

JUDGE KAPLAN

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 17 MAR 2010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA :

-v- :

JEROME O'HARA and :
GEORGE PEREZ, :

Defendants. :

- - - - - x

INDICTMENT

10 CRIM 228

COUNT ONE

(Conspiracy to Commit Securities Fraud, to Falsify Records of a
Broker-Dealer, and to Falsify Records of an Investment Adviser)

The Grand Jury charges:

Relevant Persons and Entities

1. At all times relevant to this Indictment, 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. BLMIS was a broker-dealer that engaged in three principal types of business operations: "Market Making"; "Proprietary Trading"; and Investment Advisory ("IA") services. BLMIS was registered with the Securities and Exchange Commission ("SEC") as a broker-dealer and, as of on or about August 25, 2006, as an investment adviser.

2. As a registered broker-dealer and as an investment adviser, BLMIS was required to make and keep certain books and

records in its ordinary course of business. Among other things, those books and records included the following:

a. Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities and all receipts and deliveries of securities (including certificate numbers), showing the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom the securities were purchased or received or to whom the securities were sold or delivered (the "contra party");

b. Documents reflecting each brokerage order, and any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted, including the account for which the order or other instruction was entered, the time the order was received, the time at which the order was entered, the price at which the order was executed and, to the extent feasible, the time of execution or cancellation; and

c. Records identifying the name and address of the beneficial owner of each cash and margin account held at the broker-dealer and/or investment adviser.

3. At all times relevant to this Indictment, 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.

4. 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.

5. Frank DiPascali, Jr. ("DiPascali") was employed at BLMIS between on or about September 11, 1975, and on or about December 11, 2008. 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 majority of BLMIS's IA accounts into which thousands of BLMIS clients invested, and eventually lost, billions of dollars.

6. At all times relevant to this Indictment, JEROME O'HARA and GEORGE PEREZ, the defendants, were employed by BLMIS starting in or about 1990 and 1991, respectively. O'HARA and PEREZ were each responsible for, among other things, developing and maintaining computer programs for computers that supported the operations of BLMIS, including its Market Making, Proprietary Trading, and IA operations.

Background

A. The Ponzi Scheme

7. From at least as early as the 1980s through on or about December 11, 2008, Madoff, DiPascali, 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.

8. 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. These representations were false. Contrary to representations made on account statements and other documents sent to IA Clients, 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.

B. The "Split Strike" Strategy

9. Under the direction of Madoff, DiPascali 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: (i) 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; (ii) the basket of stocks would closely mimic the price movements of the S&P 100; (iii) 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; (iv) Madoff would opportunistically time the entry and exit from the strategy; and (v) 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.

10. In total, thousands of IA Clients, including individual investors, charitable organizations, trusts, pension funds, and hedge funds, among others, with billions of dollars of

cumulative investments, were told by Madoff, DiPascali 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".)

11. Madoff, DiPascali, 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.

12. On a regular basis, Madoff provided guidance to DiPascali, 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 data related to the chosen basket of securities to be entered into a computer dedicated to the IA business, which was principally housed on the seventeenth floor of BLMIS's offices. That computer was referred to by certain BLMIS employees as "House 17." Madoff, DiPascali, and other co-conspirators used computer programs developed by JEROME O'HARA and GEORGE PEREZ, the defendants, to, among other things, 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 purportedly to "enter the market," DiPascali and other co-conspirators would cause tens of thousands of false documents to be produced from data stored on House 17 that purported to confirm the purchases of securities that, in fact, had not been purchased.

13. 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, DiPascali, 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 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.

14. A similar process to that described in paragraphs 12 and 13 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 DiPascali evaluated whether and when to appear to "sell out" of the securities positions that previously had been reported to Split Strike Clients. Thereafter, DiPascali and other co-conspirators caused BLMIS computer operators to input fake 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.

15. On a monthly basis, Madoff, DiPascali 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.

16. In practice, the growth in account values reported on the Split Strike Clients' account statements approximated the annualized rates of return that had been targeted by Madoff. As directed by Madoff, DiPascali and other co-conspirators routinely added additional fictitious options "trades" to the books and records maintained on House 17 for certain Split Strike Client accounts for the purpose of making it appear that those accounts had achieved their respective targeted annual rates of return.

C. BLMIS Operations and Computer Systems

17. BLMIS made use of numerous information technology systems in support of its market making, proprietary trading and IA businesses, and Madoff, DiPascali, and their co-conspirators relied upon BLMIS computers operated by BLMIS employees, and computer programs developed and maintained by JEROME O'HARA and GEORGE PEREZ, the defendants, among others, to carry out and conceal the fraudulent scheme.

1. House 05: Market Making and Proprietary Trading

18. The operations of the Market Making and Proprietary Trading businesses principally were supported by two computer systems, among others: (1) a STRATUS trading platform; and (2) an IBM AS/400 server known internally at BLMIS (and referred to herein) as "House 05."¹

¹ On or about April 30, 1993, BLMIS began using two IBM AS/400 servers (including House 05) at its offices at 885 Third Avenue, New York, New York, in connection with its Market Making,

a. The STRATUS system was responsible for, among other things, effectuating the trading activities of BLMIS and, to that end, communicated with third parties, including trading contra parties. The data generated through the STRATUS system about BLMIS trades (including, for example, dates, times, number of shares, and stock symbols) were regularly transferred to House 05.

b. JEROME O'HARA and GEORGE PEREZ, the defendants, were familiar with the "back-end" processing on House 05 of the trades executed on behalf of the Market Making and Proprietary Trading businesses. Among other things, these "back-end" programs processed data captured during the order entry and execution process by the STRATUS system to create various BLMIS books and records including, but not limited to, trading blotters and stock ledgers. House 05 also had software that enabled communication with third parties including, but not limited to, the Depository Trust Company ("DTC"),² and obtained data from those third parties for use in creating BLMIS books and records.

Proprietary Trading and IA businesses.

² Among other things, DTC 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. BLMIS had an account at DTC in which the securities of the Market Making and Proprietary Trading operations were custodied as well as a few equity securities held on behalf of certain IA Clients.

BLMIS employees regularly used the programs on House 05 to compare trading data received from the STRATUS system with information obtained from DTC and generated "break sheets" showing any discrepancies between BLMIS's information and DTC's data.

c. Both O'HARA and PEREZ were responsible for developing programs for, and maintaining, House 05. O'HARA and PEREZ had direct knowledge of House 05, the BLMIS books and records created by House 05, the sources of data that House 05 incorporated into BLMIS's books and records, and the manner in which House 05 received information from third parties, including DTC.

2. House 17: The IA Business

19. The operations of the IA business were supported by House 17, which was a separate IBM AS/400 server. Unlike House 05, House 17 did not receive trading data related to the IA business electronically from any computer that communicated with third parties, including trading contra parties. Rather, Madoff, DiPascali and others involved in the IA business falsified the trading data related to the purported activities of the IA business and caused that data to be entered into the House 17 server.

20. JEROME O'HARA and GEORGE PEREZ, the defendants, developed and maintained computer programs on House 17 (the

"House 17 Programs") that were used to enter fake IA business trade data. The House 17 Computer Programs were used to generate, among other things, account statements, trade confirmations, trading blotters, and other books and records related to BLMIS's purported IA business. As O'HARA and PEREZ well knew, House 17, unlike House 05, did not obtain data concerning the purported trades related to the IA business from DTC, although it could have been programmed to do so. As O'HARA and PEREZ further knew, House 17, unlike House 05, did not reconcile the purported trade data generated by BLMIS employees against any outside source.

21. The House 17 Programs produced fake IA business books and records as follows:

a. For Split Strike Clients: (i) information about a basket of purported trades (purchases when entering the market, and sales when exiting) was entered into House 17 and was used to generate data reflecting purported trades; (ii) the data describing the purported trades was stored in several files, including the Settled Trades File; (iii) trade data and other information stored on House 17 was merged with information contained in a file titled "A.NAME" (the "A.NAME File"), which contained certain account information about all the IA Clients, including, but not limited to, unique BLMIS account numbers, the names of account holders, and the mailing addresses to which

statements and other documents were to be sent; (iv) the merged information was formatted for presentation on BLMIS account statements and confirmation slips; and (v) account statements and confirmation slips were printed and distributed to IA Clients, primarily through the U.S. mails.

b. For IA Clients who were not Split Strike Clients, the process was similar; however, because their "trades" generally did not include purported "basket trades," those trades were individually entered into House 17 based on instructions provided by BLMIS employees, on an account-by-account basis.

22. The books and records generated by the House 17 Programs for BLMIS's IA business were entirely false and fraudulent because, among other things, they purported to reflect securities transactions that, in fact, had never been executed.

D. Reviews of BLMIS Between 2004 and 2008

23. BLMIS was subjected to at least five separate reviews by the SEC and a European accounting firm (the "European Accounting Firm") between 2004 and 2008 (collectively, the "Reviews").³

24. Beginning at least as early as in or about December 2003, in connection with the Reviews, Madoff and

³ The European Accounting Firm's client was a European financial institution that served as custodian for the assets of an IA client (the "European IA Client") and that had a sub-custodian agreement with BLMIS.

DiPascali directed JEROME O'HARA and GEORGE PEREZ, the defendants, to further falsify BLMIS's books and records. Madoff's goals in directing the creation of additional false and fraudulent books and records included, among other things:

- (a) revealing information about as few of BLMIS's IA Clients as possible, thereby concealing the scale of the business;
- (b) presenting explanations of BLMIS's operations that would make it more difficult for the SEC and/or the European Accounting Firm to attempt to verify with third parties the information provided by BLMIS; and (c) falsifying information to ensure that the documents produced did not contain suspicious patterns that might alert the SEC and/or the European Accounting Firm to the fraud.

25. In an effort to achieve those goals, Madoff: (i) directed DiPascali and, through DiPascali, JEROME O'HARA and GEORGE PEREZ, the defendants, to manufacture fake "special" versions of historical BLMIS books and records to show to the SEC and the European Accounting Firm; and (ii) directed DiPascali and, through DiPascali, O'HARA and PEREZ, to create false documents purportedly obtained from third parties in the ordinary course of BLMIS's business.

The False "Special" Trade Blotters

26. As described in further detail below, JEROME O'HARA and GEORGE PEREZ, the defendants, developed and maintained special House 17 Programs (the "Special House 17 Programs") and

files, many of which were used in conjunction with one another to create retrospective daily trade blotters ("the Special Blotters") that purported to identify, on a trade-by-trade basis, information such as the client for whom the trade was conducted, the contra party to the trade, the number of shares traded, and the price at which the trade was executed. The Special Blotters reported information that was materially inconsistent with information contained in the Settled Trades File.

A. The Defendants Changed the Identities of Certain IA Clients on the Special Blotters

27. In connection with the SEC's 2004 Review, Madoff attempted to make it appear that BLMIS did not have custody of its IA Clients' assets because he knew that, were the SEC to check with DTC, it would learn that DTC was not holding the securities listed on the IA Clients' account statements in a segregated account for BLMIS. To explain why DTC would not hold these securities, Madoff directed the preparation of documents in a "receive-versus-payment"/"delivery-versus-payment" ("RVP/DVP") format that showed no securities or cash balances in the accounts of the 2004 Special Clients.⁴ To be consistent with an RVP/DVP

⁴ 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

scenario, the names of the Special Clients further had to be changed to financial institutions holding assets for the benefit of the Special Clients because RVP/DVP accounts require the involvement of such a custodian.

28. In creating the Special Blotters to prepare for the SEC's 2004 Review, JEROME O'HARA and GEORGE PEREZ, the defendants, used a file titled "S.NAME6" that contained information different from that contained in the A.NAME File described in paragraph 21(a), above, to produce account statements, blotters and other books and records with misleading and inaccurate information about the identities of BLMIS clients. Not only did the S.NAME6 File contain information about a small fraction (fewer than approximately 20) of the thousands of IA Clients whose information was contained in the A.NAME File, but the information about the Special Clients was changed to make it falsely appear that the IA account holders were financial institutions that held custody of the IA Clients' assets for the benefit of those clients. For example, an account held in the name of "ABC Fund" in the A.NAME File was changed to "XYZ Financial Institution f/b/o ABC Fund" in the S.NAME6 File.⁵

balance or security position with the broker-dealer at the end of a period. Thus, an RVP/DVP account is inconsistent with an account as to which the broker-dealer holds securities on behalf of a client at DTC in a segregated position.

⁵ "F/b/o" is a commonly used term that means "for the benefit of."

Other special programs developed and maintained by O'HARA and PEREZ for the purpose of producing documents for the SEC in 2004 drew client information from the S.NAME6 File rather than the A.NAME File. As a consequence, those Special House 17 Programs produced blotters, account statements, and other books and records with misleading and inaccurate information about the identities of BLMIS clients.

29. For subsequent Reviews by the SEC and the European Accounting Firm in 2005 and 2006, JEROME O'HARA and GEORGE PEREZ, the defendants, created other versions of the S.NAME File (e.g., S.NAME7, S.NAME7B, and S.NAME8) that were used in connection with creating Special Blotters and other false and fraudulent documents, including false account statements.

B. The Defendants Changed Details About the Number of Shares, Execution Times, Contra Parties, and Transaction Numbers for Trades Reported on the Special Blotters

30. JEROME O'HARA and GEORGE PEREZ, the defendants, also developed and maintained Special House 17 Programs that, in connection with the 2004, 2005 and 2006 SEC Reviews, enabled Madoff and DiPascali to change information about trades that purportedly had already occurred. For example, O'HARA and PEREZ developed and maintained Special House 17 Programs to: (a) randomly divide each equity trade contained in the Settled Trades File associated with the Special Clients into up to 15 separate "slices"; (b) randomly assign to each subdivided equity trade a

false execution time so as to ensure, among other things, that the assigned trade times for equities occurred during trading hours in London, before the U.S. equities markets had opened; and (c) randomly assign to each subdivided equity trade in the Special Blotter for the SEC's Review a new fake transaction number.

31. Although the Settled Trades File identified the contra party for each purported trade as "CLEARING BANK," at the direction of Madoff and DiPascali, JEROME O'HARA and GEORGE PEREZ, the defendants, changed the contra parties on the Special Blotters and created a series of modifications to the S.NAME files and other House 17 Programs that allowed BLMIS to present different scenarios to the SEC and the European Accounting Firm about the purported contra parties to BLMIS "trades."

32. Specifically, Madoff and DiPascali, with the assistance of JEROME O'HARA and GEORGE PEREZ, the defendants, and other co-conspirators, for the purpose of producing documents to the SEC that would conceal the true operations of BLMIS, caused Special Blotters to be created that falsely showed that BLMIS had executed trades on behalf of the Special Clients with European contra parties about which it would be more difficult for the SEC to obtain information as part of its review.

33. Conversely, while BLMIS attempted to conceal the fraud from the SEC by making it appear as though trades occurred

overseas, BLMIS took the opposite approach when dealing with the European Accounting Firm. Specifically, Madoff and DiPascali, with the assistance of JEROME O'HARA and GEORGE PEREZ, the defendants, and other co-conspirators, for the purpose of producing documents to the European Accounting Firm, caused Special Blotters to be created that falsely showed that BLMIS had executed trades on behalf of Special Clients with United States-based contra parties about which it would be less likely for the European Accounting Firm to obtain information as part of its review.

**The Defendants Created False and Fraudulent
Order Entry And Execution Reports**

34. In connection with the Reviews, JEROME O'HARA and GEORGE PEREZ, the defendants, also developed and maintained House 17 Programs that retrospectively created false and fraudulent order entry and execution reports (the "Special OERs"), based in part on the output from the Special Blotter programs described above. The Special OERs included information not just about when orders for equity securities were executed (as found in the Special Blotters), but also included the times at which the order underlying each executed equity trade purportedly had been placed.

35. JEROME O'HARA and GEORGE PEREZ, the defendants, developed and maintained Special House 17 Programs that added false order information to the fictitious trade execution

information contained in the Special Blotters. The programs they developed employed a series of mathematical formulas to generate, at random, the time that any given purported order for the purchase or sale of an equity was placed.

**JEROME O'HARA, the Defendant, Created
False and Fraudulent Records About BLMIS Commissions**

36. On or about January 6, 2004, the SEC requested certain information and documents from BLMIS including, but not limited to, information about commissions received by BLMIS in connection with its work on behalf of certain IA Clients broken out by customer and by security.

37. Among the first Special House 17 Programs developed and maintained by JEROME O'HARA, the defendant, in connection with the SEC's 2004 review of BLMIS, were a series of computer programs (the "2004 Special Commission Programs") that were created within a few days after BLMIS received the SEC's January 6, 2004 document request. The 2004 Special Commission Programs generated fake retrospective reports for the period under review that falsely purported to show commissions received by BLMIS broken out by account and by security by multiplying the shares traded for those clients by \$0.04 per share. In fact, no such trades had ever occurred, and no such calculation of the commissions owed to BLMIS in connection with the IA business previously had been made.

**The Defendants Created
False and Fraudulent IA Client Account Statements**

38. For the reasons described in paragraph 27, above, at certain times, including during certain SEC Reviews, Madoff wanted to produce documents concerning certain IA Clients in an RVP-DVP format. At the direction of Madoff and DiPascali, JEROME O'HARA and GEORGE PEREZ, the defendants, developed and maintained House 17 Programs that created false IA account statements in a format completely different from those that, for years, had regularly been sent to all IA Clients, including the 2004 Special Clients.

39. Specifically, in connection with the SEC Reviews in 2004, 2005 and 2006, JEROME O'HARA and GEORGE PEREZ, the defendants, wrote, modified and/or maintained House 17 Programs that created a new version of account statements (the "Special RVP/DVP Statements"). The Special RVP/DVP Statements showed additional fake transactions that had not been reported to the 2004 Special Clients and which zeroed out any securities balances. Whereas the non-RVP/DVP statements showed long positions and/or cash balances, the Special RVP/DVP Statements provided to the SEC did not show any long or short positions being held by BLMIS on behalf of the account holders.

The Defendants Created False and Fraudulent DTC Reports

40. JEROME O'HARA and GEORGE PEREZ, the defendants, were familiar with the process by which House 05 obtained

information from DTC about the securities held at DTC on behalf of BLMIS's Market Making and Proprietary Trading businesses. O'HARA and PEREZ knew that: (a) House 05 communicated directly with computers at DTC and received data from DTC in several files, including an "APIBAL" file, after providing BLMIS's DTC account number and password; and (b) programs on House 05 enabled users to compare the information obtained from DTC with that produced by the STRATUS system.

41. On or about January 31, 2004, JEROME O'HARA, the defendant, created a House 17 Program ("DTC17EOM") designed to generate a monthly report that looked like the reports previously produced by DTC for House 05, but which added to the BLMIS holdings for its Proprietary Trading and Market Making operations the purported holdings of the IA Special Clients. DTC17EOM permitted an operator to pull the DTC APIBAL file for a given month using the House 05 backup tape for that month and to add to that file the Special Clients' purported stock records obtained from the House 17 Stock Record File. DTC17EOM enabled a BLMIS computer operator to print fraudulent DTC reports that reflected the combined data.

42. As JEROME O'HARA and GEORGE PEREZ, the defendants, well knew, false and fraudulent DTC reports derived from DTC17EOM and other programs developed and maintained by the defendants

were intended to be shown to representatives of the European Accounting Firm who visited BLMIS during their 2005 Review.

The Conduct of the Defendants
During and After the 2006 SEC Review

43. On or about April 6, 2006, JEROME O'HARA, the defendant, during the course of the 2006 SEC Review, closed BLMIS IA Accounts in which he had an interest and received more than \$976,000 by checks.

44. On or about April 6, 2006, GEORGE PEREZ, the defendant, during the course of the 2006 SEC Review, closed a BLMIS IA Account in which he had an interest and received approximately \$289,000 by check.

45. In or about September 2006, JEROME O'HARA and GEORGE PEREZ, the defendants, met with Madoff and DiPascali, and stated that they would no longer create computer programs used to produce false and fraudulent BLMIS books and records.

46. In or about September 2006, in an effort to keep JEROME O'HARA and GEORGE PEREZ, the defendants, working at BLMIS, Madoff authorized DiPascali to meet any salary demands made by O'HARA and PEREZ. DiPascali transmitted Madoff's offer to both O'HARA and PEREZ.

47. In or about the fall of 2006, JEROME O'HARA and GEORGE PEREZ, the defendants, demanded salary increases of approximately 20 percent. On or about November 24, 2006, O'HARA and PEREZ each received a salary increase of approximately 20

percent and also received net bonuses of approximately \$64,812, and \$60,165, respectively.

48. In or about February 2008, the European Accounting Firm was conducting another Review of BLMIS. In response to DiPascali's request, JEROME O'HARA and GEORGE PEREZ, the defendants, created computer programs that allowed DiPascali and others to use House 17 to alter data about IA Clients and to produce false and fraudulent BLMIS books and records in connection with that Review.

STATUTORY ALLEGATIONS

The Conspiracy

49. From at least in or about December 2003 up to and including on or about December 11, 2008, in the Southern District of New York and elsewhere, JEROME O'HARA and GEORGE PEREZ, the defendants, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5, falsifying the records of a broker-dealer, in violation of Title 15, United States Code, Sections 78q(a) and 78ff; Title 17, Code of Federal Regulations, Section 240.17a-3, and falsifying the records of an investment adviser, in violation of Title 15, United States Code, Sections

80b-4 and 80b-17; Title 17, Code of Federal Regulations, Section 275.204-2.

Objects of the Conspiracy

Securities Fraud

50. It was a part and an object of the conspiracy that JEROME O'HARA and GEORGE PEREZ the defendants, Madoff, DiPascali, 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.

Falsifying Records of a Broker-Dealer

51. It was further a part and an object of the conspiracy that JEROME O'HARA and GEORGE PEREZ, the defendants, Madoff, DiPascali, 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 Records of an Investment Adviser

52. It was further a part and an object of the conspiracy that JEROME O'HARA and GEORGE PEREZ, the defendants, Madoff, DiPascali, and others known and unknown, unlawfully, willfully, and knowingly, by the use of the mails and means and instrumentalities of interstate commerce, 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.

Means and Methods of the Conspiracy

53. Among the means and methods by which JEROME O'HARA, GEORGE PEREZ, the defendants, Madoff, DiPascali, and others, known and unknown, would and did carry out the conspiracy were the following:

a. At the direction of Madoff, DiPascali, and others, O'HARA and PEREZ developed and maintained computer programs that were used to generate false and fraudulent books and records related to the operation of the IA business for the purpose of misleading the SEC about the nature, scale, and activities of BLMIS's IA business.

b. At the direction of Madoff, DiPascali, and others, O'HARA and PEREZ developed and maintained computer programs that were used to generate false and fraudulent books and records related to the operation of BLMIS's IA business for the purpose of misleading the European Accounting Firm about BLMIS's operations, including where the assets of the European Accounting Firm's client were being held.

Overt Acts

54. In furtherance of the conspiracy and to effect the illegal objects thereof, JEROME O'HARA and GEORGE PEREZ, the defendants, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about December 19, 2003, in New York, New York, JEROME O'HARA, the defendant, created a computer program ("Program A") that was used to produce false and fraudulent BLMIS books and records for the IA business.

b. In or about January 2004, in New York, New York, GEORGE PEREZ, the defendant, modified Program A which was used to produce false and fraudulent BLMIS books and records for the IA business.

c. On or about January 7, 2004, in New York, New York, O'HARA created a computer program ("Program B") that was used to produce false and fraudulent BLMIS books and records for the IA business in connection with a review of BLMIS by the SEC.

d. In or about February 2004, in New York, New York, PEREZ modified a computer program ("Program C") used to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the SEC.

e. On or about February 19, 2004, in New York, New York, O'HARA created a computer program ("Program D") that was used to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the SEC.

f. In or about April 2005, in New York, New York, PEREZ modified a computer program ("Program E") that was used to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the SEC.

g. On or about April 14, 2005, in New York, New York, PEREZ created a computer file ("S.NAME7") that was used in conjunction with other computer files and computer programs to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the SEC.

h. In or about April 2005, in New York, New York, PEREZ modified a program ("Program F") that was used to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the SEC.

i. On or about April 19, 2005, in New York, New York, O'HARA further modified Program F to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the SEC.

j. In or about October 2005, in New York, New York, PEREZ modified a computer program ("Program G") that was used to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the European Accounting Firm.

k. On or about October 18, 2005, in New York, New York, PEREZ created a computer program ("Program H") that was used to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the European Accounting Firm.

l. On or about October 21, 2005, in New York, New York, PEREZ created a computer file ("S.NAME8") that was used in conjunction with other computer files and computer programs to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the European Accounting Firm.

m. In or about December 2005, in New York, New York, O'HARA modified a computer program ("Program I") that was used to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the SEC.

n. In or about December 2005, in New York, New York, PEREZ created a computer program ("Program J") that was used to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the SEC.

o. In or about December 2005, in New York, New York, O'HARA modified a computer program ("Program J") that was used to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the SEC.

p. On or about January 11, 2006, in New York, New York, O'HARA created a computer disk that contained files including false and fraudulent BLMIS books and records, and which was produced to the SEC in connection with its review of BLMIS.

q. On or about April 6, 2006, in New York, New York, O'HARA closed BLMIS IA Accounts in which he had an interest and received more than \$976,000 by checks.

r. On or about April 6, 2006, in New York, New York, PEREZ closed a BLMIS IA Account in which he had an interest and received approximately \$289,000 by check.

s. In or about September 2006, in New York, New York, O'HARA and PEREZ met with Madoff and DiPascali, and stated that they would no longer create computer programs used to produce false and fraudulent BLMIS books and records.

t. In or about September 2006, in New York, New York, DiPascali told O'HARA and PEREZ that Madoff had authorized DiPascali to meet any salary demands made by O'HARA and PEREZ.

u. In or about the fall of 2006, in New York, New York, O'HARA and PEREZ demanded pay increases of approximately 20 percent.

v. On or about November 24, 2006, in New York, New York, O'HARA received a pay increase of approximately 20 percent.

w. On or about November 24, 2006, in New York, New York, O'HARA received a net bonus of approximately \$64,812.

x. On or about November 24, 2006, in New York, New York, PEREZ received a pay increase of approximately 20 percent.

y. On or about November 24, 2006, in New York, New York, PEREZ received a net bonus of approximately \$60,165.

z. In or about February 2008, in New York, New York, O'HARA and PEREZ created computer programs that allowed DiPascali and others to produce false and fraudulent BLMIS books and records in connection with a review of BLMIS by the European Accounting Firm.

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

COUNT TWO
(Falsifying Records of a Broker-Dealer)

55. Between in or about December 2003, and on or about December 11, 2008, JEROME O'HARA and GEORGE PEREZ, the defendants, 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, in or about April 2005, O'HARA and PEREZ caused false and fraudulent books and records to be made and kept by BLMIS.

(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 THREE

(Falsifying Records of an Investment Adviser)

56. Between in or about December 2003 and on or about December 11, 2008, in the Southern District of New York and elsewhere, JEROME O'HARA and GEORGE PEREZ, the defendants, 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 2005, O'HARA and PEREZ caused false and fraudulent books and records to be made and kept by BLMIS, an investment adviser.

(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.)

FORFEITURE ALLEGATION

57. As the result of committing the securities fraud offense, as alleged in Count One of this Indictment, JEROME O'HARA and GEORGE PEREZ, the defendants, 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

offense, including but not limited to, the following: all right, title and interest of JEROME O'HARA, the defendant, in the real property and appurtenances located at 167 Legion Place, Malverne, New York, Known and designated on the Nassau County Tax Map as Section 35, Block 220, Lot: 27 to 30.

Substitute Asset Provision


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

- 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 defendants 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.)


FOREPERSON


PREET BHARARA
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

- v -

**JEROME O'HARA and
GEORGE PEREZ,**

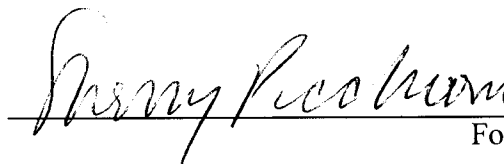
Defendants.

INDICTMENT

10 Cr.

15 U.S.C. §§ 78j(b), 78q(a), 78ff, 80b-4, 80b-17;
Title 17, Code of Federal Regulations,
Sections 240.10b-5, 240.17a-3, 275.204-2;
18 U.S.C. §§ 371 and 2

PREET BHARARA
United States Attorney.


Foreperson

3/17/10 Indictment filed, case assigned to Judge Kaplan
Bitman, U.S.M. J.