



Securities Litigation & Regulation

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Expert Analysis

What Will the SEC Do Differently in the Aftermath of the Madoff Scandal?

By David Z. Seide, Esq.

The Bernard Madoff scandal has been acutely embarrassing to the Securities and Exchange Commission. According to his voluntary confession, Madoff was engaged in the world's biggest Ponzi scheme, involving \$50 billion in possible investor losses. Yet Madoff had been repeatedly investigated by the SEC at least as far back as 1992, with the latest investigation opened and closed in early 2006.

According to internal SEC documents obtained by the Wall Street Journal, the agency's New York office opened its 2006 investigation in early January and took sworn testimony at one of the Madoff feeder funds from Madoff and personnel.¹ The agency then closed the investigation three weeks later after finding no evidence of fraud — an unusually short period given that most SEC enforcement investigations often run for many months, if not years.

The SEC will likely undertake a variety of measures to improve the effectiveness of its examination and enforcement efforts.

Former Madoff competitor Harry Markopolos reached a very different conclusion years earlier. Markopolos told the House of Representatives' Financial Services Committee at a Feb. 4 hearing that he initially shared his suspicions that Madoff was a fraud with the SEC's Boston office in 2000. Subsequently, he dealt with the SEC's New York office and the Office of Risk Assessment in Washington and compiled a written report in 2005 to back up his suspicions. Yet Madoff's fraud only finally came to light in December 2008, when Madoff, apparently realizing that his scheme was about to collapse as he was faced with mounting customer redemption requests, confessed to his decades-old scheme.

Soon after news of Madoff's scheme burst on the scene, then-SEC Chairman Christopher Cox expressed his grave concern about "the apparent multiple failures over at least a decade to thoroughly investigate the allegations [about

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