

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

No. 09CR700-LTS

DAVID FRIEHLING,

Defendant.

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ORDER

In connection with the sentencing of the above-named Defendant, the Court has reviewed the operative charging instrument in this case, the First Superseding Information, labeled S1 09CR700 (see Docket Entry No. 32), which includes a forfeiture allegation as to the Securities Fraud crime charged in Count One, which Defendant admitted in his guilty plea. In this connection, the Court has also reviewed the Preliminary Order of Forfeiture (the “Forfeiture Order”) entered by the Honorable Alvin K. Hellerstein in this case on November 3, 2009.¹ (See Docket Entry No. 34.) The Forfeiture Order signed by Judge Hellerstein includes a money judgment in the amount of \$3,183,000. (Id.)

As with the other defendants in this case who were convicted of securities fraud, the Defendant’s Sentencing Guidelines offense level calculation, as set forth in the Presentence Investigation Report (“PSR”), appears to be driven by Madoff Securities’ cash flow. This is indicated by the 30-point offense level enhancement attributed to Defendant, who is being held liable for losses exceeding \$400 million. (See PSR ¶ 82.) Defendant’s forfeiture obligation of

¹ The Forfeiture Order was amended by two subsequent partial vacatur on September 28, 2011 (see Docket Entry No. 51), and November 13, 2014. (See Docket Entry No. 92.)

\$3,183,000 appears inconsistent with such an enhancement. The Court therefore directs the parties to file written submissions by **Tuesday, May 26, 2015**, explaining why Defendant should not be subject to a forfeiture obligation in the form of a money judgment which represents the proceeds obtained from the securities fraud offense for the period of time during which the Defendant participated in the offense.²

SO ORDERED.

Dated: New York, New York
May 21, 2015

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

² In his sentencing submission, Defendant asserts that his auditing firm took control of the Madoff Securities account in 1998. (See Docket Entry No. 108, at p. 5.) Using the information set forth in the July 18, 2014, Declaration of Matthew B. Greenblatt (see Docket Entry No. 1083-2 in Case No. 10CR228), the Court has calculated the total cash additions to Madoff Securities in the period from 1998 to 2008 – the year in which Madoff Securities collapsed – to be \$130,756,241,720.