

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

INFORMATION

-v- :

S1 09 Cr. 700 (AKH)

DAVID G. FRIEHLING, :

Defendant. :

- - - - - X

COUNT ONE
(Securities Fraud)

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. BLMIS was registered with the United States Securities and Exchange Commission ("SEC") as a broker-dealer and was, beginning in or about 2006, registered with the SEC as an investment adviser.

2. Bernard L. Madoff was the founder of BLMIS, and served as its sole member and principal. In that capacity, Bernard L. Madoff controlled the business activities of BLMIS.

On March 12, 2009, in connection with his scheme to conduct a massive Ponzi scheme through BLMIS, Bernard L. 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. Among other things, Bernard L. Madoff admitted that despite his promises to clients and prospective clients that he would invest their money in shares of common stock, options, and other securities of well known corporations, he in fact never invested those clients' funds in the securities as he had promised.

3. At all times relevant to this Information, DAVID G. FRIEHLING, the defendant, was licensed in the State of New York as a Certified Public Accountant ("CPA"), was a member of the American Institute of Certified Public Accountants ("AICPA"), and was the sole practitioner at Friebling & Horowitz, CPAs, P.C. ("F&H"). From in or about 1991 through 2008, F&H was the accounting firm retained by BLMIS purportedly to audit BLMIS's financial statements. FRIEHLING created BLMIS's certified and purportedly audited financial statements, including balance sheets, statements of income, statements of cash flows, and reports on internal control. Those financial statements were filed with the SEC and were sent to certain clients of BLMIS. From in or about 2004 to in or about 2007, FRIEHLING was paid

between approximately \$12,000 and \$14,500 per month by BLMIS for his services.

Auditing Standards And Principles

4. Under the Generally Accepted Auditing Standards ("GAAS"), an auditor must obtain "sufficient appropriate audit evidence by performing audit procedures to afford a reasonable basis for an opinion regarding the financial statements under audit." AICPA Professional Standards, Auditing (hereinafter "AU") Section 326.01. Moreover, "[t]he auditor should use professional judgment and should exercise professional skepticism in evaluating the quantity and quality of audit evidence, and thus its sufficiency and appropriateness, to support the audit opinion." AU Section 326.13. Therefore, analyzing audit evidence is a fundamental part of an audit; if an auditor fails appropriately to test and verify a client's transactions, ownership and custody of assets, and account balances, the audit is rendered virtually meaningless.

5. Auditing standards also require the preparation of audit documentation in order to allow another auditor, unfamiliar with the engagement, to understand the "nature, timing, and extent of auditing procedures performed," the "results of the audit procedures," and the "conclusions reached on significant matters." AU Section 339.10.

6. Auditing standards also require that an auditor be independent; that is, an auditor "must be free from any obligation to or interest in the client, its management, or its owners." AU Section 220.03; see also AICPA Code of Professional Conduct, ET Section 101.

SEC Requirements

7. Under SEC regulations, a broker-dealer registered with the SEC is required to file an annual report, including financial statements and related disclosures, with the SEC. Under Title 17, Code of Federal Regulations, Section 240.17a-5, the financial statements are required to be accompanied by an independent auditor's report addressing both the presentation of the financial statements as well as any material inadequacies in the broker-dealer's internal controls. Under Title 17, Code of Federal Regulation, Section 240.17a-5, the audit of a registered broker-dealer must be sufficient to enable the auditor to express an opinion upon, among other things, the broker-dealer's computation of net capital and customer reserve requirements.

8. Under Title 17, Code of Federal Regulations, Section 240.17a-5(f)(3), the accountant must be independent in accordance with the provisions of Title 17, Code of Federal Regulations, Section 210.2-01(b) & (c). Under that provision, an accountant's independence is impaired when an accountant, or an accountant's immediate family member, has "[b]rokerage or similar

accounts maintained with a broker-dealer that is an audit client, if . . . [t]he value of assets in the accounts exceeds [\$500,000]."

Friehling's Failure To Conduct Meaningful Audits

9. DAVID G. FRIEHLING, the defendant, did not conduct a meaningful audit of BLMIS under the required GAAS standards or in conformity with Generally Accepted Accounting Principles ("GAAP"). FRIEHLING did not request the documentation or make the inquiries that an auditor typically must make in a GAAP- and GAAS-compliant audit. At all times relevant to this Information, and as FRIEHLING well knew, the audit workpapers maintained by F&H in connection with BLMIS (the "F&H Audit Workpapers") were inadequate to support the findings contained in the audited financial statements of BLMIS certified by FRIEHLING. Specifically, the F&H Audit Workpapers reflected insufficient independent verification of the information provided to FRIEHLING by employees of BLMIS. Among other things, because FRIEHLING had failed to conduct any meaningful audit of BLMIS, the F&H Audit Workpapers did not include documentation that FRIEHLING had: (a) conducted independent verification of BLMIS assets; (b) reviewed material sources of BLMIS revenue, including commissions; (c) examined a bank account through which billions of dollars of BLMIS client funds flowed; (d) verified liabilities related to

BLMIS client accounts; or (e) verified the purchase and custody of securities by BLMIS.

10. The audit of BLMIS conducted by DAVID G. FRIEHLING, the defendant, also failed to test internal controls as required under GAAP and GAAS standards. For example, FRIEHLING did not take any steps to test internal controls over areas such as BLMIS's redemption of client funds, the payment of invoices for corporate expenses, or the purchase of securities by BLMIS on behalf of its clients.

11. In addition, the AICPA requires that accountants who are members and who perform audits must undergo a peer review process, which includes a review of audit work papers. Each year from at least in or about 1994, through and including in or about 2008, while DAVID G. FRIEHLING, the defendant, falsely certified to the SEC that he was performing annual audits of BLMIS in conformity with GAAS and GAAP, FRIEHLING represented to the AICPA that he did not perform any audits, thereby avoiding the peer review process.

Dissemination Of Audited Financial Statements

12. For each year for which he prepared financial statements for BLMIS, DAVID G. FRIEHLING, the defendant, included an Independent Auditor's Report ("Report"). In each such Report, FRIEHLING acknowledged that BLMIS would file the accompanying Statement of Financial Condition with the SEC pursuant to Rule

17a-5 of the Securities and Exchange Act of 1934. In each such Report accompanying BLMIS's financial statements, FRIEHLING falsely stated (a) that "we conducted our audit in accordance with auditing standards generally accepted in the United States of America," when in fact he had not, and (b) that the audit "include[d] examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements," when in fact no such examination ever took place.

13. Moreover, under Title 17, Code of Federal Regulation, Sections 240.17a-5(c)(2) & (d), a broker-dealer must furnish audited financial statements to its customers. Title 17, Code of Federal Regulation, Section 240.17a-5(c)(4)(iii) defines a "customer" as "any person for whom the broker or dealer holds securities for safekeeping or as collateral or for whom the broker or dealer carries a free credit balance in the month in which customers are determined for purposes of" the section.

14. The Statement of Financial Condition, including the Report, was specially printed and regularly sent to certain BLMIS clients.

FRIEHLING's Lack Of Independence

15. In the BLMIS financial statements prepared by DAVID G. FRIEHLING, the defendant, from in or about the early 1990s to in or about 2008, FRIEHLING certified that the statements were prepared on the basis of audits conducted

pursuant to GAAS. FRIEHLING also certified that the financial statements of BLMIS were presented in conformity with GAAP. Those certifications were false because, among other things, FRIEHLING did not meet the independent auditor standards set forth in Paragraphs 6 and 8 above. In particular, FRIEHLING and/or his wife had an investment account at BLMIS from the early 1980s to the present (the "FRIEHLING Account"). At the end of each year, between at least 1995 and 2007, the FRIEHLING Account had an equity balance in excess of \$500,000.

Statutory Allegation

16. From at least the early 1990s through on or about December 11, 2008, in the Southern District of New York and elsewhere, DAVID G. FRIEHLING, the defendant, unlawfully, willfully and knowingly, by the use of the means and instrumentalities of interstate commerce, and of the mails and of the facilities of national securities exchanges, directly and indirectly, 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 the 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, to wit, FRIEHLING deceived investors by creating false and fraudulent certified financial statements for BLMIS and causing those certified financial statements to be filed with the SEC and sent to BLMIS clients.

(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 TWO
(Investment Adviser Fraud)

The United States Attorney further charges:

17. The allegations contained in Paragraphs 1 through 15, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

18. From at least the 1990s, through on or about December 11, 2008, in the Southern District of New York and elsewhere, DAVID G. FRIEHLING, the defendant, unlawfully, willfully, and knowingly, by the use of the mails and means and instrumentalities of interstate commerce, directly and indirectly, did aid and abet Bernard L. Madoff, who was acting as an investment adviser with respect to clients and potential clients of BLMIS, to (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.)

COUNTS THREE THROUGH SIX
(False Filings With The Securities And Exchange Commission)

The United States Attorney further charges:

19. The allegations contained in Paragraphs 1 through
15, above, are hereby repeated, realleged and incorporated by
reference as if fully set forth herein.

20. On or about the dates set forth below, in the
Southern District of New York and elsewhere, DAVID G. FRIEHLING,
the defendant, unlawfully, willfully, and knowingly, in
applications, reports, and documents required to be filed with
the SEC under the Securities Exchange Act of 1934, and the rules
and regulations thereunder, did make and cause to be made
statements that were false and misleading with respect to
material facts, to wit, FRIEHLING caused false and misleading
certified BLMIS audit reports to be filed with the SEC, as
follows:

| <u>Count</u> | <u>Approximate Date of Filing</u> |
|--------------|-----------------------------------|
| THREE | December 14, 2004 |
| FOUR | December 30, 2005 |

FIVE

December 22, 2006

SIX

December 20, 2007

(Title 15, United States Code, Sections 78q(e) and 78ff;
Title 17, Code of Federal Regulations, Sections 240.17a-5,
240.17a-13 and 210.2-01; Title 18, United States Code,
Section 2.)

COUNT SEVEN

(Obstructing Or Impeding The Due Administration
Of The Internal Revenue Laws -- 1991-1997)

The United States Attorney further charges:

21. The allegations contained in Paragraphs 1 through 15, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

22. From at least 1991, through and including 1997, in the Southern District of New York and elsewhere, DAVID G. FRIEHLING, the defendant, did corruptly obstruct and impede, and endeavor to obstruct and impede, the due administration of the Internal Revenue Laws, through various means, including but not limited to, aiding and assisting in the preparation of false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, and accompanying schedules, and causing the filing of those false and fraudulent returns with the Internal Revenue Service.

(Title 26, United States Code, Section 7212(a).)

COUNT EIGHT

(Obstructing Or Impeding The Due Administration
Of The Internal Revenue Laws - 1998-2003)

The United States Attorney further charges:

23.. The allegations contained in Paragraphs 1 through 15, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

24. From at least 1998, through and including 2003, in the Southern District of New York and elsewhere, DAVID G. FRIEHLING, the defendant, did corruptly obstruct and impede, and endeavor to obstruct and impede, the due administration of the Internal Revenue Laws, through various means, including but not limited to, aiding and assisting in the preparation of false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, and accompanying schedules, and U.S. Income Tax Returns for Estates and Trusts, Forms 1041, and accompanying schedules, and causing the filing of those false and fraudulent returns with the Internal Revenue Service.

(Title 26, United States Code, Section 7212(a).)

COUNT NINE

(Obstructing Or Impeding The Due Administration
Of The Internal Revenue Laws - 2004-2008)

The United States Attorney further charges:

25. The allegations contained in Paragraphs 1 through 15, above, are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

26. From at least 2004, through and including 2008, in the Southern District of New York and elsewhere, DAVID G. FRIEHLING, the defendant, did corruptly obstruct and impede, and endeavor to obstruct and impede, the due administration of the Internal Revenue Laws, through various means, including but not limited to, aiding and assisting in the preparation of false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, and accompanying schedules, and causing the filing of those false and fraudulent returns with the Internal Revenue Service.

(Title 26, United States Code, Section 7212(a).)

FORFEITURE ALLEGATION

27. As the result of committing the offenses constituting specified unlawful activity as defined in 18 U.S.C. § 1956(c)(7), as alleged in Count One of this Information, DAVID G. FRIEHLING, 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.

Substitute Asset Provision

28. 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.)


PREET BHARARA
United States Attorney