

Approved: Marc Litt

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Before: HONORABLE THEODORE H. KATZ
United States Magistrate Judge
Southern District of New York

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| -----x | <u>SEALED COMPLAINT</u> |
| | : |
| | : |
| | : Violations of |
| | : 15 U.S.C. §§ 78j(b), |
| UNITED STATES OF AMERICA | : 78q(a), 78ff; |
| | : 17 C.F.R. §§ 240.10b-5, |
| - v. - | : 240.17a-3, 240.17a-5; |
| | : 18 U.S.C. §§ 371, 2; |
| DANIEL BONVENTRE, | : 26 U.S.C. § 7206(1) |
| | : |
| Defendant. | : |
| | : COUNTY OF OFFENSE: |
| | : NEW YORK |
| | : |
| -----x | |

SOUTHERN DISTRICT OF NEW YORK, ss.:

KEITH D. KELLY, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE

(Conspiracy to Commit Securities Fraud, to Create False and Fraudulent Books and Records of a Broker-Dealer, and to Make False Filings with the SEC)

1. From at least in or about November 2005, up to and including at least on or about December 11, 2008, in the Southern District of New York and elsewhere, DANIEL BONVENTRE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit an offense against the United States, to wit, securities fraud, causing the creation of false books and records of a broker-dealer, and causing the filing of false documents with the United States Securities and Exchange Commission ("SEC") in violation of Title 15, United States Code, Sections 78j(b), 78q(a), 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5, 240.17a-3, and 240.17a-5.

Objects of the Conspiracy

2. It was a part and an object of the conspiracy that DANIEL BONVENTRE, the defendant, Bernard L. Madoff ("Madoff"), and others known and unknown, unlawfully, willfully, and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, would and did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making and causing Bernard L. Madoff Investment Securities LLC, and its predecessor, Bernard L. Madoff Investment Securities (collectively and separately, "BLMIS") to make untrue statements of material fact and omitting 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 (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons who invested in and through BLMIS, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5.

3. It was further a part and an object of the conspiracy that DANIEL BONVENTRE the defendant, Bernard L. Madoff, and others known and unknown, unlawfully, willfully, and knowingly, did cause BLMIS, a registered broker-dealer, to fail to make and keep such records as the SEC, by rule, prescribed as necessary and appropriate in the public interest for the protection of investors and otherwise in furtherance of the purposes of the Securities Exchange Act of 1934, in violation of Title 15, United States Code, Sections 78q(a) and 78ff; Title 17, Code of Federal Regulations, Section 240.17a-3.

4. It was further a part and an object of the conspiracy that DANIEL BONVENTRE, the defendant, Bernard L. Madoff and others known and unknown, unlawfully, willfully, and knowingly, in applications, reports, and documents required to be filed with the SEC under the Securities Exchange Act of 1934, and the rules and regulations thereunder, did make and cause to be made statements that were false and misleading with respect to material facts, in violation of Title 15, United States Code, Sections 78q(a) and 78ff; Title 17, Code of Federal Regulations, Sections 240.17a-5.

Means and Methods of the Conspiracy

5. Among the means and methods by which DANIEL BONVENTRE, the defendant, and others, known and unknown, would and did carry out the conspiracy were the following:

a. BONVENTRE supervised the "back office" operations of BLMIS (i.e., the post-market processing of transactions, including confirmation, payment, settling and accounting), prepared, and supervised the preparation and maintenance of, the general ledger of BLMIS (the "G/L"), and reconciled BLMIS bank accounts, including accounts associated with BLMIS's Investment Advisory ("IA"), Market Making and Proprietary Trading operations;

b. BONVENTRE prepared information to be included in Financial and Operational Combined Uniform Single Reports ("FOCUS Reports") filed by BLMIS with the SEC, and acted as an authorized signatory for BLMIS in its business relationships with certain banks and The Depository Trust Company ("DTC");¹

c. BLMIS filed false and misleading documents with the SEC that omitted material information about its financial condition.

d. Hundreds of millions of dollars of IA investor funds were used to support BLMIS's Market Making and Proprietary Trading operations, but were accounted for on BLMIS's books and records, including the G/L, so as to conceal the true source of the funds.

e. IA clients' requests for withdrawals from their IA accounts were fulfilled with funds invested by other IA clients, as is typical in the operation of a Ponzi scheme.

¹ Among other things, DTC creates efficiencies in the clearing and settlement of securities transactions by retaining custody of securities on behalf of financial institutions, and recording on its books and records changes in the ownership of those securities. BLMIS had an account at DTC in which the securities of the Market Making and Proprietary Trading businesses were custodied. As Bernard L. Madoff and Frank DiPascali, Jr. have admitted, and as the FBI's analysis of the books and records of BLMIS has confirmed, few equity securities were bought or sold on behalf of IA Clients, and few equity securities were held at DTC in connection with the IA business.

Overt Acts

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

a. On or about November 14, 2005, DANIEL BONVENTRE, the defendant, directed that a letter be written to a bank in which he requested a \$95 million loan on behalf of BLMIS.

b. In or about January 2006, BONVENTRE contacted a bank to secure a \$50 million loan on behalf of BLMIS.

c. On or about January 30, 2006, BONVENTRE created false and fraudulent BLMIS books and records.

d. On or about February 1, 2006, BONVENTRE created false and fraudulent BLMIS books and records.

e. On or about April 4, 2006, BONVENTRE created false and fraudulent BLMIS books and records.

f. On or about April 17, 2006, BONVENTRE created false and fraudulent BLMIS books and records.

g. In or about April 2006, BONVENTRE signed approximately 230 checks, totaling approximately \$10.8 million, to IA Clients.

h. On or about June 1, 2006, BONVENTRE created false and fraudulent BLMIS books and records.

i. On or about June 6, 2006, BONVENTRE created false and fraudulent BLMIS books and records.

(Title 18, United States Code, Section 371.)

COUNT TWO
(Securities Fraud)

7. From at least in or about November 2005 through on or about December 11, 2008, in the Southern District of New York and elsewhere, DANIEL BONVENTRE, the defendant, unlawfully, willfully, and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and

employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in transactions, acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons.

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

COUNT THREE

**(False and Fraudulent
Books and Records of a Broker-Dealer)**

8. Between in or about November 2005, and on or about December 11, 2008, DANIEL BONVENTRE, the defendant, unlawfully, willfully, and knowingly, did cause BLMIS, a registered broker-dealer, to fail to make and keep such records as the SEC, by rule, prescribed as necessary and appropriate in the public interest for the protection of investors and otherwise in furtherance of the purposes of the Securities Exchange Act of 1934, to wit, BONVENTRE caused false and fraudulent entries to be made on the general ledger of BLMIS.

(Title 15, United States Code, Sections 78q(a) and 78ff;
Title 17, Code of Federal Regulations, Section 240.17a-3;
Title 18, United States Code, Section 2.)

COUNT FOUR

(False Filing With the SEC)

9. On or about May 22, 2006, in the Southern District of New York and elsewhere, DANIEL BONVENTRE, the defendant, unlawfully, willfully, and knowingly, in applications, reports, and documents required to be filed with the SEC under the Securities Exchange Act of 1934, and the rules and regulations thereunder, did make and cause to be made statements that were false and misleading with respect to material facts, to wit, BONVENTRE aided and abetted the filing with the SEC of a false and misleading BLMIS FOCUS Report.

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

COUNT FIVE

(Subscribing to False Individual Income
Tax Return for Tax Year 2003)

10. On or about April 13, 2004, in the Southern District of New York and elsewhere, DANIEL BONVENTRE, the defendant, unlawfully, willfully and knowingly did make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the tax year 2003, which return contained and was verified by the written declaration of DANIEL BONVENTRE that it was made under penalties of perjury, and which return DANIEL BONVENTRE did not believe to be true and correct as to every material matter, in that DANIEL BONVENTRE, the defendant, falsely omitted wage and other income of approximately \$98,300, whereas, as DANIEL BONVENTRE then and there well knew and believed, he was not entitled to omit that income from his 2003 return.

(Title 26, United States Code, Section 7206(1).)

COUNT SIX

(Subscribing to False Individual Income
Tax Return for Tax Year 2004)

11. On or about April 15, 2005, in the Southern District of New York and elsewhere, DANIEL BONVENTRE, the defendant, unlawfully, willfully and knowingly did make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the tax year 2004, which return contained and was verified by the written declaration of DANIEL BONVENTRE that it was made under penalties of perjury, and which return DANIEL BONVENTRE did not believe to be true and correct as to every material matter, in that DANIEL BONVENTRE, the defendant: (a) falsely omitted wage and other income of approximately \$18,420; and (b) falsely characterized hundreds of thousands of dollars of ordinary income as a long-term capital gain, whereas, as DANIEL BONVENTRE then and there well knew and believed, he was not entitled to omit the \$18,429 in income from his 2004 return, and that he was not entitled on that return to characterize the ordinary income he received as a long-term capital gain.

(Title 26, United States Code, Section 7206(1).)

COUNT SEVEN

**(Subscribing to False Individual Income
Tax Return for Tax Year 2006)**

12. On or about April 12, 2007, in the Southern District of New York and elsewhere, DANIEL BONVENTRE, the defendant, unlawfully, willfully and knowingly did make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the tax year 2006, which return contained and was verified by the written declaration of DANIEL BONVENTRE that it was made under penalties of perjury, and which return DANIEL BONVENTRE did not believe to be true and correct as to every material matter, in that DANIEL BONVENTRE, the defendant: (a) falsely omitted approximately \$61,900 of wage and other income; (b) falsely omitted approximately \$166,944 of cancellation-of-indebtedness income; and (c) falsely characterized hundreds of thousands of dollars of ordinary income as a long-term capital gain, whereas, as DANIEL BONVENTRE then and there well knew and believed, he was not entitled to omit the wage and other income, and cancellation-of-debt income, from his 2006 return, and that he was not entitled on that return to characterize the ordinary income he received as a long-term capital gain.

(Title 26, United States Code, Section 7206(1).)

COUNT EIGHT

**(Subscribing to False Individual Income
Tax Return for Tax Year 2007)**

13. On or about April 11, 2008, in the Southern District of New York and elsewhere, DANIEL BONVENTRE, the defendant, unlawfully, willfully and knowingly did make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the tax year 2007, which return contained and was verified by the written declaration of DANIEL BONVENTRE that it was made under penalties of perjury, and which return DANIEL BONVENTRE did not believe to be true and correct as to every material matter, in that DANIEL BONVENTRE, the defendant, falsely omitted wage and other income of approximately \$95,300, whereas, as DANIEL BONVENTRE then and there well knew and believed, he was not entitled to omit that income from his 2007 return.

(Title 26, United States Code, Section 7206(1).)

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

14. I have been a Special Agent with the FBI for more than 26 years, and I have been personally involved in the investigation of this matter. I have a B.B.A. in accounting from Emory University. From approximately 1983 until 2004, I had an active license in the State of Georgia as a Certified Public Accountant. Since approximately 2004, my license has been inactive. Prior to becoming a Special Agent with the FBI, I worked for Arthur Andersen LLP, where I participated in audits of public corporations. Moreover, I have experience investigating securities fraud and other financial fraud cases.

15. 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; (b) documents and data found at BLMIS; (c) information provided by representatives of the SEC; and (d) information provided by Special Agents of the FBI and Internal Revenue Service ("IRS") who are involved with this investigation. Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include every fact that I have learned during the course of the investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

Relevant Entities and Individuals

16. At all times relevant to this Complaint, BLMIS had its principal place of business in New York, New York, most recently at 885 Third Avenue, New York, New York. BLMIS was a broker-dealer that made markets for certain publicly traded securities, traded the firm's purported capital for its own account, and provided investment advisory services to thousands of clients (the "IA Clients") who invested billions of dollars in BLMIS accounts. BLMIS was registered with the SEC as a broker-dealer beginning in or about 1960. On or about August 25, 2006, BLMIS registered with the SEC as an investment adviser.

17. Based on my conversations with representatives of the SEC and my review of rules and regulations promulgated by the SEC, as a broker-dealer, BLMIS was required to keep certain books and records in its ordinary course of business. Among other things, those books and records included, but were not limited to, the following:

a. Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts; and

b. Ledgers reflecting moneys borrowed and moneys loaned (together with a record of the collateral therefor and any substitutions in such collateral).

18. Based on my conversations with representatives of the SEC and my review of rules and regulations promulgated by the SEC, as an investment adviser, BLMIS was required to keep certain books and records in its ordinary course of business. Among other things, those books and records included, but were not limited to, the following:

a. A journal or journals, including cash receipts and disbursements, records, and other records of original entry forming the basis of entries in any ledger;

b. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts; and

c. All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser.

19. At all times relevant to this Complaint, Madoff Securities International Ltd. ("MSIL") was a corporation incorporated in the United Kingdom. MSIL was an affiliate of BLMIS that engaged principally in proprietary trading. MSIL cleared its transactions in securities issued by U.S. companies through BLMIS.

20. Based on my investigation of this case, my review of court and BLMIS documents, conversations with other FBI agents investigating this case, and my participation in interviews of former BLMIS employees and others, I have learned that Madoff was the founder of BLMIS, and served as its sole member and principal. In that capacity, Madoff controlled the business activities of BLMIS. Madoff owned the majority of the voting shares of MSIL, and served as the Chairman of MSIL's Board of Directors.

21. Based on my investigation of this case, my review of court and BLMIS documents, conversations with other FBI agents investigating this case, my participation in interviews of former BLMIS employees and others, and information provided by former BLMIS employees, including Frank DiPascali, Jr. ("DiPascali"), I

have learned that DiPascali² was employed at BLMIS between on or about September 11, 1975, and on or about December 11, 2008, the day that Madoff was arrested.

22. During his employment at BLMIS, DiPascali had a variety of duties and responsibilities. By the early 1990s, DiPascali was one of the BLMIS employees responsible for managing the majority of BLMIS's IA accounts into and through which thousands of BLMIS clients invested, and eventually lost, billions of dollars. Madoff, DiPascali, and other co-conspirators were responsible for, among other things: receiving funds sent to BLMIS by IA Clients for investment; causing the transfer of IA Clients' funds between and among various BLMIS bank accounts; handling requests for redemptions sent to BLMIS by IA Clients; answering IA Clients' questions about their purported investments; and developing the BLMIS computer and other systems that were used to give the false appearance to clients, regulators and others that client funds were being invested as represented when, in fact, they were not. At all times relevant to this Complaint, DiPascali was one of the individuals who supervised, managed, and/or directed the activities of certain BLMIS employees, including Jerome O'Hara ("O'Hara") and George Perez ("Perez"), insofar as their activities related to the IA business.³

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

² On August 11, 2009, DiPascali pleaded guilty, pursuant to a cooperation agreement, to a ten-count Criminal Information, which included one count of perjury, one count of falsifying records of a broker-dealer, and one count of falsifying records of an investment adviser. DiPascali is awaiting sentencing and is cooperating in hopes of receiving a more lenient sentence. DiPascali has provided reliable information to the FBI that has been corroborated by documentary evidence, evidence found on BLMIS computer systems and/or storage devices, and information obtained from other witnesses.

³ O'Hara and Perez were arrested on November 13, 2009, on a criminal complaint alleging their participation in a conspiracy to falsify the books and records of a broker-dealer and investment adviser (BLMIS) and associated substantive crimes.

for, among other things, developing and maintaining computer programs for computers that supported the business of BLMIS, including its Market Making, Proprietary Trading, and IA operations.

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

25. According to documents found in BLMIS personnel files that I have reviewed, and information received from former BLMIS employees, including DiPascali, and other FBI Agents involved in this investigation, DANIEL BONVENTRE, the defendant, was employed by BLMIS from in or about August 1968, through at least on or about December 11, 2008. Prior to his employment at BLMIS, BONVENTRE worked as an auditor at a bank, while studying for an Associates Degree in Accounting, which he eventually received. BONVENTRE began working at BLMIS as an auditor, and subsequently was given increasing responsibility for supervising the back office operations of BLMIS. BONVENTRE eventually assumed the position of "Director of Operations" for BLMIS beginning at least as early as 1978.

26. In his capacity as Director of Operations, DANIEL BONVENTRE, the defendant, was responsible for, among other things: (a) maintaining and supervising the production of the principal internal accounting documents for BLMIS, including the G/L and financial statements; (b) maintaining the stock record for BLMIS and resolving any discrepancies between internal and external records; (c) supervising the use and reconciliation of BLMIS bank accounts through which the Market Making, Proprietary Trading, and IA business operations were funded; (d) supervising BLMIS employees who worked in the accounting department and the "cage";⁴ and (e) supervising O'Hara and Perez insofar as their work related to the production of the G/L and other BLMIS accounting records.

⁴ The "cage" was the area of the office in which settlement and clearing functions occurred, and in which checks and wire transfers were sent and/or received.

The Ponzi Scheme

27. Based on my participation in the investigation to date, including my participation in interviews of former BLMIS employees and others, and my review of, among other things, the guilty plea allocutions of Madoff and DiPascali, I have learned the following:

a. From at least as early as the 1980s through on or about December 11, 2008, Madoff, DiPascali, and other co-conspirators perpetrated a scheme to defraud the IA Clients by accepting billions of dollars of IA Clients' funds under false pretenses, failing to invest the IA Clients' funds as promised, creating and disseminating false and fraudulent documents to IA Clients purporting to show that their funds had been invested, and lying to the SEC and an accounting firm to conceal the fraudulent scheme.

b. To execute the scheme, Madoff solicited, and caused others to solicit, prospective clients to open trading accounts with BLMIS, based upon, among other things, a promise to use investor funds to purchase shares of common stock, options, other securities, and financial instruments, and representations that he would achieve high rates of return for clients, with limited risk. These representations were false. Contrary to representations made on account statements and other documents sent to IA Clients, Madoff, DiPascali, and other co-conspirators knew that the IA Clients' funds were not being invested in securities as promised. Moreover, Madoff and other co-conspirators misappropriated IA Clients' funds and converted those funds to their own use and the use of others, including BLMIS.

BLMIS's Finances

A. The General Ledger

28. Based on my review of BLMIS documents, the G/L, documents supporting entries in the G/L, and information obtained from former BLMIS employees, I have learned the following about the G/L:

a. The G/L purported to reflect the financial transactions and financial positions of BLMIS, including its revenues, expenses, assets, and liabilities.

b. The G/L did not separately account for the expenses, trading activity, assets, or liabilities of the IA

operations, but rather included the expenses related to IA operations with those of the Market Making and Proprietary Trading operations. Contrary to rules and regulations promulgated by the SEC and Generally Accepted Accounting Principles ("GAAP"), the G/L did not accurately account for the assets and liabilities of the IA operations.

B. The Principal Bank and Brokerage Accounts of BLMIS and MSIL

29. Based on my review of BLMIS documents, the G/L, records of financial institutions found in BLMIS's offices, records obtained from financial institutions in the course of this investigation, and information obtained from former BLMIS employees, including DiPascali, I have learned the following:

a. Billions of dollars of funds received from IA clients for investment were principally deposited into, and the funds to fulfill requests from IA clients for withdrawals from their BLMIS accounts were principally obtained from, a bank account most recently maintained at a bank in New York, New York ("Bank No. 1") (the "IA Account") and a checking account maintained at Bank No. 1 that was affiliated with the IA Account (the "IA Checking Account"). The end-of-day balances in the IA Account, balances which generally were in the range of hundreds of millions of dollars during the 2001-2008 period, were routinely swept into a variety of overnight deposit accounts (the "IA Sweep Accounts"). In addition, beginning in or about 2007, in excess of approximately \$1 billion was invested in U.S. Treasuries and other similar investments and was custodied in a separate account held by BLMIS at Bank No. 1. (The above-described BLMIS accounts held at Bank No. 1 are referred to collectively herein as the "BLMIS IA Accounts".) Interest earned on those investments was generally transferred to the IA Account on a regular basis.

b. BLMIS maintained a separate bank account that was principally used to fund, directly and indirectly, the operations of BLMIS (the "BLMIS Operating Account"). At all times relevant to this Complaint, the BLMIS Operating Account was custodied at a Bank in New York, New York ("Bank No. 2"). BLMIS opened one or more lines of credit at Bank No. 2 (collectively the "Bank No. 2 LOC").

c. BLMIS also maintained brokerage accounts at a variety of financial institutions (the "IA Brokerage Accounts"). Funds in the BLMIS Brokerage Accounts were generally invested in U.S. Government-issued securities such as U.S. Treasury bills.

d. MSIL maintained a bank account in the United Kingdom (the "MSIL Bank Account").

C. The Interrelationships Among the Accounts of BLMIS and MSIL

30. Based on my review of BLMIS documents, the G/L, records of financial institutions found in BLMIS's offices, records obtained from financial institutions in the course of this investigation, and information obtained from former BLMIS employees including DiPascali, I have learned the following:

a. As set forth in greater detail below, between in or about 1998 and in or about December 2008, hundreds of millions of dollars were transferred from the IA Account to the BLMIS Operating Account, either directly, or through other accounts.

b. Between in or about 1998 and 2005:

i. The BLMIS IA Accounts generated approximately \$179.6 million of interest, which was credited to the IA Account ("IA Account Interest").

ii. DANIEL BONVENTRE, the defendant, facilitated the transfer of the approximately \$179.6 million of IA Account Interest from the IA Account to the BLMIS Operating Account.

iii. The transfers described in paragraphs 30(b)(i) and (ii) were improperly accounted for in the G/L in the asset account titled "Trading," and documents from BLMIS that I have reviewed reveal that BONVENTRE knew how those transfers generally were booked on the G/L. Those transfers were accounted for on BLMIS FOCUS Reports as BLMIS revenue in the form of "Gains or losses on firm securities trading accounts from all other trading."

c. Between in or about 2000 and in or about 2005, a total of approximately \$348.6 million was wired from the IA Brokerage Accounts to the BLMIS Operating Account. Documents that I have reviewed show that BONVENTRE caused these wire transfers to be improperly accounted for in the G/L in the asset account titled "Trading." These wire transfers were reflected on BLMIS FOCUS Reports as BLMIS revenue in the form of "Gains or losses on firm securities trading accounts from all other trading." In truth and in fact, however, substantially all of the IA Brokerage Accounts were funded by transfers from the IA Account. Records associated with the IA Brokerage Accounts, and

BLMIS internal records related to the IA Account show that between 1997 and 2007, a net total of approximately \$307 million was wired from the IA Account to the IA Brokerage Accounts.

d. Between in or about 2002 and in or about 2008, a total of approximately \$283.4 million was transferred from the IA Account to the MSIL Account. Between in or about 2005 and in or about 2008, approximately \$287.3 million was transferred from the MSIL Account to the BLMIS Operating Account. During fiscal years 2006-2008, after BLMIS had registered with the SEC as an investment adviser, approximately \$209.5 million of the funds transferred from the MSIL Account to the BLMIS Operating Account were improperly accounted for on the G/L as revenue in the form of "Commissions Revenue."⁵ On or about December 12, 2008, DANIEL BONVENTRE, the defendant, spoke with representatives of the court-appointed Receiver for BLMIS (the "Receiver"). According to two individuals with whom other FBI Agents have spoken, BONVENTRE introduced the subject of commission income, and told the representatives of the Receiver that Bernard L. Madoff had always told him that the commission income that BLMIS had received from the MSIL Account was income that BLMIS had earned on trades completed in Europe through MSIL. I have learned from former BLMIS and MSIL employees that BONVENTRE knew that MSIL trades of U.S. equities were cleared through BLMIS, and that the BLMIS stock record and DTC records that BONVENTRE regularly monitored reflected MSIL trades cleared through BLMIS. The information to which BONVENTRE had access shows that MSIL did not execute enough trades to generate the hundreds of millions of dollars of "commission revenue" reflected on the G/L.

e. As described further below, between in or about January 2006 and in or about April 2006, approximately four wire transfers totaling approximately \$262 million were made from the BLMIS Operating Account directly to four separate IA Clients to satisfy their requests for withdrawals from their respective IA accounts (the "Four Wire Transfers"). The G/L reflected the Four Wire Transfers in a way that concealed the relationship between the BLMIS Operating Account and the IA operations. In or about June 2006, approximately \$261,816,950 was transferred from the IA Account to the BLMIS Operating Account.

f. In or about December 2008, during another liquidity crisis, approximately \$181.5 million was wire transferred from the BLMIS Operating Account directly to the IA

⁵ BLMIS operated on a fiscal year ending October 31.

Account.

D. The Financial Condition of BLMIS

31. Based on my review of BLMIS documents, the G/L, records of financial institutions found in BLMIS's offices, records obtained from financial institutions in the course of this investigation, and information obtained from former BLMIS employees including DiPascali, I have learned that beginning at least as early as in or about 2002, BLMIS's Market Making and Proprietary Trading operations did not generate sufficient revenue to meet BLMIS's expenses. Indeed, that revenue shortfall amounted to approximately \$265 million over the fiscal year 2002-2008 period.

32. Moreover, as described in further detail below, BLMIS suffered a liquidity crisis between in or about November 2005 and June 2006 that appears to have been caused by demands for withdrawals by IA Clients that exceeded the firm's available funds.

33. The first manifestation of the liquidity crisis occurred on or about November 2, 2005, when BLMIS's internal check "register" for the IA Account showed an end-of-day balance of approximately \$13 million - a sum that was insufficient to cover the nearly approximately \$105 million in outbound wires scheduled in the following three business days. Funds were transferred from the BLMIS Brokerage Accounts to meet the cash needs of the IA operations on November 3, 2005.

34. On or about November 4, 2005, an IA client ("IA Client A") sent approximately \$100 million of Federal Home Loan Bank ("FHLB") bonds to BLMIS to be deposited in accounts affiliated with IA Client A. I have reviewed correspondence found in the office of DANIEL BONVENTRE, the defendant, that shows that BONVENTRE knew about the deposit of the FHLB bonds and the fact that they were to be deposited in accounts affiliated with IA Client A. Based on my review of other documents found in BONVENTRE's office, and my interview of a former BLMIS employee, I have learned that on or about November 14, 2005, BONVENTRE directed that a letter be written to Bank No. 1 in which he requested a \$95 million loan on behalf of BLMIS using these FHLB bonds as collateral.

35. I have reviewed documents found by FBI Agents at BLMIS, including documents found in the office of DANIEL BONVENTRE, the defendant, that show that on or about January 18, 2006, IA Client A sent another approximately \$54 million of FHLB

bonds to BLMIS to be deposited in accounts affiliated with IA Client A. (The \$154 million in FHLB bonds described in this paragraph and paragraph 34, above, are referred to herein jointly and severally as the "Client A Bonds".)

36. I have reviewed documents found in the office of DANIEL BONVENTRE, the defendant, and have been informed by other FBI agents involved in this investigation who have interviewed employees of Bank No. 1, that on or about January 23, 2006, BONVENTRE caused BLMIS to borrow another approximately \$50 million using the Client A Bonds as collateral. (The approximately \$145 million in debt incurred by BLMIS using the Client A Bonds as collateral is referred to herein jointly and severally as the "Client Collateralized Loans".)

37. I have reviewed documents, including BLMIS internally-created documents and the account statements for the IA Account, that show that the proceeds of the Client Collateralized Loans were deposited in the IA Account and were used to satisfy requests for withdrawals from other IA Clients.

38. Between in or about January 2006 and in or about April 2006, IA Clients' deposits into the IA Account failed to keep pace with IA Clients' requests for withdrawals. During that period, the Four Wire Transfers totaling approximately \$262 million were sent from the BLMIS Operating Account to four separate IA clients. Those transfers occurred on January 30, 2006 (\$28 million), February 1, 2006 (\$38 million), April 4, 2006 (\$76 million), and April 13, 2006 (\$120 million).

39. I have reviewed account records found in the office of DANIEL BONVENTRE, the defendant, related to the Bank No. 2 LOC. Those documents show that, or about March 31, 2006, BLMIS drew down approximately \$110 million on the Bank No. 2 LOC. On or about April 12, 2006, another approximately \$160 million was drawn on the Bank No. 2 LOC.⁶

40. Because the Four Wire Transfers came out of the BLMIS Operating Account (which, unlike the IA Account, was reflected on the G/L) those transactions had to be accounted for on the G/L. According to GAAP, the G/L, and/or supporting books

⁶ I have reviewed records found in the office of DANIEL BONVENTRE, the defendant, related to the Bank No. 2 LOC. Those records show that the balance owed on the Bank No. 2 LOC reached a peak of approximately \$342 million on or about May 25, 2006, and was fully repaid by in or about August 2006.

and records, had to reflect accurately the use and/or recipient(s) of the Four Wire Transfers. I have reviewed BLMIS documents, that appear to bear the handwriting of DANIEL BONVENTRE, the defendant, and which directed the inclusion of entries in the G/L, and/or supporting books and records, that disguised the fact that the Four Wire Transfers related to IA business operations (including withdrawals by IA Clients). The G/L entries and other books and records that BONVENTRE caused to be made, created the appearance that the Four Wire Transfers had been used to purchase assets for BLMIS (including the Client A Bonds), when, in fact, they had not been.

41. On or about June 1, 2006, the Client Collateralized Loan balance of approximately \$145 million was fully repaid using funds from the IA Account.

42. On or about June 1, 2006 and June 6, 2006, two wire transfers (approximately \$109,968,750 and \$151,848,200, respectively) totaling approximately \$261.8 million were executed from the IA Account to the BLMIS Operating Account, thereby replenishing the BLMIS Operating Account with substantially all of the funds it had contributed to keeping the Ponzi scheme going through the Four Wire Transfers. Entries on the G/L, and/or supporting books and records, failed accurately to reflect the purpose of these two wire transfers. On or about June 1 and June 6, 2006, the G/L was adjusted to, in substance, reverse the entries that had concealed the true purpose of the Four Wire Transfers. I have reviewed documents found in the office of DANIEL BONVENTRE, the defendant, that appear to bear his handwritten calculations determining how to achieve that goal.

43. On or about June 1, 2006, the principal balance of the Bank No. 2 LOC was reduced by approximately \$103 million. On or about June 6, 2006, the principal balance of the Bank No. 2 LOC was reduced by an additional approximately \$167 million.

44. Following the resolution of the 2005-06 liquidity crisis in or about June 2006, substantially all of the funds that were deposited in the IA Account were investor funds, or funds from the MSIL Account (that had received funds from the IA Account), and IA Clients' requests for withdrawals were satisfied by funds in the IA Account.

Filing a False and Misleading FOCUS Report With the SEC

45. I understand from representatives of the SEC that the FOCUS Reports are required to be filed on a monthly, quarterly, and annual basis by registered broker-dealers. I have

reviewed the FOCUS Reports filed by BLMIS in the November 2005 - June 2006 period. Based on my review, it appears that the FOCUS Report form requests basic information that amounts to a condensed version of a broker-dealer's general ledger.

46. Based on my review of BLMIS documents, the G/L, records of financial institutions found in BLMIS's offices, records obtained from financial institutions in the course of this investigation, information obtained from former BLMIS employees including DiPascali, and the FOCUS Reports filed by BLMIS, I have learned the following:

- a. DANIEL BONVENTRE, the defendant, was responsible for maintaining the G/L, and supervised others who played a role in maintaining the G/L.
- b. BONVENTRE provided information concerning BLMIS expenses that was used in preparation of the FOCUS Reports filed by BLMIS, and supervised others who were involved in the process of preparing those filings. BONVENTRE therefore knew that the information contained in the BLMIS FOCUS Reports concerning BLMIS's assets, liabilities, revenues, and expenses, was derived from information recorded in the G/L.
- c. The FOCUS Reports required BLMIS to file with the SEC basic balance sheet information, including a summary of the firm's assets and liabilities.
- d. Contrary to GAAP, and rules and regulations promulgated by the SEC, the G/L, and/or supporting books and records, did not accurately reflect the assets contained in the IA Account, the BLMIS Brokerage Accounts, and the other BLMIS IA Accounts, and likewise did not reflect the liability of BLMIS to its IA Clients that arose from the custody of IA Client funds in those accounts. At various points in time, the assets and associated liabilities of BLMIS's IA operations, which were omitted from the G/L, ranged from millions to billions of dollars.
- e. Contrary to GAAP, and rules and regulations promulgated by the SEC, the FOCUS Reports filed by BLMIS with the SEC failed accurately to reflect the assets contained in the IA Account, the BLMIS Brokerage Accounts and the other BLMIS IA Accounts, and likewise did not reflect the liability of BLMIS to its IA Clients that arose from the custody of IA Client funds in those accounts. At various points in time, the assets and associated liabilities of BLMIS's IA operations, which were omitted from the FOCUS Reports filed by BLMIS with the SEC,

ranged from millions to billions of dollars.

f. On or about May 22, 2006, BLMIS filed a FOCUS Report for the one-month period ending April 30, 2006 (the "April 2006 FOCUS Report"). The April 2006 FOCUS Report included among the firm's assets the approximately \$154 million of Client A Bonds. The April 2006 FOCUS Report failed to disclose any liability of BLMIS to Client A, including any liability with respect to the \$154 million of Client A Bonds; moreover, it failed to disclose any of the liability associated with the \$145 million that BLMIS had borrowed using the Client A Bonds as collateral.⁷ Accordingly, BLMIS's liabilities were understated by at least approximately \$299 million in the April 2006 FOCUS Report. That understatement of liabilities excludes the other liabilities to IA Clients described in paragraph 46(e), above, that also should have been reflected on that report.

Reviews of BLMIS Between 2004 and 2008

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

a. The operations of BLMIS were subjected to at least five separate reviews by the SEC and a European accounting firm (the "European Accounting Firm") between 2004 and 2008 (collectively, the "Reviews").⁸

b. Beginning at least as early as in or about January 2004, in connection with the Reviews, Bernard L. Madoff, DiPascali, and DANIEL BONVENTRE, the defendant, had numerous conversations about how to respond to requests for information about the IA business and what records could and should be created to satisfy those requests. Bernard L. Madoff's goals in directing the creation of additional false and fraudulent books and records were, among other things, to: (a) reveal information

⁷ The April 2006 FOCUS Report did include as a liability the \$277 million BONY LOC that had been used to fund the majority of the Four Wire Transfers.

⁸ The European Accounting Firm's client was a European financial institution that served as custodian for the assets of an IA client (the "European IA Client") and that had a sub-custodian agreement with BLMIS.

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

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

d. Based on the review by other FBI agents involved in this investigation of the IBM AS/400 server primarily dedicated to BLMIS's IA operations ("House 17"), monthly backup tapes for House 17, information provided by an individual familiar with the architecture, programming language, and operation of IBM AS/400 servers (the "AS/400 Contractor"),⁹ and information provided by DiPascali and other witnesses, I have learned that, in connection with this further deception, O'Hara and Perez developed and maintained special House 17 programs that, among other things, retrospectively: (i) created new sets of historical BLMIS books and records for certain subsets of IA Clients (the "Special Clients"); (ii) changed information about the identities of IA Clients; (iii) added trading contra parties to historical transactions, and changed the identities of those contra parties depending on whether the books and records were being prepared for the SEC (in which case the contra parties were randomly selected from a list of European financial firms) or the European Accounting Firm (in which case the contra parties were randomly selected from a list of U.S. financial firms); (iv) created new versions of client account statements designed to mislead the SEC about whether BLMIS had custody of IA Clients'

⁹ The AS/400 Contractor has been working for the FBI as a contractor under my supervision and the supervision of other FBI Agents, and is being paid at an hourly rate.

assets; (v) incorporated randomization algorithms to create fake records reflecting securities transactions that appeared to be realistic in terms of their size and timing; and (vi) generated documents that looked like the output of reliable third parties such as DTC.

e. Based on information supplied by DiPascali and one or more other former BLMIS employees, and based on my review of BLMIS documents, including documents found in BONVENTRE's office, I have learned that BONVENTRE, among other things:

i. participated in discussions with Madoff and DiPascali about how to respond to requests for information from the SEC and the European Accounting Firm;

ii. reviewed certain of the specially created false and fraudulent records, including fake DTC records that were actually created by BLMIS employees before they were provided to the European Accounting Firm;

iii. assisted with the preparation of a list of purported European contra parties for transactions purportedly executed in connection with the IA business; and

iv. prepared DiPascali to pose falsely as BLMIS's Director of Operations during one or more visits by the European Accounting Firm to the BLMIS offices in order to be able to respond to inquiries about the "back office" operations related to BLMIS's IA activities.

1. The 2005 Review by the European Accounting Firm

48. According to DiPascali, in or about 2005, DANIEL BONVENTRE, the defendant, helped to prepare DiPascali for the on-site review of BLMIS operations by representatives of the European Accounting Firm. BONVENTRE attended meetings with Madoff and DiPascali to prepare for that visit, and helped to prepare DiPascali to play the role of BLMIS's Director of Operations. Specifically, BONVENTRE taught DiPascali terminology, instructed him about paper and information flow, and provided explanations about the firm's banking arrangements so that he could respond knowledgeably to questions.

49. According to DiPascali, in connection with this review, because the European Accounting Firm, the European Custodian and the European Clients were all based in Europe, Bernard L. Madoff used a "domestic scenario" (instead of the

"European scenario" that was sometimes employed during certain SEC reviews) in an effort to make it less likely that the European Accounting Firm would be able to obtain information that might uncover the fraudulent scheme. As part of this "domestic scenario," Bernard L. Madoff, DiPascali, O'Hara and Perez, with the assistance of DANIEL BONVENTRE, the defendant, created counterfeit DTC reports that purported to show that BLMIS had custody (at DTC) of the securities reflected on the account statements that had been sent to the European Clients and/or the European Custodian.

50. According to DiPascali, Bernard L. Madoff and DANIEL BONVENTRE, the defendant, reviewed various versions of the fake DTC reports created by O'Hara and Perez to ensure that they appeared to be legitimate. According to DiPascali and representatives of the European Accounting Firm, versions of these false and fraudulent DTC reports were shown to representatives of the European Accounting Firm who visited BLMIS during their 2005 Review.

51. Among the papers found by FBI Agents, including the undersigned, in the office of DANIEL BONVENTRE, the defendant, were genuine DTC reports reflecting the positions of BLMIS's Market Making and Proprietary Trading operations, and fake DTC reports that purported to reflect securities held on behalf of certain Special Clients.

2. The 2006 SEC Review

52. According to DiPascali, in connection with the 2006 SEC review, Bernard L. Madoff sought to convince the SEC that the trades purportedly conducted by BLMIS's IA business were executed in Europe because doing so would make it more difficult for the SEC to obtain information from third parties that would reveal that, in fact, no trades were being executed.

53. The books and records generated in the ordinary course of BLMIS's IA operations identified the contra party for each securities trade as "CLEARING BANK." According to DiPascali, with the assistance of DANIEL BONVENTRE, the defendant, Bernard L. Madoff, DiPascali, O'Hara and Perez, created special trade blotters that substituted for "CLEARING BANK" actual European financial institutions as the contra parties for purported trades. According to DiPascali, BONVENTRE reviewed for accuracy a list of European institutions from which substitute contra parties were drawn. I have reviewed an undated document found by FBI Agents in BONVENTRE's office that lists approximately dozens of foreign securities dealers.

3. Preparation of RVP/DVP Statements

54. According to DiPascali, in connection with one or more SEC Reviews, Madoff attempted to make it appear that BLMIS did not have custody of its IA Clients' assets because he knew that were the SEC to check with DTC, it would learn that DTC was not holding the securities listed on the IA Clients' account statements in a segregated account for BLMIS. To explain why DTC would not hold these securities, Madoff directed the preparation of documents in a "receive-versus-payment"/"delivery-versus-payment" ("RVP/DVP") format that showed no securities or cash balances in the accounts of the Special Clients.¹⁰ To be consistent with an RVP/DVP scenario, the names of the Special Clients further had to be changed to financial institutions holding assets for the benefit of the Special Clients because RVP/DVP accounts require the involvement of such a custodian. For example, an account held in the name of "ABC Fund" was changed to "XYZ Financial Institution f/b/o ABC Fund."

55. I have reviewed documents found by FBI Agents, including the undersigned, in the office of DANIEL BONVENTRE, the defendant, including a file containing copies of account statements dated in or about 2006 for certain of the subset of clients that had been revealed to the SEC. Those account statements were both the original BLMIS format (which showed billions of dollars of assets being held by BLMIS on behalf of those clients) and in RVP/DVP format (which showed BLMIS holding no assets on behalf of those clients). None of the RVP/DVP statements found in BONVENTRE's office, however, purported to show assets held at a third party financial institution for the benefit of an IA client.

¹⁰ In a RVP/DVP arrangement, payment for securities purchased is made to the selling customer's agent and/or delivery of securities sold is made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash. Because transactions in RVP/DVP accounts are settled directly with the agent on a transaction-by-transaction basis, account statements sent by a broker-dealer like BLMIS to customers with RVP/DVP accounts generally do not reflect any cash balance or security position with the broker-dealer at the end of a period. Thus, an RVP/DVP account is inconsistent with an account as to which the broker-dealer holds securities on behalf of a client at DTC in a segregated position.

4. O'Hara and Perez Announce Their Unwillingness to Create Additional False Documents

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

57. According to DiPascali, DANIEL BONVENTRE, the defendant, was present for one of the meetings between O'Hara, Perez and Madoff at which O'Hara and Perez announced their unwillingness to further assist with the manipulation of data related to BLMIS's IA operations.

BONVENTRE Caused False and Fraudulent Profitable "Trades" to be Placed In His IA Account

58. Based on a review of BLMIS IA account statements preserved on microfilm, documents found in the files of a former BLMIS employee with responsibilities related to the IA operations ("BLMIS Employee B"), the Bonventre IA Account statements found on House 17 and its backup tapes, other BLMIS documents, documents subpoenaed from various financial institutions, information obtained from other FBI Agents involved in this investigation, and information obtained from the AS/400 Contractor, I have learned that DANIEL BONVENTRE, the defendant, maintained at BLMIS an IA account (the "Bonventre IA Account") from at least as early as 1983 through December 2008. I have learned that between 2002 and 2006 BONVENTRE received the benefit of more than \$1.8 million in three separate backdated, fictitious, securities transactions in the Bonventre IA Account that were not, in fact, actually executed. Specifically, I have learned the following:

a. The Fictitious \$1 Million Big Lots "Trade"

i. On or about November 12, 2002, Bernard L. Madoff signed a check drawn on the IA Account made out to BONVENTRE and his wife in the amount of \$999,375 ("Check No. 1"). The memo line on Check No. 1 referenced the account number of the

Bonventre IA Account.

ii. On or about November 13, 2002, BONVENTRE caused Check No. 1 to be deposited in a joint bank account held by BONVENTRE and his wife (the "Bonventre Bank Account").

iii. On or about November 20, 2002, BONVENTRE caused a check in the amount of \$950,000 drawn on the Bonventre Bank Account to be deposited into a brokerage account controlled by BONVENTRE in which BONVENTRE subsequently purchased more than \$950,000 of U.S. Treasury bills in December 2002.

iv. On or about November 22, 2002, a fictitious trade was entered in the records of the Bonventre IA Account maintained on House 17. That purported trade had the effect of showing, on paper, purchases of 40,000 shares of stock of Consolidated Stores on January 31, 1990 for \$90,000, and sales of 62,500 shares of stock of Big Lots Inc. (adjusted for a stock split and the change of Consolidated Stores' corporate name to Big Lots Inc.) on September 26, 2002, for \$1,089,375. The false, backdated trade entered onto House 17 conformed to instructions found on a piece of paper contained in the Bonventre IA Account client file maintained at BLMIS; that is, the trade dates, settlement dates, number of shares purchased, purchase price per share, total purchase price, number of shares sold, selling price per share, and total sales price, which were entered onto House 17, matched the instructions. Those instructions were handwritten, and appear to be consistent with other handwritten notes that have been identified by former BLMIS employees as being the handwriting of BONVENTRE.

v. The Bonventre IA Account had a balance of approximately -\$90,304 in or about January 1990.

vi. The first time that the Bonventre IA Account statements reflected the purchase of Consolidated Stores or Big Lots was on an account statement for the period ending November 30, 2002, which was not prepared until on or after December 2, 2002.

vii. House 17 records pertaining to the Bonventre IA Account do not reflect that the account was ever charged margin interest at any point during the period between in or about January 1990 and in or about December 2002.¹¹

¹¹ Based on my experience and training, I understand that, under certain circumstances an investor may borrow funds from a

viii. Following the backdated Big Lots "trade," the Bonventre IA Account reflected a balance of \$182,000.00.

b. The Fictitious \$650,000 Lucent "Trade"

i. The Bonventre IA Account statements for the period March 2003 through March 2004 reflected no securities positions, and a constant cash balance of \$182,000.00.

ii. The Bonventre IA Account statement for the period ending April 30, 2004 reflected a withdrawal, by check, of \$200,000.00, resulting in a balance of -\$18,000.00. A check in the amount of \$200,000.00, drawn on the IA Account was made out to BONVENTRE and his wife, and was deposited in the Bonventre Bank Account on or about April 6, 2004. On or about April 14, 2004, BONVENTRE deposited into a brokerage account controlled by BONVENTRE a check drawn on the Bonventre Bank Account in the amount of \$235,000.00.

iii. On or about July 12, 2004, a series of false, backdated trades were entered in the records of the Bonventre IA Account maintained on House 17. Those purported trades had the effect of showing, on paper:

(1) the purchase of 90,000 shares of stock of Lucent Technologies Inc. ("Lucent") on March 11, 2003, for a total price of \$144,000.00;

(2) the purchase of 67,000 shares of Lucent on March 12, 2003 for a total price of \$102,510.00;

(3) the sale of 67,000 shares of Lucent on April 19, 2004, for a total price of \$285,420.00; and

financial institution to buy securities in the investor's account. That practice is known as buying securities "on margin," and financial institutions generally charge interest on such borrowed funds ("margin interest"). Various rules and regulations that govern the securities industry also generally limit the portion of any securities purchase that may be made on margin to 50 percent of the purchase price. Based on my training and experience, it would be highly unusual for a for-profit financial institution to extend a \$90,000 interest-free loan for twelve years to permit the purchase of securities on margin.

(4) the sale of 90,000 shares of Lucent on April 20, 2004, for a total price of \$360,900.00.

iv. The purported purchases and sales of Lucent stock resulted in net profits of \$399,810.00. Immediately following the Lucent "transaction," the Bonventre IA Account reflected a balance of \$381,000.00.

v. I have reviewed a handwritten note found in the files of a BLMIS Employee B that stated, "Dan had me put thru a profit trade for 399810.00, then add that figure to cap additions!" Another handwritten note found in the files of BLMIS Employee B stated, "LU Trade DanBon \$400,000 Lt." Based on my investigation, and information provided by other FBI agents involved in this investigation, I understand this note to refer to a long-term (i.e., more than one year between purchase and sale) transaction involving the stock of Lucent that would generate a profit of approximately \$400,000.

vi. On or about May 25, 2005, a check in the amount of \$400,000.00 ("Check No. 2") made out to BONVENTRE and his wife, drawn on the IA Account was deposited in the Bonventre Bank Account. The memo line on Check No. 2 referenced the account number of the Bonventre IA Account. Immediately following the withdrawal evidenced by Check No. 2, the Bonventre IA Account reflected a balance of -\$18,190.00. On or about June 6, 2005, Bonventre deposited in a brokerage account a check drawn on the Bonventre Bank Account in the amount of \$420,000.00.

c. The Fictitious \$1 Million Apple "Trade"

i. The Bonventre IA Account statements during the period January 2005 through February 2006 reflected no securities positions, and a constant cash balance of -\$18,190.00.

ii. An undated handwritten note found in the files of BLMIS Employee B stated,

Hi [BLMIS Employee B]

As per our phone conversation, I need a long term capital gain of \$449000.- on an investment of \$129000.- for a sale proceed of \$578000.--

I'll be back in NY on March 30th but if you need to speak to me before then, call me on []

Thanks
Dan

Former BLMIS employees have identified the handwriting on this note as being that of DANIEL BONVENTRE, the defendant.

iii. On or about March 31, 2006, a series of purported trades were entered in the records of the Bonventre IA Account maintained on House 17. Those purported trades had the effect of showing, on paper:

(1) the purchase of 8,000 shares of stock of Apple Computer Inc. ("Apple") on January 25, 2005, for a total price of \$577,760.00;

(2) the sale of 16,000 shares of Apple on March 9, 2006, for a total price of \$1,056,960.00;¹²

(3) a long-term gain from the purported purchase and sale of Apple stock of \$479,200.00.

iv. As of March 31, 2006, the Bonventre IA Account reflected a balance of \$461,010.00. Records pertaining to the Bonventre IA Account do not reflect that any margin interest was paid to BLMIS between January 2005 and March 2006, notwithstanding the fact that the Bonventre IA Account did not have sufficient cash to purchase Apple securities valued at \$577,760.00 at the time of the purported transaction.

¹² The additional 8,000 shares were credited to the Bonventre IA Account as a consequence of a two-for-one Apple stock split on March 2, 2005.

d. BONVENTRE Empties His IA Account

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

60. On or about April 6, 2006, DANIEL BONVENTRE, the defendant, caused a check drawn on the IA Account in the amount of \$577,954.81 ("Check No. 3") to be made out to BONVENTRE and his wife. On or about April 7, 2006, BONVENTRE caused Check No. 3 to be deposited in the Bonventre Bank Account. On or about April 24, 2006, BONVENTRE caused a check in the amount of \$500,000.00, drawn on the Bonventre Bank Account, to be deposited in a brokerage account controlled by BONVENTRE.

61. Following the deposit of Check No. 3, the Bonventre IA Account reflected a balance of -\$116,944.81. The Bonventre IA Account statement reflecting activity through June 30, 2006 shows a journal entry in the amount of \$116,944.81, which brought the balance in the account to \$0. The investigation to date reveals no further activity in the Bonventre IA Account following this adjusting journal entry, and reveals no payment by BONVENTRE to BLMIS to zero out that negative balance.

62. On or about December 12, 2008, DANIEL BONVENTRE, the defendant, spoke with representatives of the Receiver. According to two individuals who were present for one or more of the meetings between BONVENTRE and representatives of the Receiver, BONVENTRE stated, in substance, that he had closed his IA account in 2006 because he had gotten a "bad" or "queasy" feeling about the consistent returns that the account had produced.

BONVENTRE Failed To Report
Funds Taken From a BLMIS Bank Account
As Income on His Federal Tax Returns

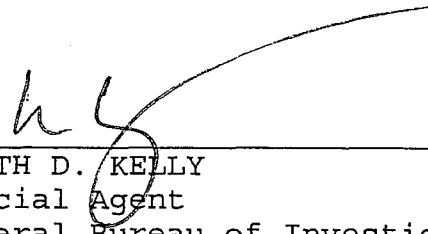
63. Based on my review of bank records and BLMIS documents, I have learned that DANIEL BONVENTRE, the defendant, wrote and caused checks described below to be written from a BLMIS bank account for his benefit:

| <u>Date</u> | <u>Amount</u> |
|-------------|---------------|
| 2/10/03 | \$33,300.00 |
| 11/12/03 | \$65,000.00 |
| 12/21/04 | \$18,420.24 |
| 1/13/06 | \$61,900.00 |
| 1/17/07 | \$35,000.00 |
| 10/29/07 | \$60,000.00 |

64. Based on conversations with IRS Special Agents involved in this investigation, I have learned that DANIEL BONVENTRE, the defendant, did not declare these funds, which totaled approximately \$273,620.24, on the federal income tax return associated with the year in which he received the funds. I have further learned that BONVENTRE did declare his receipt of \$50,000.00 from a BLMIS bank account on or about November 5, 2008, after receiving a form 1099-MISC issued by BLMIS which, at that time, was under the auspices of the Trustee appointed under the Securities Investor Protection Act. Prior to 2008, it does not appear that BLMIS had issued to BONVENTRE Forms 1099-Misc in connection with his previous withdrawals.

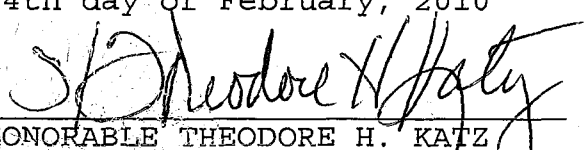
65. According to a representative of the Receiver who participated in a meeting with DANIEL BONVENTRE, the defendant, on or about December 12, 2008, BONVENTRE told that individual, in substance, that he had received checks into his personal bank account from a BLMIS bank account above and beyond his salary and yearly bonus. BONVENTRE also stated that he had signatory authority for that bank account.

WHEREFORE, deponent prays that an arrest warrant be issued for the above-named defendant, and that he be imprisoned or bailed as the case may be.



KEITH D. KELLY
Special Agent
Federal Bureau of Investigation

Sworn to before me this
24th day of February, 2010



HONORABLE THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK