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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff.

08 Civ. $\frac{1077}{()}$

- against -

BERNARD L. MADOFF and BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

Defendants.

LOCAL RULE 6.1 DECLARATION OF
ALEXANDER M. VASILESCU IN SUPPORT OF PLAINTIFF'S EMERGENCY
APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION, ASSET FREEZE AND OTHER RELIEF

I, Alexander M. Vasilescu, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a member of the bar of State of New York and a member of the bar of this Court. I am employed by Plaintiff Securities and Exchange Commission (the "Commission") in the Commission's New York Regional Office. I make this declaration pursuant to Local Civil Rule 6.1(d) to show that good and sufficient reasons exist for bringing the Commission's application (the "Application") for a preliminary injunction and temporary restraining order, among other things, enjoining Defendants Bernard L. Madoff ("Madoff") and Bernard L. Madoff Investment Securities LLC ("BMIS")

(collectively, "Defendants") from violating the federal securities laws, freezing Defendants' assets, directing Defendants to provide immediate accountings and related relief, by order to show cause rather than by notice of motion. No previous application for similar relief has been made.

- 2. The Commission makes its Application by order to show cause to: (i) preserve the status quo pending adjudication of the Application; (ii) ensure that any future judgment of this Court for disgorgement, prejudgment interest and penalties will not be rendered meaningless; (iii) halt ongoing violations of the federal securities laws; and (iv) prevent the destruction of evidence. The Commission believes that to proceed by notice of motion may jeopardize the Court's ability to grant full and effective relief both as to this Application and the merits of the Complaint.
- 3. The following facts are set forth in the complaint filed by the Commission on December 11, 2008 and in the accompanying memorandum of law, and are supported by the sworn statement of Federal Bureau of Investigation agent Theodore Cacioppi, executed on December 11, 2008, which is filed concurrently herewith. Defendants have been defrauding investment advisory clients by conducting a Ponzi scheme by paying returns to certain investors out of principal received from other investors, and, unless temporarily restrained and preliminarily enjoined, will continue to violate the antifraud provisions of the federal securities laws and attempt to hide and dissipate assets. Because of the substantial harm to the investing public and Madoff Securities clients that would result from Defendants' continued fraudulent conduct, it is necessary for the Commission to seek the relief requested in the Application by way of an order to show cause.

- 4. Specifically, as set forth in the Complaint and supporting sworn statement. BMIS is a broker-dealer registered with the Commission and controlled by Madoff. Madoff, through BMIS, also conducts an investment advisory business that is separate from BMIS' proprietary trading and market making activities. On or about December 10, 2008, Madoff told two senior employees of BMIS that his investment advisory business was a fraud, that it was "finished," that Madoff had "absolutely nothing," that it was "all one big lie," and that it was a "Ponzi scheme." In that same conversation, Madoff told the two senior employees that he estimated the losses from this fraud to be at least approximately \$50 billion. Madoff also told the two senior employees that he planned to surrender to authorities in one week, but that, before he did that, he planned to use the approximately \$200 million he had left to make payments to certain selected employees, family, and friends. On December 11, 2008, Madoff confessed to F.B.I. agent Theodore Cacioppi that there was "no innocent explanation." Madoff explained that he had traded and lost money for institutional clients, that it was all his fault, and that he had "paid investors with money that wasn't there." Madoff further said that he was "broke" and "insolvent" and that he expected to go to jail.
- 5. This case presents an emergency, because the fraud is ongoing and Madoff controls BMIS, including its investment advisory business.
- 6. There is substantial evidence that Madoff presents a continuing risk to the investing public and his customers and that, without an asset freeze, Madoff may dissipate remaining funds under his and BMIS' control. On December 10, 2008, Madoff told two senior employees that he intended to use the remainder of BMIS' assets to selectively make payments to certain employees, friends and family.

7. A receiver is necessary to protect and preserve BMIS' documents and assets, to marshal any assets and to assist in the resolution of competing claims for the assets that remain in firm's accounts. Madoff controlled BMIS, kept its financial statements under lock and key, and was "cryptic" about the firm's investment advisory business with at least one senior employee. Since Madoff's arrest on December 11, 2008, it does not appear that anyone is running the firm or that anyone at the firm will be able to marshal assets and assist in fairly resolving competing claims for the remaining assets.

8. At approximately 3:45 p.m., I spoke with Mudoff's attorney, Mauro M. Wolfe, Esq., and told him the Commission would seek this emergency application this afternoon in this Court. I also told the attorney that I would contact him and requested that he be available in person or telephone. Mauro M. Wolfe's telephone number is (212) 277-6726.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 11, 2008

Alexander M. Vasilescu

Approved:

Assistant United States Attorney

Before:

HONORABLE DOUGLAS F. EATON

United States Magistrate Judge Southern District of New York

UNITED STATES OF AMERICA

COMPLAINT

Violation of

15 U.S.C. §§ 78j(b),

78ff; 17 C.F.R. § BERNARD L. MADOFF,

240.10b-5

Defendant.

COUNTY OF OFFENSE:

NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

THEODORE CACIOPPI, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation, and charges as follows:

COUNT ONE

(Securities Fraud)

1. From at least in or about December 2008 through the present, in the Southern District of New York and elsewhere, BERNARD L. MADOFF, the defendant, unlawfully, wilfully and knowingly, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, in connection with the purchase and sale of securities, would and did use and employ manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, MADOFF deceived investors by operating a securities business in which he traded and lost investor money, and then paid certain investors purported returns on investment with the principal received from other, different investors, which resulted in losses of approximately billions of dollars.

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

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

- Bureau of Investigation ("FBI") for approximately six and one-half years, and I have been personally involved in the investigation of this matter. 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) my review of publicly available information relating to BERNARD L. MADOFF, the defendant. 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.
- I have reviewed the publicly available web site of a securities broker dealer named Bernard L. Madoff Investment Securities LLC, from which I have learned the following: (a) BERNARD L. MADOFF, the defendant, is the founder of Bernard L. Madoff Investment Securities LLC; (b) Bernard L. Madoff Investment Securities LLC is a securities broker dealer with its principal office in New York, New York; (c) Bernard L. Madoff Investment Securities LLC "is a leading international market The firm has been providing quality executions for broker-dealers, banks and financial institutions since its inception in 1960;" (d) "[w]ith more than \$700 million in firm capital, Madoff currently ranks among the top 1% of US Securities firms: (e) BERNARD L. MADOFF, the defendant, is a former Chairman of the board of directors of the NASDAQ stock market; and (f) "Clients know that Bernard Madoff has a personal interest in maintaining an unblemished record of value, fair-dealing, and high ethical standards that has always been the firm's hallmark."
- 4. I have interviewed two senior employees of Bernard L. Madoff Investment Securities LLC ("Senior Employee No. 1", and "Senior Employee No. 2", collectively the "Senior Employees").

The Senior Employees informed me, in substance, of the following:

- a. The Senior Employees are employed by Bernard L. Madoff Investment Securities LLC, in a proprietary trading, and market making capacity. According to the Senior Employees, BERNARD L. MADOFF, the defendant, conducts certain investment advisory business for clients that is separate from the firm's proprietary trading and market making activities. According to the Senior Employees, MADOFF ran his investment adviser business from a separate floor in the New York offices of Bernard L. Madoff Investment Securities LLC. According to Senior Employee No. 1, MADOFF kept the financial statements for the firm under lock and key, and stated that MADOFF was "cryptic" about the firm's investment advisory business.
- b. In or about the first week of December, BERNARD L. MADOFF, the defendant, told Senior Employee No. 2 that there had been requests from clients for approximately \$7 billion in redemptions, that he was struggling to obtain the liquidity necessary to meet those obligations, but that he thought that he would be able to do so. According to the Senior Employees, they had previously understood that the investment advisory business had assets under management on the order of between approximately \$8-15 billion. According to a Form ADV filed by MADOFF on behalf of Bernard L. Madoff Investment Securities LLC with the SEC on or about January 7, 2008, MADOFF's investment advisory business served between 11 and 25 clients and had a total of approximately \$17.1 billion in assets under management.
- On or about December 9, 2008, MADOFF informed Senior Employee No. 1 that he wanted to pay bonuses to employees of the firm in December, which was earlier than employee bonuses are usually paid. Accordingly to the Senior Employees, bonuses traditionally have been paid in February of each year. about December 10, 2008, the Senior Employees visited MADOFF at the offices of Bernard L. Madoff Investment Securities LLC to discuss the situation further, particularly because it MADOFF had appeared to the Senior Employees to have been under great stress in the prior weeks. At that time, MADOFF informed the Senior Employees that he had recently made profits through business operations, and that now was a good time to distribute it. the Senior Employees challenged his explanation, MADOFF said that he did not want to talk to them at the office, and arranged a meeting at MADOFF's apartment in Manhattan. According to Senior Employee No. 2, MADOFF stated, in substance, that he "wasn't sure he would be able to hold it together" if they continued to discuss the issue at the office.

- d. At MADOFF's Manhattan apartment, MADOFF informed the Senior Employees, in substance, that his investment advisory business was a fraud. MADOFF stated that he was "finished," that he had "absolutely nothing," that "it's all just one big lie," and that it was "basically, a giant Ponzi scheme." The Senior Employees understood MADOFF to be saying, in substance, that he had for years been paying returns to certain investors out of the principal received from other, different, investors. MADOFF stated that the business was insolvent, and that it had been for years. MADOFF also stated that he estimated the losses from this fraud to be at least approximately \$50 billion. One of the Senior Employees has a personal account at Bernard L. Madoff Investment Securities LLC in which several million had been invested under the management of MADOFF.
- e. At MADOFF's Manhattan apartment, MADOFF further informed the Senior Employees that, in approximately one week, he planned to surrender to authorities, but before he did that, he had approximately \$200-300 million left, and he planned to use that money to make payments to certain selected employees, family, and friends.
- f. At MADOFF's Manhattan apartment, MADOFF further informed the Senior Employees that he had also recently informed a third senior employee ("Senior Employee No. 3"), of the facts that MADOFF had just told the Senior Employees.
- 5. On December 11, 2008, I spoke to BERNARD L. MADOFF, the defendant. After identifying myself, MADOFF invited me, and the FBI agent who accompanied me, into his apartment. He acknowledged knowing why we were there. After I stated, "we're here to find out if there's an innocent explanation." MADOFF stated, "There is no innocent explanation." MADOFF stated, in substance, that he had personally traded and lost money for institutional clients, and that it was all his fault. MADOFF further stated, in substance, that he "paid investors with money that wasn't there." MADOFF also said that he was "broke" and "insolvent" and that he had decided that "it could not go on," and that he expected to go to jail. MADOFF also stated that he had recently admitted what he had done to Senior Employee Nos. 1, 2, and 3.

WHEREFORE, deponent prays that BERNARD L. MADOFF, the defendant, be imprisoned, or bailed, as the case may be.

DEC 1 1 2008

THEODORE CACIOPPI

Special Agent

Federal Bureau of Investigation

Sworn to before me this
_____ day of December, 2008

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HONORABLE DOUGLAS F. EATON

UNITED STATES MAGISTRATE JUDGE SOUTHERN DISTRICT OF NEW YORK