

Revised Final Version of Jury Instructions

1                                    **United States v. Bonventre et al., 10 cr. 228**

2                                    **JURY INSTRUCTIONS**

3  
4                                    Ladies and gentlemen, I now am going to instruct you on the law, before you  
5 begin your deliberations. You must pay close attention and I will be as clear as possible.

6  
7                                    It has been obvious to me and to counsel that you have faithfully discharged your  
8 duty to listen carefully and observe each witness who testified. Your interest has never flagged,  
9 and you have followed the testimony with close attention.

10  
11                                   I ask you to give me that same careful attention as I instruct you on the law.

12  
13                                   The following instructions are rather extensive, so let me provide you with a brief  
14 overview of what to expect. I'll begin by instructing you on very important rules that are  
15 generally applicable to all criminal jury trials. Then, I will proceed to review the counts which  
16 are charged in the Indictment and instruct you on the specific rules of law that you will have to  
17 consider in deciding each count. Finally, I will instruct you on the procedures you should follow  
18 while conducting your deliberations.

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**ROLE OF THE COURT**

1  
2           You have now heard all of the evidence in the case as well as the final arguments  
3 of the lawyers for the Government and for the Defendants.

4  
5           My duty at this point is to instruct you as to the law. It is your duty to accept  
6 these instructions of law and apply them to the facts as you determine them, just as it has been  
7 my duty to preside over the trial and decide what testimony and evidence is relevant under the  
8 law for your consideration.

9  
10           On these legal matters, you must take the law as I give it to you. If any attorney  
11 has stated a legal principle different from any that I state to you in my instructions, it is my  
12 instructions that you must follow.

13  
14           You should not single out any instruction as alone stating the law, but you should  
15 consider my instructions as a whole when you retire to deliberate in the jury room.

16  
17           You should not, any of you, be concerned about the wisdom of any rule that I  
18 state. Regardless of any opinion that you may have as to what the law may be – or ought to be –  
19 it would violate your sworn duty to base a verdict upon any other view of the law than that  
20 which I give you.

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**ROLE OF THE JURY**

As members of the jury, you are the sole and exclusive judges of the facts. You pass upon the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them, and you determine the weight of the evidence.

In determining these issues, no one may invade your province or function as jurors. In order for you to determine the facts, you must rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing arguments, in the objections, or in their questions is not evidence. Nor is what I may have said – or what I may say in these instructions – about a fact issue, evidence unless I specifically stated that I was instructing you to that extent. In this connection, you should bear in mind that a question put to a witness is never evidence; it is only the answer which is evidence. But you may not consider any answer that I directed you to disregard or that I directed struck from the record. Do not consider such answers.

Since you are the sole and exclusive judges of the facts, I do not mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not any indication of my views of what your decision should be as to whether or not the Government has proven its case. I am going to go back and clarify a statement that I made a few

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1 minutes ago. What I say is not evidence. I have given you certain instructions about what is in  
2 the evidence, but it is the evidence that you as the jury will weigh in order to make your  
3 determination. My statement is not itself evidence. I apologize for any lack of clarity on that.

4  
5 You are to understand that the Court has no opinion as to the verdict you should  
6 render in this case.

7  
8 As to the facts, ladies and gentlemen, you are the exclusive judges. You are to  
9 perform the duty of finding the facts without bias or prejudice for or against any party.

10  
11  
12 **JUROR OATH**

13 In determining the facts, you are reminded that you took an oath to render  
14 judgment impartially and fairly, without prejudice or sympathy and without fear, solely upon the  
15 evidence in the case and the applicable law. I know that you will do this and reach a just and  
16 true verdict.

17  
18  
19 **JURY TO DISREGARD COURT'S VIEW**

20 I have not expressed, nor have I intended to intimate, any opinion as to which  
21 witnesses are or are not worthy of belief, what facts are or are not established, or what inference  
22 or inferences should be drawn from the evidence. If any expression of mine has seemed to

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1 indicate an opinion relating to any of these matters, I instruct you to disregard it. You are, I  
2 repeat, the exclusive, sole judges of all of the questions of fact submitted to you and of the  
3 credibility of the witnesses. Your authority, however, is not to be exercised arbitrarily; it must  
4 be exercised with sincere judgment, sound discretion, and in accordance with the rules of law  
5 that I give you. In making your determination of the facts in this case, your judgment must be  
6 applied only to that which is properly in evidence. Arguments of counsel are not in evidence,  
7 although you may give consideration to those arguments in making up your mind on what  
8 inferences to draw from the facts which are in evidence.

9  
10 From time to time the Court has been called upon to pass upon the admissibility  
11 of certain evidence. I have tried to do so, in so far as it was practicable, out of your hearing.  
12 The reasons for any such rulings are not your concern and you are not to draw any inferences  
13 from them. Whether evidence is admissible is purely a question of law in the province of the  
14 Court and outside the province of the jury. In admitting evidence to which objection has been  
15 made, the Court does not determine what weight should be given to such evidence, nor does it  
16 pass on the credibility of the evidence. Of course, you will dismiss from your mind completely,  
17 entirely, any evidence which has been ruled out of the case by the Court, and you must refrain  
18 from speculation or conjecture or any guesswork about the nature or effect of any discussion  
19 between Court and counsel held out of your hearing or sight.

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**CONDUCT OF COUNSEL**

It is the duty of the attorney for each party in the case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. Counsel also have the right and duty to ask the Court to make rulings of law and to request conferences out of the hearing of the jury. All those questions of law must be decided by me, the Court. You should not show any prejudice against an attorney or the party the attorney represents because the attorney objected to the admissibility of evidence, or asked for a conference out of the hearing of the jury, or asked the Court for a ruling on the law.

As I have already indicated, my rulings on the admissibility of evidence do not, unless expressly stated by me, indicate any opinion on my part as to the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

Your verdict should be based on the facts as found by you from the evidence and the law as instructed by the Court.

**REMARKS TO COUNSEL**

It is the duty of the attorneys to offer evidence and press objections on behalf of their side. It is my function to cut off counsel from an improper line of argument or questioning,

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1 to strike offending remarks and to reprimand counsel when I think it is necessary. But you  
2 should draw no inference from that. It is irrelevant whether you like a lawyer or whether you  
3 believe I like a lawyer.

4  
5 I would like to express my gratitude to each of the attorneys for their  
6 conscientious efforts and for work well done.

7  
8  
9 **PRESUMPTION OF INNOCENCE & BURDEN OF PROOF**

10 Each of the Defendants has pleaded not guilty to the Indictment, which contains  
11 the charges for which he or she is now on trial.

12  
13 As a result of each Defendant's plea of not guilty, the burden is on the  
14 prosecution, which I refer to in this Charge as the Government, to prove individually each of the  
15 Defendants guilty beyond a reasonable doubt. This burden never shifts to a defendant for the  
16 simple reason that the law never imposes upon a defendant in a criminal case the burden or duty  
17 of calling any witness or producing any evidence.

18  
19 The law presumes each of the individual Defendants to be innocent of all of the  
20 charges against him or her. I therefore instruct you that each Defendant is to be presumed by  
21 you to be innocent throughout your deliberations until such time, if ever, you as a jury are

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1 satisfied that the Government has proven that individual Defendant guilty beyond a reasonable  
2 doubt.

3  
4 Each of the Defendants began the trial here with a clean slate. This presumption  
5 of innocence alone is sufficient to acquit a Defendant unless you as jurors are, unanimously,  
6 convinced beyond a reasonable doubt of that Defendant's guilt, after a careful and impartial  
7 consideration of all of the evidence in this case. If the Government fails to sustain its burden as  
8 to any Defendant you are considering, you must find that Defendant not guilty.

9  
10 This presumption was with each Defendant when the trial began and remains with  
11 each Defendant even now, as I speak to you, and will continue with each Defendant into your  
12 deliberations unless and until you are convinced that the Government has proven that Defendant  
13 guilty beyond a reasonable doubt.

14  
15  
16 **REASONABLE DOUBT**

17 I have said that the Government must prove each Defendant guilty beyond a  
18 reasonable doubt. The question naturally is: what is a reasonable doubt? The words almost  
19 define themselves. It is a doubt based upon reason and common sense. It is a doubt that a  
20 reasonable person has after carefully weighing all of the evidence. It is a doubt that would cause  
21 a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof

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1 beyond a reasonable doubt must, therefore, be proof of such a convincing character that a  
2 reasonable person would not hesitate to rely and act upon it in the most important of his or her  
3 own affairs. A reasonable doubt is not a caprice or whim; it is not speculation or suspicion. It is  
4 not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy.

5  
6 In a criminal case, the burden is at all times upon the Government to prove guilt  
7 beyond a reasonable doubt. The law does not require that the Government prove guilt beyond all  
8 possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never  
9 shifts to any Defendant, which means that it is always the Government's burden to prove each of  
10 the elements of each of the crimes charged against each of the Defendants beyond a reasonable  
11 doubt.

12  
13 If, after fair and impartial consideration of all of the evidence, you have a  
14 reasonable doubt as to the guilt of an individual Defendant, it is your duty to acquit that  
15 Defendant of the charge you are considering. On the other hand, if after fair and impartial  
16 consideration of all the evidence, you are satisfied of that Defendant's guilt beyond a reasonable  
17 doubt, it is your duty to convict that Defendant on that charge.



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1 facts to be true, and asked the witness if the statement was true. If the witness denied the truth of  
2 a statement, and if there is no direct evidence in the record proving that assumed fact to be true,  
3 then you may not consider it to be true simply because it was contained in the lawyer’s question.  
4

5 An example of this is a lawyer’s question of a witness: “When did you stop  
6 drinking excessively?” You would not be permitted to consider as true the assumed fact that the  
7 witness had ever been drinking excessively unless the witness herself indicated that she had, or  
8 unless there was some other evidence in the record that the witness had been drinking  
9 excessively.  
10

11 Testimony that has been stricken or excluded is not evidence and may not be  
12 considered by you in rendering your verdict. Also, if certain testimony was received for a  
13 limited purpose – such as for the purpose of assessing a witness’s credibility, or as against a  
14 particular Defendant only – you must follow any limiting instructions I have given.  
15

16 Arguments by lawyers are not evidence, because the lawyers are not witnesses.  
17 What they have said to you in their opening statements and in their summations is intended to  
18 help you understand the evidence to reach your verdict. However, if your recollection of the  
19 facts differs from the lawyers’ statements, it is your recollection which controls.  
20

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1           To constitute evidence, exhibits must be received in evidence. Exhibits which  
2 have been marked for identification may not be considered by you as evidence until and unless  
3 they have been received in evidence by the Court.

4  
5           Materials brought forth only to refresh a witness's recollection are not evidence.

6  
7           Finally, statements that I may have made concerning the quality of the evidence  
8 do not constitute evidence. It is for you alone to decide the weight, if any, to be given to the  
9 testimony you have heard and the exhibits you have seen.

10  
11           To follow up on a statement I made a moment ago, during the trial, I admitted  
12 certain evidence against only one Defendant. You must consider this evidence only against the  
13 Defendant in question. You must not consider the evidence in the case against any other  
14 Defendant. Each Defendant is entitled to have his or her case decided just on the evidence which  
15 applies to him or her.

16  
17           Likewise, when I have admitted certain evidence only for a particular purpose and  
18 not generally, you may give this evidence the weight you feel it deserves for the limited purpose  
19 for which the evidence was received. You may not use this evidence for any other purpose not  
20 specifically mentioned.

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**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

1  
2 There are two types of evidence which you may properly use in reaching your  
3 verdict.

4  
5 One type of evidence is direct evidence. Direct evidence is testimony about  
6 something the witness knows by virtue of his or her own senses – something he or she has seen,  
7 felt, touched, or heard. Direct evidence may also be in the form of an exhibit, where the fact to  
8 be proved is embodied in a document or other object.

9  
10 Circumstantial evidence is evidence that tends to prove a disputed fact by proof of  
11 other facts. Here is a simple example of circumstantial evidence. Assume that, when you came  
12 into the courthouse this morning, it was a nice day. Assume that the courtroom blinds were  
13 drawn and you could not look outside. As you were sitting here, someone walked in with a wet  
14 coat and hat. Then, a few minutes later, another person entered with a wet umbrella. Now, you  
15 cannot look outside of the courtroom and you cannot see whether or not it is raining. So you  
16 have no direct evidence of that fact. But on the combination of facts which I have asked you to  
17 assume, it would be reasonable and logical for you to conclude that it had begun to rain.

18  
19 That is all there is to circumstantial evidence. You infer on the basis of reason  
20 and experience and common sense, from one established fact, the existence or non-existence of  
21 some other fact.

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1           Circumstantial evidence is of no less value than direct evidence. It is a general  
2 rule that the law makes no distinction between direct evidence and circumstantial evidence.

3  
4  
5                                   **INFERENCE DEFINED**

6           You have heard the term “infer,” and in their arguments the attorneys may have  
7 asked you to infer, on the basis of your reason, experience, and common sense, from one or more  
8 established facts, the existence of some other fact.

9  
10           An inference is not a suspicion or a guess. It is a reasoned, logical conclusion that  
11 a disputed fact exists on the basis of another fact which has been shown to exist.

12  
13           There are times when different inferences may be drawn from facts, whether  
14 proved by direct or circumstantial evidence. The Government may ask you to draw one set of  
15 inferences, while the defense may ask you to draw another. It is for you, and you alone, to  
16 decide what inferences you will draw.

17  
18           The process of drawing inferences from facts in evidence is not a matter of  
19 guesswork or speculation. An inference is a deduction or conclusion that you, the jury, are  
20 permitted to draw – but are not required to draw – from the facts which have been established by

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1 either direct or circumstantial evidence. In drawing inferences, you should exercise your  
2 common sense.

3  
4 So, while you are considering the evidence presented to you, you are permitted to  
5 draw, from the facts which you find to be proven, such reasonable inferences as would be  
6 justified in light of your experience.

7  
8  
9 **WITNESS CREDIBILITY**

10 You have had the opportunity to observe all the witnesses. It is now your job to  
11 decide how believable each witness was in his or her testimony. You are the sole judges of the  
12 credibility of each witness and of the importance of his or her testimony.

13  
14 It must be clear to you by now that you are being called upon to resolve various  
15 factual issues raised by the parties in the face of very different pictures painted by the  
16 Government and by the various Defendants. In making these judgments, you should carefully  
17 scrutinize all of the testimony of each witness, the circumstances under which each witness  
18 testified, and any other matter in evidence which may help you decide the truth and the  
19 importance of each witness's testimony.

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1           How do you determine where the truth lies? You watched the witnesses testify.  
2 Everything a witness said or did on the witness stand counts in your determination. How did the  
3 witness impress you? Did he or she appear to be frank, forthright and candid, or evasive and  
4 edgy as if hiding something? How did the witness appear; what was his or her demeanor – that  
5 is, the person’s carriage, behavior, bearing, manner and appearance while testifying? Often it is  
6 not what a person says but how he or she says it that moves us.

7  
8           You should use all the tests for truthfulness that you would use in determining  
9 matters of importance to you in your everyday life. You should consider any bias or hostility the  
10 witness may have shown for or against any party as well as any interest the witness has in the  
11 outcome of the case. You should consider the opportunity the witness had to see, hear, and  
12 know the things about which he or she testified, the accuracy of the witness’s memory, the  
13 witness’s candor or lack of candor, the witness’s intelligence, the reasonableness and probability  
14 of his or her testimony and its consistency or lack of consistency, and its corroboration or lack of  
15 corroboration with other credible testimony.

16  
17           If you find that a witness has testified falsely as to any material fact or if you find  
18 that a witness has been previously untruthful when testifying under oath or otherwise, you may  
19 reject that witness’s testimony in its entirety or you may accept only those parts that you believe  
20 to be truthful or that are corroborated by other independent evidence in the case.

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1           It is for you to decide, based on your total impression of the witness, how to  
2 weigh the discrepancies in his or her testimony. You should, as always, use common sense and  
3 your own good judgment.  
4

5  
6           **IMPEACHMENT BY PRIOR INCONSISTENT STATEMENTS**

7           You have heard evidence that at some earlier time a witness has said or done  
8 something which counsel argues is inconsistent with the witness's trial testimony.  
9

10           Evidence of a prior inconsistent statement is not to be considered by you as  
11 affirmative evidence in determining whether the criminal charges in this case have been proven  
12 or not. Evidence of a prior inconsistent statement was placed before you for the more limited  
13 purpose of helping you decide whether to believe the trial testimony of the witness who  
14 contradicted himself or herself. If you find that the witness made an earlier statement that  
15 conflicts with his or her trial testimony, you may consider that fact in deciding how much of his  
16 or her trial testimony, if any, to believe.  
17

18           In making this determination, you may consider whether the witness purposely  
19 made a false statement or whether it was an innocent mistake; whether the inconsistency  
20 concerns an important fact, or whether it had to do with a small detail; whether the witness had

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1 an explanation for the inconsistency, and whether that explanation appealed to your common  
2 sense.

3  
4 It is exclusively your duty, based upon all the evidence and your own good  
5 judgment, to determine whether the prior statement was inconsistent, and if so how much, if any,  
6 weight to give to the inconsistent statement in determining whether to believe all or part of the  
7 witness's testimony.

8  
9

10 **EVIDENCE OF MOTIVE**

11 You have heard evidence about the Defendants' motives for committing the  
12 crimes charged. Proof of motive is not a necessary element of the crimes with which the  
13 Defendants are charged. Proof of motive does not establish guilt, nor does lack of motive  
14 establish that a Defendant is innocent.

15  
16 If the guilt of the Defendant that you are considering is shown beyond a  
17 reasonable doubt, it is immaterial what the motive for the crimes may be, but the presence or  
18 absence of motive is a circumstance which you may consider as bearing on the intent of the  
19 Defendant that you are considering.

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1                    **ACCOMPLICE/COOPERATING WITNESS TESTIMONY**

2                    You have heard from witnesses who testified that they were actually involved in  
3 carrying out aspects of the crimes charged in the Indictment. There has been a great deal said  
4 about these so-called accomplice or cooperating witnesses in the summations of counsel and  
5 about whether you should believe them. The Government argues, as it is entitled to do, that it  
6 frequently must rely on the testimony of witnesses who admit to participating in the alleged  
7 crimes at issue. It argues that it must take its witnesses as it finds them and frequently must use  
8 such testimony in a criminal prosecution, because otherwise it would be difficult or impossible  
9 to detect and prosecute wrongdoers. For these very reasons, the law allows the use of such  
10 testimony.

11  
12                    Indeed, it is the law in federal courts that the testimony of an accomplice may be  
13 enough in itself for conviction, if the jury believes that the testimony establishes guilt beyond a  
14 reasonable doubt. That said, because of the possible interest an accomplice or a cooperating  
15 witness may have in testifying, such a witness's testimony should be scrutinized with special  
16 care and particular caution in deciding how much, if any, of the cooperating witness's testimony  
17 to believe.

18  
19                    Whether a witness has admitted to committing a crime, can be considered by you  
20 as bearing upon his or her credibility. It does not follow, however, that simply because a person

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1 has admitted to participating in one or more crimes, he or she is incapable of telling the truth  
2 about what happened or did not happen.

3

4 The testimony of an accomplice or a cooperating witness should be given such  
5 weight as it deserves in light of the particular facts and circumstances before you, taking into  
6 account the witness's demeanor and candor, the strength and accuracy of his or her recollection,  
7 his or her background, the extent to which his or her testimony is or is not corroborated by other  
8 evidence in the case, and his or her motive or reasons for testifying and cooperating with the  
9 Government.

10

11 You may consider whether an accomplice or cooperating witness has an interest  
12 in the outcome of the case, or had any other incentive to fabricate, and if so, whether it  
13 influenced his or her testimony. You have heard testimony about agreements between the  
14 Government and the accomplice or cooperating witnesses. I caution you that it is not your  
15 concern why the Government made an agreement with a witness. Your sole concern is whether  
16 a witness has given truthful testimony here in this courtroom before you. You may, however,  
17 consider in this connection the provisions of the cooperation agreement between a witness and  
18 the Government in making your determination as to whether the witness has given truthful trial  
19 testimony.

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1           The cooperation agreements that have been admitted into evidence require the  
2 witnesses to, among other things, testify truthfully. They also provide that, if the Government  
3 determines that the witness has abided by the terms of the cooperation agreement and has  
4 provided substantial assistance in an investigation or prosecution of another person, the  
5 Government will file a so-called “5K1.1” letter. Section 5.K.1.1 of the United States Sentencing  
6 Guidelines authorizes a court to depart downward from the Sentencing Guidelines when  
7 sentencing the cooperating witness, upon a motion by the Government stating that the witness  
8 has “provided substantial assistance in the investigation or prosecution of another person who  
9 has committed an offense.”

10  
11           In evaluating the testimony of cooperating witnesses, you should ask yourselves  
12 whether these accomplices would benefit more by lying, or by telling the truth. Was their  
13 testimony made up in any way because they believed or hoped that they would somehow receive  
14 favorable treatment by testifying falsely? Or did they believe that their interests would be best  
15 served by testifying truthfully? If you believe that the witness was motivated by hopes of  
16 personal gain, was the motivation one that would cause the witness to lie, or was it one that  
17 would cause him to tell the truth? Did this motivation color the witness’s testimony?

18  
19           If you find that the testimony was false, you should reject it. If, however, after a  
20 cautious and careful examination of an accomplice or a cooperating witness’s testimony and

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1 demeanor on the witness stand, you are satisfied that the witness told the truth, you should  
2 accept the testimony as credible and act upon it accordingly.

3  
4 As with any witness, the issue of credibility need not be decided in an all-or-  
5 nothing fashion. Even if you find that a witness testified falsely in one part, you still may accept  
6 his or her testimony in other parts, or you may disregard all of it. This is a determination that is  
7 entirely for you, the jury.

8  
9  
10 **ACCOMPLICE/COOPERATING WITNESS TESTIMONY-GUILTY PLEA**

11  
12 You have heard testimony from Government witnesses who have pleaded guilty  
13 to charges arising in part out of some of the same facts that are at issue in this case. You are  
14 instructed, however, that you are to draw no conclusions or inferences of any kind about the guilt  
15 of any individual Defendant merely from the fact that a prosecution witness pleaded guilty to  
16 charges that may be similar.

17  
18 The decision of that witness to plead guilty was a personal decision that witness  
19 made about that witness's own guilt. It may not be used by you in any way as evidence against  
20 or unfavorable to any of the Defendants on trial here.



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1 considering is guilty, you should not acquit the Defendant merely because you believe that  
2 Defendant to be a person of good character.  
3  
4

5 **UNCALLED WITNESS - EQUALLY AVAILABLE TO BOTH SIDES**

6 There are persons whose names you have heard during the course of the trial but  
7 who did not appear here to testify, and one or more of the attorneys has referred to their absence  
8 from the trial. I instruct you that every party had an equal opportunity or lack of opportunity to  
9 call any of these witnesses.  
10

11 You should not draw any inferences or reach any conclusions as to what they  
12 would have testified to had they been called. Their absence should not affect your judgment in  
13 any way. You should, however, remember my instruction that no defendant in a criminal case  
14 has a burden or duty of calling any witness or producing any evidence. You should remember  
15 that there is no duty on either side to call a witness whose testimony would be merely cumulative  
16 of testimony already in evidence, or who would merely provide additional testimony to facts  
17 already in evidence.  
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**PERSONS NOT ON TRIAL**

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2           You may not draw any inference, favorable or unfavorable, towards the  
3 Government or the Defendants from the fact that any person other than the Defendants is not on  
4 trial here. You also may not speculate as to the reasons why other persons are not on trial.  
5 Those matters are wholly outside your concern and have no bearing on your function as jurors.

6  
7           You also may not draw any inference, favorable or unfavorable, toward the  
8 Government or the Defendants from the fact that certain persons were not named in the  
9 Indictment. The fact that these persons were not named in this Indictment must play no part in  
10 your deliberations. Whether a person should be named as a coconspirator or indicted as a  
11 defendant is a matter within the sole discretion of the United States Attorney and the Grand Jury.  
12 Therefore, you may not consider it in any way in reaching your verdict as to the Defendants on  
13 trial.

14  
15  
16           **PARTICULAR INVESTIGATIVE TECHNIQUES NOT REQUIRED**

17           You have heard reference to the fact that certain investigative techniques were not  
18 used by law enforcement authorities. There is no legal requirement, however, that the  
19 Government prove its case through any particular means. The Government is not on trial, and  
20 law enforcement techniques are not your concern.





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**STIPULATIONS OF TESTIMONY**

In this case you have heard evidence in the form of stipulations of testimony. A stipulation of testimony is an agreement between the parties that, if called as a witness, the person would have given certain testimony. You must accept as true the fact that the witness would have given that testimony. However, it is for you to determine the effect to be given that testimony.

**STIPULATIONS OF FACT**

In this case you have also heard evidence in the form of stipulations that contained facts that were agreed to be true. In such instances, you must accept those facts as true.

**PREPARATION OF WITNESSES**

You have heard evidence during the trial that witnesses have discussed the facts of the case and their testimony with the lawyers before the witnesses appeared in Court.

Although you may consider that fact when you are evaluating a witness's credibility, there is nothing either unusual or improper about a witness meeting with lawyers

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1 before testifying so that the witness can be aware of the subjects he or she will be questioned  
2 about, focus on those subjects and have the opportunity to review relevant exhibits before being  
3 questioned about them. Such consultation helps conserve your time and the Court's time. In  
4 fact, it would be unusual for a lawyer to call a witness without such consultation.

5  
6 Again, the weight you give to the fact or the nature of the witness's preparation  
7 for his or her testimony and what inferences you draw from such preparation are matters  
8 completely within your discretion.

9  
10  
11 **DEFENDANT'S TESTIMONY**

12 A defendant in a criminal case never has any duty to testify or come forward with  
13 any evidence. This is because, as I have told you, the burden of proof beyond a reasonable doubt  
14 remains on the Government at all times, and the defendant is presumed innocent until and unless  
15 you find guilt beyond a reasonable doubt.

16  
17 In this case, Defendants DANIEL BONVENTRE and ANNETTE BONGIORNO  
18 did testify and were subject to cross-examination like any other witnesses. You should examine  
19 and evaluate the testimony just as you would the testimony of any other witness with an interest  
20 in the outcome of the case.

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**DEFENDANT’S RIGHT NOT TO TESTIFY**

Defendants JO ANN CRUPI, JEROME O’HARA AND GEORGE PEREZ did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any evidence, because it is the Government’s burden to prove each defendant guilty beyond a reasonable doubt. That burden remains with the Government throughout the entire trial and never shifts to any defendant.

A defendant is never required to prove that he or she is innocent. Therefore, you may not attach any significance to the fact that a Defendant did not testify. You may not draw any adverse inference against any Defendant because he or she did not take the witness stand. You may not consider this against a Defendant in any way in your deliberations in the jury room.

**NOT CRIMINAL TO FAIL TO REPORT A CRIME**

Furthermore, mere failure to report a felony is not a crime, and there is no general duty to report criminal activity to the authorities.

**ADMISSION OF A DEFENDANT**

There has been evidence that certain of the Defendants made statements in which the Government claims that they made admissions relevant to the charges in the Indictment. I

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1 instruct you that you are to give the statements such weight as you feel that they deserve in light  
2 of all the evidence.

3  
4  
5 **IMPROPER CONSIDERATIONS:**  
6 **RACE, RELIGION, SEXUAL ORIENTATION, FAMILY STATUS, NATIONAL**  
7 **ORIGIN, SEX, AGE, ETC.**  
8

9 Your verdict must be based solely upon the evidence developed at trial or the lack  
10 of evidence. It would be improper for you to consider, in reaching your decision as to whether  
11 the Government sustained its burden of proof, any issues relating to the sexual orientation, same  
12 sex or other marriage or domestic partnership status, family status, race, gender, national origin,  
13 age or other social or ethnic characteristics of the parties, witnesses and trial participants. The  
14 parties in this case are entitled to a trial free from prejudice and our judicial system cannot work  
15 unless you reach your verdict through a fair and impartial consideration of the evidence. It  
16 would also be improper for you to allow any feelings you might have about the nature or the  
17 notoriety of the crimes charged to interfere with your decision-making process.

18  
19  
20 **IMPROPER CONSIDERATION: PUNISHMENT**

21 The question of possible punishment of any Defendant is of no concern to the jury  
22 and should not, in any sense, enter into or influence your deliberations. The duty of imposing a  
23 sentence, if necessary, rests exclusively with the Court. Your function is to weigh the evidence

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1 in the case and to determine, solely upon the basis of such evidence, whether or not each  
2 Defendant is guilty beyond a reasonable doubt. Under your oath as jurors, you cannot allow a  
3 consideration of the punishment that may be imposed upon a Defendant, if he or she is  
4 convicted, to influence your verdict in any way or to enter into your deliberations in any sense.

5  
6 This concludes the general portion of the Instructions. I now turn to the specific  
7 charges against the Defendants and what is required to prove each charge.

8  
9 \*\*\*\*\*

10 **MULTIPLE COUNTS/MULTIPLE DEFENDANTS**

11 The Indictment in this case contains a total of thirty-three counts. You will be  
12 asked to render verdicts upon thirty-one of those Counts. There are five Defendants on trial  
13 before you: DANIEL BONVENTRE, ANNETTE BONGIORNO, JO ANN CRUPI, JEROME  
14 O'HARA AND GEORGE PEREZ.

15  
16 You must consider each count of the Indictment and each Defendant's  
17 involvement, if any, in that count separately, and you must return a separate verdict on each  
18 Defendant for each count in which he or she is charged.

19  
20 The number of counts charged against any particular Defendant is not evidence of  
21 the guilt of that individual, and should not influence your decision in any way.



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1 different counts, each individual Defendant and each count must be considered separately. You  
2 must return a separate, unanimous verdict as to each individual Defendant on each count on  
3 which you are asked to render a verdict.

4  
5 Count One of the Indictment charges all five of the Defendants with knowingly  
6 and willfully conspiring: to commit securities fraud; to fail to make and keep the records  
7 required of a registered broker-dealer; to fail to make and keep the records required of an  
8 investment adviser; and to commit mail fraud.

9  
10 As I will explain in more detail in a few moments, a conspiracy, such as the one  
11 charged in Count One here, is a criminal agreement to violate the law. Counts Two, Three, Four  
12 and Sixteen also charge certain of the Defendants with participating in additional conspiracies.

13  
14 The remaining charges in the Indictment that you must consider, which are set  
15 forth in Counts Six through Fifteen, Counts Seventeen and Eighteen and Counts Twenty through  
16 Thirty-Three, allege what are called “substantive” violations. Unlike a conspiracy charge, which  
17 is a charge of agreeing to commit certain offenses, the substantive counts allege the actual  
18 commission of specified offenses. There are two groups of substantive charges. The first group  
19 consists of charges alleging various types of fraud. The second group consists of charges  
20 alleging violations of the federal income tax laws.

21



## Revised Final Version of Jury Instructions

1 Count One charges that Defendants DANIEL BONVENTRE, ANNETTE  
2 BONGIORNO, JO ANN CRUPI, JEROME O’HARA and GEORGE PEREZ participated in a  
3 criminal conspiracy to deceive investors dealing with Madoff Securities, involving securities  
4 fraud, the falsification of books and records concerning Madoff Securities’ business, and mail  
5 fraud. The Indictment alleges that this conspiracy existed from at least in or about the 1970s  
6 until in or about 2008. It alleges that this conspiracy had four different objectives or objects:  
7 first, to commit securities fraud; second, to falsify records that the Securities and Exchange  
8 Commission (known as the “SEC”) requires registered broker-dealers to keep; third, to falsify  
9 records that the SEC requires investment advisers to keep; and, fourth, mail fraud.

10  
11  
12 Count Two charges that Defendants DANIEL BONVENTRE, JO ANN CRUPI,  
13 JEROME O’HARA and GEORGE PEREZ participated in a criminal conspiracy involving  
14 securities fraud and falsification of books and records in connection with audits of Madoff  
15 Securities. The Indictment alleges that this conspiracy existed from at least in or about 2003  
16 until in or about 2008. It alleges that this conspiracy had three different objectives or objects:  
17 first, to commit securities fraud; second, to falsify records the SEC required registered broker-  
18 dealers to keep; and, third, to falsify records the SEC required investment advisers to keep, all in  
19 connection with reviews of Madoff Securities conducted by the SEC and an accounting firm  
20 known as KPMG.

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1           Count Three charges that Defendant DANIEL BONVENTRE participated in a  
2 criminal conspiracy at Madoff Securities to engage in accounting fraud and to defraud banks.  
3 The Indictment alleges that this conspiracy existed from at least in or about 1992 until on or  
4 about December 11, 2008. It alleges that this conspiracy had six objects: first, to commit  
5 securities fraud; second, to falsify records of a broker-dealer; third, to falsify records of an  
6 investment adviser; fourth, to make false filings with the SEC; fifth, to commit mail fraud; and  
7 sixth, to commit bank fraud.

8  
9  
10           Count Four charges that Defendant DANIEL BONVENTRE participated in a  
11 criminal conspiracy to commit tax fraud at Madoff Securities from at least in or about 1991 until  
12 on or about December 11, 2008. The Indictment alleges that the object of this conspiracy was to  
13 defeat the lawful government function of the Internal Revenue Service, which I will refer to as  
14 the “IRS.”

15  
16  
17           Additionally, Count Sixteen of the Indictment charges that Defendant JO ANN  
18 CRUPI participated with others in a conspiracy to commit bank fraud in connection with loans  
19 obtained on behalf of Madoff Securities employee David Kugel, in violation of Section 1349 of  
20 Title 18 of the United States Code.

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1 That section of the United States Code provides in relevant part as follows:

2

3 Any person who attempts or conspires to commit any  
4 offense [constituting bank fraud is guilty of a crime].

5

6 Count Sixteen alleges that the object of the charged conspiracy was to defraud a  
7 financial institution, the deposits of which were insured by the Federal Deposit Insurance  
8 Corporation, which is also referred to as the "FDIC."

9

10 The Indictment also alleges that overt acts were committed in furtherance of these  
11 various conspiracies. I will not read those allegations out loud to you at this time.

12

13 With that summary of the conspiracy charges as background, I will now give you  
14 detailed instructions on each charge and what it takes to prove each charge, beginning with the  
15 conspiracy charged in Count One.

16

17 First, I will explain the legal concept of a conspiracy.

18

19

20

21

22

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1                                   **GENERAL CONCEPT OF A CONSPIRACY**  
2                                   **(COUNTS ONE, TWO, THREE, FOUR AND SIXTEEN)**  
3

4                   A conspiracy is a kind of criminal partnership – a combination or agreement of  
5 two or more persons to join together to accomplish some unlawful purpose. The crime of  
6 conspiracy to violate a federal law is an independent offense. It is separate and distinct from an  
7 actual violation of any specific federal statute, which the law refers to as a “substantive crime.”  
8

9                   Indeed, you may find the Defendant you are considering guilty of the crime of  
10 conspiracy to violate federal law even though none of the substantive crimes which were the  
11 objects of the particular alleged conspiracy was actually committed. The law makes conspiracy,  
12 standing alone, a separate crime, even if the conspiracy is not successful.  
13  
14

15                                   **ELEMENTS OF THE CRIME OF CONSPIRACY:**  
16                                   **(COUNTS ONE, TWO, THREE, FOUR AND SIXTEEN)**  
17

18                   As I have told you earlier, Counts One, Two, Three, Four and Sixteen of the  
19 Indictment charge the Defendants with participating in conspiracies.  
20

21                   Now, in order to sustain its burden of proof with respect to each of the charges of  
22 conspiracy, the Government must separately establish beyond a reasonable doubt each of the  
23 following three essential elements:  
24

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1           First, that the conspiracy charged existed – that is, the existence of an agreement  
2 or understanding to commit at least one of the object crimes charged in the Indictment;

3  
4           Second, that the individual Defendant you are considering knowingly and  
5 willfully became a member of the conspiracy, that is, that he or she had the necessary intent or  
6 state of mind; and

7  
8           Third, that any one of the conspirators – not necessarily one of the Defendants  
9 you are considering, but any member of the conspiracy – knowingly committed at least one overt  
10 act in the Southern District of New York in furtherance of the conspiracy during the time frame  
11 of the conspiracy. The Southern District of New York includes Manhattan, the Bronx and  
12 several counties to the north of the Bronx.

13  
14           Now let us separately consider these elements in detail.

15  
16  
17                                   **CONSPIRACY FIRST ELEMENT –**  
18                                   **EXISTENCE OF THE CONSPIRACY:**  
19                                   **(COUNTS ONE, TWO, THREE, FOUR AND SIXTEEN)**  
20

21           Starting with the first element – existence of the conspiracy – we ask – what is a  
22 conspiracy? A conspiracy is an agreement or an understanding of two or more persons to  
23 accomplish by joint action a criminal or unlawful purpose. The gist, or the essence, of the crime

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1 of conspiracy is the unlawful combination or agreement to violate the law. The success of the  
2 conspiracy, or the actual commission of the criminal act which is the object of the conspiracy, is  
3 not an essential element of that crime.

4  
5 In order to prove this element beyond a reasonable doubt, the Government is not  
6 required to show that two or more people sat around a table and entered into a solemn pact,  
7 orally or in writing, stating that they had formed a conspiracy to violate the law and setting forth  
8 details of the plans or the part to be played by each conspirator. Indeed, it is rare that a  
9 conspiracy can be proven by direct evidence of an explicit agreement. Common sense tells you  
10 that when people, in fact, agree to enter into a criminal conspiracy, much is left to the  
11 unexpressed understanding. From its very nature, a conspiracy is almost invariably secret in its  
12 origin and execution.

13  
14 To show that a conspiracy existed, then, it is sufficient if the evidence shows that  
15 two or more persons in some way or manner, through any contrivance, explicitly or implicitly,  
16 came to an understanding to violate the law and to establish an unlawful plan.

17  
18 The adage “actions speak louder than words” is applicable here. Usually, the  
19 only evidence available with respect to the existence of a conspiracy is that of disconnected acts  
20 on the part of the alleged individual coconspirators. When taken together and considered as a  
21 whole, however, such acts may show a conspiracy or agreement as conclusively as would direct  
22 proof.

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1           So, in considering the first element of the crime of conspiracy as charged in  
2 Counts One, Two, Three, Four and Sixteen – whether the conspiracy actually existed – you  
3 should consider all the evidence which has been admitted with respect to the acts, conduct and  
4 declarations of each alleged coconspirator, and the reasonable inferences to be drawn from such  
5 evidence.

6  
7           It is sufficient to establish the existence of the conspiracy if, after considering all  
8 of the relevant evidence, you find beyond a reasonable doubt that the minds of at least two  
9 alleged conspirators met in an understanding way, and that they agreed to work together, by the  
10 means alleged, to accomplish at least one object of the conspiracy.

11  
12  
13                           **CONSPIRACY FIRST ELEMENT –**  
14                           **OBJECTS OF THE CONSPIRACY:**  
15                           **(COUNTS ONE, TWO, THREE, FOUR AND SIXTEEN)**  
16

17           An illegal conspiracy is an agreement to accomplish an unlawful purpose. As I  
18 mentioned a few moments ago, each of the conspiracy counts in the Indictment charges specific  
19 unlawful purposes, which are also referred to as “objects,” of the particular conspiracy. I will  
20 now review each of those objects.

21  
22  
23

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1     **Securities Fraud**

2             The first crime alleged to be an object of the conspiracies charged in Counts One,  
3     Two and Three is securities fraud. Count One of the Indictment charges (and here I am again  
4     summarizing) that it was an object of the conspiracy that the Defendants, DANIEL  
5     BONVENTRE, ANNETTE BONGIORNO, JO ANN CRUPI, JEROME O’HARA, and  
6     GEORGE PEREZ, in connection with the purchase and sale of securities, would and did employ  
7     a scheme to defraud, make false and fraudulent misrepresentations and omissions in  
8     communications to persons who invested in and through Madoff Securities and engaged in acts,  
9     practices and courses of business that would operate as a fraud and deceit on persons who  
10    invested in and through Madoff Securities.

11

12            Count Two of the Indictment charges, in summary, that it was an object of the  
13    conspiracy that Defendants DANIEL BONVENTRE, JO ANN CRUPI, JEROME O’HARA, and  
14    GEORGE PEREZ, in connection with the purchase and sale of securities, would and did, in  
15    connection with audits at Madoff Securities, employ a scheme to defraud and did make false and  
16    fraudulent misrepresentations and omissions, and engaged in acts, practices and courses of  
17    business that would operate as a fraud and deceit on persons who invested in and through  
18    Madoff Securities.

19

20            Count Three of the Indictment charges that it was an object of the conspiracy that  
21    Defendant DANIEL BONVENTRE, in connection with the purchase and sale of securities,  
22    would and did, in connection with his creation and filing of accounting records at Madoff

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1 Securities and his obtaining loans and lines of credit from banks, employ a scheme to defraud  
2 and did make and cause Madoff Securities to make false and fraudulent misrepresentations and  
3 omissions, and engaged in acts, practices and courses of business that would operate as a fraud  
4 and deceit on persons who invested in and through Madoff Securities.

5  
6 The relevant law here, with regard to the securities fraud object of Counts One,  
7 Two and Three, is Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of  
8 Federal Regulations, Section 240.10b-5, which prohibits securities fraud. Later, when I explain  
9 Counts Six, Seven and Eight, which pertain to the substantive crime of securities fraud, I will  
10 give you more detailed instructions regarding the securities fraud crime that is alleged to have  
11 been an object of the conspiracies charged in Counts One, Two, and Three.

12  
13  
14  
15 **Falsifying Records of a Broker-Dealer**

16 The second crime alleged to be an object of the conspiracies charged in Counts  
17 One, Two and Three is knowingly and willfully failing to make and keep records that the SEC,  
18 by rule, required Madoff Securities to make and keep as a broker-dealer. The relevant law here  
19 is Title 15, United States Code, Sections 78q(a) and 78ff; and Title 17, Code of Federal  
20 Regulations, Section 240.17a-3. Because this object is also charged as a crime in separate  
21 substantive offenses, I will be giving you further instructions about it later on, when I discuss the  
22 substantive charges set forth in Counts Nine, Ten and Eleven of the Indictment.

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**Falsifying Records of an Investment Adviser**

The third crime alleged to be an object of the conspiracies charged in Counts One, Two, and Three is knowingly and willfully failing to make and keep records that the SEC required Madoff Securities to make and keep as an investment adviser. The relevant law here is Title 15, United States Code, Sections 80b-4 and 80b-17; and Title 17, Code of Federal Regulations, Section 275.204-2. Because this object is also charged in separate substantive offenses, I will be giving you further instructions about it later on, when I discuss the substantive charges set forth in Counts Twelve, Thirteen, and Fourteen.

**Mail Fraud**

The fourth crime alleged to be an object of the conspiracy charged in Count One is mail fraud. The relevant law here is Title 18, United States Code, Section 1341, which makes it a crime to use the United States mail system in connection with a scheme to defraud. The mail fraud statute provides, in pertinent part, as follows:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . for the purpose of

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1           executing such scheme or artifice or attempting so to do,  
2           . . . knowingly causes to be delivered by mail or  
3           [commercial interstate] carrier according to the direction  
4           thereon, or at the place at which it is directed to be  
5           delivered by the person to whom it is addressed, any such  
6           matter or thing, shall [be guilty of a crime].

7  
8           The three elements of mail fraud are thus:

9  
10  
11           First, that at or around the times alleged in the Indictment, there was a scheme or  
12           artifice to defraud others of money or property by false or fraudulent pretenses, representations,  
13           or promises;

14  
15           Second, that the individual Defendant you are considering would and did  
16           knowingly and willfully participate in the scheme or artifice with knowledge of its fraudulent  
17           nature and with specific intent to defraud; and

18  
19           Third, that in execution of that scheme, the individual Defendant would and did  
20           use, or cause the use of, the mails as specified in the Indictment.

21

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1 I have instructed you on the specific elements of mail fraud here, unlike the other  
2 alleged objects of the conspiracy, because there is no separate substantive mail fraud charge in  
3 the Indictment.

4  
5 You need not find that there was an agreement to specifically accomplish each  
6 one of these objects. An agreement to accomplish any one of these objects – securities fraud,  
7 falsifying records of a broker-dealer, falsifying records of an investment adviser, or mail fraud –  
8 is sufficient to satisfy this requirement as to Count One. Similarly, as to the conspiracy charged  
9 in Count Two, a finding of an agreement to accomplish any one of the three alleged objectives –  
10 securities fraud, falsifying books and records of a broker-dealer, or falsifying books and records  
11 of an investment adviser – is sufficient.

12  
13 Although, when the particular conspiracy charge alleges more than one object,  
14 finding one unlawful objective is sufficient to satisfy the illegal purpose element, you must  
15 unanimously agree on which object, if any, was the specific object or objects of the alleged  
16 conspiracy. You may find that there was more than one illegal object of a particular conspiracy,  
17 but you must agree unanimously as to each such object. If the Government fails to prove beyond  
18 a reasonable doubt that at least one of the objects alleged in the conspiracy charge that you are  
19 considering was in fact an objective of the conspiracy, you must find the individual Defendant  
20 you are considering not guilty as to the conspiracy charge you are considering.

21

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1           As to each of the remaining conspiracy charges, the Indictment alleges just one  
2 object. There are also substantive charges with respect to each of these objects, so I will simply  
3 mention these counts and objects now. Count Four of the Indictment charges that the object of  
4 the alleged conspiracy was to commit tax fraud. And bank fraud was the alleged object of the  
5 conspiracy charged in Count Sixteen. As I stated earlier, I will provide you with more  
6 information on the elements of the objects charged as substantive offenses when I instruct you  
7 on the separate counts charging those offenses.

8  
9  
10                           **CONSPIRACY SECOND ELEMENT –**  
11                           **MEMBERSHIP IN THE CONSPIRACY:**  
12                           **(COUNTS ONE, TWO, THREE, FOUR AND SIXTEEN)**  
13

14           If you conclude, when you consider each count, that the Government has proven  
15 beyond a reasonable doubt that the conspiracies charged in Counts One, Two, Three, Four and  
16 Sixteen existed, you must next determine the second element, whether the individual Defendant  
17 you are considering participated in the conspiracy with knowledge of its unlawful purpose or  
18 purposes, and in furtherance of its unlawful objective or objectives.

19  
20           As to each of the conspiracy charges, the Government must prove beyond a  
21 reasonable doubt that the particular Defendant you are considering knowingly, willfully and  
22 unlawfully entered into the conspiracy, the agreement, with a criminal intent, that is, with a

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1 purpose to violate the law, and agreed to take part in the conspiracy to further promote and  
2 cooperate in its unlawful objectives.

3  
4  
5 **“Knowingly,” “Willfully” and “Unlawfully” Defined**

6 **“Knowingly”** means to act voluntarily and deliberately, rather than mistakenly or  
7 inadvertently.

8  
9 **“Willfully”** means to act knowingly and purposely, with an intent to do  
10 something the law forbids, that is to say, the actions of the Defendant in question must have been  
11 the product of his or her conscious objective, with a bad purpose either to disobey or to disregard  
12 the law.

13  
14 **“Unlawfully”** simply means contrary to law. The Defendant in question need not  
15 have known that he or she was violating any particular statute or any particular rule. He or she  
16 need only have been aware of the generally unlawful nature of his or her acts.

17  
18 As I mentioned a moment ago, before an individual Defendant can be found to  
19 have been a conspirator, you must first find that he or she knowingly joined in the unlawful  
20 agreement or plan. The key question, therefore, is whether the individual Defendant you are  
21 considering joined the conspiracy with an awareness of at least some of the basic aims and  
22 purposes of the unlawful agreement.

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1           Now, a defendant's knowledge can sometimes be a matter of inference from the  
2 facts proved. Science has not yet devised a manner of looking into a person's mind and knowing  
3 what that person is thinking. It is for you to determine whether the Government has established  
4 beyond a reasonable doubt that such knowledge and intent existed on the part of the Defendant  
5 you are considering. In making that determination you may consider all of the evidence, which  
6 may include evidence of certain acts and conversations alleged to have taken place with certain  
7 Defendants or in their presence.

8  
9           It is not necessary that a defendant be fully informed as to all the details of the  
10 conspiracy in order to justify an inference of knowledge on his or her part. To have guilty  
11 knowledge, an individual defendant need not have known the full extent of the conspiracy or all  
12 of its activities or all of its participants. It is not even necessary that a defendant know every  
13 other member of the conspiracy. In fact, a defendant may know only one other member of the  
14 conspiracy and still be a coconspirator. However, mere suspicion or discomfort is not sufficient,  
15 standing alone, to constitute knowledge. It is up to you, the jury, to determine based on all of the  
16 evidence whether the individual Defendant you are considering acted with knowledge of the  
17 unlawful purpose or purposes of the agreement.

18  
19           You have heard evidence that Bernard Madoff, or Frank DiPascali, told certain of  
20 the Defendants that it was acceptable to engage in some of the actions underlying the charges in  
21 the Indictment. You may consider that evidence in deciding whether a particular Defendant  
22 acted willfully and with knowledge of the unlawful purpose or purposes of the agreement. You

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1 may also consider that evidence in deciding questions of intent in connection with other charges  
2 in the Indictment. However, the mere fact that the Defendant may have been told something by  
3 his or her employer does not, in itself, necessarily mean that the Defendant lacked the required  
4 knowledge and intent.

5  
6 You must ask yourselves whether the Defendant honestly and in good faith  
7 believed statements by his or her employer that the actions were proper. No one can willfully  
8 and knowingly violate the law and excuse himself from the consequences of his or her conduct  
9 simply by pleading that he or she followed someone else's orders. In other words, if the  
10 Government has sustained its burden of proving that the Defendant knew that he or she was  
11 breaking the law, it is no defense that the Defendant was just following the orders of his or her  
12 employer.

13  
14 Nor is it necessary that the Defendant in question received any monetary benefit  
15 from participating in the conspiracy. Proof of a financial interest in the outcome of a scheme is  
16 not essential, because obtaining a financial benefit is not an element of a conspiracy charge.  
17 However, if you find that the individual Defendant in question had a financial interest in the  
18 conspiracy's success, that is a factor you may properly consider in determining whether or not  
19 the Defendant was a member of the conspiracy charged in the Indictment.

20  
21 The duration and extent of a defendant's participation in the conspiracy has no  
22 bearing on the issue of a defendant's guilt. A defendant need not have joined the conspiracy at

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1 the outset. A defendant may have joined it for any illegal purpose at any time during its  
2 progress, and that defendant will still be held responsible for all that was done before he or she  
3 joined and all that was done during the conspiracy's existence while the defendant was a  
4 member. Each member of a conspiracy may perform separate and distinct acts and may perform  
5 them at different times. Some conspirators play major roles, while others play minor roles in the  
6 scheme. The law does not require an equal role. In fact, even a single act may be sufficient to  
7 draw a defendant within the ambit of a conspiracy.

8  
9           However, I want to caution you that mere association by one person with another  
10 does not make that person a member of the conspiracy even when coupled with knowledge that a  
11 conspiracy exists. Mere presence at the scene of a crime, even if that presence is coupled with  
12 knowledge that a crime is being committed, is not sufficient to support a conviction. In other  
13 words, knowledge without willful participation is not sufficient to support a conviction.

14  
15           Nor may you infer an individual Defendant's participation in criminal conduct  
16 merely from the fact that he or she associated with other people, including co-workers who were  
17 guilty of wrongdoing. Mere association with conspirators or those involved in a criminal  
18 enterprise is insufficient to prove a Defendant's participation in a conspiracy.

19  
20           Moreover, the fact that the acts of a defendant, without knowledge of the  
21 conspiracy and its unlawful objectives, merely happen to further the purposes or objectives of  
22 the conspiracy does not make him or her a member of the conspiracy. What is necessary is that

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1 the defendant has participated in the conspiracy with knowledge of its unlawful purpose or  
2 purposes, and with an intent to aid in the accomplishment of its unlawful objective or objectives.  
3

4 In sum, before a finding of guilt, you must be satisfied beyond a reasonable doubt  
5 that the individual Defendant you are considering, with an understanding of the unlawful  
6 character of the specific conspiracy charged in the Indictment, intentionally engaged, advised or  
7 participated in it for the purpose of furthering its illegal objectives. He or she thereby becomes a  
8 knowing and willing participant in the unlawful agreement – that is to say, a conspirator.  
9

10 A conspiracy, once formed, is presumed to continue until either its objectives are  
11 accomplished or there is some affirmative act of termination by its members. So, too, once a  
12 person is found to be a member of a conspiracy, that person is presumed to continue being a  
13 member in the venture until the venture is terminated, unless it is shown by some affirmative  
14 proof that the person withdrew or disassociated himself or herself from it.  
15  
16

17 **CONSPIRACY THIRD ELEMENT –**  
18 **OVERT ACTS:**  
19 **(COUNTS ONE, TWO, THREE, FOUR AND SIXTEEN)**  
20

21 The third element of a conspiracy is the requirement of an overt act. To sustain  
22 its burden of proof with respect to each of the five charged conspiracies upon which you will be  
23 asked to render verdicts, the Government must show beyond a reasonable doubt that at least one

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1 overt act was committed in furtherance of the particular conspiracy by at least one of the  
2 coconspirators – not necessarily by one of the Defendants on trial here – in the Southern District  
3 of New York, within a particular period of time.

4  
5 The overt act requirement is simple. There must have been something more than  
6 mere agreement: some overt step or action must have been taken by at least one of the  
7 conspirators in furtherance of the conspiracy.

8  
9 The Indictment sets forth numerous overt acts the Government alleges were done  
10 by conspirators in furtherance of the charged conspiracies. I will not read all of the overt acts  
11 listed in the Indictment because, in order for the Government to satisfy the overt act requirement,  
12 it is not necessary for the Government to prove that any of the overt acts specifically alleged in  
13 the Indictment were committed. Indeed, you may find that overt acts were committed that were  
14 not alleged in the Indictment at all. In short, it is sufficient for the Government to show that the  
15 Defendant you are considering, or one of his or her alleged coconspirators, knowingly  
16 committed at least one overt act in furtherance of the particular conspiracy during the time frame  
17 of the conspiracy. You must, however, be unanimous on what the particular overt act was for  
18 each particular conspiracy charge.

19  
20 An overt act, standing alone, may be an innocent, lawful act. Frequently,  
21 however, an apparently innocent act sheds its harmless character if it is a step in carrying out,  
22 promoting, aiding or assisting the conspiratorial scheme. You are therefore instructed that the

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1 overt act does not have to be an act that in and of itself is criminal or constitutes an objective of  
2 the conspiracy.

3  
4 Because there is a limit on how much time the Government has to obtain an  
5 indictment, with respect to the charges in Counts One, Two, Three and Sixteen, you cannot  
6 return a verdict of a guilty as to a particular Defendant unless you find that the Government has  
7 proven, beyond a reasonable doubt, that an overt act was committed in furtherance of each  
8 charged conspiracy after November 17, 2005, by one of the coconspirators (or, if securities fraud  
9 is the only object on which you agree unanimously for the relevant conspiracy, that an overt act  
10 was committed after November 17, 2004). Your findings as to the specific act and the relevant  
11 time frame must be unanimous.

12  
13 With respect to the conspiracy charge against Mr. Bonventre in Count Four, you  
14 cannot return a verdict of guilty unless you find that the Government has proven, beyond a  
15 reasonable doubt, that an overt act was committed in furtherance of that conspiracy after October  
16 1, 2006. Your finding as to the specific act and the relevant time frame must be unanimous.

17  
18  
19 **CONSPIRACY –**  
20 **TIME FRAME OF CONSPIRACY:**  
21 **(COUNTS ONE, TWO, THREE, FOUR AND SIXTEEN)**  
22

23 The Indictment charges that the conspiracy alleged in Count One existed from at  
24 least in or about the early 1970s up to and including on or about December 11, 2008.

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1           The Indictment charges that the conspiracy alleged in Count Two existed from at  
2 least in or about 2003 up to and including on or about December 11, 2008.

3  
4           The Indictment charges that the conspiracy alleged in Count Three existed from at  
5 least in or about 1992 up to and including on or about December 11, 2008.

6  
7           The Indictment charges that the conspiracy alleged in Count Four existed from at  
8 least in or about 1991 up to and including on or about December 11, 2008.

9  
10  
11           The Indictment charges that the conspiracy alleged in Count Sixteen existed from  
12 at least in or about 2002 up to and including on or about 2007.

13  
14           It is not essential that the Government prove that the conspiracy started and ended  
15 in any specific month. Indeed, it is sufficient if you find that the charged conspiracy was in fact  
16 formed and that it existed for some time within the period set forth in the Indictment, and that at  
17 least one overt act was committed in furtherance of the charged conspiracy within that period.  
18 You must, however, make a finding as to whether an overt act in furtherance of each of the  
19 charged conspiracies was committed after a specific date, or dates, as I explained a few minutes  
20 ago.

21  
22

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1                                   **OVERVIEW OF THE SUBSTANTIVE CHARGES:**  
2                                   **(COUNTS SIX THROUGH FIFTEEN, SEVENTEEN, EIGHTEEN AND TWENTY**  
3                                   **THROUGH THIRTY-THREE)**  
4

5                                   I will now instruct you regarding the substantive counts of the Indictment.

6  
7  
8                                   Count Six of the Indictment charges all of the Defendants with committing  
9 securities fraud.

10  
11  
12                                  Count Seven charges Defendants DANIEL BONVENTRE, JO ANN CRUPI,  
13 JEROME O'HARA and GEORGE PEREZ with committing securities fraud.

14  
15  
16                                  Count Eight charges Defendant DANIEL BONVENTRE with committing  
17 securities fraud.

18  
19  
20                                  Count Nine charges all of the Defendants with falsifying the books and records of  
21 a broker-dealer.

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1 Count Ten charges Defendants DANIEL BONVENTRE, JO ANN CRUPI,  
2 JEROME O'HARA and GEORGE PEREZ with falsifying the books and records of a broker-  
3 dealer.

4  
5  
6 Count Eleven charges Defendant DANIEL BONVENTRE with falsifying the  
7 books and records of a broker-dealer.

8  
9  
10  
11 Count Twelve charges all of the Defendants with falsifying the books and records  
12 of an investment adviser.

13  
14  
15 Count Thirteen charges Defendants DANIEL BONVENTRE, JO ANN CRUPI,  
16 JEROME O'HARA, and GEORGE PEREZ with falsifying the books and records of an  
17 investment adviser.

18  
19  
20 Count Fourteen charges Defendant DANIEL BONVENTRE with falsifying the  
21 books and records of an investment adviser.

22

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1                   Count Fifteen charges Defendant DANIEL BONVENTRE with causing false and  
2 misleading filings to be made with the SEC.

3

4

5                   Count Seventeen charges Defendant JO ANN CRUPI with bank fraud.

6

7

8                   Count Eighteen charges Defendant DANIEL BONVENTRE with bank fraud.

9

10

11                   Each of these substantive counts also charges the Defendant or Defendants with  
12 aiding and abetting the commission of the charged crime.

13

14

15                   Count Twenty charges Defendant DANIEL BONVENTRE with making and  
16 subscribing to a false income tax return for the year 2003.

17

18

19                   Count Twenty-One charges Defendant DANIEL BONVENTRE with making and  
20 subscribing to a false income tax return for the year 2004.

21

22

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1                   Count Twenty-Two charges Defendant DANIEL BONVENTRE with making and  
2                   subscribing to a false income tax return for the year 2006.

3

4

5                   Count Twenty-Three charges Defendant DANIEL BONVENTRE with making  
6                   and subscribing to a false income tax return for the year 2007.

7

8

9                   Count Twenty-Four charges Defendant DANIEL BONVENTRE with corruptly  
10                  obstructing the lawful administration of the Internal Revenue laws.

11

12

13                  Counts Twenty-Five through Twenty-Nine charge Defendant ANNETTE  
14                  BONGIORNO with tax evasion, for the years 2004 through 2008.

15

16

17                  Count Thirty charges Defendant ANNETTE BONGIORNO with corruptly  
18                  obstructing the lawful administration of the Internal Revenue laws.

19

20

21                  Counts Thirty-One through Thirty-Three charge Defendant JO ANN CRUPI with  
22                  Tax Evasion for the tax years 2004, 2007 and 2008.

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1 As you may have noticed, all of the objectives of the conspiracy charges, with the  
2 exception of mail fraud, are also charged as substantive offenses.

3  
4 Before I give you further detailed instructions as to what it takes to prove these  
5 substantive charges, let me further clarify the difference between the conspiracy counts, which  
6 are charged in Counts One, Two, Three, Four and Sixteen, and the substantive counts, which are  
7 charged in Counts Six through Fifteen, Counts Seventeen and Eighteen and Counts Twenty  
8 through Thirty-Three of the Indictment.

9  
10 A conspiracy, as I said, is a separate crime of agreeing to commit an unlawful  
11 objective. Here, the Government contends that the substantive violations alleged to be objects of  
12 the conspiracies actually occurred. With the exception of mail fraud, Defendants are charged in  
13 the Indictment with committing the substantive offenses that are the alleged objects of the  
14 conspiracy, as well as with conspiracy itself.

15  
16 I will now instruct you on the substantive crimes charged in the Indictment.

17  
18  
19 **SECURITIES FRAUD - THE STATUTE AND RULE 10B-5:**  
20 **(COUNTS SIX, SEVEN AND EIGHT)**  
21

22 Count Six, Seven and Eight of the Indictment charge that the Defendants  
23 committed securities fraud in connection with their work at Madoff Securities.

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Count Six charges Defendants DANIEL BONVENTRE, ANNETTE BONGIORNO, JO ANN CRUPI, JEROME O’HARA AND GEORGE PEREZ as follows:

[The Court reads Count Six of the Indictment (Indictment ¶ 94).]

Count Seven charges Defendants DANIEL BONVENTRE, JO ANN CRUPI, JEROME O’HARA AND GEORGE PEREZ as follows:

[The Court reads Count Seven of the Indictment (Indictment ¶ 96).]

Count Eight charges Defendant DANIEL BONVENTRE as follows:

[The Court reads Count Eight of the Indictment (Indictment ¶ 98).]

The relevant statute for these securities fraud counts is Section 10(b) of the Securities Exchange Act of 1934, which is codified as Title 15, United States Code, Section 78j(b). Section 10(b) provides, in pertinent part, that:

It shall be unlawful for any person, directly or indirectly,  
by the use of any means or instrumentality of interstate

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1 commerce or of the mails, or of any facility of any national  
2 securities exchange . . . To use or employ, in connection  
3 with the purchase or sale of any security registered on a  
4 national securities exchange or any security not so  
5 registered, . . . any manipulative or deceptive device or  
6 contrivance in contravention of such rules and regulations  
7 as the [SEC] may prescribe as necessary or appropriate in  
8 the public interest or for the protection of investors.

9  
10 Based on its authority under this statute, the SEC has issued a number of rules and  
11 regulations, one of which, known as Rule 10b-5, is relevant here. Rule 10b-5 reads as follows:

12  
13 It shall be unlawful for any person, directly or indirectly,  
14 by the use of any means or instrumentality of interstate  
15 commerce, or of the mails, or of any facility of any national  
16 securities exchange, (a) To employ any device, scheme, or  
17 artifice to defraud, (b) To make any untrue statement of a  
18 material fact or to omit to state a material fact necessary in  
19 order to make the statements made, in light of the  
20 circumstances under which they were made, not  
21 misleading, or (c) To engage in any act, practice, or course  
22 of business which operates or would operate as a fraud or

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1           deceit upon any person, in connection with the purchase or  
2           sale of any security.

3  
4  
5                           **SECURITIES FRAUD-ELEMENTS:**  
6                           **(COUNTS SIX, SEVEN AND EIGHT)**  
7

8           To prove a violation of Section 10(b), the Government must prove each of the  
9 following elements beyond a reasonable doubt for each Defendant charged:

10  
11           First, that in connection with the purchase or sale of securities, the Defendant you  
12 are considering did any one or more of the following:

13  
14           (1) employed a device, scheme or artifice to defraud, or

15  
16           (2) made an untrue statement of a material fact or omitted to state a material fact which  
17 made what was said, under the circumstances, misleading, or

18  
19           (3) engaged in an act, practice or course of business that operated, or would operate, as a  
20 fraud or deceit upon a purchaser or seller;

21  
22           Second, that the Defendant you are considering acted knowingly, willfully and  
23 with the intent to defraud a purchaser or seller; and

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1           Third, that the Defendant you are considering used or caused to be used, any  
2 means or instruments of transportation or communication in interstate commerce or the mails in  
3 furtherance of the fraudulent conduct.

4  
5           I will now explain these elements in more detail.

6  
7  
8                           **SECURITIES FRAUD FIRST ELEMENT -**  
9                           **FRAUDULENT ACT:**  
10                          **(COUNTS SIX, SEVEN AND EIGHT)**  
11

12           The first element that the Government must prove beyond a reasonable doubt is  
13 that, in connection with the purchase or sale of securities, the Defendant you are considering did  
14 any one or more of the following:

15  
16           (1) employed a device, scheme or artifice to defraud, or

17  
18           (2) made an untrue statement of a material fact or omitted to state a material fact which  
19 made what was said, under the circumstances, misleading, or

20  
21           (3) engaged in an act, practice or course of business that operated, or would operate, as a  
22 fraud or deceit upon a purchaser or seller.  
23

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1           It is not necessary for the Government to establish all three types of unlawful  
2           conduct in connection with the purchase or sale of securities. Any one will be sufficient for a  
3           conviction if you so find. However, you must be unanimous as to which type of unlawful  
4           conduct took place.

5  
6           The statute requires that the defendant's action be **“in connection with”** the  
7           purchase or sale of securities. You need not find that the Defendant you are considering actually  
8           participated in any specific purchase or sale of a security if you find that the Defendant  
9           participated, or agreed to participate, in fraudulent conduct that was “in connection with” a  
10          purchase or sale of securities.

11  
12          The requirement that the fraudulent conduct be “in connection with” a purchase  
13          or sale of securities is satisfied so long as there was some nexus or relation between the allegedly  
14          fraudulent conduct and the sale or purchase of securities.

15  
16          Fraudulent conduct may be “in connection with” the purchase or sale of securities  
17          if you find that the alleged fraudulent conduct “touched upon” a securities transaction. It is not a  
18          defense to a charge of participation in an overall scheme to defraud that the Defendant you are  
19          considering was not involved in the scheme from its inception or played only a minor role with  
20          no contact with the investors and purchasers of the securities in question. It is also no defense  
21          that the Defendant or persons with whom the Defendant acted did not control any actual  
22          securities in the course of the fraud. Nor is it necessary for you to find that the individual

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1 Defendant was or would be the actual seller of the securities. It is sufficient if the  
2 misrepresentation or omission of material fact involved the purchase or sale of securities.  
3

4 By the same token, the Government need not prove that a Defendant personally  
5 made the misrepresentation or that he or she omitted the material fact. It is sufficient if the  
6 Government establishes that the Defendant caused the statement to be made or the fact to be  
7 omitted. With regard to the alleged misrepresentations and omissions, you must determine  
8 whether the statements were true or false when made, and, in the case of alleged omissions,  
9 whether the omissions were materially and deliberately misleading.  
10

11 The statute provides that securities fraud can be committed by employing a  
12 **“device, scheme, or artifice to defraud.”** A “device, scheme or artifice to defraud” is merely a  
13 plan for the accomplishment of any fraudulent or deceitful objective. Fraud is a general term  
14 which embraces all ingenious efforts and means that individuals devise to take advantage of  
15 others. It includes all kinds of manipulative and deceptive acts. The fraudulent or deceitful  
16 conduct alleged need not relate to the actual investment value of the securities involved in this  
17 case.  
18

19 Securities fraud can also be committed through **false or fraudulent statements**  
20 **and omissions.** A statement, representation, claim, or document is false if it is untrue when  
21 made and was known to be untrue, at the time it was made, by the person making it or causing it  
22 to be made. A representation or statement is fraudulent if it was falsely made with the intention

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1 to deceive. The concealment of material facts in a manner that makes what is said or represented  
2 deliberately and materially misleading may also constitute false or fraudulent statements under  
3 the statute.

4  
5 The deception need not be based upon spoken or written words alone. The  
6 arrangement of the words, or the circumstances in which they are used, may convey the false and  
7 deceptive appearance.

8  
9 A false or fraudulent statement or omission must concern a “**material fact**” to  
10 violate the statute. If you find that the Government has established beyond a reasonable doubt  
11 that a statement was false or a statement was omitted rendering the statements that were made  
12 misleading, you must next determine whether the statement or omission was material under the  
13 circumstances.

14  
15 The word “material” is used to describe the kind of false statements or omissions  
16 that are wrongful under the fraud statutes. A material fact is one that would have been important  
17 to a reasonable investor in making an investment decision. We use the word “material” to  
18 distinguish between the kinds of statements we care about and those that are of lesser  
19 significance.

20  
21 If you find that the deception involved the making of material misrepresentations  
22 or omissions of material facts, it does not matter whether the intended victims were gullible

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1 buyers or sophisticated investors, because the securities laws protect the gullible and  
2 unsophisticated as well as the experienced investor.

3  
4 Nor does it matter whether the alleged unlawful conduct was or would have been  
5 successful, or whether the Defendant you are considering profited or would have received any  
6 benefit as a result of the alleged scheme. Success is not an element of a violation of Section  
7 10(b) or Rule 10b-5. However, if you find that the Defendant you are considering expected to or  
8 did profit from the alleged scheme, you may consider that in relation to the element of intent,  
9 which I will discuss in a moment.

10  
11  
12 **SECURITIES FRAUD SECOND ELEMENT - KNOWLEDGE, INTENT AND**  
13 **WILLFULNESS:**  
14 **(COUNTS SIX, SEVEN AND EIGHT)**  
15

16 The second element that the Government must establish beyond a reasonable  
17 doubt is that the individual Defendant you are considering participated in the scheme to defraud  
18 knowingly, willfully and with the intent to defraud a purchaser or seller.

19  
20 As I explained earlier, “knowingly” means to act voluntarily and deliberately,  
21 rather than mistakenly or inadvertently, while “willfully” means to act knowingly and purposely,  
22 with an intent to do something the law forbids. “Intent to defraud” in the context of the  
23 securities laws means to act knowingly and with intent to deceive. The question of whether a

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1 person acted knowingly, willfully and with intent to defraud is a question of fact for you to  
2 determine, like any other fact question. This question involves one's state of mind. Direct proof  
3 of knowledge and fraudulent intent is almost never available. It would be a rare case where it  
4 could be shown that a person wrote or stated that as of a given time in the past he committed an  
5 act with fraudulent intent. Such direct proof is not required. The ultimate facts of knowledge  
6 and criminal intent, though subjective, may be established by circumstantial evidence, based  
7 upon a person's outward manifestations, his words, his conduct, his acts and all the surrounding  
8 circumstances disclosed by the evidence and the rational or logical inferences that may be drawn  
9 therefrom.

10  
11 What is referred to as drawing inferences from circumstantial evidence is no  
12 different from what people normally mean when they say, "use your common sense." Using  
13 your common sense means that, when you come to decide whether the defendant possessed or  
14 lacked an intent to defraud, you don't limit yourself to what the defendant said, but you also look  
15 at what he or she did and what others did in relation to the defendant and, in general, everything  
16 that occurred. Circumstantial evidence, if believed, is of no less value than direct evidence. In  
17 either case, the essential elements of the crime charged must be established beyond a reasonable  
18 doubt.

19  
20 Since an essential element of the crime charged is intent to defraud, it follows that  
21 good faith on the part of a defendant (that is, belief in the truth of the matter asserted and lack of  
22 intent to defraud) is a complete defense to a charge of securities fraud. A defendant, however,

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1 has no burden to establish a defense of good faith. The burden is on the Government to prove  
2 fraudulent intent and consequent lack of good faith beyond a reasonable doubt. Under the anti-  
3 fraud statutes, even false representations or statements or omissions of material facts do not  
4 amount to a fraud unless done with fraudulent intent. However misleading or deceptive conduct  
5 may be, it is not fraudulent if it was carried out in good faith. An honest belief by a defendant in  
6 the truth of the representations made is a good defense, however inaccurate the statements may  
7 turn out to be.

8  
9 In considering whether or not a defendant acted in good faith, you are, however,  
10 instructed that a belief by the defendant, if such belief existed, that ultimately everything would  
11 work out so that no investors would lose any money does not require a finding by you that he  
12 acted in good faith. No amount of honest belief on the part of a defendant that the scheme will  
13 ultimately make a profit for the investors will excuse fraudulent actions or knowingly false  
14 representations by him or her.

15  
16 As a practical matter, then, to sustain any fraud charge against a particular  
17 Defendant, the Government must establish beyond a reasonable doubt that the particular  
18 Defendant you are considering knew that his or her conduct as a participant in the alleged  
19 scheme was calculated to deceive and nonetheless, he or she associated himself with the alleged  
20 fraudulent scheme.

21

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1 To conclude on this element, if you find that the Government has not proven  
2 beyond a reasonable doubt that the Defendant in question was a knowing participant in the  
3 scheme and had the intent to defraud, then you must acquit that Defendant.

4  
5 On the other hand, if you find that the Government has established beyond a  
6 reasonable doubt not only the first element, namely, the existence of a scheme to defraud, but  
7 also this second element, that the individual Defendant you are considering was a knowing  
8 participant and acted with intent to defraud, then you must proceed to consider the third element,  
9 as to which I am about to instruct you.

10  
11  
12 **SECURITIES FRAUD THIRD ELEMENT -**  
13 **INTERSTATE COMMERCE:**  
14 **(COUNTS SIX, SEVEN AND EIGHT)**  
15

16 The third and final element that the Government must prove beyond a reasonable  
17 doubt is that the Defendant you are considering knowingly used, or caused to be used, the mails  
18 or the instrumentalities of interstate commerce in furtherance of the scheme to defraud or  
19 fraudulent conduct. It is not necessary that the Defendant in question be or would have been  
20 directly or personally involved in any mailing or use of an instrumentality of interstate  
21 commerce. If the conduct alleged would naturally and probably result in the use of the mails or  
22 an instrumentality of interstate commerce, this element would be satisfied.

23

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1 Nor is it necessary that the items sent through the mails or communicated through  
2 an instrumentality of interstate commerce did or would contain the fraudulent material, or  
3 anything criminal or objectionable. The matter mailed or communicated may be entirely  
4 innocent so long as it is in furtherance of the alleged scheme to defraud or fraudulent conduct.  
5 The use of the mails or instrumentality of interstate commerce need not be central to the  
6 execution of the scheme or even be incidental to it. All that is required is that the use of the  
7 mails or instrumentality of interstate commerce bear some relation to the object of the alleged  
8 scheme or fraudulent conduct.

9  
10 In fact, the actual purchase or sale of a security need not be accompanied by the  
11 use of the mails or instrumentality of interstate commerce, so long as the mails or instrumentality  
12 of interstate commerce are used in furtherance  
13 of the scheme and the Defendant is still engaged in actions that are part of a fraudulent scheme  
14 when the mails or the instrumentalities of interstate commerce are used.

15  
16 With respect to the charges in Counts Six, Seven and Eight, you cannot return a  
17 verdict of guilty as to any particular count unless you find that the Government has proven  
18 beyond a reasonable doubt that the Defendant you are considering committed, or caused to be  
19 committed, an act of securities fraud after November 17, 2004. Your decision as to whether the  
20 act was fraudulent, and as to the timing of the act, must be unanimous.

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**FALSIFYING RECORDS OF A BROKER-DEALER:**  
**(COUNTS NINE, TEN AND ELEVEN)**

Counts Nine, Ten, and Eleven charge the Defendants with falsifying, or causing the falsification of, the books and records of a broker-dealer, here, Madoff Securities.

Count Nine charges Defendants DANIEL BONVENTRE, ANNETTE BONGIORNO, JO ANN CRUPI, JEROME O’HARA and GEORGE PEREZ as follows:

[The Court reads Count Nine of the Indictment (Indictment ¶ 100).]

Count Ten charges Defendants DANIEL BONVENTRE, JO ANN CRUPI, JEROME O’HARA and GEORGE PEREZ as follows:

[The Court reads Count Ten of the Indictment (Indictment ¶ 102).]

Count Eleven charges Defendant DANIEL BONVENTRE as follows:

[The Court reads Count Eleven of the Indictment (Indictment ¶ 104).]

Title 15 of the United States Code, Section 78c, defines “**broker**” as “any person engaged in the business of effecting transactions in securities for the account of others.” The statute also defines a “**dealer**” as “any person engaged in the business of buying and selling

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1 securities . . . for such person’s own account through a broker or otherwise.” Federal law  
2 requires that companies which are registered as broker-dealers, maintain certain records as  
3 prescribed by the SEC. The records include client account statements, trade confirmations, trade  
4 blotters, order entry and execution reports, commission reports, documents relating to profit,  
5 loss, and revenue, security receipt, delivery and custody reports, general ledgers, stock records,  
6 and reports derived from the general ledgers and stock records. The record keeping  
7 requirements are established by Title 17 of the Code of Federal Regulations, Section 240.17a-3.  
8 Title 15 of the United States Code, Section 78q(a), generally requires registered broker-dealers  
9 to “make and keep for prescribed periods such records, furnish such copies thereof, and make  
10 and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate  
11 in the public interest, for the protection of investors, or otherwise.”

12  
13 Counts Nine, Ten and Eleven also charge violations of Section 32 of  
14 the Securities Exchange Act of 1934, Title 15 of the United States Code, Section 78ff. Section  
15 78ff provides in relevant part:

16  
17 [A]ny person who willfully and knowingly makes, or causes  
18 to be made, any statement in any application, report, or  
19 document required to be filed under this chapter or any rule  
20 or regulation thereunder . . . which statement was false or  
21 misleading with respect to any material fact [shall be guilty  
22 of a crime].

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This section is the general provision of the federal securities laws that makes it unlawful to willfully violate any provision of the Securities Exchange Act of 1934, or any rule or regulation under that Act, by making materially false and misleading statements in applications, reports, and documents required to be filed with the SEC.

**FALSIFYING RECORDS OF A BROKER DEALER -**  
**ELEMENTS OVERVIEW:**  
**(COUNTS NINE, TEN AND ELEVEN)**

For each of Counts Nine, Ten and Eleven, to establish a violation of Title 15 of the United States Code, Sections 78q(a) and 78ff, the Government must prove each of the following elements beyond a reasonable doubt:

First, that Madoff Securities was a registered broker-dealer that was required under the Securities Exchange Act of 1934 to make and keep the records charged in that Count; and

Second, that the Defendant you are considering knowingly and willfully made, or caused to be made, a materially false or misleading statement in those records. Now I will explain these two elements in more detail.

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**FALSIFYING RECORDS OF A BROKER DEALER**  
**FIRST ELEMENT - REQUIRED RECORDS:**  
**(COUNTS NINE, TEN AND ELEVEN)**

1  
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4  
5           With respect to each of Counts Nine, Ten and Eleven, respectively, the  
6 Government must show, first, that Madoff Securities was registered as a broker-dealer and was  
7 required by the Securities Exchange Act of 1934 to maintain the records charged in that Count.  
8 If the Government has not proven that Madoff Securities was a registered broker-dealer, you  
9 must acquit the Defendants of all of the charges in Counts Nine, Ten and Eleven.

10  
11           Registered broker-dealers are required to make and keep certain records as  
12 prescribed by the SEC. These records include client account statements, trade confirmations,  
13 trade blotters, order entry and execution reports, security receipt, delivery and custody records,  
14 general ledgers setting forth all assets and liabilities, income, expenses and capital accounts of  
15 the broker dealer, stock records, and reports derived from the general ledgers and stock records.  
16 If you find that the Government has proven beyond a reasonable doubt that Madoff Securities  
17 was registered with the SEC as a broker-dealer under the Securities Exchange Act of 1934, then  
18 it was required to make and keep these records and the first element is satisfied.

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1                                   **FALSIFYING RECORDS OF A BROKER DEALER**  
2                                   **SECOND ELEMENT - FALSITY:**  
3                                   **(COUNTS NINE, TEN AND ELEVEN)**  
4

5                   The Government next must prove, with respect to each of Counts Nine, Ten and  
6 Eleven, that the individual Defendant you are considering knowingly and willfully made, or  
7 caused to be made, materially false and fraudulent statements in the records you are considering.

8  
9                   A statement or representation is “false” if it was untrue when made, and known at  
10 the time to be untrue by the person making it or causing it to be made. A representation or  
11 statement is fraudulent if it was falsely made with the intention to deceive. The concealment of  
12 material facts in a manner that makes what is said or represented deliberately and materially  
13 misleading may also constitute false or fraudulent statements under the statute.

14  
15                  I have defined the term “material” for you previously and you should use that  
16 definition here. I have also defined the terms “knowingly” and “willfully”. Those same  
17 definitions, and the defense of good faith, apply here. A statement made with a good faith belief  
18 in its accuracy does not amount to a false statement and is not a crime. This is so even if the  
19 statement is, in fact, erroneous.

20  
21                  To establish this element, the Government need not prove that the Defendant in  
22 question himself or herself physically made or otherwise personally prepared the statements in  
23 question. It is sufficient if the Government has proved that the Defendant in question knowingly

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1 and willfully caused materially false information to be included in a required record by some  
2 person.

3  
4 Now, each of Counts Nine, Ten and Eleven is based on a different set of records  
5 required to be maintained by Madoff Securities as a broker-dealer.

6  
7 Count Nine charges that Defendants DANIEL BONVENTRE, ANNETTE  
8 BONGIORNO, JO ANN CRUPI, JEROME O’HARA and GEORGE PEREZ made, or caused to  
9 be made, fraudulent required books and records including client account statements and trade  
10 confirmations.

11  
12 Count Ten charges that Defendants DANIEL BONVENTRE, JO ANN CRUPI,  
13 JEROME O’HARA and GEORGE PEREZ made, or caused to be made, fraudulent required  
14 books and records including client account statements, trade blotters, order entry and execution  
15 reports, commission reports, Depository Trust Corporation (or “DTC”) reports, documents  
16 relating to the profit, loss and revenue of Madoff Securities, and general ledgers and/or stock  
17 records.

18  
19 Count Eleven charges that Defendant DANIEL BONVENTRE made, or caused to  
20 be made, fraudulent required books and records including general ledgers, stock records, and/or  
21 reports derived from the general ledgers and stock records.

22

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1           The Government contends that each of these types of records maintained by  
2 Madoff Securities contained a number of materially false statements and misleading omissions.  
3 The Government is not required to prove all of these false statements and omissions. However,  
4 in order to convict a Defendant on the false broker-dealer books and records charge or charges  
5 against that Defendant, each juror must agree with each of the other jurors that the same  
6 statement in the same required record that you are considering was in fact materially false or  
7 misleading. You need not unanimously agree on each such statement alleged, but you may not  
8 convict the individual Defendant you are considering of a particular count unless you find  
9 unanimously that the Government has proven beyond a reasonable doubt that at least one  
10 particular statement in a required record was materially false and misleading and that the  
11 Defendant you are considering knowingly and willfully made the statement or caused it to be  
12 made.

13  
14           With respect to the charges in Counts Nine, Ten and Eleven, you cannot return a  
15 verdict of guilty as to a particular Defendant unless you find that the Government has proven  
16 beyond a reasonable doubt that the Defendant you are considering made, or caused to be made, a  
17 fraudulent statement in a required record after November 17, 2005. Your decisions as to  
18 whether the particular statement was fraudulent, and as to the timing of the statement, must be  
19 unanimous.

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**FALSIFYING RECORDS OF AN INVESTMENT ADVISER -**  
**GENERAL OVERVIEW:**  
**(COUNTS TWELVE, THIRTEEN AND FOURTEEN)**

Counts Twelve, Thirteen, and Fourteen charge the Defendants with falsifying, or causing the falsification of, the books and records of an investment adviser, here, Madoff Securities.

Count Twelve charges Defendants DANIEL BONVENTRE, ANNETTE BONGIORNO, JO ANN CRUPI, JEROME O'HARA and GEORGE PEREZ as follows:

[The Court reads Count Twelve of the Indictment (Indictment ¶ 106).]

Count Thirteen charges Defendants DANIEL BONVENTRE, JO ANN CRUPI, JEROME O'HARA and GEORGE PEREZ as follows:

[The Court reads Count Thirteen of the Indictment (Indictment ¶ 108).]

Count Fourteen charges Defendant DANIEL BONVENTRE as follows:

[The Court reads Count Fourteen of the Indictment (Indictment ¶ 110).]

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1 Federal law requires that companies which are investment advisers and make use  
2 of the mails or any instrumentalities of interstate commerce in connection with their business,  
3 make and keep records as prescribed by SEC rules. These records include client account  
4 statements, trade confirmations, trade blotters, order entry and execution reports, commission  
5 reports, documents relating to the profit, loss, and revenue of the investment adviser, security  
6 receipt, delivery and custody records, financial statements, internal audit working papers, general  
7 ledgers, stock records, and reports derived from the general ledgers and stock records.

8  
9 Title 15 of the United States Code, Section 80b-4, requires investment advisers to  
10 “make and keep for prescribed periods such records[,] . . . furnish such copies thereof, and make  
11 and disseminate such reports as the [SEC], by rule, may prescribe as necessary or appropriate in  
12 the public interest or for the protection of investors.” These counts also charge violations of  
13 Title 15 of the United States Code, Section 80b-17. Section 80b-17 provides in relevant part:

14  
15 Any person who willfully violates any provision of this  
16 subchapter, or any rule, regulation, or order promulgated  
17 by the Commission under authority thereof, shall [be guilty  
18 of a crime].

19  
20 This statute makes it unlawful to willfully violate the provisions of law that  
21 require investment advisers to maintain records required by the SEC.  
22

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**FALSIFYING RECORDS OF AN INVESTMENT ADVISER -  
ELEMENTS OF THE OFFENSE:  
(COUNTS TWELVE, THIRTEEN AND FOURTEEN)**

For each of Counts Twelve, Thirteen, and Fourteen, to establish a violation of Title 15 of the United States Code, Sections 80b-4 and 80b-17, the Government must prove each of the following four elements beyond a reasonable doubt:

First, that Madoff Securities was a registered or unregistered investment adviser;

Second, that Madoff Securities made use of the mails or any instrumentalities of interstate commerce in connection with its investment advisory business;

Third, that Madoff Securities was required by law to make and keep the records charged in that Count;

Fourth, that the individual Defendant you are considering knowingly and willfully caused Madoff Securities to fail to make and keep those records required by law.

Now I will explain these four elements in more detail.

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1                   **FALSIFYING RECORDS OF AN INVESTMENT ADVISER -**  
2                                   **FIRST ELEMENT:**  
3                                   **(COUNTS TWELVE, THIRTEEN AND FOURTEEN)**  
4

5                   With respect to each of Counts Twelve, Thirteen, and Fourteen, respectively, the  
6 Government must show, first, that at the relevant time Madoff Securities was an investment  
7 adviser that was registered or required to be registered under section 203 of the Investment  
8 Advisers Act. An **investment adviser** is “any person who, for compensation, engages in the  
9 business of advising others, either directly or through publications or writings, as to the value of  
10 securities or as to the advisability of investing in, purchasing, or selling securities, or who, for  
11 compensation and as part of a regular business, issues or promulgates analyses or reports  
12 concerning securities,” with certain exceptions not applicable here. An investment adviser must  
13 register with the SEC unless it qualifies for an exception from the Act’s registration  
14 requirements. None of the exceptions applies here.  
15

16                   I instruct you that Madoff Securities registered as an investment adviser as of  
17 August 25, 2006.  
18  
19

20                   **FALSIFYING RECORDS OF AN INVESTMENT ADVISER**  
21                                   **SECOND ELEMENT - USE OF THE MAILS:**  
22                                   **(COUNTS TWELVE, THIRTEEN AND FOURTEEN)**  
23

24                   The Government next must prove, with respect to each of Counts Twelve,  
25 Thirteen, and Fourteen, that Madoff Securities made use of the mails or any instrumentalities of

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1 interstate commerce in connection with its investment advisory business. The use of the mails or  
2 any instrumentalities of interstate commerce can be from one state to another, or just within a  
3 state or even a single city; it does not matter, as long as the United States mails or any  
4 instrumentalities of interstate commerce were used. “Instrumentalities of interstate commerce”  
5 include the national telephone system, even when used only for local calls, the internet, and  
6 email systems, even when used only within one state.

7  
8 The mailing or use of an instrumentality of interstate commerce need not involve  
9 a false record or any fraudulent representation. Moreover, it is not necessary for the defendant to  
10 be directly or personally involved in the mailing or use of an instrumentality of interstate  
11 commerce.

12  
13  
14 **FALSIFYING RECORDS OF AN INVESTMENT ADVISER**  
15 **THIRD ELEMENT - REQUIRED RECORDS:**  
16 **(COUNTS TWELVE, THIRTEEN AND FOURTEEN)**  
17

18 With respect to each of Counts Twelve, Thirteen, and Fourteen, respectively, the  
19 Government must show that Madoff Securities was required by law to maintain the records  
20 charged in that Count in its capacity as an investment adviser. I have already instructed you that  
21 investment advisers who make use of the mails or any instrumentalities of interstate commerce  
22 in connection with their business are required to make and keep records as prescribed by the  
23 SEC.

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1           If you find that the Government has proven that at the relevant time Madoff  
2 Securities was an investment adviser required to be registered with the SEC, and that it made use  
3 of the mails or any instrumentalities of interstate commerce in connection with its business, the  
4 records it was required to keep included: client account statements, trade confirmations, trade  
5 blotters, order entry and execution reports, security receipt, delivery and custody records,  
6 financial statements and internal audit papers relating to the business of the investment adviser,  
7 general ledgers, stock records, and reports derived from the general ledgers and stock records.

8  
9           If you further find that the Government has proven that Madoff Securities, as an  
10 investment adviser, had or purported to have custody or possession of securities or funds of any  
11 client, Madoff Securities was also required to keep and maintain additional documents, including  
12 copies of confirmations of all transactions effected by or for the account of a client.

13  
14           Count Twelve charges that Defendants DANIEL BONVENTRE, ANNETTE  
15 BONGIORNO, JO ANN CRUPI, JEROME O'HARA and GEORGE PEREZ caused Madoff  
16 Securities to keep false and fraudulent books and records including client account statements and  
17 trade confirmations.

18  
19           Count Thirteen charges that, in connection with the SEC and KPMG audits,  
20 Defendants DANIEL BONVENTRE, JO ANN CRUPI, JEROME O'HARA and GEORGE  
21 PEREZ caused Madoff Securities to keep false and fraudulent books and records including client  
22 account statements, trade blotters, order entry and execution reports, commission reports, DTC

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1 reports, documents relating to the profit, loss and revenue of Madoff Securities, and/or stock  
2 records.

3  
4 Count Fourteen charges that Defendant DANIEL BONVENTRE caused Madoff  
5 Securities to keep false and fraudulent books and records including general ledgers, stock  
6 records and/or reports derived from the general ledgers or stock records.

7  
8  
9 **FALSIFYING RECORDS OF AN INVESTMENT ADVISER**  
10 **FOURTH ELEMENT - FAILURE TO MAKE AND KEEP REQUIRED RECORDS:**  
11 **(COUNTS TWELVE, THIRTEEN AND FOURTEEN)**  
12

13 The Government next must prove, with respect to each of Counts Twelve,  
14 Thirteen and Fourteen, that the individual Defendant you are considering knowingly and  
15 willfully caused Madoff Securities to fail to make and keep those records required by law.

16  
17 I have defined the terms “knowingly” and “willfully”. Those same definitions  
18 apply here, as does the defense of good faith. A good faith belief on the part of an individual  
19 Defendant that Madoff Securities made and kept those records required by law is a complete  
20 defense to these charges, even if that belief was erroneous.

21  
22 To establish this element, the Government need not prove that the defendant in  
23 question physically made or otherwise personally prepared or personally failed to maintain those

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1 records required by law. It is sufficient if the Government has proved that the Defendant in  
2 question knowingly and willfully caused Madoff Securities to fail to make and keep required  
3 records.

4  
5 Now, each of Counts Twelve, Thirteen and Fourteen is based on a separate set of  
6 records maintenance requirements from those that applied to Madoff Securities as a broker-  
7 dealer. The Government contends that each of these records was knowingly and willfully  
8 improperly maintained at Madoff Securities. The Government is not required to prove all of  
9 these failures to make and keep required records of an investment adviser. However, in order to  
10 convict an individual Defendant on a particular count, each juror must agree with each of the  
11 other jurors that the particular Defendant you are considering knowingly and willfully caused the  
12 particular record that you are considering to be improperly maintained. You need not  
13 unanimously agree on each such record alleged but, in order to convict the Defendant you are  
14 considering on a particular count, you must unanimously agree upon at least one such record that  
15 you find that the particular Defendant knowingly and willfully caused Madoff Securities to fail  
16 to make and keep as required by law.

17  
18 With respect to the charges in Counts Twelve, Thirteen and Fourteen, you cannot  
19 return a guilty verdict as to any Defendant unless you find that the Government has proven  
20 beyond a reasonable doubt that the Defendant you are considering caused Madoff Securities to  
21 fail to make and keep at least one required book or record after November 17, 2004. Your

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1 decisions as to whether the particular book or record was not made and kept as required by law,  
2 and as to the timing of the conduct, must be unanimous as to each individual Defendant.

3  
4  
5 **FALSE FILING WITH THE SEC – OVERVIEW:**  
6 **(COUNT FIFTEEN)**  
7

8 Count Fifteen of the Indictment charges DANIEL BONVENTRE, the defendant,  
9 with aiding and abetting the filing of a false and misleading Madoff Securities FOCUS report  
10 with the SEC. I will explain the concept of “aiding and abetting” in more detail later.

11  
12 Count Fifteen charges Defendant DANIEL BONVENTRE as follows:

13  
14 [The Court reads Count Fifteen of the Indictment (Indictment ¶ 112).]  
15

16 In order for DANIEL BONVENTRE to be found guilty on this count, the  
17 Government must prove each of the following three elements beyond a reasonable doubt:  
18

19 First, that Madoff Securities was required by the Securities Exchange Act of 1934  
20 to file the FOCUS report identified in Count Fifteen;

21  
22 Second, that an individual knowingly and willfully made, or caused to be made, a  
23 materially false or misleading statement in the FOCUS report; and

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1           Third, that DANIEL BONVENTRE aided and abetted the filing of  
2 the materially false and misleading FOCUS report.

3  
4           I have already defined the words “knowingly” “willfully,” and “materially,” and  
5 you should apply those definitions here. The defense of good faith, which I have discussed  
6 earlier, applies to this charge as well.

7  
8  
9  
10                           **BANK FRAUD OVERVIEW:**  
11                           **(COUNTS SEVENTEEN AND EIGHTEEN)**  
12

13           Count Seventeen of the Indictment charges that the Defendant JO ANN CRUPI  
14 committed bank fraud in connection with loans on behalf of David Kugel, Craig Kugel, and  
15 Heather Kugel. Count Eighteen of the Indictment charges that Defendant DANIEL  
16 BONVENTRE committed bank fraud in connection with loans obtained for Madoff Securities.

17  
18  
19           Count Seventeen charges Defendant JO ANN CRUPI as follows:

20  
21  
22           [The Court reads Count Seventeen of the Indictment (Indictment ¶ 119).]  
23

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1 Count Eighteen charges Defendant DANIEL BONVENTRE as follows:

2  
3 [The Court reads Count Eighteen of the Indictment (Indictment ¶ 121).]

4  
5  
6 These counts charge violations of Title 18, United States Code, Section 1344, the  
7 federal bank fraud statute. In order to establish a particular Defendant's guilt of this crime, the  
8 Government must prove the following two elements:

9  
10 First, that the Defendant you are considering engaged in a course of conduct  
11 concerning a material matter that was designed to deceive a federally chartered or insured  
12 financial institution into releasing property. A material matter is one that would reasonably be  
13 expected to be of concern to a reasonable and prudent person in relying upon the representation  
14 or statement in making a decision; and

15  
16 Second, that the Defendant you are considering intended to victimize the  
17 institution by exposing it to actual or potential loss.

18  
19 In order to prove a particular Defendant guilty of bank fraud, the Government is  
20 not required to prove that the bank was actually injured or even potentially injured by the  
21 Defendant's actions. The Government must, however, prove that the Defendant intended that  
22 the bank would suffer actual or potential injury. The Government must prove that the

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1 Defendant's conduct was knowing and willful, as I have defined those terms for you earlier. The  
2 defense of good faith, which I have discussed earlier, applies to these charges as well.  
3

4  
5 **AIDING AND ABETTING: WILLFULLY CAUSING A CRIME**  
6 **(COUNTS SIX, SEVEN, EIGHT, NINE, TEN, ELEVEN, TWELVE, THIRTEEN,**  
7 **FOURTEEN, FIFTEEN, SEVENTEEN AND EIGHTEEN)**  
8

9 In Counts Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen,  
10 Fifteen, Seventeen, and Eighteen (that is, all of the substantive charges except for the tax charges  
11 that I will discuss later), the Defendants are charged as aiders and abettors in addition to being  
12 charged as principals. Thus, the Government does not contend that the Defendants personally  
13 committed every physical act or crime charged in the Indictment. Instead, it contends that each  
14 Defendant charged performed certain acts and caused others to physically do certain acts.  
15

16 Section 2(b) of the aiding and abetting statute, which makes it a crime to willfully  
17 cause another to commit a crime, reads as follows:  
18

19 Whoever willfully causes an act to be done which if directly  
20 performed by him or another would be an offense against  
21 the United States [is punishable as a principal].  
22

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1           What does the word “**principal**” mean here? It means a person who physically  
2 commits the substantive crime that is charged.

3  
4           What does the term “**willfully caused**” mean? It does not mean that the  
5 Defendant himself need have physically committed the crime or supervised or participated in the  
6 actual criminal conduct charged in the Indictment.

7  
8           For purposes of your consideration of these Counts, the meaning of the term  
9 “willfully caused” can be found in the answers to the following questions:

10  
11           First, did the individual Defendant you are considering *intend* to commit the  
12 substantive crime charged in the particular Count that you are considering? As an example, if  
13 you are considering the Securities Fraud charge in Count Six, you must determine whether the  
14 individual Defendant you are considering intended that investors would be deceived by Madoff  
15 Securities account documentation.

16  
17           Second, did the individual Defendant you are considering intentionally cause  
18 another person to take the action described in the Count of the Indictment that you are  
19 considering? Again using Count Six as an example only, you must determine whether the  
20 individual Defendant you are considering intentionally caused another person to issue false  
21 account documentation to Madoff Securities investors.

22

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1           You may not find that a Defendant aided and abetted a crime unless you find that  
2 the Government has proven that another person took the action resulting in the commission of  
3 the offense and that the Defendant you are considering “willfully caused” the commission of the  
4 offense, as I have just defined that term for you.

5  
6           I will now turn to the remaining counts of the Indictment, which charge tax-  
7 related crimes.

8  
9  
10       **SUBSCRIBING TO FALSE INDIVIDUAL TAX RETURN FOR THE TAX YEARS 2003,**  
11                               **2004, 2006, 2007 - GENERAL:**  
12       **(COUNTS TWENTY, TWENTY-ONE, TWENTY-TWO, AND TWENTY-THREE)**  
13

14           Counts Twenty, Twenty-One, Twenty-Two and Twenty-Three each charge  
15 Defendant DANIEL BONVENTRE with filing a false or fraudulent tax return in the years 2003,  
16 2004, 2006 and 2007, respectively, as specified in the Indictment.

17  
18  
19           Count Twenty of the Indictment charges Defendant DANIEL BONVENTRE as  
20 follows:

21  
22           [The Court reads Count Twenty of the Indictment (Indictment ¶ 125).]  
23

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1 Count Twenty-One of the Indictment charges Defendant DANIEL BONVENTRE as  
2 follows:

3  
4 [The Court reads Count Twenty-One of the Indictment (Indictment ¶ 127 ).]

5  
6  
7 Count Twenty-Two of the Indictment charges Defendant DANIEL  
8 BONVENTRE as follows:

9  
10 [The Court reads Count Twenty-Two of the Indictment (Indictment ¶ 129).]

11  
12  
13 Count Twenty-Three of the Indictment charges Defendant DANIEL  
14 BONVENTRE as follows:

15  
16 [The Court reads Count Twenty-Three of the Indictment (Indictment ¶ 131).]

17  
18  
19 Counts Twenty to Twenty-Three of the Indictment allege that DANIEL  
20 BONVENTRE violated Section 7206(1) of Title 26 of the United States Code, which provides  
21 that:

22

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1 Any person who . . . [w]illfully makes and subscribes any  
2 return, statement, or other document, which contains or is  
3 verified by a written declaration that it is made under the  
4 penalties of perjury, and which he does not believe to be  
5 true and correct as to every material matter [shall be guilty  
6 of a crime.]

7  
8 In the course of your deliberations concerning the determination of whether any  
9 particular portion of the Defendant's income was taxable, you should consider income which  
10 may have been illegally acquired, as well as funds which the evidence indicates have been  
11 lawfully acquired.

12  
13 If you find from the evidence that the Defendant received taxable income and  
14 failed to report it as the law requires, it makes no difference in determining the Defendant's tax  
15 liability whether such income was lawfully or unlawfully acquired.

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1 **SUBSCRIBING TO FALSE INDIVIDUAL TAX RETURN FOR THE TAX YEARS 2003,**  
2 **2004, 2006, 2007 - ELEMENTS OF THE OFFENSE:**  
3 **(COUNTS TWENTY, TWENTY-ONE, TWENTY-TWO, AND TWENTY-THREE)**  
4

5 In order to prove the Defendant, DANIEL BONVENTRE, guilty of filing a false  
6 or fraudulent tax return, the Government must prove each of the following four elements beyond  
7 a reasonable doubt:

8  
9 First, that the Defendant made or caused to be made, a federal income tax return  
10 for the year in question which he verified to be true;

11  
12 Second, that the tax return was false as to a material  
13 matter;

14  
15 Third, that the Defendant signed the return willfully and knowing it was false; and  
16

17 Fourth, that the return contained a written declaration that it was made under the  
18 penalty of perjury.

19  
20 The false statement in the return must be material. In this context, “material”  
21 means that it must be essential to an accurate determination of the defendant’s tax liability. The  
22 Government must also prove that the Defendant knew that the statement was false as to that  
23 material matter. I have already defined the terms “willfully,” and “knowingly,” and those

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1 definitions apply here. The defense of good faith, which I have discussed earlier, applies to  
2 these charges as well.

3  
4 Thus, in order for the Government to prove willfulness, it must establish beyond a  
5 reasonable doubt that the Defendant acted voluntarily and intentionally, with the specific intent  
6 to violate the law by making a statement that the Defendant knew was false, when it was the  
7 legal duty of the Defendant to answer truthfully, and the Defendant knew that it was his legal  
8 duty to answer truthfully.

9  
10  
11 **OBSTRUCTING AND IMPEDING TAX LAW ADMINISTRATION - GENERAL:**  
12 **(COUNTS TWENTY-FOUR AND THIRTY)**  
13

14 Counts Twenty-Four and Thirty charge Defendants DANIEL BONVENTRE and  
15 ANNETTE BONGIORNO, respectively, with corruptly obstructing and impeding the due  
16 administration of the internal revenue laws. The Indictment charges as follow:

17  
18 Count Twenty-Four of the Indictment charges defendant DANIEL  
19 BONVENTRE as follows:

20  
21 [The Court reads Count Twenty-Four of the Indictment (Indictment ¶ 133.)]  
22

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1 Count Thirty of the Indictment charges Defendant ANNETTE BONGIORNO as  
2 follows:

3  
4 [The Court reads Count Thirty of the Indictment (Indictment ¶ 137.)]  
5  
6

7 The Indictment alleges that defendants DANIEL BONVENTRE and ANNETTE  
8 BONGIORNO violated Section 7212(a) of Title 26 of the United States Code, which provides,  
9 in pertinent part, that:

10  
11 Whoever corruptly . . . obstructs or impedes, or endeavors  
12 to obstruct or impede, the due administration of [the  
13 internal revenue laws shall be guilty of a crime].  
14  
15

16 **OBSTRUCTING AND IMPEDING TAX LAW ADMINISTRATION - ELEMENTS OF**  
17 **THE OFFENSE:**  
18 **(COUNTS TWENTY-FOUR AND THIRTY)**

19  
20 In order to prove the Defendants DANIEL BONVENTRE and ANNETTE  
21 BONGIORNO guilty of the crimes charged in Counts Twenty-Four and Thirty, the Government  
22 must prove each of the two following elements beyond a reasonable doubt:  
23

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1           First, that the individual Defendant you are considering acted corruptly; and

2  
3           Second, that the individual Defendant you are considering acted with the intent to  
4 impede or obstruct the due administration of federal tax laws.

5  
6           To act corruptly simply means to act with the intent to secure an unlawful  
7 advantage or benefit either for oneself or for another. The due administration of the internal  
8 revenue laws refers to the uncorrupted and unimpeded collection of taxes by the federal  
9 government.

10  
11           Because there is a limit on how much time the Government has to obtain an  
12 indictment, you cannot return a verdict of guilty on Count Twenty-Four or on Count Thirty  
13 unless you find that the Government has proven, beyond a reasonable doubt, that the Defendant  
14 you are considering committed an act after October 1, 2006, that was designed to corruptly  
15 obstruct the IRS. Your findings as to the particular act committed and as to the time frame must  
16 be unanimous.



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1           Count Twenty-Six of the Indictment charges that, for the 2005 tax year,  
2 Defendant ANNETTE BONGIORNO falsely reported on her tax return that her taxable income  
3 was \$59,470 when her approximate actual taxable income was \$122,403 and that the  
4 approximate additional income tax due and owing was \$18,616.

5  
6  
7           Count Twenty-Seven of the Indictment charges that, for the 2006 tax year,  
8 Defendant ANNETTE BONGIORNO falsely reported on her tax return that her taxable income  
9 was \$54,792 when her approximate actual taxable income was \$122,112 and that the  
10 approximate additional income tax due and owing was \$20,201.

11  
12  
13           Count Twenty-Eight of the Indictment charges that, for the 2007 tax year,  
14 Defendant ANNETTE BONGIORNO falsely reported on her tax return that her taxable income  
15 was \$579,085 when her approximate actual taxable income was \$640,606 and that the  
16 approximate additional income tax due and owing was \$17,220.

17  
18  
19           Count Twenty-Nine of the Indictment charges that, for the 2008 tax year,  
20 Defendant ANNETTE BONGIORNO falsely reported on her tax return that her taxable income  
21 was \$65,467 when her approximate actual taxable income was \$116,977 and that the  
22 approximate additional income tax due and owing was \$17,850.

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1 The statutory reference is Title 26, United States Code, § 7201.

2  
3 Counts Thirty-One through Thirty-Three charge Defendant JO ANN CRUPI as  
4 follows:

5  
6 [The Court reads Count Thirty-One through Thirty-Three of the Indictment  
7 (Indictment ¶ 139).]

8  
9  
10 Count Thirty-One of the Indictment charges that, for the 2004 tax year, Defendant  
11 JO ANN CRUPI falsely reported on her tax return that her taxable income was \$104,418 when  
12 her approximate actual taxable income was \$170,290 and that the approximate additional income  
13 tax due and owing was \$13,341.

14  
15  
16 Count Thirty-Two of the Indictment charges that, for the 2007 tax year,  
17 Defendant JO ANN CRUPI falsely reported on her tax return that her taxable income was \$0  
18 when her approximate actual taxable income was \$34,700 and that the approximate additional  
19 income tax due and owing was \$7,955.

20  
21 Count Thirty-Three of the Indictment charges that, for the 2008 tax year,  
22 Defendant JO ANN CRUPI falsely reported on her tax return that her taxable income was

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1 \$2,534,045 when her approximate actual taxable income was \$2,589,665 and that the  
2 approximate additional income tax due and owing was \$19,467.

3  
4 The Indictment alleges that the Defendants ANNETTE BONGIORNO and JO  
5 ANN CRUPI violated Section 7201 of Title 26 of the United States Code, which provides, in  
6 pertinent part, that:

7  
8 Any person who willfully attempts in any manner to evade  
9 or defeat any tax imposed by [the Internal Revenue Code  
10 shall be guilty of a crime].

11  
12  
13 **TAX EVASION -**  
14 **ELEMENTS:**  
15 **(COUNTS TWENTY-FIVE TO TWENTY-NINE AND THIRTY-ONE TO THIRTY-**  
16 **THREE)**  
17

18 In order to prove the crime of tax evasion, the Government must establish beyond  
19 a reasonable doubt each of the following three elements:

20  
21 First, that the individual Defendant you are considering owed substantially more  
22 federal income tax for the calendar year specified in the charge than was declared due on her  
23 income tax return;



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1                                   **TAX EVASION SECOND ELEMENT -**  
2                                   **AFFIRMATIVE ACT CONSTITUTING EVASION:**  
3                                   **(COUNTS TWENTY-FIVE TO TWENTY-NINE AND THIRTY-ONE TO THIRTY-**  
4                                   **THREE)**  
5

6                   The second element of the tax evasion offense which the Government must prove  
7 is that the individual Defendant you are considering committed the affirmative act constituting  
8 tax evasion described in the relevant Count of the Indictment.

9  
10                   The Internal Revenue Code makes it a crime to attempt, in any manner, to evade  
11 or defeat any income tax imposed by law.

12  
13                   There are many different ways in which a tax may be evaded, or an attempt may  
14 be made to evade it. In this case, the Indictment alleges that the Defendants engaged in the  
15 specific activities I referenced when reading these Counts of the Indictment.

16  
17  
18                                   **TAX EVASION THIRD ELEMENT -**  
19                                   **WILLFULNESS:**  
20                                   **(COUNTS TWENTY-FIVE TO TWENTY-NINE AND THIRTY-ONE TO THIRTY-**  
21                                   **THREE)**  
22

23                   The third element of the tax evasion offense which the Government must prove is  
24 that the individual Defendant you are considering acted knowingly and willfully.

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1           To satisfy this element, the Government must prove beyond a reasonable doubt  
2 that the Defendant knew that she owed substantially more federal income tax for the specified  
3 calendar year than was declared on her income tax return. Whether or not the Defendant had this  
4 knowledge is a question of fact to be determined by you on the basis of all of the evidence. Of  
5 course, an act is done knowingly only if it is done purposely and deliberately and not because of  
6 mistake, accident, negligence, actual belief that the amounts received were not taxable income or  
7 other innocent reason. Simply filing a tax return that might be incorrect or incomplete, is not by  
8 itself a crime.

9  
10           In this regard, I instruct you that the Internal Revenue Code provides that the fact  
11 that an individual's name is signed to a return is evidence that the return was actually signed by  
12 that person. In other words, unless there is evidence in the case which leads you to conclude  
13 otherwise, you may find that a tax return was in fact signed by the person whose name appears to  
14 be signed on it. If the evidence leads you to conclude, beyond a reasonable doubt, that the  
15 individual Defendant you are considering signed her tax return, you may, but are not required to,  
16 draw the inference that the individual Defendant you are considering had knowledge of the  
17 contents of the return.

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1                   **TAX EVASION - UNLAWFULLY RECEIVED INCOME:**  
2                   **(COUNTS TWENTY-FIVE TO TWENTY-NINE AND THIRTY-ONE TO THIRTY-**  
3                   **THREE)**  
4

5                   In the course of your deliberations concerning the determination of whether any  
6 particular portion of the Defendant's income was taxable, you should consider income which  
7 may have been illegally acquired, as well as funds which the evidence indicates have been  
8 lawfully acquired.

9  
10                  If you find from the evidence that the individual Defendant you are considering  
11 received taxable income and failed to report it as the law requires, it makes no difference in  
12 determining the Defendant's tax liability whether such income was lawfully or unlawfully  
13 acquired.

14  
15  
16                                   **CONSCIOUS AVOIDANCE**

17                  As I have explained, each Count charged in the Indictment requires the  
18 Government to prove beyond a reasonable doubt that each individual Defendant that you are  
19 considering acted "knowingly," because he or she had knowledge of particular material facts. In  
20 determining whether a Defendant acted knowingly, you may consider whether he or she  
21 deliberately closed his or her eyes to what would otherwise have been obvious to him or her, and  
22 acted with deliberate disregard of the facts. However, I caution you that the Government cannot  
23 prove a Defendant's knowledge of a particular fact merely by showing that the Defendant was

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1     careless, foolish, negligent, inattentive or reckless. To find knowledge on this basis, it is not  
2     sufficient that the particular Defendant may not have tried hard enough to learn the truth.

3  
4             Thus, if you find there is proof beyond a reasonable doubt that the Defendant you  
5     are considering was aware of a high probability of a material fact's existence, and that he or she  
6     consciously and deliberately took action to avoid learning the truth of that fact, you may find that  
7     the Defendant had knowledge of that material fact. However, if the Defendant actually believed  
8     that a particular material fact did not exist, then you may not conclude that he or she acted  
9     knowingly, and you must acquit.

10  
11             It is entirely up to you, as the judges of the facts, to determine whether the  
12     Defendant deliberately closed his or her eyes and any inferences to be drawn from the evidence  
13     on this issue. Lastly, in the context of a conspiracy, if you find that a conspiracy existed, before  
14     you may convict any Defendant you must find that the particular Defendant you are considering  
15     knew there was an illegal conspiracy and that he or she intentionally joined it. You may not  
16     apply the principle of conscious avoidance as I have defined it to decide whether or not the  
17     Defendant you are considering intentionally joined a conspiracy. You may, however, find that  
18     the Defendant joined the conspiracy even if he or she did not actually know the details of the  
19     conspiracy's aims or unlawful objectives, if you find that the Defendant consciously and  
20     deliberately avoided knowing the truth about the conspiracy's aims and objectives.

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22

**VENUE**

In addition to the elements I have described for you, you must decide whether the alleged criminal acts in this case occurred within the Southern District of New York. The Government has offered evidence that some of the events occurred in Manhattan. I instruct you that Manhattan, the Bronx and Westchester County are all in the Southern District of New York.

I should note that on this issue – and this issue alone – the Government need not prove venue beyond a reasonable doubt, but only by a mere preponderance of the evidence. Thus, the Government has satisfied its venue obligations if you conclude that it is more likely than not that the activity at issue occurred in the Southern District of New York. If you find that the Government has failed to prove this venue requirement, then you must acquit the Defendant you are considering of the charge that you are considering.

**VARIANCE IN DATES**

It does not matter if the Indictment alleges that a specific transaction or event occurred on or about a certain date or month and the testimony indicates that in fact it was a different date or month. The law requires only a substantial similarity between the dates and months alleged in the Indictment and the dates and months established by the evidence.

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1

**CONCLUSION OF INSTRUCTIONS**

2

This completes my instructions of the law.

3

\*\*\*\*\*

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1           **SELECTION OF THE FOREPERSON, RIGHT TO SEE EXHIBITS AND REVIEW**  
2           **TESTIMONY; COMMUNICATIONS WITH THE COURT**  
3

4           Now, for some general instructions that will guide you in your deliberations.

5           You will shortly retire to the jury room to begin your deliberations. When you retire to the jury  
6           room, you must have a foreperson. That person will preside over the deliberations and speak for  
7           you here in open court. Other than those functions, the foreperson will have no greater nor lesser  
8           authority than any other juror.

9  
10           It is my custom to select the foreperson of the jury. Accordingly, I am now  
11           selecting juror number two as your foreperson.

12  
13           When you retire to the jury room to deliberate, you will be provided with lists of  
14           the exhibits that have been admitted into evidence. You may request to see any of the exhibits.  
15           You may also request to review any of the testimony. Please remember that it is not always easy  
16           to locate what you might want, so be as specific as you possibly can in your requests.

17  
18           I remind you that any notes you may have taken during trial are simply an aid to  
19           your personal memory. They are not to be shared. Because the notes may be inaccurate or  
20           incomplete, they may not be given any greater weight or influence than the recollections of other  
21           jurors about the facts or the conclusions to be drawn from the facts in determining the outcome  
22           of the case. Any difference between a juror's recollection and a juror's notes should always be  
23           settled by asking to review the court reporter's transcript on that point. You must base your

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1 determination of the facts and, ultimately, your verdict, on the court record rather than on your  
2 notes.

3  
4 During your deliberations, you must not communicate by any means with, or  
5 provide any information about this case, or anything or anyone having to do with it to, anyone  
6 who is not part of the 12-member deliberating jury. You may not communicate with outsiders  
7 directly, in writing or by using any electronic device or media, such as a telephone, cell phone,  
8 smart phone, iPhone, or computer; the internet, any internet service, or any text or instant  
9 messaging; or any internet chat room, blog, website or social networking platform such as  
10 Facebook, LinkedIn, YouTube, or Twitter, to communicate to anyone any information about this  
11 case or to conduct any research about this case until after I accept your verdict. You must  
12 continue to refrain from receiving any outside information about this case until the case is over.

13  
14 Each of your requests, and any communication with the Court, should be made  
15 to me in writing, initialed by your foreperson, and given to the U.S. Marshal, who will be  
16 available outside the jury room throughout your deliberations. After consulting with counsel, I  
17 will respond to any question or request you have as promptly as possible, either in writing or by  
18 having you return to the courtroom so that I can speak with you in person.

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1                   **DUTY TO DELIBERATE AND NEED FOR UNANIMITY**

2                   The Government, to prevail as to each individual Defendant with respect to each  
3 Count of the Indictment, must prove the essential elements of the crime charged beyond a  
4 reasonable doubt, as I have already explained in these instructions. If the Government succeeds,  
5 your verdict should be guilty; if the Government fails, your verdict should be not guilty.

6  
7                   To report a verdict, your decision must be unanimous.

8  
9                   Your function is to weigh the evidence in the case and determine whether or not  
10 the Defendant you are considering is guilty, as to each crime with which that Defendant is  
11 charged in the Indictment, solely upon the basis of such evidence.

12  
13                   Each of you must decide the case for yourself, after consideration, with your  
14 fellow jurors, of the evidence of the case. You should not hesitate to change an opinion when  
15 convinced that it is erroneous. However, you are not bound to surrender your honest convictions  
16 concerning the effect or weight of the evidence for the mere purpose of returning a verdict or  
17 solely because of the opinion of other jurors. Discuss and weigh your respective opinions  
18 dispassionately, without regard to sympathy, without regard to prejudice or favor for either  
19 party, and adopt that conclusion which in your good conscience appears to be in accordance with  
20 the truth.

21

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1           Again, each of you must make his or her own decision about the proper outcome  
2 of this case based on your consideration of the evidence and your discussions with your fellow  
3 jurors. In short, your verdict as to each charge and each Defendant, whether you find a  
4 Defendant guilty or not guilty, must reflect your conscientious decision as to how the issues  
5 should be decided. And your decision must be unanimous. That is, in order to return a verdict,  
6 it is necessary that each juror agree to it.

7  
8           After you have reached a verdict, your foreperson completes and signs the  
9 verdict form and will advise the Marshal outside your door that you have reached a verdict and  
10 are ready to return to the courtroom.

11  
12           If you are divided, do not report how the vote stands, and if you have reached a  
13 verdict do not report what it is until you are asked in open court.

14  
15           Please remain silent, in your seats, while I confer briefly with counsel.

16  
17           **[SIDEBAR RE: ANY OBJECTIONS TO CHARGE]**

18  
19           At this time I thank, and excuse from deliberations for now, the three remaining  
20 alternate jurors. All of us in this courtroom are grateful for your faithful and attentive  
21 participation in these extraordinary proceedings. Even though you are being excused from  
22 deliberating for now, you may be called to join the deliberations if that becomes necessary in the

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1 future. Accordingly, I am not releasing you from your oath as jurors or from your obligations of  
2 confidentiality at this time. You must continue to follow my instructions to keep your views to  
3 yourself, to steer clear of all outside information and views about the case, and not to discuss the  
4 case, or anyone or anything having to do with it, in any way, with any one at all.

5  
6 Please make sure that Ms. Ng has telephone numbers at which you can be  
7 reached, and be prepared to return to the courthouse on three hours' notice if called to do so. If  
8 you are not recalled during the deliberations, Ms. Ng will notify you after the deliberations have  
9 ended. Jurors fourteen, seventeen and eighteen, thank you. We wish you and your families well.  
10 Jurors, 14, 17 and 18, please accompany Ms. Ng to the jury room to gather your belongings, give  
11 her all of your notes, and let her verify your contact information.

12  
13 We will all remain here quietly, in our seats, until Ms. Ng returns.

14  
15 The Marshal will be sworn in a moment and you will retire to the jury room to  
16 begin your deliberations. You must only deliberate when all 12 of you are present in the room.  
17 You will deliberate today until 4:30 p.m. and each succeeding week-day as necessary. You must  
18 not discuss the case, or anything or anyone having anything to do with it, in any way, outside the  
19 jury room, when fewer than all 12 of you are present, or with anyone who is not a member of  
20 this 12 member jury. You may not do any outside research or consult any outside sources,  
21 electronic or otherwise. Leave all notes, exhibits and case related material in the jury room at all  
22 times. The Marshal will bring you back to the courtroom for dismissal at the end of the day.

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1 Multiple copies of the verdict form, the exhibit lists and the Indictment will be  
2 provided to you shortly. Copies of the Jury Instructions will be provided to you as soon as  
3 possible. You will also be given forms on which to write any notes to the Court.

4

5 [Deputy Clerk swears Marshal in.]

6

7 Mr. Marshal, please escort the jury to the jury room.