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09 MAG 2484

Before: HONORABLE DEBRA C. FREEMAN  
United States Magistrate Judge  
Southern District of New York

SEALED  
COMPLAINT

- V. -

JEROME O'HARA, and  
GEORGE PEREZ,

Defendants.

Violations of  
18 U.S.C. §§ 371, 2;  
15 U.S.C. §§ 78q(a),  
78ff, 80b-4, and  
80b-17; 17 C.F.R.  
§§ 240.17a-3,  
275.204-2

COUNTY OF OFFENSE:  
NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

M. KATHRYN SCOTT, being duly sworn, deposes and says that she is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE

(Conspiracy to Falsify Books and Records of a Broker-Dealer and  
to Falsify Books and Records of an Investment Adviser)

1. From at least in or about December 2003 up to and including at least 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, falsifying the books and records of a broker-dealer and falsifying the books and records of an investment adviser, in violation of Title 15, United States Code, Sections 78q(a) and 78ff; Title 17, Code of Federal Regulations, Section 240.17a-3; and 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

2. It was a part and an object of the conspiracy that JEROME O'HARA and GEORGE PEREZ the defendants, Bernard L. Madoff ("Madoff"), Frank DiPascali, Jr. ("DiPascali"), and others known and unknown, unlawfully, willfully, and knowingly, did cause Bernard L. Madoff Investment Securities LLC, and its predecessor, Bernard L. Madoff Investment Securities (collectively and separately, "BLMIS"), a registered broker-dealer, to fail to make and keep such records as the United States Securities and Exchange Commission ("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.

3. 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, 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.

### Means and Methods of the Conspiracy

4. 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. O'HARA and PEREZ developed and maintained computer programs for the computer that was principally used to create the books and records of BLMIS's Investment Advisory ("IA") business.

b. At the direction of Bernard L. Madoff, Frank DiPascali, Jr., 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 operations of the IA business.

c. At the direction of Bernard L. Madoff, Frank DiPascali, Jr., 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 a European accounting firm (the "European Accounting Firm") about BLMIS's operations, including where the assets of the European Accounting Firm's client were custodied.<sup>1</sup>

d. O'HARA and PEREZ attempted to delete certain computer programs that they had developed and maintained to create false and fraudulent books and records related to the operation of the IA business.

#### Overt Acts

5. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about December 19, 2003, in New York, New York, JEROME O'HARA 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, further 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.

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<sup>1</sup> 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.

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 modified Program F that was used 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. In or about April 2006, in New York, New York, PEREZ and/or O'HARA attempted to delete 218 of 225 "special" programs developed and/or maintained by O'HARA and PEREZ in connection with the production of false and fraudulent BLMIS books and records.

r. 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 nearly \$1 million.

s. 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.

t. In or about September 2006, in New York, New York, O'HARA and PEREZ met with Bernard L. Madoff and Frank DiPascali, Jr., and told Madoff that they would no longer create computer programs used to produce false and fraudulent BLMIS books and records.

u. In or about September 2006, in New York, New York, Frank DiPascali, Jr. told O'HARA and PEREZ that Bernard L. Madoff had authorized DiPascali to meet any salary demands O'HARA and PEREZ made.

v. On or about November 24, 2006, in New York, New York, O'HARA received a pay increase of approximately 25 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 25 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 Books and Records of a Broker-Dealer)**

6. 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 Books and Records of an Investment Adviser)**

7. 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.)

The bases for my knowledge and the foregoing charges are, in part, as follows:

8. I have been a Special Agent with the FBI for approximately two years, and I have been directly involved in the investigation of this matter. I have a Bachelor's degree in electrical engineering, and prior to joining the FBI I had approximately five years of experience designing computer hardware and software for private firms. I am currently assigned to the Computer Intrusion Squad in the Cyber Division within the New York Division of the FBI. I have received training in computer technology and computer fraud.

9. The information contained in this Complaint is based upon my personal knowledge, as well as information obtained from other sources, including: (a) statements made or reported by various witnesses with knowledge of relevant facts; and (b) documents and data found at BLMIS. Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include every fact that I have learned during the course of the investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

#### Relevant Entities and Individuals

10. At all times relevant to this Complaint, 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 IA services. BLMIS was registered with the SEC as a broker-dealer and also, on or about August 25, 2006, registered with the SEC as an investment adviser.

11. Based on my conversations with representatives of the SEC and my review of rules and regulations promulgated by the SEC, as a registered broker-dealer and as an investment adviser, BLMIS was required to keep certain books and records in its ordinary course of business. Among other things, those books and

records included, but were not limited to, the following:

a. Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, 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 purchased or received or to whom 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 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.

12. At all times relevant to this Complaint, 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.

13. Based on my review of court documents, BLMIS documents, and conversations with other FBI agents investigating this case, I have learned that 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.

14. Based on my review of court documents, BLMIS documents, and conversations with other FBI agents investigating this case, I have learned that DiPascali<sup>2</sup> was employed at BLMIS

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<sup>2</sup> On August 11, 2009, DiPascali pleaded guilty, pursuant to a cooperation agreement, to a ten-count Criminal Information, which included one count of perjury, one count of falsifying records of a broker-dealer, and one count of falsifying records of an investment adviser. DiPascali is awaiting sentencing and is cooperating in hopes of receiving a more lenient sentence.



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 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. At all times relevant to this Complaint, DiPascali was one of the individuals who supervised, managed, and/or directed the activities of JEROME O'HARA and GEORGE PEREZ, the defendants, insofar as those activities related to the IA business.

15. According to documents found in BLMIS personnel files that I have reviewed, JEROME O'HARA, the defendant, was employed by BLMIS from on or about June 8, 1990, through at least on or about December 11, 2008. According to BLMIS documents, former employees that have been interviewed by FBI Special Agents, and data found on BLMIS computers and back-up tapes that I have reviewed, O'HARA was 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 businesses.

16. According to documents found in BLMIS personnel files that I have reviewed, GEORGE PEREZ, the defendant, was employed by BLMIS from on or about May 6, 1991, through at least on or about December 11, 2008. According to BLMIS documents, former employees that have been interviewed by FBI Special Agents, and data found on BLMIS computers and backup tapes that I have reviewed, PEREZ was responsible for, among other things, developing and maintaining computer programs for computers that supported the operations of BLMIS, including its Market Making,

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DiPascali has provided reliable information to the FBI that has been corroborated by documentary evidence, evidence found on BLMIS computer systems and/or storage devices, and information obtained from other witnesses.

Proprietary Trading, and IA businesses.

### Background

#### A. The Ponzi Scheme

17. Based on my participation in the investigation to date, including my review of, among other things, the plea allocutions of Madoff and DiPascali, I have learned the following:

a. 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.

b. 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.

c. In connection with this scheme, Madoff, DiPascali, and other co-conspirators 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.

#### B. The "Split Strike" Strategy

18. Based on my review of court documents, BLMIS documents, my conversations with DiPascali and other FBI agents investigating this case, and public documents regarding various securities, I have learned that:

a. 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) that 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.

b. In total, thousands of IA Clients, 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".)

c. 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.

d. 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 primarily dedicated to the IA business. 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 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.

e. 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: (i) 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 (ii) 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.

f. A similar process to that described in paragraphs 18(d) and 18(e), 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 "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.

g. 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.

h. 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. Defrauding The "Non-Split Strike Clients"**

19. Based on my review of court documents, BLMIS documents, and my conversations with DiPascali and other FBI agents investigating this case, I have learned that:

a. At all times relevant to this Complaint, 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. Beginning at least as early as the 1980s, Madoff and his co-conspirators took steps to make it appear that the investments of the Non-Split Strike Clients with BLMIS had generated the returns they had been promised by Madoff when, in fact, their funds had not been invested in any securities at all.

b. At various times relevant to this Complaint, but particularly in December of each year, at Madoff's direction, DiPascali 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 and others 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.

c. 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, DiPascali 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.

**D. BLMIS Operations and Computer Systems**

20. Based on my review of documents, BLMIS computers and backup tapes, and my conversations with DiPascali, other former BLMIS employees, and other FBI agents investigating this case, I have learned that:

a. BLMIS made use of numerous information technology systems in support of its various business operations, and Madoff, DiPascali, and their co-conspirators, relied upon BLMIS computers and computer programs developed and maintained by JEROME O'HARA and GEORGE PEREZ, the defendants, among others, to carry out and conceal the scheme.

b. 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."<sup>3</sup>

i. 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.

ii. 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

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<sup>3</sup> 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, Proprietary Trading and IA businesses.

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"),<sup>4</sup> and obtained data from those third parties for use in creating BLMIS books and records. Programs on House 05 provided users with the ability 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, and those programs were regularly used to do so.

iii. Both O'HARA and PEREZ were responsible for developing programs for, and maintaining, House 05. Based on their responsibilities and the computer programs that they developed and maintained, I believe that 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, but not limited to, DTC.

c. Based on my review of BLMIS documents, various BLMIS computer systems, my conversations with DiPascali, other former BLMIS employees, and other FBI agents investigating this case, I believe that the operations of the IA business principally 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. The trade data related to the purported activities of the IA business was generated by DiPascali and others involved in the IA business, and was entered into the House 17 server.

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<sup>4</sup> 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 businesses were custodied. Because, as Madoff and DiPascali have admitted, and as the FBI's analysis of the books and records of BLMIS have revealed, few equity securities were bought or sold on behalf of IA Clients, few equity securities were held at DTC in connection with the IA business.

d. Based on my review of BLMIS documents, various BLMIS computer systems and backup tapes, my conversations with DiPascali, other former BLMIS employees, and other FBI agents investigating this case, I believe that O'HARA and PEREZ developed and maintained computer programs on House 17 (the "House 17 Programs") that were used to enter purported 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. Unlike House 05, House 17 did not obtain data concerning the purported trades related to the IA business from DTC, although it could have been programmed to do so, and did not reconcile the internally generated trade data against any outside source.

21. Based on my review of documents, BLMIS computers and backup tapes, and my conversations with DiPascali, other former BLMIS employees, and other FBI agents investigating this case, I have learned that the House 17 Programs produced 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 information on an account-by-account basis about all the IA Clients including, but not limited to, its unique BLMIS account number, in whose name the account was held and the mailing address 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 non-Split Strike Clients, the process was similar; however, because basket trades generally were not "executed" for those clients, all trades were individually entered into House 17, based on instructions provided by BLMIS employees, on an account-by-account basis.

22. Based on my review of documents, BLMIS computers and backup tapes, the plea allocutions of Madoff and DiPascali, and my conversations with DiPascali, other former BLMIS employees, and other FBI agents investigating this case, I have



learned that the books and records generated in the ordinary course of 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.

**E. Madoff's IA Business Receives Public Scrutiny**

23. In or about May 2001, two articles concerning Madoff's IA business were published and, according to DiPascali, were the subject of much internal discussion at BLMIS. I have reviewed a printout of a May 7, 2001 e-mail addressed to JEROME O'HARA, the defendant, attaching the May 7, 2001 Barron's article that was found by other FBI agents in the BLMIS office shared by O'HARA and GEORGE PEREZ, the defendant. Among other things, the article raised questions about the consistency of the returns generated by Madoff for his IA clients.

24. According to DiPascali, beginning at or around the time the articles were published, Madoff grew increasingly nervous that regulators or others might uncover the fact that the IA business was not executing the trades reflected on client account statements and confirmations. Madoff then attempted to prepare for increased scrutiny.

**F. Reviews of BLMIS Between 2004 and 2008**

25. Based on information supplied by the SEC and the European Accounting Firm, documents and records found at BLMIS, and interviews of former BLMIS employees, including DiPascali, conducted by other FBI agents, I have learned the following:

a. The operations of BLMIS were subjected to at least five separate reviews by the SEC and the European Accounting Firm between 2004 and 2008 (collectively, the "Reviews").

b. Beginning at least as early as in or about January 2004, in connection with the Reviews, Madoff and 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 were, among other things, to:

- (a) reveal information about as few of BLMIS's IA Clients as possible, thereby concealing the scale of the business;
- (b) present explanations of BLMIS's operations that would make it more difficult for the SEC and or the European Accounting Firm to attempt to corroborate with third parties the information provided by BLMIS; and
- (c) produce documents containing detailed

information that appeared to be genuine and from which no unrealistic looking patterns could easily be detected.

c. In an effort to achieve those goals, Madoff: (i) attempted to anticipate the requests of the SEC and European Accounting Firm; (ii) limited disclosures to the SEC and the European Accounting Firm to those IA clients about which they either already were aware (and/or those about which he thought they might become aware); (iii) directed DiPascali, and through DiPascali, O'HARA and PEREZ, to create, retrospectively, different "special" versions of historical BLMIS books and records to meet the actual and/or anticipated requests of the SEC and the European Accounting Firm; and (iv) 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.

d. In connection with this further deception, as described in greater detail below, JEROME O'HARA and GEORGE PEREZ, the defendants, developed and maintained special House 17 Programs (the "Special House 17 Programs") that, among other things, retrospectively: (i) created new sets of historical BLMIS books and records for certain subsets of IA Clients; (ii) changed information about the identities of IA Clients; (iii) added trading contra parties to historical transactions, and changed the identities of those contra parties depending on whether the books and records were being prepared for the SEC (in which case the contra parties were randomly selected from a list of European financial firms) or the European Accounting Firm (in which case the contra parties were randomly selected from a list of U.S. financial firms); (iv) created new versions of client account statements designed to mislead the SEC about whether BLMIS had custody of IA Clients' assets; (v) incorporated randomization algorithms to create fake records reflecting securities transactions that appeared to be realistic in terms of their size and timing; and (vi) generated documents that looked like the output of reliable third parties such as DTC.

#### **The Defendants Created False and Fraudulent Trade Blotters**

26. Based on my review of House 17, monthly backup tapes for House 17, information provided by an individual familiar with the architecture, programming language, and operation of IBM AS/400 servers (the "AS/400 Contractor"),<sup>5</sup> and

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<sup>5</sup> The AS/400 Contractor has been working for the FBI as a contractor under my supervision and the supervision of other FBI

information provided by DiPascali and other witnesses, I have learned that JEROME O'HARA and GEORGE PEREZ, the defendants, developed and maintained the Special House 17 Programs specially created for the purpose of producing documents for the SEC and the European Accounting Firm in connection with the Reviews.

27. Several of the Special House 17 Programs I reviewed were named with the prefix "SPCL," which I understand to be an abbreviation for "Special." Many of the Special House 17 Programs and files created by JEROME O'HARA and GEORGE PEREZ, the defendants,<sup>6</sup> were used in conjunction with one another to create retrospective Daily Trade Blotters that purported to identify, on a trade-by-trade basis, information including 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. As described in further detail below, the Special House 17 Programs that O'HARA and PEREZ developed and maintained, retrospectively created special Daily Trade Blotters (the "Special Blotters") that reported information wholly inconsistent with that contained in the Settled Trades File that had been generated contemporaneously with the purported "trading" activity of the IA business. Among other things, O'HARA and PEREZ developed Special House 17 Programs that retrospectively changed the following content, among other things, of BLMIS books and records with respect to purported securities transactions executed by the IA business: (a) identities of account holders; (b) associated transaction numbers; (c) numbers of shares involved; (d) times of the transactions; and (e) contra parties.

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Special Agents, and is being paid at an hourly rate.

<sup>6</sup> Several of the SPCL programs contain information in the "comments" field associated with the program that identify the Review for which each respective SPCL program was created. Based on my training and experience, I understand that software engineers often save comments with the programs that they create and/or modify to, among other things, provide information so that others are able to determine what aspects of the program were changed, when they were changed, and by whom they were changed. In attributing to the defendants the development, maintenance and modification of specific computer programs and computer files, I rely on, among other things, program comments and information provided by DiPascali and others.

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

28. According to DiPascali, 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.<sup>7</sup> To be consistent with an RVP/DVP 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.

29. Based upon my review of House 17 and its backup tapes, and information provided by the A/S 400 Contractor, I learned that, 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 (approximately 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 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

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<sup>7</sup> 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 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.

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. 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 account statements, blotters and other books and records with misleading and inaccurate information about the identities of BLMIS clients.

30. 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.

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

31. Based upon my review of House 17 and its backup tapes, and information provided by the AS/400 Contractor, I learned that JEROME O'HARA and GEORGE PEREZ, the defendants, developed and maintained Special House 17 Programs that manipulated and altered data from the Settled Trades File to generate Special Blotters that contained false and fraudulent information about the details of the purported trades. Specifically, O'HARA and PEREZ developed and maintained computer programs that, in connection with the 2004, 2005 and 2006 SEC Reviews, retrospectively:

a. Randomly divided each equity trade contained in the Settled Trades File associated with the Special Clients into up to 15 separate "slices" based on the hundredths digit of the net price associated with the transaction;<sup>8</sup>

b. Randomly assigned to each subdivided equity trade an execution time so as to ensure, among other things, that the assigned trade times for equities occurred during trading

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<sup>8</sup> Data from the Settled Trades File concerning transactions involving options, U.S. Treasury bills and other securities were also modified.

hours in London, before the U.S. equities markets had opened;<sup>9</sup> and

c. Assigned to each subdivided equity trade in the Special Blotter for the SEC's Review, a new transaction number by subtracting from the five-digit transaction number obtained from the Settled Trades File (or the new transaction number assigned to the previous subdivided equity trade), the two-digit number created by the third and fourth digits of that transaction number. For example, if the transaction number in the Settled Trade File was 98765, the transaction number assigned by the defendants' Special House 17 Programs would be 98765 minus 76, or 98689.

C. The Defendants Changed the Contra Parties on the Special Blotters

32. According to DiPascali, one of Madoff's objectives was to make the SEC believe that the trades purportedly executed on behalf of the Special Clients were conducted in Europe. Among other things, Madoff believed that the SEC would be less likely to obtain information from BLMIS's purported European trading partners and that, therefore, he was more likely to avoid detection of the fraud. Accordingly, 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, caused Special Blotters to be created that falsely showed European contra parties to the trades executed on behalf of the Special Clients.

33. According to DiPascali, Madoff also believed that because the European Accounting Firm was based in Europe, they should present documents that reflected that trades were occurring in the United States, rather than Europe, in order to reduce the likelihood that the European Accounting Firm would obtain information that would reveal the fraud. Accordingly, 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 showed United States-based contra parties to the trades executed on behalf of the Special Clients.

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<sup>9</sup> The Settled Trades File did not include any information about the times at which the purported trades described in that file had occurred.

34. The Settled Trades File created in the ordinary course of the IA business identified the contra party for each trade as "CLEARING BANK." At the direction of Madoff and DiPascali, JEROME O'HARA and GEORGE PEREZ, the defendants, created a series of modifications to the S.NAME files that allowed BLMIS to present different scenarios to the SEC and the European Accounting Firm about the contra parties to BLMIS trades.

35. Based on my review of House 17 and its backup tapes, and information provided by the AS/400 Contractor, JEROME O'HARA and GEORGE PEREZ, the defendants, incorporated in the S.NAME6 File new "accounts" for approximately 65 European financial institutions that were identified as the purported contra parties for the equity trades executed by BLMIS on behalf of the Special Clients. According to DiPascali, and documents obtained from BLMIS and MSIL that I have reviewed, the list of those European financial institutions was obtained from information about the trading activities of MSIL. The new accounts were numbered beginning with "FN600," and the account number increased by 3 (e.g., FN603, FN606, etc.) for each subsequent account.

36. In the special name files created for subsequent Reviews in 2005 and 2006 (i.e., S.NAME7, S.NAME8, and S.NAME7B), which I have also reviewed with the assistance of the AS/400 Contractor, JEROME O'HARA and GEORGE PEREZ, the defendants, re-used the contra party account numbers, but changed the names of the account holders, depending on the scenario Madoff sought to present. For example, FN600 was denoted: (a) "Aitken Campbell & Co. Ltd. (a European firm) in S.NAME6; (b) Evolution Beeson Gregory Ltd. (a European Firm) in S.NAME7 and S.NAME7B; and (c) "A.G. Edwards & Sons (a U.S. firm) in S.NAME8.<sup>10</sup> Based upon my review of BLMIS documents, House 17 and its backup tapes, and conversations with DiPascali and other FBI agents involved in this investigation, I have learned that IA account numbers were unique identifiers that were not, in the ordinary course, reassigned or reused.

37. Based upon my review of House 17 and its backup tapes, information provided by the AS/400 Contractor, and

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<sup>10</sup> According to DiPascali, and information obtained from House 17 and House 05, the identities of those U.S. financial institutions were obtained from information about the trading activities of BLMIS's Market Making and Proprietary Trading Businesses.

conversations with DiPascali and other FBI agents involved in this investigation, I have learned that:

a. The Special Blotter computer programs developed and maintained by JEROME O'HARA and GEORGE PEREZ, the defendants, drew on a different S.NAME File for each of the Reviews. For example, the S.NAME8 File (which contained names of purported U.S. equity contra parties) was, according to the program file attributes, created on or about October 21, 2005. The S.NAME8 File was used by other programs written, modified and/or maintained by O'HARA and PEREZ to generate Special Blotters for the European Accounting Firm in 2005. The S.NAME7B File (which contained names of purported European equity contra parties) was, according to the program file attributes, created on or about November 30, 2005, and was used by other programs written, modified and/or maintained by O'HARA and PEREZ to generate Special Blotters for the SEC in 2006.

b. JEROME O'HARA and GEORGE PEREZ, the defendants, included in the Special Blotter computer programs they developed and maintained to produce the Special Blotters described in paragraph 37(a), above, randomization algorithms that randomly selected the contra party for each equity trade reported on the Special Blotters from among the list of purported equity contra parties contained in the S.NAME File associated with each respective version of the Special Blotters.

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

38. Based upon my review of House 17 and its backup tapes, information provided by the AS/400 Contractor, and conversations with DiPascali and other FBI agents involved in this investigation, I have learned that:

a. In connection with the Reviews, JEROME O'HARA and GEORGE PEREZ, the defendants, 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.

b. The Special OERs, some of which I have reviewed, 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 had been placed.



c. O'HARA and PEREZ developed and maintained Special House 17 Programs that added corresponding order information to the fictitious trade execution information contained in the Special Blotters. The programs they developed generated the time that any given purported order for the purchase or sale of an equity was placed by employing a series of algorithms. One such algorithm involved subtracting the last two digits of the transaction number from the number of seconds associated with the execution time reported in the trade blotter (a time that itself had been generated using a randomization algorithm as described in paragraph 31(c), above). Additional algorithms in the program made further changes to the purported time at which any given order was entered. If the final algorithm produced a time that was more than five minutes prior to the execution time set forth on the special trade blotters, the program caused the Special OER to print "ORDER HAS TIMED OUT" with respect to that order.

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

39. Based on conversations with representatives of the SEC and documents that I have reviewed, 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 broken out by customer and by security.

40. Based upon my review of House 17 and its backup tapes, and information provided by the AS/400 Contractor, among the first "SPCL" programs developed and maintained by JEROME O'HARA, the defendant, in connection with the SEC's 2004 review of BLMIS, were SPCL23, SPCL24, SPCL25 and SPCL26 (the "2004 Special Commission Programs"), all of which I have reviewed with the assistance of the AS/400 Contractor. According to the program comments present on House 17, the 2004 Special Commission Programs were created between January 7 and January 9, 2004 by "Jerry O'Hara" within a few days after BLMIS received the SEC's January 6, 2004 document request. The 2004 Special Commission Programs used S.NAME6, and those parts of the Settled Trades File that concerned the 2004 Special Clients. The 2004 Special Commission Programs generated 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, based on my review of court documents, BLMIS documents, information provided by DiPascali, and my conversations with other FBI agents involved in this

investigation, no such trades 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**

41. As described in paragraph 29, above, Madoff wanted to produce documents in an RVP-DVP format to the SEC during certain of its Reviews. Based upon my review of BLMIS documents, House 17 and its backup tapes, information provided by the AS/400 Contractor, and conversations with DiPascali and other FBI agents involved in this investigation, I have learned that:

a. At the direction of Madoff and DiPascali, JEROME O'HARA and GEORGE PEREZ, the defendants, developed and maintained House 17 Programs that 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.

b. The account statements that customarily had been sent to all IA Clients, including the 2004 Special Clients, reflected purported securities trades and showed long positions of securities (including stocks, options, and United States Treasury bills) or cash being held by BLMIS in those clients' accounts.

c. O'HARA and PEREZ, the defendants, wrote, modified and/or maintained House 17 Programs that created a new version of account statements that: (i) drew upon S.NAME6 for the "f/b/o" account names resident thereon; and (ii) showed transactions never before reported to the 2004 Special Clients that zeroed out any securities balances so that the account statements provided to the SEC would not show any long or short positions (the "RVP/DVP Statements").

d. Programs developed by JEROME O'HARA and GEORGE PEREZ, the defendants, were used to generate RVP/DVP Statements for each of the SEC Reviews in 2004, 2005, and 2006.

**The Defendants Created False and Fraudulent DTC Reports**

42. Based on my review of House 05 and House 17, the comments associated with the computer code found thereon, information provided by the AS/400 Contractor, and conversations with other FBI agents involved in this investigation:

a. I believe that 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.

b. I have learned that 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. This process was conducted using House 05's File Transfer Protocol ("FTP") capabilities. As described in paragraph 20(b)(ii), above, programs on House 05 also provided users with the ability to compare the information obtained from DTC with that produced by the STRATUS system and created "break sheets" showing any discrepancies.

43. Based on my review of House 17 and its backup tapes and information provided by the AS/400 Contractor, comments associated with the program titled "DTC17EOM,"<sup>11</sup> reflect that, on or about January 31, 2004, JEROME O'HARA, the defendant, created a program 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 businesses the purported holdings of the 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 add to that file the Special Clients' stock records obtained from the House 17 Stock Record File. DTC17EOM combined the information and enabled a computer operator to print the fraudulent DTC reports.

44. Based on my review of House 17 and its backup tapes and information provided by the AS/400 Contractor, conversations with other FBI agents involved in this investigation, conversations with DiPascali, and documents and information provided by representatives of the European Accounting Firm, I have learned that JEROME O'HARA, the defendant, developed one or more Special House 17 Programs that generated other false and fraudulent daily DTC records.

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<sup>11</sup> I understand the file name "DTC17EOM" to refer to a program designed to generate fraudulent end-of-month DTC reports for the 17<sup>th</sup> Floor of BLMIS's offices in New York, New York (where the IA business principally was located).

45. Based on my review of House 17 and its backup tapes and information provided by the AS/400 Contractor, conversations with other FBI agents involved in this investigation, conversations with DiPascali, and documents and information provided by representatives of the European Accounting Firm, false and fraudulent DTC reports derived from DTC17EOM and other programs developed and maintained by JEROME O'HARA and GEORGE PEREZ, the defendants, were shown to representatives of the European Accounting Firm who visited BLMIS during their 2005 Review.

**The Defendants Created False and Fraudulent  
London Stock Exchange Trade Reporting Files**

46. Based on my review of House 17 and its backup tapes, information provided by the AS/400 Contractor, and interviews of former BLMIS employees including DiPascali, I have learned that:

a. Comments found in House 17 Programs reflect that, beginning at least as early as in or about December 2002, JEROME O'HARA, the defendant, created software for House 05 that allowed BLMIS to electronically send data concerning MSIL trades executed on the London Stock Exchange ("LSE") to the LSE. House 05 created a daily trade reporting file and sent that file electronically to the LSE. Upon receipt of the BLMIS trade reporting file, the LSE would send an e-mail to certain BLMIS employees, including O'HARA, confirming its receipt of the file.

b. Beginning in or about December 2003, O'HARA and GEORGE PEREZ, the defendants, developed Special House 17 Programs that created a special LSE trade reporting file for the 2004 Special Clients that was intended to look like the House 05 LSE trade reporting file. According to DiPascali, the creation of this program was intended to further Madoff's goal of persuading the SEC that the trades for the IA business were being executed in Europe. DiPascali and Madoff intended to produce LSE trade reporting files purporting to show trading activity for the 2004 Special Clients for any dates requested by the SEC. Further, they planned to attach to such reports the confirmation e-mails received from the LSE in response to the House 05 file transfers on the corresponding dates. The House 17 software that O'HARA and PEREZ created was incapable of communicating directly with the LSE and therefore could not generate the confirming e-mails in the manner that the House 05 programs did.

c. The computer programs designed to create fraudulent LSE reports were removed from the programs used to

generate special books and records for the 2005 European Accounting Firm Review. It appears that this was done so that the special books and records would be consistent with the "domestic scenario" that Madoff employed when explaining the IA business to the European Accounting Firm.

#### The Defendants' Knowledge of Their Wrongdoing

47. The investigation to date has revealed that JEROME O'HARA and GEORGE PEREZ, the defendants, created, and aided and abetted the creation of, false and fraudulent BLMIS books and records. Among other things, the investigation has revealed that:

a. O'HARA and PEREZ were involved with operation and maintenance of House 05. In that capacity, and as shown by the comments appended to certain programs on House 05 that I have reviewed, the defendants were familiar, for example, with the fact that House 05 regularly received trading information through the STRATUS trading platform, and that purported trades were not manually entered into the system to create books and records for BLMIS's Market Making and Proprietary Trading businesses.

b. The comment section to Program A referred to in paragraph 5(a), above, indicates that O'HARA entered the following: "PURPOSE: CREATE LSE TRAN REPORT FOR CONTRA BANKS." Based on my review of the House 17 Programs and information provided by DiPascali and the AS/400 Contractor, I understand this comment to reflect the fact that Program A was designed, in part, to create an LSE report for the IA business that looked like the LSE report generated by House 05. I further understand that Program A used contra party information that had been specially created to make it appear that BLMIS was executing trades on the LSE on behalf of its IA business.

c. The comment section to Program C referred to in paragraph 5(d), above, indicates that on or about February 10, 2004, PEREZ entered the following: "GP: RANDOM TIME INTERVAL ASSIGNMENT FOR EQUITIES & RAND ALGO FOR TIME2." Based on my review of the House 17 Programs and information provided by DiPascali and the AS/400 Contractor, I understand this comment to reflect the fact that Program C was designed, in part, to produce Special Blotters that included randomly generated trade execution times.

d. The comment section to Program F referred to in paragraph 5(h), above, indicates that on or about April 14, 2005, PEREZ entered the following: "GP: AUDIT 04/2005 -

ABBREVIATED SPECIAL LIST / USE S.NAME7." Based on my review of the House 17 Programs and information provided by DiPascali and the AS/400 Contractor, I understand this comment to reflect the fact that Program F was developed in connection with a Review by the SEC in 2005. I further understand that Program F used S.NAME7 to produce, among other things, RVP/DVP statements.

e. The comment section to Program E referred to in paragraph 5(f), above, indicates that on or about April 14, 2005, PEREZ entered the following:

GP: AUDIT 04/2005 - MAIN PROC  
1. ABBREVIATED SPECIAL LIST  
2. USE S.NAME7 (COPY OF S.NAME6) / UPDATED BY FRANK  
VIA SPCL302  
. . . . .

Based on my review of the House 17 Programs and information provided by DiPascali and the AS/400 Contractor, I understand this comment to reflect the fact that Program E was developed in connection with a Review by the SEC in 2005. I further understand that Program E - the main Special Program for the SEC's 2005 Review, which called upon related special sub-programs - used a list of Special Clients contained in S.NAME7, which had been updated by DiPascali, to produce false and fraudulent books and records.

f. The comment section to Program H referred to in paragraph 5(k), above, indicates that on or about October 18, 2005, PEREZ entered the following:

GP: [ ] AUDIT - MAIN PROC  
1. NEW SPECIAL LIST - NEW ACCTS/NEW DOMESTIC CONTRAS  
2. USE S.NAME8 (COPY OF S.NAME7) / UPDATED BY FRANK  
VIA SPCL402  
. . . . .

Based on my review of the House 17 Programs and information provided by DiPascali and the AS/400 Contractor, I understand this comment to reflect the fact that Program H was developed in connection with a Review by the European Accounting Firm in 2005. I further understand that Program H - the main Special Program for the European Accounting Firm's 2005 Review, which called upon related special sub-programs - used a list of Special Clients contained in S.NAME8, which had been updated by DiPascali, to produce false and fraudulent books and records.

g. The comment section to Program J referred to in paragraphs 5(n) and 5(o), above, indicates that on or about December 21, 2005, PEREZ entered the following:

GP: SEC HERE - REVISIT  
1. USE SPCL333 AS STARTING POINT  
2. USE S.NAME7B (COPY OF S.NAME7)  
. . . . .

Based on my review of the House 17 Programs and information provided by DiPascali and the AS/400 Contractor, I understand this comment to reflect the fact that Program J was developed in connection with a Review by the SEC in 2005. I further understand that Program J - the main Special Program for the SEC's 2006 Review, which called upon related special sub-programs - used a list of Special Clients contained in S.NAME7B, to produce false and fraudulent books and records.

h. Based on my review of the House 17 Programs and information provided by DiPascali and the AS/400 Contractor, in or about April 2006, O'HARA and/or PEREZ attempted to delete approximately 218 of 225 "special" programs from House 17.

i. On or about April 6, 2006, O'HARA and PEREZ closed their BLMIS IA accounts through identical typewritten instructions that I have reviewed, with each withdrawing hundreds of thousands of dollars.

j. According to DiPascali, in or about August and/or September 2006, after the 2006 Reviews by the SEC and the European Accounting Firm had been completed, O'HARA and PEREZ met with Madoff and one or more other BLMIS employees. The defendants told Madoff that they would no longer lie for him. I have reviewed handwritten notes found by other FBI agents in O'HARA's desk that state, among other things: "I won't lie any longer. Next time, I say 'ask Frank'". Those notes appear on a page between entries dated "9-25-06" and "9/27/06." According to DiPasacali, the defendants told Madoff that they would no longer create special programs to manipulate data and that DiPascali would have to create any such fraudulent records in the future.

k. According to DiPascali, following the conversation described in paragraph 46(j), above, Madoff directed DiPascali to pay O'HARA and PEREZ whatever they wanted in order to keep them happy. According to FBI analysis of BLMIS bank and payroll records with which I am familiar, O'HARA and PEREZ each subsequently received one-time net bonuses of more than approximately \$60,000 in or about November 2006. In addition,

both defendants received pay increases of approximately 25 percent at or about the same time.

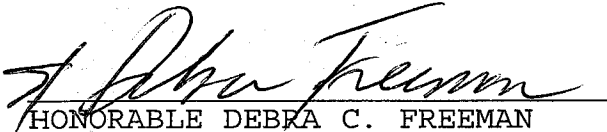
1. In or about 2008, in connection with the second Review by the European Accounting Firm, O'HARA and PEREZ modified certain House 17 Programs to permit DiPascali and other BLMIS employees to alter programs necessary to create additional false and fraudulent BLMIS books and records to respond to the European Accounting Firm's requests for information.

WHEREFORE, deponent prays that arrest warrants be issued for the above-named defendants, and that they be imprisoned or bailed as the case may be.



M. KATHRYN SCOTT  
Special Agent  
Federal Bureau of Investigation

Sworn to before me this  
12<sup>th</sup> day of November, 2009



HONORABLE DEBRA C. FREEMAN  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK