

EXHIBIT 32

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----)
5 In Re:) SIPA LIQUIDATION)
6 BERNARD L. MADOFF INVESTMENT) No. 08-01789 (BRL)
SECURITIES LLC,) (Substantively
7 Debtor.) Consolidated)
8 -----)

9 IRVING H. PICARD, Trustee of the)
10 Liquidation of Bernard L. Madoff)
Investment Securities LLC,)
11 Plaintiff,)

12 vs.)
13 Adv. Pro. No.)
09-01182 (BRL)

14 J. EZRA MERKIN, GABRIEL CAPITAL,)
L.P., ARIEL FUND LTD., ASCOT)
15 PARTNERS L.P., GABRIEL CAPITAL)
CORPORATION,)
16 Defendants.)
17 -----)

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21 VIDEOTAPED DEPOSITION OF STEVE POMERANTZ, Ph.D.
New York, New York
July 8, 2015

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24 Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR
JOB NO. 95461
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2 information.

3 If I am acquiring somebody, if I am
4 negotiating with an outside hedge fund and I
5 am trying to acquire them, or I may be
6 talking to a hedge fund that has no track
7 record that doesn't exist, but somebody that
8 I want to ultimately seed and start up, or
9 somebody could be a partner of my -- Weiss
10 Peck & Greer is a partnership, so a lot of
11 the people who work there are partners, and
12 they have ongoing businesses that they have
13 been managing their funds for years.

14 So there is different levels of
15 information that I am getting from all of
16 these different people.

17 Q Would you agree that due diligence
18 is a flexible process?

19 A I guess I don't -- there are
20 aspects -- I don't know what you mean by the
21 process. I would like to think that the
22 process is objective and the process is well
23 defined by what Weingarten and I have said.
24 The actual implementation of it is going to
25 be constrained by the particulars of any

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2 given situation.

3 So, in other words, somebody --
4 somebody may be in business for five years,
5 and they may have a track record, and I may
6 be able to analyze their historical track
7 record, but somebody else may just be out of
8 the box and be a totally new hedge fund, and
9 then they have no track record. So my
10 evaluation of their performance will mean
11 something different when I look at this
12 manager versus that manager, but the notion,
13 the concept of looking at performance is an
14 objective part of that process.

15 Q When you performed due diligence on
16 one of your partners as compared to
17 performing due diligence on a fund that you
18 were considering acquiring, did you do
19 anything differently?

20 A Well, again, if they are a partner,
21 if they are a part of Weiss, Peck & Greer, I
22 have access to all of their records. I know
23 their trading. I know what their
24 transactions are. I know what their trades
25 are. I can go talk directly to the head

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2 trader at Weiss, Peck & Greer and get
3 information.

4 If I am trying to acquire someone
5 and they are using Goldman Sachs as a prime
6 broker, well, I can talk to Goldman Sachs,
7 but Goldman Sachs is clearly not going to
8 tell me the same things that the head trader
9 at Weiss, Peck & Greer is going to tell me.

10 So, again, there is differences
11 based on every situation.

12 Q Why would the -- why would Goldman
13 Sachs not tell you the same things that the
14 head trader at Weiss, Peck & Greer would tell
15 you?

16 A Because Goldman Sachs is a private
17 company, and there are limits to what they
18 need to communicate to the public.

19 (Discussion held off the record.)

20 BY MR. STEINER:

21 Q The -- so, you said when you were
22 at Weiss, Peck & Greer, when you were
23 performing due diligence on your partners,
24 you had access to basically more information,
25 and a lot more information, than on a fund

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2 Q Of some Goldman fund?

3 A Of a Goldman account. It's not a
4 '40 Act fund. It's an account. It's a
5 separately -- separate legal standing
6 account, and we own shares in that account.

7 Q Just like an LLC or something?

8 A It's like a hedge fund.

9 Q And someone at Goldman manages that
10 fund?

11 A It's an index fund, but presumably
12 somebody is managing it.

13 Q And you don't know who that person
14 is?

15 A It's probably a computer.

16 Q Do you know what broker-dealer that
17 fund uses?

18 A They probably use themselves.

19 Q Goldman Sachs?

20 A Yes.

21 Q And that's not a problem for you?

22 A That's not a problem.

23 Q Why not?

24 A I mean, Goldman Sachs is a large
25 entity. There is -- the broker-dealer and

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2 the asset management arm are two distinct
3 entities. They report to different people.
4 They probably share a CEO and nothing but a
5 CEO.

6 Goldman has divisions of
7 responsibilities, and they have people who
8 are there to insure the division of
9 responsibility. I don't -- I don't see a
10 problem with that.

11 Q And have you ever asked to see the
12 trade confirmations or monthly statements
13 from that account?

14 A I get monthly statements. But
15 again, I get -- I get monthly statements
16 regarding -- actually, the total plan as well
17 as the individual pieces.

18 Q And does the monthly statement show
19 the individual securities that are owned in
20 that account, or it shows the value of --

21 A It would show me shares of --
22 shares of Goldman Sachs' total stock alpha
23 fund, and then the number of shares that I
24 own, and the NAV of those shares.

25 Q It doesn't show you the underlying

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2 holdings?

3 A No.

4 Q That is not a problem for you?

5 A It's a Russell 3000 index fund.

6 Q And so, it's okay with you to not
7 have the breakdown of individual holdings?

8 A I don't need to see a list of 3,000
9 holdings. If I want to look at the annual
10 report, I could do that.

11 Q Have you ever done that?

12 A Maybe years ago.

13 Q How do you know that that account
14 in fact owns all 3,000 stocks that you think
15 it owns?

16 A I think there is -- how do I know
17 it owns 3,000? They have represented to me
18 that it owns 3,000. It performs like it owns
19 3,000. The returns match the returns of the
20 index.

21 I have no reason to believe that it
22 doesn't own 3,000. It behaves exactly the
23 way I expect it to behave.

24 Q And that's good enough for you?

25 A Not -- that fact alone is not good

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2 enough. I mean, there is -- there is a brand
3 that is involved. I go to their offices
4 periodically. I meet with a lot of people --
5 as I said, I have about ten contacts in the
6 company -- on a variety of issues involving
7 IFIC. So I meet with, sometimes meet with
8 all of them, or sometimes meet with one or
9 two or three.

10 I feel very comfortable. I have no
11 reason to believe that something is happening
12 that is not as being represented.

13 Q I think you used the term "trust
14 but verify" --

15 A Yes.

16 Q -- in your report; right?

17 A Yes.

18 Q So in terms -- I understand the
19 "trust," and I understand people trust
20 Goldman Sachs. In terms of the "verify,"
21 what do you do to verify those
22 representations, other than go to their
23 offices and meet with people?

24 A I mean, this relationship has been
25 going on for about seven years. I do get

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2 all tools that have direct application to a
3 BLMIS-type investment.

4 Q So, now let me make sure I
5 understand. If I understand correctly, what
6 you are saying is that the industry standard
7 was the framework, the five P's; is that
8 right?

9 A Yes.

10 Q In your opinion?

11 A Yes.

12 Q And then there are lots of
13 different ways to go about implementing,
14 developing the information you need in the
15 five different P's; is that right?

16 A I mean the five P's are the
17 objective standard, and then it is incumbent
18 on a fiduciary to accomplish the due
19 diligence into each of those P's to the
20 extent that data and tools are available, and
21 circumstances warrant.

22 Q What do you mean by "circumstances
23 warrant"?

24 A Well, let's take BLMIS as an
25 example. Perhaps what is being offered up as

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2 A Well, I just gave you examples in a
3 litigation context.

4 Q Right. So, my question is: In
5 your due diligence of -- in your performing
6 due diligence on an investment advisor or
7 hedge fund manager, have you ever reviewed
8 trade confirmations?

9 A No. I reviewed transaction-level
10 data, and I would input transaction-level
11 data into systems to perform certain
12 analyses. But I -- I never had a need to
13 look at the confirmations.

14 Q So, you never asked to look at
15 confirmations in any of the due diligence
16 that you have done over the last 20 years?

17 A I was never -- I never had a need
18 to do that.

19 Q And in your -- in due diligence --
20 by the way, when you referred to your work as
21 an expert in the tax shelter cases as due
22 diligence, that was always a review after the
23 fact after a challenge by the IRS; correct?

24 A Yes.

25 Q Okay. So in your work performing

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2 due diligence on investment advisors or hedge
3 funds, have you -- have you had occasion
4 to -- strike that.

5 In your work performing due
6 diligence on hedge fund managers or on
7 investment advisors, have you ever compared
8 on a transaction-by-transaction basis
9 transaction price versus the daily high-low
10 range? Has that been something you have done
11 in your due diligence work?

12 A I have looked at transaction prices
13 against VWAP, but I have not looked at
14 transactions versus highs and lows. But I
15 have looked against VWAP as part of my due
16 diligence.

17 Q Why haven't you looked at
18 transactions versus highs and lows as part of
19 your due diligence?

20 A I never had a reason to.

21 Q And I take it you don't believe
22 that the due diligence that you have
23 performed has been faulty for not having
24 looked at that; correct?

25 A It depends on the circumstances.

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2 In the circumstances that I have worked in, I
3 never had a need to do that. I -- as I said,
4 my objective was to understand things as best
5 as I could, and I felt that I always reached
6 that objective by using the tools that were
7 necessary.

8 Q Looking back over the, you know,
9 30 years that you have been involved in the
10 investment industry or the, you know, 20 or
11 so years where you have had some due
12 diligence responsibilities, have you ever had
13 occasion in hindsight to think that your due
14 diligence was subpar?

15 A You know, there was a time when I
16 actually was lied to, and I didn't discover
17 it for a few months. I don't know -- there
18 really was no way, looking back on it, for me
19 to have known that I was being lied to, but I
20 was, and as soon as I knew, as soon as it was
21 possible for me to know, I knew.

22 Q What were you lied to about?

23 A Actually, it was a particular hedge
24 fund that actually said they were not going
25 to engage in market timing, and that it was

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2 competitor to Barra called NorthPoint, and
3 they will provide similar analysis. It's not
4 a very expensive proposition. You can -- you
5 can hire people.

6 I -- I don't -- I don't know that
7 it requires -- you know, maybe I'm -- maybe
8 I'm out of touch, but I don't think it
9 requires an enormous amount of effort. There
10 is commercially available software to do all
11 of this work.

12 Q But it is your view that, for
13 example, asking the question how do you
14 calculate the correlation between each
15 investment means that the person performing
16 the due diligence should go and recalculate
17 that to test what information they are
18 receiving?

19 A It depends what the results say.
20 If the results that you get from somebody,
21 right -- I mean, you don't ask these
22 questions, fill them in, and then throw this
23 in a file somewhere. You have to read it and
24 you have to interpret it and understand it.

25 I think of this as kind of when you

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2 go to the doctor, the nurse takes your
3 history and asks you a bunch of questions,
4 and she enters the questions into a database,
5 and there is questions and answers, and then
6 there is a doctor who basically interprets
7 that, and says, oh, you have this problem or
8 you have that problem. That is not for the
9 nurse to do, that is for the doctor to do.

10 This is like an intake form. These
11 are questions that need to be asked, but just
12 because they are answered, that is not
13 where -- due diligence doesn't end there.
14 This is where it starts. It starts here by
15 asking these questions and getting answers,
16 and then somebody, a partner, a general
17 partner, somebody has to then start to read
18 it and interpret it and say, okay, is what I
19 am seeing consistent with these answers? Do
20 these answers make sense? Are they
21 internally consistent? Are they internally
22 inconsistent? Those are things that have to
23 be asked.

24 Q And in making those judgments, is
25 it your opinion -- as to whether things are

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2 consistent with what they expect, is it your
3 opinion that the manager or the person
4 responsible for the due diligence is required
5 to use the very -- the various quantitative
6 analyses that you have put forth in your
7 report?

8 A I think that part of the due
9 diligence process is to confirm these
10 answers. Right. The due diligence process
11 is not fill this in so that I can put it in
12 my file. Right? You have to confirm the
13 information that is here, whatever tools you
14 think are necessary to do that, and it will
15 depend upon the fund, it will depend upon the
16 strategy, it will depend upon the data that
17 is available. It's very situational.

18 But the fiduciary is ultimately
19 responsible for reconciling the information
20 on this piece of paper with the reality that
21 he sees.

22 Q And he is supposed to do that using
23 the tools he thinks are necessary; right?

24 A You know, he is supposed to do it.
25 How he chooses to do it is up to him. He can

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2 saying.

3 But these are all tools that were
4 available, and some subset of these tools
5 were always being brought to bear regarding
6 any due diligence project.

7 Q So, is it your testimony that these
8 tools, the quantitative tools that you
9 describe in your report, were available, or
10 that industry standards required these tools
11 to be used?

12 A I -- I would say both. I would say
13 that they were available, and as far as the
14 industry standard is concerned, I would point
15 to this document which is dated 1997, and it
16 basically says you will also have to identify
17 the sources of return. That is what is being
18 mandated to people that are in the process of
19 due diligence, that are in the process of
20 performing due diligence. They are being
21 mandated by AIMA, you will also have to
22 identify the sources of return.

23 And that is what this report
24 attempts to do. Now, ironically, there was
25 no source of return. That is not evident

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2 MS. ARCHER: I think Mr. Steiner
3 has done a more than adequate job, so I
4 have no questions.

5 THE VIDEOGRAPHER: The time is
6 6:41 p.m. We are off the record.

7 oOo

8 I, STEVE POMERANTZ, Ph.D., the witness
9 herein, do hereby certify that the foregoing
10 testimony of the pages of this deposition to be a
11 true and correct transcript, subject to the
12 corrections, if any, shown on the attached page.

13 _____

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15 Subscribed and sworn to before me this

16 _____ day of _____, _____.

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NOTARY PUBLIC

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