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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RUTH SONKING and RICHARD SONKING,

Plaintiffs

v.

COHMAD SECURITIES CORPORATION,
MAURICE J. COHN, MARCIA B. COHN, and
ROBERT JAFFE,

Defendants.

No. 2010-cv-00479 (MGC)

**FIRST AMENDED
COMPLAINT**

Plaintiffs Ruth Sonking and Richard Sonking, by and through undersigned counsel, as and for their First Amended Complaint against Cohmad Securities Corporation (“Cohmad”), Maurice “Sonny” J. Cohn, and Marcia B. Cohn (collectively, “Defendants”), state as follows:

Summary of the Action

1. This is an action by Ruth Sonking, an 89 year-old widow, and her son, Richard Sonking, against their brokerage firm, Cohmad, seeking compensation for damages caused by Cohmad’s breach of numerous duties owed to them, including the making of misrepresentations and omitting to disclose material information in connection with the investments. As a result of Defendants’ wrongful conduct, Plaintiffs invested with Bernard L. Madoff Investment Securities Corporation LLC (“BMIS”), and lost approximately \$6 million in retirement savings.

2. As detailed herein, Cohmad recommended Plaintiffs' investment in BMIS and induced such investment through misrepresentations of material fact, and by omitting to disclose information that was material to Plaintiffs' investment decisions. Cohmad made these investment recommendations notwithstanding the fact that it had actual knowledge of the fictitious nature of BMIS investments, and that the recommendation was based upon information that was false and misleading. It possessed this knowledge because Madoff was an owner, director, and officer of Defendant Cohmad at the time it was making the misleading statements to Plaintiffs.

3. In addition to this direct knowledge, Defendants Maurice "Sonny" Cohn and Marcia Cohn knew or should have known that the representations they were making to induce Plaintiffs' investments were false. Cohmad was founded by Madoff and Maurice "Sonny" Cohn, as reflected in its name – Cohmad is fashioned out of the first three letters of the names "Cohn" and "Madoff." Cohmad had its New York offices entirely within BMIS' premises and even utilized BMIS' employees and computer network. Through its intimate relationship, Defendants gave the false illusion that they had fulfilled their legal obligation of vetting the investment that they were recommending as suitable to Plaintiffs' investment strategy.

4. Cohmad's misrepresentations, and its failures to disclose material facts, were the product of its conflict of interest. Undisclosed to Plaintiffs, and indeed, affirmatively hidden from them, Cohmad was receiving continuing kickbacks in return for steering investors into BMIS. Over the course of the period from 1996 to 2008, Cohmad earned nearly \$100 million in referral fees. Indeed, as much as 90% of Cohmad's reported income resulted from the continual referral of victims to BMIS – and even more income was generated as a result of Cohmad's intimate relationship with BMIS. This conflict of interest would have been material to

evaluating Cohmad's recommendations, but was never disclosed to Plaintiffs. Instead, Cohmad filed false Broker Dealer registrations claiming that it earned no referral fees.

5. Through the fraudulent solicitations described herein, Cohmad induced Plaintiffs to invest millions with BMIS, monies that now have vanished once the Ponzi scheme became known. This action seeks to recover those sums from Cohmad and its principals.

Jurisdiction and Venue

6. Jurisdiction of this Court is pursuant to section 27 of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §78aa et seq. and 28 U.S.C. §1331. The Court has jurisdiction over the common law claims alleged herein pursuant to the principles of supplemental jurisdiction, 28 U.S.C. §1367(a).

7. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) as Defendant Cohmad Securities' principal place of business is located in this District. In addition, a substantial part of the events comprising Defendants' fraudulent activities giving rise to the Commission's claims occurred in the Southern District of New York.

The Plaintiffs

8. Plaintiff Ruth Sonking is an 89 year-old widow, and a citizen of the State of New York. Through the conduct at issue herein, she lost virtually the entire amount that she and her late husband, Herbert L. Sonking invested and anticipated living on through her retirement.

9. Plaintiff Richard Sonking is a citizen of the State of New Hampshire. He is the son of Ruth and Herbert Sonking. Through the conduct at issue herein, he has lost a significant portion of his retirement funds.

The Defendants

10. Cohmad is a New York corporation with its principal place of business at 885 Third Avenue in New York, NY (the “Lipstick Building”). In 1985, Madoff and Maurice Cohn incorporated and registered Cohmad as a broker-dealer with the Commission and the National Association of Securities Dealers (“NASD”). Cohmad is registered with the Commission and is registered with, and a member of, the Financial Industry Regulatory Authority (“FINRA”), the self-regulatory organization that is NASD’s successor. At all relevant time, Cohmad was owned by Maurice Cohn (48%), Marcia Cohn (25%), Bernard Madoff (15%), Madoff’s brother (9%), Maurice Cohn’s brother (1%), Robert Jaffe (1%) and another Cohmad employee (1%). Cohmad’s Form BD filings identified Madoff as a control person of Cohmad, and identified its “Types of Business” as “Development of Trading, Hedging and Investment Strategies.”

11. Maurice “Sonny” Cohn, (“Sonny Cohn”) is a citizen of the State of New York and resides at 54 Elderfields Road, Manhasset, New York 11030. Sonny Cohn is registered as an agent of Cohmad, with CRD number 1313085. Upon information and belief, Sonny Cohn is an owner of Cohmad and serves as the Chairman and Chief Executive Officer of Cohmad. He is a former member of the New York Stock Exchange and specialist at the American Stock Exchange. Prior to forming Cohmad in 1985, Cohn was a principal at a brokerage firm named Cohn, Delaire & Kaufman. He is also Madoff’s former neighbor.

12. Marcia Beth Cohn is the daughter of Sonny Cohn and resides at 50 Sutton Place South Apt. 8E, New York, New York 10022. She is a registered representative of Cohmad and is registered as an agent of Cohmad, with CRD number 1049032. She serves as its President, Chief Operating Officer, Chief Compliance Officer and principal. Marcia Cohn passed various licensing exams required for securities professionals, including Series 7, 63, 55, 24, and 4, and

the Fin-Op exam. Since at least July 1999 to the present, Marcia Cohn has signed all Forms BD and amendments that Cohmad submitted to the Commission, which number approximately 31 filings. She previously worked at another registered broker-dealer in New York and joined Cohmad in 1988.

The BMIS Investment

13. BMIS is a New York limited liability company, registered with the Commission as a broker-dealer in 1960. At the time of the Plaintiffs' initial investments, BMIS was not a registered investment adviser, first registering only in 2006. BMIS operated from its principal place of business at 885 Third Avenue, New York, New York. BMIS occupies floors 17-19 of the Lipstick Building in New York City. BMIS purportedly engaged in three different operations: investment adviser services (housed on the 17th floor), market making services, and proprietary trading. BMIS reported to the Commission that it had over \$17 billion in assets under management as of January 2008. BMIS is currently under the control of a trustee appointed pursuant to the Securities Investor Protection Act of 1970.

14. Madoff was the founder, Chairman, and Chief Executive Officer, of BMIS and, together with several Madoff family members and a number of employees, ran BMIS. Until December 11, 2008, Madoff oversaw and controlled the investment adviser services at BMIS as well as the overall finances of BMIS. Madoff faced civil and criminal charges for his role in a multi-billion dollar Ponzi scheme orchestrated since at least 1991. (S.E.C. v. Bernard L. Madoff and Bernard L. Madoff Investment Securities LLC, S.D.N.Y. 08 CV 10791 (LLS) (“the Civil Action”); United States v. Bernard L. Madoff, S.D.N.Y. 09 Cr. 213 (DC) (“the Criminal Action”)). On February 9, 2009, in the Civil Action, the District Court, with Madoff's consent,

entered a partial judgment in the Commission's case against Madoff which deems the facts of the complaint as established and cannot be contested by Madoff.

15. At a plea hearing (the "Plea Hearing") on March 12, 2009 in the case captioned *United States v. Madoff*, Case No. 09-CR-213(DC), Madoff pled guilty to an 11-count criminal information filed against him by the United States Attorneys' Office for the Southern District of New York. At the Plea Hearing, Madoff admitted that he "operated a Ponzi scheme through the investment advisory side of [BMIS]." (Plea Hr'g Tr. at 23:14-17.) Additionally, Madoff asserted "[a]s I engaged in my fraud, I knew what I was doing [was] wrong, indeed criminal." (Id. at 23:20-21.) On June 29, 2009 Madoff was sentenced to 150 years in prison for the conduct described herein.

Cohmad's Solicitation for the BMIS Investment

16. Both Ruth Sonking and her late husband, Herbert L. Sonking, became customers of Cohmad after meeting Sonny Cohn socially. Because they were not active in the investment world, and because they trusted Sonny Cohn's experience, both came to rely upon Sonny Cohn for investment advice.

17. Ruth and Herbert were looking to invest their retirement savings, and therefore Plaintiffs had conservative investment objectives. Their brokerage account at Cohmad reflected this conservative investment objective, consisting in large part of municipal bonds recommended by Cohmad. As the bonds' matured, Plaintiffs would follow Cohmad's investment recommendations concerning the allocation and roll-over of the investment into new investments in equally conservative portfolio of bonds.

18. In or about 1990, Cohmad, through Sonny Cohn, approached Plaintiffs with a supposedly special investment opportunity. In recommending to Plaintiffs that they invest with

BMIS, Cohn advised that he and his firm had a close relationship with Madoff. Defendants advised that Madoff had developed a trading strategy based on having a bundle of blue chip stocks, hedged by puts and calls, which resulted in a conservative investment that nonetheless yielded steady rate of growth. Sonny Cohn further vouched for the investment, telling the Plaintiffs that he had his own money invested with BMIS. By making the recommendation and vouching for BMIS, Defendants suggested to Plaintiffs that they had a reasonable understanding of the investment, and had ascertained that it was appropriate and consistent with Plaintiffs' investment policy.

19. Based upon Cohmad's recommendation, Herbert and Ruth Sonking both invested with BMIS in the early 1990s, starting by investing approximately \$100,000.00. Cohmad assisted and arranged the Plaintiffs in opening the customer accounts with BMIS. Plaintiffs later increased their investment by as much as \$1,000,000.00. The transactions continued periodically through the relationship. As recently as 2007, Cohmad solicited additional investments from Ruth Sonking, resulting in her investing an additional \$600,000.00 in August 3, 2007. As of November 2008, immediately prior to the Ponzi scheme being revealed, Ruth Sonking had an account balance of \$2,686,441.78 in cash and securities invested with BMIS.

20. Richard Sonking was a customer of Cohmad, having also opened an account with Cohmad. Consistent with his conservative investment purposes, the Cohmad accounts consisted of a portfolio of municipal bonds.

21. In 1994, Sonny Cohn advised Richard Sonking of an opportunity to invest in BMIS, and recommended to him that he put together the required \$100,000.00 minimum investment. Cohmad assisted Richard Sonking in opening the customer accounts with BMIS.

22. Through further solicitations, Richard Sonking increased his investments throughout the subsequent years, and engaged in securities transactions as recently as 2007, each in reliance upon the Defendants' representations and recommendations.

23. In reliance on Cohmad's and Sonny Cohn's solicitation to invest in BMIS Richard Sonking invested a total of \$1,812,450.53 with BMIS. As of November 2008, immediately prior to the Ponzi scheme being revealed, he had an account balance of \$3,258,000.00 in cash and securities invested with BMIS.

24. Cohmad and its representatives maintained relationships with BMIS investors, including Plaintiffs, after Cohmad brought customers into BMIS. In the course of this activity, the Cohns made representations to Plaintiffs about BMIS while knowing, or recklessly disregarding, facts indicating BMIS and Madoff were engaged in securities fraud.

25. In subsequent years, Cohmad provided investment advice to Richard Sonking. The Cohns provided Plaintiffs with answers to these inquiries, even checking with Madoff or employees on BMIS' 17th floor to find out the answers. Cohmad also provided Sonking with non-public information about BMIS, such as the fact that BMIS was "having a good month," during the course of providing investment advice and discussing the investment environment.

Cohmad's Actual Knowledge of BMIS' Fraud

26. Cohmad had actual knowledge that BMIS was engaging in fraud by virtue of Madoff's role as Owner, Director and Officer of Cohmad. As a result of this knowledge, Defendants knew that their investment recommendations to Plaintiffs were inappropriate, and that their subsequent statements to Plaintiffs concerning their BMIS accounts were false and misleading.

27. Cohmad was formed in February 1985 by Madoff and his friend and former neighbor Sonny Cohn. At all relevant times, Cohmad was owned by Maurice Cohn (48%), Marcia Cohn (25%), Bernard Madoff (15%), Madoff's brother (9%), Maurice Cohn's brother (1%), Robert Jaffe (1%) and another Cohmad employee (1%).

28. Cohmad's filing on Financial Industry Regulatory Authority's Central Registration Depository ("CRD") identifies Madoff as a Director of Cohmad. Other directors and officers of Cohmad include: Peter Madoff (Madoff's brother), Milton Cohn (Sonny's brother), and Marcia Cohn (Sonny's daughter), along with Sonny Cohn, Madoff, Jaffe and Buccellato.

29. Madoff was considered the "Boss" by Cohmad representatives. Madoff exercised actual control over Cohmad's operations in areas large and small. For example, to avoid regulatory scrutiny into BMIS, in or around 2006, Madoff dictated to Marcia Cohn that Cohmad representatives would no longer be allowed to use email, for anything. In addition, Madoff set the retirement compensation for a departing Cohmad representative and he unilaterally lowered compensation rates and allocations for Cohmad and its representatives as he saw fit. Compliance questions concerning the Cohmad's retail brokerage business were run by BMIS' legal compliance department.

30. In addition to the actual knowledge held by Cohmad as a result of Madoff's role in Cohmad, Defendants had other access to BMIS. Cohmad's offices were embedded within BMIS' offices on the 18th and 19th floors of the Lipstick Building and Cohmad representatives sat either on the BMIS trading desk or in a single office surrounded by other BMIS offices. Cohmad CEO, Maurice Cohn, had his own office at BMIS that was closer to Madoff's office and not even contiguous to the office where the other Cohmad representatives sat. Cohmad's operations were indistinct from BMIS, sharing everything from reception to photocopiers to bathrooms. Even

Cohmad's payroll and health benefits plans were integrated with BMIS until approximately 2002 and until approximately that time Cohmad shared email servers with BMIS. Cohmad was even integrated into BMIS' market-making operation, executing trades on the floor of the NYSE (through Bear Stearns) for positions that the BMIS market-making desk wanted to lay-off its book. In addition, during Cohmad's early years, its representatives were even listed on BMIS account opening forms, but were not identified as associated with Cohmad.

Cohmad's Sharing of Offices and Access to BMIS

31. Upon information and belief, both Sonny Cohn and Marcia Cohn had access to BMIS' offices. Significantly, although Cohmad's offices were located on the 18th floor, at least Marcia Cohn had a master key which granted access to all of BMIS' offices, including the 17th floor, where the fraudulent activity of the IA business occurred. Indeed, the historical information related to Marcia Cohn's door access cards for the last year indicates that her card was used to gain access to the 17th floor with regularity, even on December 11, 2008, the day on which Madoff was arrested. On various occasions and dates, Marcia Cohn used her card to gain access to the following three doors on the 17th floor: "885 17 CAGE", "885 17 ELEVATOR LOBBY", and "885 17 STAIR B".

32. Marcia Cohn's access to the 17th Floor is particularly significant here, as even most of BMIS' employees did not have access to the 17th Floor. BMIS' market maker business and BMIS' proprietary trading desk were located on the 18th and 19th floors, along with Cohmad. The following factors about the 17th floor are notable:

- a. BMIS' IA business (known as "House 17"), located one floor below Cohmad's office on the 18th floor, was the home of the operations of the infamous Ponzi scheme.

- b. The reported day-to-day operations of the IA Business 17th Floor were antiquated. The IA business utilized IBM Application System 400 computers (the “AS 400 System”) – that is computers that were introduced in 1988 for small businesses. The AS 400 System was used to report customer cash transactions, prepare customer statements and generate false trade confirmations. The customer cash transactions were maintained on handwritten logs before being manually entered into the system. In fact, the running balance of available cash was manually recorded on index cards and reported to Madoff on a regular basis.
- c. Only 6 of the approximately 21 BMIS employees in the IA Business had BMIS e-mail accounts.
- d. Upon information and belief, three individuals worked in the back area, known as the “cage.” A “cage” is a term known in the securities industry as the area where currency, checks and physical securities are stored, and this term was widely used during the time when securities were typically stored in-house. In BMIS’ “cage,” however, individuals kept track of the actual inflow and outflow of money, that is, the checks and wires coming into and out of the House 17 bank accounts.
- e. Upon information and belief, in the open area of the 17th floor, other individuals researched historical equity prices from various sources including Bloomberg, Thompson Financial Services, and issues of the Wall Street Journal. These equity prices were then utilized to create fictitious trades for past trading periods. In the center of the floor, in an area surrounded by glass walls and referred to as the “fish bowl,” two individuals worked inputting the trades into House 17’s AS 400 System, which was not connected to any

external system that executed trades and was therefore unable to have facilitated any actual securities trades.

f. The AS 400 System would then generate false trade confirmations for the fictitious trades. The value of securities based on these trades was then automatically calculated by the system for the creation of the IA customer statements. Most of the IA customer files and copies of monthly statements were stored on the 17th Floor.

g. Entry to the IA Business on the 17th Floor required a key-card or a key.

h. The majority of BMIS employees did not have authority to enter the 17th Floor and could not do so with their BMIS-issued key card. They knew little about the 17th Floor, and/or had never been on the 17th Floor.

33. In short, Madoff kept the 17th Floor off-limits to all but a select few employees and family members – a select group that included Marcia Cohn. Upon information and belief, Kurzrok and Buccellato also accessed the 17th Floor, as did Cohmad employee John Joseph Kelly, an unnamed non-defendant.

Cohmad's Tracking of Customer Accounts

34. Cohmad also maintained a separate database on BMIS' network (the "Cohmad Cash Database") which consisted solely of the BMIS customer accounts that had been referred by the Cohmad Representatives other than Sonny Cohn and Jaffe. Upon information and belief, the Cohmad Cash Database was used to monitor BMIS customer accounts for those customers referred by Cohmad Representatives to BMIS other than Sonny Cohn and Jaffe and to calculate the commissions to be paid by BMIS to Cohmad for the benefit of the Cohmad Representatives other than Sonny Cohn and Jaffe.

35. For each victim referred to BMIS by a Cohmad Representative other than Jaffe and Sonny Cohn, the Cohmad Cash Database calculates and reports the following:

- a. the name of the owner of the BMIS customer account,
- b. the tax identification information of the BMIS customer,
- c. the Cohmad Representative associated with the referral for that BMIS customer account,
- d. the date and amount of each deposit into and each withdrawal from the BMIS customer account,
- e. the total amount of cash under management at BMIS in the account,
- f. the amount of commissions due to the particular Cohmad Representative, and
- g. the BMIS account number assigned to the BMIS customer account.

36. The Cohmad Cash Database was originally maintained by Belle Jones, an employee of BMIS. In recent years, the Cohmad Cash Database was maintained by Buccellato, and Buccellato entered the data contained therein.

37. The Cohmad Cash Database provided, on an account by account basis, the true value (i.e. the account balance without reference to the fictitious profits) of each BMIS account referred by a Cohmad Representative other than Sonny Cohn and Jaffe.

38. Cohmad's database tracking the net capital accounts for investors brought into BMIS by Cohmad representatives also provided red flags to Defendants Sonny and Marcia Cohn. The returns that Madoff provided to those investors were not included in the database. For example, if a client placed \$10,000 with BMIS and it grew to \$100,000 through the supposed management of BMIS, and the client withdrew \$15,000, Cohmad no longer received any payments on the funds despite the \$85,000 that remained in the customer accounts. More significantly, on

Cohmad's internal records and database, the above scenario was designated as a negative \$5,000 number (meaning \$5,000 more was withdrawn than placed into the account.) These facts suggested that profits generated by Madoff were fictitious. Ponzi schemes require a net inflow of funds into the scheme and once the amount withdrawn by an account exceeds the amount deposited, the account is a net liability for the Ponzi scheme and of no value. Accordingly, Madoff ceased making payments, and the Cohns, Cohmad and its representatives accepted this arrangement year after year.

39. Importantly, in situations where BMIS customer statements showed a positive balance due to fictitious profits, but the account was actually in a negative position because the customer had withdrawn from the account more money than the customer had deposited, the Cohmad Cash Database showed the negative account balance of the BMIS customer account.

40. In general, customer accounts at a legitimate brokerage would not maintain active accounts with negative net equity, net equity being the amount of deposits minus the amount of withdrawals in the brokerage account. Upon information and belief, because the Cohmad Representatives were privy to the Cohmad Cash Database showing negative account balances, the Cohmad Representatives knew or should have known that BMIS IA business was a fraud.

41. In calculating the amount of commissions due to Cohmad Representatives, the Cohmad Cash Database was used to determine, for each IA account Cohmad referred to BMIS, the money under management, based on the net cash activity and certain related subjective adjustment. A subjective percentage, generally ranging from 0.1% to 0.9%, would then be applied to the money under management and weighted adjustments would be made to consider intra-year cash activity. Remarkably, the Cohmad Cash Database would reduce the commissions

due a representative based in the event of negative net cash activity in BMIS IA accounts. This means that despite the fact that certain BMIS customer accounts appeared to have significant positive balances, due to fictitious profits, Cohmad and the Cohmad Representatives knew otherwise and would no longer be paid once a customer withdrew all of the cash that they deposited.

42. These net activity calculations appear to have also involved the use of so-called “Capital Movement” reports generated on behalf of BMIS by BMIS employee Frank DiPascali. Upon information and belief, DiPascali had a standing report programmed that would pull all of the Cohmad related IA accounts and their underlying cash deposits and cash withdrawals.

43. The amounts of commissions generated on the Payment Schedules corresponded to the amount of money paid by BMIS to Cohmad and the Cohmad Representatives.

44. Cohmad has indicated that at times BMIS’ trading desk executed trades of securities through Cohmad. The Cohmad Representatives should have known that the only reason for BMIS to request these trades was that BMIS was not actively trading in the IA Accounts, and that House 17 did not have the capability of executing trades.

The Defendants’ Breach of Duties in Recommending the BMIS Investment

45. Cohmad lacked a basis for recommending the BMIS investment for numerous reasons. Foremost, as stated above, Cohmad itself possessed actual knowledge of the fraud, through Madoff’s participation. Individual Defendants Sonny Cohn and Marcia Cohn knew or should have known that the investment recommendation to Plaintiffs was not suitable.

46. In the alternative, in the event that Cohmad and Defendants are determined not to have possessed actual knowledge of the fraud, Defendants still breached duties owed to Plaintiffs

by failing to conduct the required due diligence of investigating these reports, or taking the steps necessary to assure themselves that BMIS' investment strategy was suitable for Plaintiffs.

47. Specifically, Defendants were on notice of the following indicia of irregularity and fraud due to the operation and/or relationship with Cohmad and/or by the activity in their BMIS Cohmad Family IA Accounts but failed to make sufficient inquiry:

- a. The BMIS accounts reported an implausibly consistent—and consistently high—rate of return.
- b. These implausibly high purported returns have enabled the Cohmad Representatives, other than Jaffe, and their family members to collectively withdraw at least at least \$105,235,523 over and above any funds invested, from BMIS between January 1996 and December 2008.
- c. The Defendants, including the Cohmad Representatives, knew or should have known that fictitious and backdated trading activity was being reported in the BMIS Cohmad Family IA Accounts, and that the BMIS Cohmad Family IA Accounts reflected fictitious holdings.
- d. BMIS' statements to the Cohmad Representatives, their family members, and BMIS customers referred by Cohmad reflected a consistent ability to buy stocks near their daily lows, and to sell stocks near their monthly highs, a timing of the market that is virtually impossible to achieve in the absence of deceit and manipulation. No experienced investment professional could have reasonably believed that this could have been accomplished legitimately. Indeed, upon information and belief, the Cohmad Representatives had their own trading accounts with Cohmad, and the Cohmad Representatives were making trades in such accounts over the same time period. As such,

and based on their industry expertise, the Cohmad Representatives were aware of the performance in the market in general, and should have known that the IA Accounts were providing a rate of return that was inexplicable.

48. Beyond these indicia of fraud, the Defendants ignored numerous other indicia of irregularity and fraud. Among other things, the Defendants were on notice of the following indicia of irregularity and fraud but failed to make sufficient inquiry:

a. The purported consistency of the IA Business returns was questioned in a May 2001 article entitled “Madoff Tops Charts; Skeptics Ask How” published in MAR/Hedge, a semi-monthly newsletter that is widely read by hedge fund industry players. The article noted that many current and former traders, other money managers, consultants, quantitative analysts and fund of fund executives who are familiar with the split-strike conversion strategy purportedly used by Madoff to manage the assets questioned the consistency of the reported returns and observed that “others who use or used the strategy are known to have had nowhere near the same degree of success.”

b. A May 27, 2001 Barron’s article entitled “Don’t Ask, Don’t Tell: Bernie Madoff is so secretive, he even asks investors to keep mum” following the industry newsletter raised similar concerns about the credibility of BMIS’ reported compound average returns of 15% for over a decade. The article noted the skepticism on Wall Street and lack of transparency around Madoff’s IA Business based on Madoff’s unwillingness to answer questions about his investment strategy.

c. The IA Business did not use either itself or outside brokers when buying or selling the securities it purported to manage and trade on a monthly basis on behalf of its investors.

d. BMIS chose not to obtain funding from commercial lenders at lower interest rates than it paid out. As the Cohmad Representatives were aware, the BMIS customer accounts that they referred, as well as their own BMIS Cohmad Family Accounts, received far higher purported annual rates of return on their investments with BMIS, as compared to the interest rates BMIS would have had to pay commercial lenders during the relevant time period. As such, BMIS accepted the investment capital referred by the Cohmad Representatives in lieu of other available alternatives that would have been more lucrative for BMIS.

e. BMIS, which reputedly ran the world's largest hedge fund, was purportedly audited by Friebling & Horowitz, an accounting firm that had only three employees, one of whom was semi-retired, with offices located in a strip mall. No experienced investment professional could have genuinely believed it possible for any such firm to have competently audited an entity the size of BMIS.

f. BMIS' statements to investors reflected a consistent ability to trade stocks near their monthly highs and lows to generate consistent and unusual profits. No experienced investment professional, such as the Cohmad Representatives, could have reasonably believed that this could have been accomplished legitimately.

g. BMIS functioned as both investment manager and custodian of securities. This arrangement eliminated another frequently utilized check and balance in investment management by excluding an independent custodian of securities from the process, and thereby furthering the lack of transparency of BMIS.

h. The compensation system utilized by BMIS was atypical, in that BMIS, the entity purportedly employing the hugely-successful and secret proprietary trading system, was

compensated only for the trades that it executed, while the Cohmad Representatives, whose main role was to funnel money to BMIS, received administrative fees and a share of the profits that would normally go to the entity in the position of BMIS.

This compensation arrangement, together with the lack of transparency and other factors listed herein, should have caused an experienced investment professional to question Madoff's operation.

i. Based on some or all of the foregoing factors, many banks, industry advisers, and insiders who made an effort to conduct reasonable due diligence flatly refused to deal with BMIS and Madoff because they had serious concerns that the IA Business operations were not legitimate. On information and belief, included among these were Société Generale, Goldman Sachs, CitiGroup, Morgan Stanley, Merrill Lynch, Bear Stearns, and Credit Suisse.

j. BMIS purported to convert all of its holdings to cash immediately before each quarterly report, a strategy that had no practical benefit but which had the effect of shielding BMIS' purported trading activities from scrutiny.

k. All of the Defendants were intimately involved with Madoff and had a close personal, if not familial, relationship with Madoff for decades.

49. Cohmad's recommendations of the BMIS investment to Plaintiffs failed to disclose the above information known to it about the BMIS fraud, and, upon information and belief, failed to perform the required investigation into BMIS to determine whether the investment was suitable for recommendation to clients.

Defendants' Failure to Disclose Kickbacks from BMIS

50. Cohmad failed to disclose this information because Cohmad and the Cohns were being paid large amounts of money by BMIS to direct investors to BMIS. For the time period for which BMIS records are currently available, which at the time of filing extends back to January 1996, BMIS made payments to Cohmad on at least a monthly basis. For the period from 1996 – 2008, the known payments to Cohmad total \$98,448,678.84. A list of known payments from BMIS to Cohmad, from 1996-2008, is attached as Exhibit 1 hereto. The yearly breakdown of known payments to Cohmad is as follows:

Year	Amount
1996	\$4,789,019.62
1997	\$7,378,789.26
1998	\$8,098,228.23
1999	\$9,874,438.90
2000	\$10,415,793.21
2001	\$9,892,273.82
2002	\$10,905,265.27
2003	\$9,462,247.47
2004	\$6,745,439.44
2005	\$7,239,978.09
2006	\$6,449,342.84
2007	\$4,583,267.63
2008	\$2,614,595.06
TOTAL:	\$98,448,678.84

51. For the time period from 2002 to the present, BMIS made direct payments to Sonny Cohn personally on at least a monthly basis. For this period, the known payments from BMIS to Sonny Cohn are \$14,601,213.15. Since at least November 2001, BMIS paid Sonny Cohn \$8,000.00 every month, and paid additional sums each quarter. A list of known payments from BMIS to Sonny Cohn, from 2001-2008, is attached as Exhibit 2 hereto. The yearly breakdown of known payments to Sonny Cohn since 2002 are:

Year	Amount
2002	\$2,437,165.00
2003	\$2,350,600.00
2004	\$1,882,831.05
2005	\$1,930,617.10
2006	\$2,000,000.00
2007	\$2,000,000.00
2008	\$2,000,000.00
Total	\$14,601,213.15

52. Cohmad hand delivered to BMIS, on almost a monthly basis, requests for payment – often stating that the requests were for “professional services” and other times not even referencing a particular reason for payment. Those requests correlate almost precisely with the fees recognized as income on Cohmad’s income statements and the actual payments made by BMIS.

53. Upon information and belief, Cohmad provided to the SEC unaudited income statements. These statements included as income fees for “account supervision,” which appear to include fees paid to Cohmad by BMIS for accounts referred by Cohmad’s Representatives.

54. For each year from 2000 to 2008, the fees paid by BMIS to Cohmad for “account supervision” (i.e., accounts referred to BMIS by Cohmad Representatives) represented the vast majority of Cohmad’s income, as set forth on the following chart.

YEAR	Fees for Account Supervision Listed on Income Statements	Total Income to Cohmad	Percentage of Cohmad’s Total Income
2000	\$10,415,284.35	\$13,801,556.83	75.46%
2001	\$9,892,314.11	\$12,370,678.82	79.97%
2002	\$10,305,265.07	\$12,505,818.33	82.40%
2003	\$9,462,247.47	\$10,376,164.70	91.19%
2004	\$6,745,438.44	\$7,760,711.65	86.92%
2005	\$7,239,978.07	\$8,070,855.01	89.71%
2006	\$6,449,343.24	\$7,177,126.17	89.86%
2007	\$4,255,062.89	\$4,934,157.49	86.24%
2008	\$2,665,092.01	\$3,118,294.42	85.47%
TOTAL	\$67,430,025.45	\$80,115,363.42	84.17%

The foregoing chart does not include the fees paid to Jaffe or Sonny Cohn. When considering the amounts paid directly from BMIS to Sonny Cohn, the percentage of Cohmad’s income paid by BMIS is considerably higher, as detailed in the following table, which extends back to 2002, when payments to Cohn were made separately.

YEAR	Fees from BMIS to Cohn and Cohmad	Total Income to Cohmad Including Payments to Cohn	Percentage of Total Income to Cohn and Cohmad
2002	\$12,742,430.07	\$14,942,983.33	85.27%
2003	\$11,812,847.47	\$12,726,764.70	92.82%
2004	\$8,628,269.49	\$9,643,542.70	89.47%
2005	\$9,170,595.17	\$10,001,472.11	91.69%
2006	\$8,449,343.24	\$9,177,126.17	92.07%
2007	\$6,255,062.89	\$6,934,157.49	90.21%
2008	\$4,665,092.01	\$5,118,294.42	91.15%
TOTAL	\$61,723,640.34	\$68,544,340.92	90.05%

55. Disclosure of Defendants’ compensation for soliciting investment is material information that enables investors to determine the solicitor’s financial incentives in making

the referral to the Investment Adviser. By SEC Rule 204-3 of the Investment Adviser's Act of 1940, 15 U.S.C. § 80b, Defendants were required to provide to Plaintiffs a disclosure of the referral, or "solicitation," fees that Defendants would receive from the Investment Adviser. Rule 206(4)-3, promulgated by the Securities Exchange Commission pursuant to Section 206(4) of the Advisers Act, requires "at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's [brochure] and a separate written disclosure document described in paragraph (b) of [Rule 206(4)-3]." Paragraph (b) of Rule 206(4) requires the additional document to include:

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

56. This referral fee was material to understanding Cohmad's recommendation in making the referral to BMIS, because it provided Cohmad with a powerful incentive for recommending BMIS to investors. Nearly all of Cohmad's revenue came from BMIS in the form of compensation for bringing customers into BMIS (and, in the earlier years, for execution of layoff trades). For the period 1996 through 2008, payments by BMIS to Cohmad total \$98,448,678.84.

Under the titles “professional services”, “brokerage services” or “fees for account supervision,” Madoff compensated Cohmad each year the account was open. For each year from 2000 to 2008, Cohmad’s yearly revenue from BMIS ranged from \$10.4 million (year 2000) to \$2.6 million (year 2008), and accounted for as much as 91.2% of Cohmad’s total revenue (year 2003) and no less than 63.98% of Cohmad’s total revenue (year 1999). These numbers do not include the fees that BMIS paid directly to Maurice Cohn and Jaffe. BMIS direct payments to Maurice Cohn for the period 2001 to 2008 total more than \$14 million. When the revenue BMIS paid directly to Maurice Cohn is included in the analysis concerning the years 2000 through 2008, the percentage of Cohmad’s income paid by BMIS is considerably higher, ranging in those same years from 79.98% (year 2001) to 92.82% (year 2003).

57. Cohmad and BMIS failed to provide Plaintiffs with the written disclosures required by Rule 206(4)-3.

58. Not only did Cohmad fail to disclose the compensation to Plaintiffs, but it even took affirmative steps to hide the information from investors. For example, in its Forms BD and amendments for the last six years, which were signed by Marcia Cohn, Cohmad made the following false responses:

- Question 7 on the Form BD asks: “Does *applicant* refer or introduce customers to any broker or dealer?” Cohmad answered “Yes,” but only disclosed Bear Stearns, its clearing firm for the retail brokerage business and failed to disclose any reference to BMIS, to which it referred over 800 customers.
- Question 10.A. asks “Directly or indirectly, does *applicant* control, is *applicant* controlled by, is *applicant* under *common control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?” Cohmad answered “No,” even though Cohmad was under the control of BMIS and both Cohmad and BMIS were under Madoff’s common control.

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

60. Through false filings, Madoff and the Defendants succeeded in concealing from Plaintiffs BMIS' advisory business and its relationship with Cohmad.

61. When subpoenaed by the Secretary of the Commonwealth of Massachusetts to testify concerning these matters, including these referral fees, Defendants Cohmad, Maurice Cohn and Marcia Cohn refused to appear and provide testimony in January 2009.

62. The above information was not disclosed to Plaintiffs.

63. The above information would have been material to Plaintiffs in evaluating the BMIS investment.

64. As a result of these failures, and the subsequent false representations to Plaintiffs about the status of their BMIS investments, Plaintiffs made investments in BMIS, and continued to entrust BMIS with their funds in reliance upon Defendants' representations.

65. Plaintiffs have been injured as a result of Defendants' false representations, and omissions to disclose material information.

FIRST CLAIM FOR RELIEF

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

66. Paragraphs 1 through 65 are re-alleged and incorporated by reference as if set forth fully herein.

67. Defendants, in connection with Plaintiffs' purchase and sale of securities, directly and indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails and/or wires, employed devices, schemes and artifices to defraud; have made

untrue statements of material fact and have omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and have engaged in acts, practices and courses of business which operated as a fraud and deceit upon investors. Among the fraudulent conduct, which is described more fully herein:

- a. Cohmad had actual knowledge of the fraudulent scheme and nonetheless represented that the investment was conservative and suitable;
- b. Defendants misrepresented the nature of the investment strategy;
- c. Defendants touted their access to BMIS and Madoff, suggesting thereby ability to vet and vouch for the investment strategy;
- d. Defendants misrepresented BMIS's performance when it reported that BMIS "was having a good month."

68. Defendants also omitted to disclose material information about the BMIS investment, including:

- a. failing to disclose the nature of its relationship with BMIS, including failing to the disclosures required by Rule 204-3 of the Investment Advisers Act of 1940. Cohmad, Maurice Cohn, and Marcia Cohn solicited Plaintiffs on behalf of BMIS while taking compensation from BMIS for such activity and aware that BMIS was an investment adviser. Cohmad, Maurice Cohn, Marcia Cohn, Jaffe and other Cohmad representatives knowingly did not provide any written disclosures to investors they solicited on behalf of BMIS;

- b. failing to disclose the facts about the BMIS investment known to Cohmad, including the fraudulent nature of its business and the fictitious nature of the investment transactions; and
- c. failing to disclose that for most of the period, BMIS was not appropriately registered under the Investment Advisers Act of 1940;

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

70. Plaintiffs have suffered injuries as a result of Comad's misrepresentations, including the loss of their investment, the lost opportunity to invest in alternative suitable investments, and the tax payments made in connection with non-existent profits.

SECOND CLAIM FOR RELIEF
(Common Law Fraud)

71. Paragraphs 1 through 70 are re-alleged and incorporated by reference as if set forth fully herein.

72. Defendants made a false representation as to a material fact, including:
- a. misrepresenting that the investment was conservative and suitable;
 - b. misrepresenting the nature of the investment strategy;
 - c. touting their access to BMIS and Madoff, suggesting thereby ability to vet and vouch for the investment strategy;
 - d. misrepresenting BMIS's performance when it reported to Richard Sonking that BMIS "was having a good month."

73. Defendants knew these statements to be false, by virtue of Madoff's membership in Cohmad, and Cohmad's active participation in, and benefit from, the fraud.

74. Defendants made the above representations with the intent to deceive and for the purpose of inducing Plaintiffs to act upon them.

75. Defendants also omitted to disclose material information, including the commissions and fees that they were earning from BMIS in exchange for referring investors to the investment.

76. Plaintiffs did in fact rely on the representation and was damaged by that reliance.

THIRD CLAIM FOR RELIEF
(Breach of Fiduciary Duty)

77. Paragraphs 1 through 76 are re-alleged and incorporated by reference as if set forth fully herein.

78. Plaintiffs placed their trust and confidence in Cohmad, including the trust that Defendants had performed due diligence on their investment recommendations, and had a reasonable basis for the recommendation.

79. In addition to the duty not to misrepresent information, Defendants owed Plaintiffs a duty to disclose material information.

80. Defendants breached the duty by failing to disclose material information about their recommendation of BMIS, including disclosing that BMIS was engaging in fraud, that Defendants were receiving financial payments for the recommendation, and that the investment was not suitable to Plaintiffs.

81. Plaintiffs were injured by the Defendants' breach of their fiduciary duties.

FOURTH CLAIM FOR RELIEF
(Negligent Misrepresentation)

82. Paragraphs 1 through 81 are re-alleged and incorporated by reference as if set forth fully herein.

83. Defendants had knowledge that Plaintiffs desired information regarding the BMIS investment for a serious purpose and knew that Plaintiffs intended to rely upon information provided by defendants.

84. Defendants knew that if the information provided was false or erroneous Plaintiffs would be injured.

85. The Defendants owed to Plaintiffs a duty: (a) to act with reasonable care in preparing and disseminating the information set forth in the representations relied upon by Plaintiffs in deciding to purchase the investments; and (b) to use reasonable diligence in determining the accuracy of and preparing the information contained therein.

86. Defendants breached their duty to Plaintiffs by failing to investigate, confirm, prepare and review with reasonable care the information contained in the written materials and other representations and by failing to disclose to Plaintiffs, among other things, the facts alleged above, and in failing to correct the misstatements, omissions and inaccuracies contained therein.

87. In responding to Plaintiffs' requests for account information, Defendants misrepresented to Plaintiffs the value of the account, and the BMIS performance.

88. As a direct, foreseeable and proximate result of this negligence, Plaintiffs have sustained damages, suffered mental and emotional distress and have been injured by Cohmad's violation of the above duties, lost a substantial part of their respective investments, together with lost interest, general and incidental damages in an amount yet to be determined, and to be proven at trial.

FIFTH CLAIM FOR RELIEF
(Violation of the Investment Adviser Act of 1940)

89. Paragraphs 1 through 88 are re-alleged and incorporated by reference as if set forth fully herein.

90. Cohmad, and Sonny Cohn, received compensation for providing advice to Plaintiffs as to the advisability of investing in, purchasing, or selling securities. They therefore acted as an investment advisor within the meaning of the Investment Adviser Act of 1940, which provides:

(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities;

15 U.S.C. 80b-2(a)(11) (section 202(a)(11)).

91. Cohmad does not qualify for the exception set forth in section 202(a)(11)(C) because it was not a "broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor" because Cohmad, Sonny Cohn and Marcia Cohn received special compensation for the investment recommendations that it made.

92. Cohmad was not registered as an Investment Adviser.

93. Defendants violated Section 206 of the Investment Adviser Act, which provides:

It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud any client or prospective client;

(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

(3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this paragraph (3) shall not apply to any transaction with a customer of a broker or dealer if such broker or dealer is not acting as an investment adviser in relation to such transaction;

(4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

94. Plaintiffs have been damaged by Cohmad's breach of the Investment Adviser Act of 1940, and are entitled to rescission and restitution of the transactions.

SIXTH CLAIM FOR RELIEF
(Negligence)

95. Paragraphs 1 through 94 are re-alleged and incorporated by reference as if set forth fully herein.

96. As a broker-dealer, Cohmad owed Plaintiffs a duty of care, which encompassed the following components:

- a. Defendants had a duty to disclose to Plaintiffs all material information known to Cohmad about the investment.
- b. Defendants had a duty to investigate the investment recommendations made to Plaintiffs.
- c. Defendants had a duty to disclose any conflict of interest that might impair the impartiality of their investment recommendations.

97. In violation of its duties Defendants failed to conduct the required oversight and due diligence into BMIS, and failed to make the required disclosures.

98. Plaintiffs' have been injured by Defendants' violation of its duties.

SEVENTH CLAIM FOR RELIEF
(Violation of Suitability)

99. Paragraphs 1 through 98 are re-alleged and incorporated by reference as if set forth fully herein.

100. As a broker-dealer, Cohmad was subject to the "suitability" requirements set forth in, among other sources, the National Association of Securities Dealers rules.

101. For example, the National Association of Securities Dealers' (NASD) Rule 2310 (formerly Article III, section 2 of the Rules of Fair Practice) provides, "[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

102. At all relevant times, Cohmad was aware that the Madoff Ponzi scheme was fictitious and not a suitable investment for any investors, particularly those such as Plaintiffs, who desired a conservative investment strategy. Nonetheless, in violation of its duties as a broker-dealer, and in order to generate the above payments to itself as a referring broker, Cohmad placed Plaintiffs in the Madoff scheme.

103. Plaintiffs' have been injured by Defendants' violation of its duties.

EIGHTH CLAIM FOR RELIEF
(Violation of New Hampshire Section 421-B:3 (antifraud))

104. Paragraphs 1 through 103 are re-alleged and incorporated by reference as if set forth fully herein.

105. Defendants directed communications and solicitations to Plaintiff Richard Sonking in New Hampshire.

106. In those communications, Defendants violated New Hampshire Securities Act, Section 421-B:3, which provides:

- I. It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:
 - (a) To employ any device, scheme, or artifice to defraud;
 - (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

107. Pursuant to Section 421-B:25 of the Act, Defendants are civilly liable to Plaintiff

Richard Sonking for such violates. That section, titled “Civil Liabilities”, provides:

II. Any person who violates RSA 421-B:3 in connection with the purchase or sale of any security shall be liable to any person damaged by the violation of that section who sold such security to him or to whom he sold such security, and any person who violates RSA 421-B:5 in connection with the purchase or sale of any security shall be liable to any person damaged by the conduct proscribed by RSA 421-B:5. Any person who violates RSA 421-B:4 in connection with the purchase or sale of any security shall be liable to any investment advisory client of his who is damaged by the violation of that section. Damages in an action pursuant to this paragraph shall include the actual damages sustained plus interest from the date of payment or sale, costs, and reasonable attorney's fees.

108. Defendants also violated sub-section two of that section, which provides:

III. Every person who directly or indirectly controls a person liable under paragraph I or II, every partner, principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation, are also liable jointly and severally with and to the same extent as such person. There is contribution as in cases of contract among the several persons so liable.

109. Plaintiff Richard Sonking has been injured by Defendants’ violation of the above duties.

NINTH CLAIM FOR RELIEF
(Violation of NH 421-B:3 (Suitability Requirements))

110. Paragraphs 1 through 109 are re-alleged and incorporated by reference as if set forth fully herein.

111. Defendants directed communications and solicitations to Plaintiff Richard Sonking in New Hampshire.

112. In those communications, Defendants' violated NH Securities Act 421-B:3-a which requires Cohmad to determine that the investments in the Madoff scheme was suitable for Plaintiffs. That section provides:

Suitability of Recommendation; Reasonable Grounds Required.

I. In recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer or broker-dealer agent must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after reasonable inquiry as to his or her other security holdings and as to his or her financial situation and needs.

II. Before the execution of a transaction recommended to a noninstitutional customer, other than transactions with customers where investments are limited to money market mutual funds, a broker-dealer, salesperson, investment adviser, or investment adviser representative shall make reasonable efforts to obtain information concerning:

(a) The customer's financial status.

(b) The customer's tax status.

(c) The customer's investment objectives.

(d) Such other information used or considered to be reasonable by the broker-dealer, salesperson, investment adviser, or investment adviser representative in making recommendations to the customer.

113. Cohmad failed to fulfill the above duties, as it placed Plaintiff Richard Sonking into the Madoff Ponzi scheme.

114. In addition, Defendants' conduct violated Section 421:3-a, titled "Suitability of Recommendation; Reasonable Grounds Required", it provides:

I. In recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer or broker-dealer agent must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after reasonable inquiry as to his or her other security holdings and as to his or her financial situation and needs.

II. Before the execution of a transaction recommended to a noninstitutional customer, other than transactions with customers where investments are limited to money market mutual funds, a broker-dealer, salesperson, investment adviser, or investment adviser representative shall make reasonable efforts to obtain information concerning:

(a) The customer's financial status.

(b) The customer's tax status.

- (c) The customer's investment objectives.
- (d) Such other information used or considered to be reasonable by the broker-dealer, salesperson, investment adviser, or investment adviser representative in making recommendations to the customer.

115. Defendants lacked a reasonable basis for recommending that Plaintiff Richard Sonking invest with BMIS.

116. Plaintiff Richard Sonking has been injured by Cohmad's violation of the above duties.

TENTH CLAIM FOR RELIEF
(Punitive Damages)

117. Paragraphs 1 through 116 are re-alleged and incorporated by reference as if set forth fully herein Defendants' conduct was wanton, willful, or malicious.

118. Defendants' conduct was applicable to the broader investing public, and applied to numerous other public transactions as set forth herein.

JURY TRIAL DEMAND

Plaintiffs demand trial by jury on all issues so triable.

PRAYER FOR RELIEF

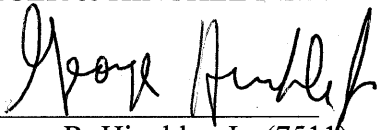
WHEREFORE, Plaintiffs respectfully requests that the Court enter judgments in favor of the Plaintiffs, which grants the following relief:

- (A) Actual damages that place the Plaintiffs in the position they would have been in but for the fraud, in the amount determined at trial, which for Plaintiff Ruth Sonking is not less than \$2,686,441.78, plus treble and punitive damages, and for Plaintiff Richard Sonking is not less than \$3,258,000.00;
- (B) rescission and restitution of transactions to restore plaintiffs to their position;
- (C) imposing punitive damages;
- (D) awarding the Plaintiffs all applicable interest, costs, and disbursements of this action;
and

(E) awarding Plaintiffs such other, further, and different relief as the Court deems just, proper, and equitable.

Dated: New York, New York
June 22, 2010

TRAIGER & HINCKLEY LLP

By: 
George R. Hinckley Jr. (7511)

Christoph C. Heisenberg (8736)

501 Fifth Avenue, Suite 506
New York, New York 10017
Phone: (212) 759-4933

Attorneys for Plaintiffs

EXHIBIT 1

Bernard L. Madoff Investment Securities, LLC Payments to Cohmad (1996 – 2008)

Year	Invoice No.	Date	Amount
1996	39128	01/31/96	298,615.00
1996	39678	02/29/96	298,615.00
1996	40186	03/31/96	298,615.00
1996	40818	04/30/96	947,917.96
1996	41495	05/31/96	364,386.38
1996	41919	06/30/96	364,386.38
1996	42533	07/31/96	364,386.38
1996	43136	08/31/96	364,386.38
1996	43677	09/30/96	364,386.38
1996	44231	10/31/96	394,386.38
1996	44876	11/30/96	364,386.38
1996	45532	12/31/96	364,386.38
1996	45849	12/31/96	165.62
1997	46168	01/31/97	364,386.38
1997	46778	02/28/97	364,386.38
1997	47540	03/31/97	364,386.38
1997	48094	04/30/97	1,950,639.11
1997	48792	05/31/97	528,186.44
1997	49505	06/30/97	528,186.44
1997	35551	06/30/97	161.95
1997	50157	07/31/97	528,186.44
1997	50208	07/31/97	4,559.00
1997	5892	07/31/97	102.84
1997	50846	08/31/97	528,186.44
1997	51420	09/30/97	528,186.44
1997	52002	10/31/97	528,186.44
1997	35704	11/30/97	120.40
1997	52696	11/30/97	600,626.44
1997	52785	11/30/97	115.30
1997	53203	12/31/97	2,000.00
1997	53213	12/31/97	30,000.00
1997	53305	12/31/97	528,186.44
1998	13049	01/22/98	592,012.37
1998	1998-2	02/12/98	587,628.84
1998	1998-3	03/20/98	528,186.44
1998	13184	04/14/98	1,338,321.40
1998	1998-5	05/13/98	623,964.06
1998	1998-6	06/10/98	623,964.06
1998	1998-7/98	07/10/98	623,964.06
1998	1998-8/98	08/12/98	623,964.06
1998	13424	09/08/98	623,964.06
1998	55400	09/22/98	49.69
1998	13460	10/06/98	683,964.06
1998	1998-11/98	11/12/98	623,964.06

1998	56296	11/13/98	91.07
1998	1998-12/98	12/11/98	623,964.06
1998	56871	12/16/98	123.78
1998	56911	12/17/98	102.16
1999	1999-1	01/22/99	623,964.06
1999	57811	02/11/99	190.90
1999	57812	02/11/99	62.10
1999	1999-2B	02/12/99	623,964.06
1999	57966	02/24/99	53.73
1999	13679	03/12/99	623,964.06
1999	1999-4	04/09/99	1,918,787.69
1999	13774	05/14/99	760,331.80
1999	60007	06/15/99	79.34
1999	13824	06/15/99	760,331.80
1999	60119	06/22/99	17.19
1999	1999-7/99	07/08/99	760,331.80
1999	61928	08/11/99	234.82
1999	61929	08/11/99	151.30
1999	1999-8/99	08/13/99	760,331.80
1999	62406	09/07/99	53.75
1999	1999-9/99	09/13/99	760,331.80
1999	197	10/15/99	760,331.80
1999	63110	10/21/99	64.80
1999	63507	11/11/99	65.10
1999	1999-11	11/15/99	760,331.80
1999	63660	11/23/99	131.60
1999	1999-12/99	12/15/99	760,331.80
2000	293	01/18/00	120,000.00
2000	2000-1/00	01/18/00	760,331.80
2000	2000-2/00	02/14/00	760,331.80
2000	2000-3/00	03/16/00	760,331.80
2000	66261	04/14/00	395.61
2000	2000-4/00A	04/14/00	1,460,488.27
2000	2000-5/00	05/24/00	819,225.06
2000	67135	06/02/00	113.45
2000	2000-6/00	06/09/00	819,225.06
2000	2000-7/00	06/30/00	819,225.06
2000	558	08/11/00	819,225.06
2000	2000-9/00	09/15/00	819,225.06
2000	2000-10	10/18/00	819,225.06
2000	2000-11/00	11/17/00	819,225.06
2000	2000-12/00	12/08/00	819,225.06
2001	36892	01/18/01	819,225.06
2001	2001-2	02/09/01	819,225.06
2001	1071	03/13/01	819,225.06
2001	36982	04/11/01	881,002.35
2001	37012	05/10/01	824,325.22
2001	37043	06/14/01	824,325.22
2001	37073	07/19/01	824,325.22
2001	37104	08/03/01	824,325.22
2001	37135	09/21/01	824,325.22
2001	37165	10/17/01	862,986.43
2001	1269	11/16/01	740,491.88

2001	1298	12/14/01	828,491.88
2002	2002-1/3/02	01/15/02	828,491.88
2002	1344	02/14/02	828,491.88
2002	1370	03/13/02	828,491.88
2002	1392	04/12/02	1,293,632.91
2002	1416	05/13/02	883,269.59
2002	81976	06/14/02	60,000.00
2002	2002-6	06/14/02	883,269.59
2002	1478	07/12/02	883,269.59
2002	1502	08/16/02	883,269.59
2002	1521	09/13/02	883,269.59
2002	1540	10/10/02	883,269.59
2002	1558	11/15/02	883,269.59
2002	1569	12/06/02	883,269.59
2003	2003-1	01/15/03	883,269.59
2003	1605	02/13/03	883,269.59
2003	1618	03/17/03	883,269.59
2003	86311	03/25/03	600.00
2003	86311	03/27/03	(600.00)
2003	1635	04/14/03	723,454.37
2003	1657	05/21/03	755,439.48
2003	1682	06/12/03	755,439.48
2003	1694	06/30/03	45,468.49
2003	1704	07/01/03	755,439.48
2003	1728	08/06/03	755,439.48
2003	1756	09/09/03	755,439.48
2003	1771	10/10/03	755,439.48
2003	1786	11/12/03	755,439.48
2003	1799	12/03/03	755,439.48
2004	1819	01/16/04	755,439.48
2004	1838	02/10/04	555,439.48
2004	1852	03/15/04	555,439.48
2004	38081	04/08/04	436,678.05
2004	1891	05/07/04	547,259.49
2004	1903	06/10/04	547,259.49
2004	1918	07/16/04	607,459.87
2004	1935	08/04/04	548,092.82
2004	1945	09/16/04	548,092.82
2004	1953	10/12/04	548,092.82
2004	1967	11/05/04	548,092.82
2004	1981	12/08/04	548,092.82
2005	1996	01/07/05	548,092.82
2005	2020	02/04/05	548,092.82
2005	2036	03/14/05	548,092.82
2005	2053	04/15/05	922,734.20
2005	2079	05/06/05	581,150.17
2005	2094	06/09/05	581,150.17
2005	2116	07/08/05	604,914.24
2005	2137	08/04/05	581,150.17
2005	2155	09/12/05	581,150.17
2005	2179	10/07/05	581,150.17
2005	2193	11/04/05	581,150.17
2005	2210	12/08/05	581,150.17

2006	2237	01/13/06	531,150.17
2006	2257	02/16/06	531,150.17
2006	2274	03/17/06	531,150.17
2006	2299	04/13/06	659,004.09
2006	2313	05/09/06	524,611.03
2006	2331	06/09/06	524,611.03
2006	2348	07/14/06	524,611.03
2006	2366	08/11/06	524,611.03
2006	2383	09/18/06	524,611.03
2006	2400	10/11/06	524,611.03
2006	2422	11/17/06	524,611.03
2006	2435	12/08/06	524,611.03
2007	2455	01/05/07	524,611.03
2007	2474	02/15/07	524,611.03
2007	2490	03/08/07	524,611.03
2007	2509	04/13/07	425,585.99
2007	2541	06/08/07	173,281.97
2007	2561	07/11/07	330,382.72
2007	2580	07/31/07	175,000.00
2007	2581	08/23/07	629,715.72
2007	2599	09/21/07	463,715.22
2007	2612	10/16/07	463,715.22
2007	2635	11/20/07	196,853.97
2007	2652	12/19/07	111,183.73
2007	105081	12/20/07	40,000.00
2008	2670	01/22/08	111,183.73
2008	2689	02/07/08	111,183.73
2008	2008-3	03/07/08	111,183.73
2008	2718	04/15/08	563,267.63
2008	2740	05/07/08	214,722.03
2008	2763	06/12/08	214,722.03
2008	2783	07/10/08	214,722.03
2008	2803	08/08/08	214,722.03
2008	2822	09/05/08	214,722.03
2008	2848	10/13/08	214,722.03
2008	2864	11/06/08	214,722.03
2008	2877	12/10/08	214,722.03
			\$ 98,448,678.84

**Bernard L. Madoff Investment Securities, LLC
Payments to Maurice J. Cohn (2002-2008)**

Year	Invoice No.	Date	Amount
2002	1/2/2002	1/15/2002	8,000.00
2002	2002-1/8/02	1/15/2002	841,165.00
2002	1350	2/14/2002	8,000.00
2002	79932	3/1/2002	8,000.00
2002	80589	4/2/2002	500,000.00
2002	2002-4/1/02	4/12/2002	8,000.00
2002	81036	5/1/2002	8,000.00
2002	81644	6/3/2002	8,000.00
2002	82127	7/1/2002	8,000.00
2002	82150	7/1/2002	500,000.00
2002	82670	8/1/2002	8,000.00
2002	83170	9/3/2002	8,000.00
2002	83582	10/1/2002	8,000.00
2002	1541	10/10/2002	500,000.00
2002	84016	11/1/2002	8,000.00
2002	84398	12/2/2002	8,000.00
2003	84796	1/2/2003	8,000.00
2003	1593	1/15/2003	904,000.00
2003	85586	2/3/2003	8,000.00
2003	85957	3/3/2003	8,000.00
2003	86322	3/26/2003	600.00
2003	86346	4/1/2003	8,000.00
2003	86400	4/2/2003	475,000.00
2003	86694	5/1/2003	8,000.00
2003	87129	6/2/2003	8,000.00
2003	1705	7/1/2003	475,000.00
2003	87467	7/1/2003	8,000.00
2003	87916	8/1/2003	8,000.00
2003	88243	9/2/2003	8,000.00
2003	88626	10/1/2003	8,000.00
2003	88670	10/2/2003	400,000.00
2003	88969	11/3/2003	8,000.00
2003	89347	12/1/2003	8,000.00
2004	89702	1/2/2004	8,000.00
2004	89753	1/6/2004	348,698.00
2004	90052	2/2/2004	8,000.00
2004	90382	3/1/2004	8,000.00
2004	90717	4/1/2004	8,000.00
2004	90781	4/5/2004	482,961.45
2004	91078	5/3/2004	8,000.00
2004	91418	6/1/2004	8,000.00
2004	91760	7/1/2004	8,000.00
2004	91761	7/1/2004	455,171.60
2004	92119	8/2/2004	8,000.00

2004	92446	9/1/2004	8,000.00
2004	92754	10/1/2004	8,000.00
2004	92787	10/4/2004	500,000.00
2004	93114	11/1/2004	8,000.00
2004	93415	12/1/2004	8,000.00
2005	93785	1/3/2005	8,000.00
2005	1998	1/7/2005	370,778.73
2005	94085	2/1/2005	8,000.00
2005	94377	3/1/2005	8,000.00
2005	94720	4/1/2005	8,000.00
2005	94721	4/1/2005	463,838.37
2005	95069	5/2/2005	8,000.00
2005	95411	6/1/2005	8,000.00
2005	95731	7/1/2005	8,000.00
2005	95732	7/1/2005	500,000.00
2005	96055	8/1/2005	8,000.00
2005	96383	9/1/2005	8,000.00
2005	96691	10/3/2005	8,000.00
2005	96692	10/3/2005	500,000.00
2005	97014	11/1/2005	8,000.00
2005	97314	12/1/2005	8,000.00
2006	97615	1/3/2006	8,000.00
2006	97616	1/3/2006	404,000.00
2006	97980	2/1/2006	8,000.00
2006	98269	3/1/2006	8,000.00
2006	98606	4/3/2006	8,000.00
2006	98631	4/3/2006	500,000.00
2006	98937	5/1/2006	8,000.00
2006	99240	6/1/2006	8,000.00
2006	99591	7/3/2006	8,000.00
2006	99592	7/3/2006	500,000.00
2006	99885	8/1/2006	8,000.00
2006	100227	9/1/2006	8,000.00
2006	100509	10/2/2006	8,000.00
2006	100510	10/2/2006	500,000.00
2006	100844	11/1/2006	8,000.00
2006	101139	12/1/2006	8,000.00
2007	101448	1/3/2007	8,000.00
2007	101449	1/3/2007	404,000.00
2007	101755	2/1/2007	8,000.00
2007	102030	3/1/2007	8,000.00
2007	102385	4/2/2007	8,000.00
2007	102386	4/2/2007	500,000.00
2007	102715	5/1/2007	8,000.00
2007	103060	6/1/2007	8,000.00
2007	103388	7/2/2007	8,000.00
2007	103687	8/1/2007	8,000.00
2007	103766	8/6/2007	500,000.00
2007	103982	9/4/2007	8,000.00

2007	104261	10/1/2007	8,000.00
2007	104262	10/1/2007	500,000.00
2007	104549	11/1/2007	8,000.00
2007	104847	12/3/2007	8,000.00
2008	105138	1/2/2008	8,000.00
2008	105139	1/2/2008	404,000.00
2008	105529	2/1/2008	8,000.00
2008	105801	3/3/2008	8,000.00
2008	106091	4/1/2008	8,000.00
2008	106092	4/1/2008	500,000.00
2008	106365	5/1/2008	8,000.00
2008	106668	6/2/2008	8,000.00
2008	106970	7/1/2008	8,000.00
2008	107082	7/9/2008	500,000.00
2008	107273	8/1/2008	8,000.00
2008	107535	9/3/2008	8,000.00
2008	107812	10/1/2008	8,000.00
2008	107813	10/1/2008	500,000.00
2008	108115	11/3/2008	8,000.00
2008	108348	12/1/2008	8,000.00
			\$ 14,601,213.15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RUTH SONKING and RICHARD SONKING,

Plaintiffs

No. 2010-cv-00479 (MGC)

v.

COHMAD SECURITIES CORPORATION,
MAURICE J. COHN, MARCIA B. COHN, and
ROBERT JAFFE,

Defendants.

FIRST AMENDED COMPLAINT

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