custody of securities for a limited number of IA Clients including the European Clients. At the direction of Madoff, DIPASCALI, the defendant, and other co-conspirators also prepared false and fraudulent trade blotters. Those documents included fictitious domestic trading counterparties drawn from records of actual trading activity conducted by the BLMIS's proprietary trading business. They also reflected trade amounts and times that were invented using random number generators, in an effort to prevent anyone reviewing the blotters from detecting patterns of activity that might prompt additional investigation.

Laundering IA Client Funds Through MSIL To Support BLMIS

30. Beginning at least as early as 2003, BLMIS's market making and proprietary trading businesses did not generate sufficient revenue to meet their expenses. In part to support BLMIS's market making and proprietary trading businesses, between at least as early as in or about 2005 and in or about 2008, at the direction of Madoff, FRANK DIPASCALI, JR., the defendant, and other co-conspirators caused at least \$250 million of BLMIS

investment advisory clients' funds to be transferred to, and between, the bank accounts that funded those businesses. Specifically, at the direction of Madoff, DIPASCALI caused hundreds of millions of dollars of IA Client funds to be transferred between and among a BLMIS account in New York, New York (the "BLMIS Client Account"), accounts held by MSIL in London, United Kingdom (the "MSIL Accounts"), and another bank account in New York, New York, which was principally used to fund BLMIS's operations (the "BLMIS Operating Account").

The Attempt To Steal IA Client Funds In December 2008

31. As of on or about November 30, 2008, BLMIS had approximately 4,800 client accounts. On or about December 1, 2008, BLMIS issued account statements for the calendar month of November 2008 reporting that those client accounts held a total balance of approximately \$64.8 billion. In fact, BLMIS had approximately several hundred million dollars in cash in the BLMIS Client Account, and IA Clients had informed BLMIS of their intent to redeem sums that far exceeded BLMIS's cash on hand.

32. On or about December 3, 2008, Madoff explicitly told FRANK DIPASCALI, JR., the defendant, that there were no assets standing behind the tens of billions of dollars of BLMIS obligations reflected in the IA Clients' account statements.

33. Within approximately one week of that conversation, Madoff, FRANK DIPASCALI, JR., the defendant, and

other co-conspirators prepared lists of employees, employees' family members, and certain other IA Clients, and the balances in their IA accounts. At the direction of Madoff, DIPASCALI and other co-conspirators caused checks to be prepared that would have used the remaining BLMIS funds to cash out those individuals' IA accounts, thereby putting the interests of those select few ahead of all the other IA Clients. On or about December 10, 2008, Bernard L. Madoff signed certain of those checks, which were subsequently found in Madoff's office desk following his arrest on December 11, 2008.

The Conspiracy

34. From at least in or about the 1980s through on or about December 11, 2008, in the Southern District of New York and elsewhere, FRANK DIPASCALI, JR., the defendant, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree with others, known and unknown, to commit offenses against the United States, namely: (a) to commit fraud in connection with the purchase and sale of securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5; (b) to commit investment adviser fraud, in violation of Title 15, United States Code, Sections 80b-6 and 80b-17; (c) to falsify books and records of a broker-dealer in violation of Title 15, United States Code, Sections

78q(a) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.17a-3; (d) to falsify books and records of an investment adviser, in violation of Title 15, United States Code, Sections 80b-4 and 80b-17, and Title 17, Code of Federal Regulations, Section 275.204-2; (e) to commit mail fraud, in violation of Title 18, United States Code, Section 1341; (f) to commit wire fraud, in violation of Title 18, United States Code, Section 1343; and (g) to commit international money laundering, in violation of Title 18, United States Code, Section 1956(a)(2)(A).

The Objects of the Conspiracy

Securities Fraud

35. It was a part and an object of the conspiracy that FRANK DIPASCALI, JR., the defendant, and others known and unknown, unlawfully, willfully, and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, would and did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making and causing BLMIS to make untrue statements of material fact and omitting 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 (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons who invested in and through BLMIS, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

Investment Adviser Fraud

36. It was further a part and an object of the conspiracy that FRANK DIPASCALI, JR., the defendant, acting on behalf of an investment adviser with respect to one and more investors and potential investors in products offered by BLMIS, and others known and unknown, unlawfully, willfully, and knowingly, by the use of the mails and means and instrumentalities of interstate commerce, directly and indirectly, would and did: (a) employ devices, schemes, and artifices to defraud clients and prospective clients; (b) engage in transactions, practices, and courses of business which operated as a fraud and deceit upon clients and prospective clients; and (c) engage in acts, practices, and courses of business that were fraudulent, deceptive, and manipulative, in violation of Title 15, United States Code, Sections 80b-6 and 80b-17.

Falsifying Books and Records of a Broker-Dealer

37. It was further a part and an object of the conspiracy that FRANK DIPASCALI, JR., the defendant, and others known and unknown, unlawfully, willfully, and knowingly, did cause BLMIS, a registered broker-dealer, to fail to make and keep such records as the SEC, by rule, prescribed as necessary and appropriate in the public interest for the protection of investors and otherwise in furtherance of the purposes of the Securities Exchange Act of 1934, in violation of Title 15, United States Code, Sections 78q(a) and 78ff.

Falsifying Books and Records of an Investment Adviser

38. It was further a part and an object of the conspiracy that FRANK DIPASCALI, JR., the defendant, and others known and unknown, unlawfully, willfully, and knowingly, by the use of the mails and means and instrumentalities of interstate commerce, directly and indirectly, in connection with BLMIS's business as an investment adviser, did cause BLMIS to fail to make and keep for prescribed periods such records, furnish such copies thereof and make and disseminate such reports as the SEC, by rule, prescribed as necessary and appropriate in the public interest and for the protection of investors, in violation of Title 15, United States Code, Sections 80b-4 and 80b-17.

Mail Fraud

39. It was further a part and an object of the conspiracy that FRANK DIPASCALI, JR., the defendant, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice and attempting so to do, would and did place and cause to be placed in post offices and authorized depositories for mail matters, matters and things to be sent and delivered by the Postal Service, and would and did deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and would and did take and receive therefrom such matters and things, and would and did knowingly cause to be delivered, by mail and such carriers according to the directions thereon, and at the places at which they were directed to be delivered by the persons to whom they were addressed, such matters and things, in violation of Title 18, United States Code, Section 1341.

Wire Fraud

40. It was further a part and an object of the conspiracy that FRANK DIPASCALI, JR., the defendant, and others known and unknown, unlawfully, willfully, and knowingly, having

devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice and attempting so to do, would and did transmit and cause to be transmitted by means of wire, radio and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

International Money Laundering

41. It was further a part and an object of the conspiracy that FRANK DIPASCALI, JR., the defendant, and others known and unknown, in an offense involving and affecting interstate and foreign commerce, unlawfully, willfully and knowingly, transported, transmitted and transferred, attempted to transport, transmit and transfer, and caused others to transport, transmit and transfer, and attempt to transport, transmit, and transfer, funds from a place in the United States to a place outside the United States, and funds from a place outside the United States to a place within the United States, with the intent to promote the carrying on of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(2)(A).

Means And Methods Of The Conspiracy

42. Among the means and methods by which Bernard L. Madoff, FRANK DIPASCALI, JR., the defendant, and others, known and unknown, would and did carry out the conspiracy were the following:

a. DIPASCALI assisted Madoff in inventing the Split Strike strategy that was marketed to current and prospective Split Strike Clients.

b. At Madoff's direction, DIPASCALI and other co-conspirators conducted research on historical prices and trading volumes to develop baskets of stocks that could be used to generate the appearance of investment returns for Split Strike Clients.

c. At Madoff's direction, DIPASCALI and other co-conspirators created and supervised the infrastructure necessary to cause millions of pages of false and fraudulent account statements and confirmations of purported securities transactions to be sent to Split Strike Clients via the United States mails to give the appearance that BLMIS had invested those clients' funds when, in fact, it had done no such thing.

d. At Madoff's direction, DIPASCALI and other co-conspirators caused false and fraudulent books and records to be created for the express purpose of misleading the SEC and

others about the nature, scale, and operations of BLMIS's IA business.

e. Madoff and DIPASCALI committed perjury in an effort to prevent the SEC from learning the truth about BLMIS's IA business.

f. Madoff, DIPASCALI and other co-conspirators attempted to, and did, misappropriate IA Clients' funds and convert them to their own use and that of others without the authorization of the IA Clients.

g. At Madoff's direction, DIPASCALI and other co-conspirators used facilities of interstate and foreign commerce, including the mails and interstate and foreign wire transfers, in furtherance of the objects of the conspiracy.

Overt Acts

43. In furtherance of the conspiracy and to effect the illegal objects thereof, FRANK DIPASCALI, JR., the defendant, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about the 1980s, DIPASCALI provided information to Madoff for an options trade based on historical price data.

b. In or about the early 1990s, Madoff, with DIPASCALI's assistance, created the Split Strike strategy.

c. In or about the early 1990s, Madoff caused numerous Split Strike Client accounts to be opened on BLMIS's books and records.

d. In or about February 1993, at the direction of Madoff, DIPASCALI caused false and fraudulent BLMIS account statements reflecting purported trades in the Split Strike strategy to be sent through the United States mails from New York, New York to Pembroke Pines, Florida.

e. In or about February 1994, at the direction of Madoff, DIPASCALI caused false and fraudulent BLMIS account statements reflecting purported trades in the Split Strike strategy to be sent through the United States mails from New York, New York to Minnetonka, Minnesota.

f. In or about January 1995, at the direction of Madoff, DIPASCALI caused false and fraudulent BLMIS account statements reflecting purported trades in the Split Strike strategy to be sent through the United States mails from New York, New York to Miami Beach, Florida.

g. In or about February 1996, at the direction of Madoff, DIPASCALI caused false and fraudulent BLMIS account statements reflecting purported trades in the Split Strike strategy to be sent through the United States mails from New York, New York to Worcester, Massachusetts.

h. In or about January 1997, at the direction of Madoff, DIPASCALI caused false and fraudulent BLMIS account statements reflecting purported trades in the Split Strike strategy to be sent through the United States mails from New York, New York to Coconut Grove, Florida.

i. In or about February 1998, at the direction of Madoff, DIPASCALI caused false and fraudulent BLMIS account statements reflecting purported trades in the Split Strike strategy to be sent through the United States mails from New York, New York to Coconut Grove, Florida.

j. On or about December 28, 1999, at the request of a co-conspirator, DIPASCALI provided information about a fictional options "trade," using historical data, which purported to generate approximately \$50,633 in "profit" for a Non-Split Strike Client.

k. In or about January 2000, the fictional options trade referred to in subparagraph 43(i), above, was recorded on the books and records of BLMIS and was reflected on the pertinent Non-Split Strike Client's account statement.

l. On or about December 31, 2001, DIPASCALI caused fictional options trades that purported to generate approximately \$201,450 in profits to be reflected on a Split Strike Client's December 2001 account statement.

m. On or about September 10, 2002, DIPASCALI caused approximately \$1,701,769 of IA Client funds to which he was not entitled to be wire transferred from the BLMIS Client Account for the purchase of a boat for DIPASCALI's personal use.

n. On or about December 31, 2003, DIPASCALI caused fictional options trades that purported to generate approximately \$3,202,760 in profits to be reflected on a Split Strike Client's December 2003 account statement.

o. On or about February 4, 2004, Madoff had a telephone conversation with a representative of the SEC.

p. On or about December 31, 2004, DIPASCALI caused fictional options trades that purported to generate approximately \$10,122 in profits to be reflected on the December 2004 statement for an IA account held in the name of a co-conspirator.

q. On or about April 28, 2005, Madoff met with one or more representatives of the SEC.

r. On or about October 21, 2005, DIPASCALI caused approximately \$16,597,587 to be wire transferred from the BLMIS Client Account to the MSIL Accounts.

s. On or about October 27, 2005, DIPASCALI caused approximately \$8,446,920 to be wire transferred from the MSIL Accounts to the BLMIS Operating Account.

t. In or about November 2005, Madoff met with representatives of the European Accounting firm in New York, New York.

u. In or about November 2005, DIPASCALI met with representatives of the European Accounting firm in New York, New York.

v. On or about January 11, 2006, a disc containing false and fraudulent BLMIS books and records was sent to the SEC.

w. On or about May 9, 2006, Madoff met with one or more representatives of the SEC.

x. On or about July 26, 2006, DIPASCALI caused approximately \$7,751,058 to be wire transferred from the BLMIS Client Account to the MSIL Accounts.

y. On or about July 26, 2006, DIPASCALI caused approximately \$7,905,340 to be wire transferred from the MSIL Accounts to the BLMIS Operating Account.

z. On or about December 26, 2006, DIPASCALI caused fictional options trades that purported to generate approximately \$344,190 in profits to be reflected on a Split Strike Client's December 2003 account statement.

aa. On or about March 22, 2007, DIPASCALI caused approximately \$24,294,714 to be wire transferred from the BLMIS Client Account to the MSIL Accounts.

bb. On or about March 29, 2007, DIPASCALI caused approximately \$14,828,550 to be wire transferred from the MSIL Accounts to the BLMIS Operating Account.

cc. In or about April 2008, DIPASCALI met with representatives of the European Accounting Firm in New York, New York.

dd. On or about June 6, 2008, DIPASCALI caused approximately \$15,870,880 to be wire transferred from the BLMIS Client Account to the MSIL Accounts.

ee. On or about July 23, 2008, DIPASCALI caused approximately \$7,265,690 to be wire transferred from the MSIL Accounts to the BLMIS Operating Account.

ff. On or about December 10, 2008, approximately 100 checks totaling approximately \$173,788,956.82 were prepared for certain IA Clients including BLMIS employees, employees' family members, and others.

gg. On or about December 11, 2008, approximately 37 checks totaling approximately \$176,359,965.08 were prepared for certain IA Clients including BLMIS employees, employees' family members, and others.

hh. On or about December 11, 2008, DIPASCALI attempted to delete certain computer files that evidenced the fraudulent scheme.

(Title 18, United States Code, Section 371.)

COUNT TWO
(Securities Fraud)

The United States Attorney further charges:

44. The allegations contained in paragraphs 1 through 33, and 42 through 43, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

45. From at least the 1990s through on or about December 11, 2008, in the Southern District of New York and elsewhere, FRANK DIPASCALI, JR., the defendant, unlawfully, willfully, and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting 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 (c) engaging in transactions, acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons.

(Title 15, United States Code, Sections 78j(b) and 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5;
Title 18, United States Code, Section 2.)

COUNT THREE
(Investment Adviser Fraud)

The United States Attorney further charges:

46. The allegations contained in paragraphs 1 through 33, and 42 through 43, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

47. From at least the 1990s through on or about December 11, 2008, in the Southern District of New York and elsewhere, FRANK DIPASCALI, JR., the defendant, acting on behalf of an investment adviser with respect to clients and potential clients of BLMIS, unlawfully, willfully, and knowingly, by the use of the mails and means and instrumentalities of interstate commerce, directly and indirectly, did: (a) employ devices, schemes, and artifices to defraud clients and prospective clients; (b) engage in transactions, practices, and courses of business which operated as a fraud and deceit upon clients and prospective clients; and (c) engage in acts, practices, and courses of business that were fraudulent, deceptive, and manipulative.

(Title 15, United States Code, Sections 80b-6 and 80b-17;
Title 18, United States Code, Section 2.)

COUNT FOUR

(Falsifying Broker-Dealer Books and Records)

The United States Attorney further charges:

48. The allegations contained in paragraphs 1 through 33, and 42 through 43, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

49. Between in or about 2004, and on or about December 11, 2008, FRANK DIPASCALI, JR., the defendant, unlawfully, willfully, and knowingly, did cause BLMIS, a registered broker-dealer, to fail to make and keep such records as the SEC, by rule, prescribed as necessary and appropriate in the public interest for the protection of investors and otherwise in furtherance of the purposes of the Securities Exchange Act of 1934, to wit, on or about January 11, 2006, DIPASCALI caused false and fraudulent BLMIS trade blotters to be made and kept and produced to the SEC.

(Title 15, United States Code, Sections 78q(a) and 78ff;
Title 17, Code of Federal Regulations, Section 240.17a-3;
Title 18, United States Code, Section 2.)

COUNT FIVE

(Falsifying Investment Adviser Books and Records)

The United States Attorney further charges:

50. The allegations contained in paragraphs 1 through 33, and 42 through 43, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

51. Between in or about September 2006 and on or about December 11, 2008, in the Southern District of New York and elsewhere, FRANK DIPASCALI, JR., the defendant, unlawfully, willfully, and knowingly, by the use of the mails and means and instrumentalities of interstate commerce, directly and indirectly, in connection with BLMIS's business as an investment adviser, did cause BLMIS to fail to make and keep for prescribed periods such records, furnish such copies thereof and make and disseminate such reports as the SEC, by rule, prescribed as necessary and appropriate in the public interest and for the protection of investors, to wit, in or about April 2008, DIPASCALI caused false trade blotters to be made and kept by BLMIS, an investment adviser registered with the SEC.

(Title 15, United States Code, Sections 80b-4 and 80b-17;
Title 17, Code of Federal Regulations, Section 275.204-2;
Title 18, United States Code, Section 2.)

COUNT SIX
(Mail Fraud)

The United States Attorney further charges:

52. The allegations contained in paragraphs 1 through 33, and 42 through 43, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

53. From at least as early as the 1990s through on or about December 11, 2008, in the Southern District of New York and elsewhere, FRANK DIPASCALI, JR., the defendant, unlawfully, willfully, and knowingly, having devised and intending to devise

a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice and attempting so to do, did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and did deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and did take and receive therefrom such matters and things, and did knowingly cause to be delivered, by mail and such carriers according to the directions thereon, and at the places at which they were directed to be delivered by the persons to whom they were addressed, such matters and things, to wit, on or about December 1, 2008, DIPASCALI sent and caused to be sent and delivered via the Postal Service a false and fraudulent account statement from BLMIS to a client in New York, New York.

(Title 18, United States Code, Sections 1341 and 2.)

COUNT SEVEN
(Wire Fraud)

The United States Attorney further charges:

54. The allegations contained in paragraphs 1 through 33, and 42 through 43, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

55. From at least as early as the 1990s through on or about December 11, 2008, in the Southern District of New York and

elsewhere, FRANK DIPASCALI, JR., the defendant, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, on or about March 29, 2007, DIPASCALI caused approximately \$14,828,550 to be sent by wire from London, England to New York, New York.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT EIGHT

**(International Money Laundering To Promote
Specified Unlawful Activity)**

The United States Attorney further charges:

56. The allegations contained in paragraphs 1 through 33, and 42 through 43, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

57. From at least as early as in or about 2002, through on or about December 11, 2008, in the Southern District of New York, the United Kingdom, and elsewhere, FRANK DIPASCALI, JR., the defendant, in an offense involving and affecting interstate and foreign commerce, unlawfully, willfully and knowingly, transported, transmitted and transferred, attempted to

transport, transmit and transfer, and caused others to transport, transmit and transfer, and attempt to transport, transmit, and transfer, funds from a place in the United States to a place outside the United States, and funds from a place outside the United States to a place within the United States, with the intent to promote the carrying on of specified unlawful activity, to wit, fraud in the sale of securities, mail fraud, and wire fraud, to wit, DIPASCALI caused funds to be wire transferred from BLMIS bank accounts, including the BLMIS Investor Account in New York, New York, to the MSIL Accounts in the United Kingdom, and to be transferred from the MSIL Accounts in the United Kingdom, to BLMIS bank accounts, including the BLMIS Operating Account, in New York, New York, in order to promote fraud in the sale of securities, mail fraud, and wire fraud.

(Title 18, United States Code, Sections 1956(a)(2)(A) and 2.)

COUNT NINE
(Perjury)

The United States Attorney further charges:

58. The allegations contained in paragraphs 1 through 33, and 42 through 43, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

59. As described in paragraph 1 above, BLMIS was at certain times, among other things, a broker-dealer and investment adviser registered with the SEC. As such, BLMIS was subject to

periodic examinations by the SEC. The SEC has broad authority to conduct investigations into various aspects of the securities markets and, in or about 2006, was conducting such an investigation of BLMIS. As part of that investigation, on or about January 26, 2006, employees of the SEC took the voluntary testimony of FRANK DIPASCALI, JR., the defendant, under oath (the "DIPASCALI SEC Testimony").

60. During the course of the DIPASCALI SEC Testimony, FRANK DIPASCALI, JR., the defendant, made numerous false and misleading statements for the purpose of deceiving the SEC and hiding the unlawful conduct of himself and others described in paragraphs 1 through 33, and 42 through 43, above. DIPASCALI testified, among other things, in substance, that: (a) BLMIS executed trades of common stock on behalf of its investment advisory clients; (b) BLMIS executed options contracts on behalf of its investment advisory clients; (c) BLMIS had only about 20 clients of its IA business; and (d) BLMIS managed only about \$10-11 billion of IA Client funds.

61. On or about January 26, 2006, in the Southern District of New York, FRANK DIPASCALI, JR., the defendant, having taken an oath before a competent tribunal, officer and person, in a case in which the law of the United States authorizes an oath to be administered, namely, in testimony before an officer of the SEC, that he would testify, declare, depose and certify truly, and that any written testimony, declaration, deposition and

certificate by him subscribed, would be true, unlawfully, willfully, knowingly, and contrary to such oath, stated and subscribed material matters which he did not believe to be true, namely, in his testimony on or about January 26, 2006, DIPASCALI knowingly testified falsely as to the material matters in the portions of his cited testimony underlined below:

Specification One

(Page 63, Lines 3-16)

- Q: Have there been instances in the last ten years where Mr. Madoff's overall returns have been negative?
- A: I don't believe so. For the year, no. For any particular period of time, definitely, but not over the course of a year. No, I don't remember one.
- Q: How does the firm -
- A: I don't want to interrupt you, but keep in mind that there has been market corrections that have occurred. We are not in the market all the time. We are in the market for short periods of time.

Specification Two

(Page 87, Lines 1-9)

- Q: I wanted to make sure that the basket is put on during a trading day and the options are put on subsequent to the basket?
- A: The basket is put on during the European trading day. The options are put on prior to the New York open and after the European trading day is ended, when I am complete.

Specification Three

(Page 124, Lines 3-18)

- Q: The people that you execute your equities with, are they the same broker-dealers that you execute the options with?
- A: No, they are not.

Q: None of them are the same?

A: People I execute the equities with, you are talking about European contra side dealers?

Q: Yes.

A: No, no.

Q: About how many derivative dealers do you deal with?

A: Derivative dealers, 20, maybe two dozen. It's not five and it's not 30. It's probably 18, 19, 20.

Specification Four
(Page 73, Lines 1-9)

Q: [D]o you even keep some . . . record that they executed this [options] transaction at a certain price with these parameters?

A: I have the entry database that comes back from the dealers that is accessible in any format I want to look at it, trade date, dealer, I want to look at it by price, symbol, by any sort of mechanism.

Specification Five
(Page 71, Lines 12-14)

Q: How does [Bernard L. Madoff] communicate with [the dealers with whom he executes options transactions]?

A: Telephone. They affirm back to me by computer.

Specification Six
(Page 104, Line 23 - Page 105, Line 9)

Q: I want to switch gears and talk about the customers in the institutional business. What kind of customers does this business have? Who are they?

A: Who are they, I guess there [are] about 20, the largest of which would be Fairfield, which I guess is an offshore hedge fund. I am thinking of some of the names, what they do. They are either a hedge fund or some sort of a European institution. They are not natural people like a client would be, Joe Schmo.

Specification Seven
(Page 129, Lines 10-18)

Q: You mentioned confirmations and account statements that get sent to customers earlier. Who is in charge of generating them and sending them to customers?

A: The computer actually gets all the information, spits it out and a printer - one of the operators is told to print me that file and they print it out. There [are] not that many statements.

Specification Eight
(Page 112, Lines 17-19)

Q: Any rough idea about how much [Bernard L. Madoff] is managing?

A: 10, \$11 billion.

(Title 18, United States Code, Section 1621.)

COUNT TEN
(Income Tax Evasion)

The United States Attorney further charges:

63. For certain tax years between 2002 and 2007, FRANK DIPASCALI, JR., the defendant, failed to report certain income, including: (a) millions of dollars of withdrawals from a BLMIS IA account held in the name of a limited liability corporation formed by DIPASCALI (the "LLC"); (b) interest income earned from a money market account held in the name of the LLC; and (c) salary paid by BLMIS from IA Client funds to a boat captain employed by DIPASCALI.

64. From on or about January 1, 2002, through on or about August 10, 2009, in the Southern District of New York and elsewhere, FRANK DIPASCALI, JR., the defendant, unlawfully,

willfully, and knowingly, did attempt to evade and defeat a substantial part of the income tax due and owing by DIPASCALI to the United States of America for calendar years 2002, 2005, 2006 and 2007 by various means, including depositing personal income into bank accounts held in the name of nominees and filing and causing to be filed, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for the 2005 tax year, which return falsely omitted certain income, resulting in taxes due and owing for each of the following tax years in the following amounts:

<u>Calendar Year</u>	<u>Reported Taxable Income</u>	<u>Tax Paid</u>	<u>Corrected Taxable Income</u>	<u>Additional Tax Due and Owing</u>
2002	\$0	\$327,121	\$3,254,163	\$889,745
2005	\$999,999	\$314,278	\$2,265,734	\$452,791
2006	\$0	\$676,150	\$2,559,703	\$192,996
2007	\$0	\$867,367	\$4,050,810	\$522,622

(Title 26, United States Code, Section 7201.)

FORFEITURE ALLEGATION

(Offenses Constituting Specified Unlawful Activity)

65. As the result of committing the offenses constituting specified unlawful activity as defined in 18 U.S.C. § 1956(c)(7), as alleged in Counts One, Two, Six, and Seven of this Information, FRANK DIPASCALI, JR., the defendant, shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable

to the commission of the said offenses, including, but not limited to, a sum of money equal to at least \$170 billion, in that such sum in aggregate represents the amount of proceeds obtained as a result of the said offenses or is traceable to such property.

Substitute Asset Provision

66. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value;
or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 981(a)(1)(C),
and Title 28, United States Code, Section 2461.)

FORFEITURE ALLEGATION
(Money Laundering)

67. As the result of committing the money laundering offense in violation of 18 U.S.C. § 1956(a)(2)(A), alleged in

Count Eight of this Information, FRANK DIPASCALI, JR., the defendant, shall forfeit to the United States, pursuant to 18 U.S.C. § 982, all property, real and personal, involved in the said money laundering offense and all property traceable to such property, including, but not limited to, a sum of money equal to at least \$250 million, in that such sum in aggregate represents the amount of property involved in the money laundering offense or is traceable to such property.

Substitute Asset Provision

68. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value;
or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b) and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of

the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 982.)

Lev L. Dassin
LEV L. DASSIN *282*
Acting United States Attorney