

Derivative Trade: More On The Madoff Mess

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Global Research, February 03, 2009

3 February 2009

For the last six weeks or so, I have been dealing with a large number of people whom I never previously knew and who did not previously know me. They are victims of Madoff. They are not the billionaires, huge international funds, or gigantic banks that the media focuses on. They are plain Americans who worked like dogs all their lives, managed to save some money, thought they had invested it wisely, were fooled by, and got sucked in by, the complicitous SEC's 1992 pronouncement that there was no fraud and/or its failure of retraction or of any action thereafter, and now, in their senior years, suddenly find themselves financially wiped out or gravely injured. They are selling their houses to raise money to live, they are trying to unretire and get back into the workforce at a time of depression and high unemployment caused by the barons of Wall Street — which has just passed out nearly \$20 billion in bonuses — who were aided and abetted by Greenspan, Rubin, Summers, Bush and Bush's laissez faire Republican Party. They are desperate and in agony.

One of these plain Americans recently sent me an email. It was poignant. She gave me permission to print it, with her identification deleted:

Dear Sir

I have been reading your articles on line. I write you this email with tears in my eyes engulfed with great emotion. I too am a victim of Bernard Madoff's masterful Ponzi scheme and I too am left with nothing. You are the first one I have written . Your articles have made more sense to me than any thing I have read or seen (and I follow the stories on the internet/TV carefully). I have no lawyer, accountant, advisor – just me. Your words resonate.

I am not the stereotypical investor the reporters seem to love to showcase, to sensationalize their stories. I am a regular plain person, mom, wife, grandmother. I am the working poor – owning a small yard maintenance business in [redacted] with my husband – earning enough to “get by”. No more. We live in a 1500 sq foot house, have 1 car that runs . Going to the dentist., the doctor is only on an as absolutely necessary basis. There are no summer houses, jewelry, art, travel, no steaks or fine wine just a hamburger / beer and Walmart. My last job was as a maid. My husband and I have 3 daughters. For the most part, I have stayed home with our girls (the youngest is now in college locally) as they grew up. I worked here and there if we needed money, mostly as a maid. Oh yes I am poor and a jew.

I invested in BLMIS 17 years ago with my 3 sisters – each of us putting in money jointly to have enough so Mr Madoff would take our account. He did. (collectively we had under \$100k.) A brother in law did all the accounting work. I never even saw a statement, just got tax forms at the end of the year from him.(K-1) We split our group 7 years ago so those that wanted could add more to their account. At that point I began getting monthly and quarterly

statements, flying solo. My sister (her husband did the accounting with our group) died the next year so I have no records of the past.

I never worried about the luxury of being a stay at home mom. I had a Madoff account. It grew steadily but not by huge amounts as the news reports. My wealthy friends were making tons of money investing with their brokers (who wanted nothing to do with me since I wasn't a big enough account as told to me by a broker). Apple, Microsoft grew, split – my friends got in on hot tips etc etc not me. But I finally had an investment that I could do well with and knew as my children grew under my loving care, not day care, I would have Madoff.

To this date, I think I am the poorest Madoff investor with the smallest account, at least based on what the media has reported. I haven't gone from riches to rags. I never had riches. Stories like mine are uninteresting because they don't make the public, those viewing the media, happy or feel good to know someone like them was a victim. It is more sensational, a thrill to think it was only the rich, the elite, the movie stars — people the working class can laugh at, feel the situation was caused by the greedy rich.

I have no way to recoup what I thought were my life's savings. I have very few quarters for social security – Madoff was for both my husband and me.

Based on my November 2008 statement — I could file 2 1/2 SIPC claims and be within their limit! That is how small for some but huge for us my account was worth. I never withdrew any funds, just paid taxes all 17 years.

The scary part now is the unknown — with very little news from the trustee/SIPC — my emotions go from initially being hopeful to total despair. Nights are sleepless. There are no jobs where I live –

So I appreciate your thoughtful comments on OpEdNews — the only ones that have uttered any reason to me. Rich or middle class or poor – a loss of one's life savings is devastating. I feel like a failure. My only hope right now for a modest life in the future is SIPC — to pay out something soon — for those that need living money now and for those of us that will need to quickly reinvest what ever we can salvage. The clock is ticking.

Sincerely yours

[Name Redacted]

I responded to this email with one that expressed my sympathy, and received back the following email:

How kind of you to respond to my email. Please know I was the one that was touched by your articles. I am sad and grieving about what could have been, a modest retirement for my husband and me, I am frightened about our senior years, but I am almost more overwhelmed with the realization that our government (SEC), our culture is so corrupt, uncaring, filled with greed.....SEC can say mea culpa and be done with Madoff investors....Bernie will end up in a country club jail while his wife and kids live happily on factious profits that won't get clawed back Mr Picard will earn more by paying us less.....I have become cynical . My husband and I will survive this – after all as I said in my email we never had a high life – I actually think we are better off then most victims that lost everything because we are accustomed to a simple frugal life already. It is easier in life to move up in station than down.!! We are already down! I have many weak moments and feelings of disbelief but I am trying very hard not to go there. It is time to replant my vegetable garden here – this

year it is with more meaning.

I have no objections to you sharing my letter provided you can assure me full anonymity. Right now this is still a very private matter for me. I realize there is little understanding of the spectrum of victims involved and agree the public needs to know the truth.

As an aside, do you know if amongst the victims there is any activism happening in the case – for example letter writing or calling Congress/Senate ?

Thank you again for your articles – I wish you good health and happiness.

[Name Redacted]

This woman's emails poignantly reflect the agony visited on so many by the combination of Madoffian fraud and governmental irresponsibility.

But now contrast her poignant emails with a view expressed during an exchange on a CSpan call-in show ("Washington Journal," I believe) by a Republican Congressman, Mark Steven Kirk of Illinois.

Kirk represents a number of suburban towns north of Chicago , including ones that traditionally were havens of the WASP and wealthy, are still havens of the well off, sometimes are still heavily WASP, and have been bastions of Republicans forever. Kirk, who has the smooth-faced visage so often endemic to politicians, could not exactly be called underprivileged. He attended one of the country's most elite public high schools, New Trier, which has served the elite of the Northern Chicago suburbs forever — for around 100 years I would bet, including a long period when those suburbs were exclusively WASP and wealthy. His B.A. is from Cornell, he has a Master's degree from the London School of Economics, and he has a legal degree from the elite Georgetown University Law School in Washington . He has spent almost all of his career, except for two or three years, in politics or government. He was not out there scrabbling for a living in the private sector like Madoff's victims were.

When Kirk was on the CSpan call-in show, he would lengthily pontificate in answer to telephonic questions, the way that legislators always do. No question was so minor not to be worth hundreds of words. Philip Roth once satirized Eric Sevareid as saying blah, blah, blah, blah, blah, blah, blah, blah, blah, blah, blah, blah. And more blah. That was Kirk too, until one fellow called in and asked whether Kirk would support a bailout for the victims of Madoff. Suddenly, the loquacious Congressman who is supposedly a moderate Republican, and who held forth at great length on even the trivial, became an exponent of the one word, clipped response. "No" was his expostulation.

This supposedly moderate representative of the Bushian Republican Party which led the country into foreign, economic and regulatory disaster from 2000 (when Kirk was first elected) until today, this supposedly moderate representative of a Bushian party which aided and abetted such fantastic economic disaster that it requires a bailout of one or more trillion dollars to the culpable private side actors it collaborated with, this child of continuous privilege in high school, college, graduate school and life, this "worthy" who has not had to scramble in life as Madoff's victims have, this motor mouth who holds forth loquaciously on television on even the most trivial non Madoff subjects — this person's tersely expressed attitude towards helping innocent, non culpable, hardworking unprivileged persons such as the woman who wrote me the poignant emails essentially is "fuck 'em."

Is it ironic that Kirk means church?

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Regardless of party, not all legislators have the attitude of the “church” from the wealthy northern suburbs of Chicago. There are those who are horrified at what has happened. True, so far their horror has mainly focused, sometimes almost exclusively focused, on the regulatory failure, on the question of how could the SEC — and FINRA too — have missed this gigantic fraud and how do we correct whatever led to the regulatory failure. Generally, little concern has been shown for the human wreckage caused by the incompetence and complicitousness of the regulators. But some have shown concern for the human wreckage, particularly a few Congressmen at a hearing of January 5th and, even if to a somewhat lesser extent, some Senators at a hearing on January 27th.

Let us briefly discuss aspects of the January 27th hearing of the Senate Banking Committee. The witnesses, who comprised a panel, included John Coffee, a nationally famous professor of securities law and regulation at the Columbia Law School, Stephen Harbeck, the head of FINRA, Stephen Luparello, the head of the SIPC, Dr. Henry Backe, the head of a 140 employee medical practice that serves people in Bridgeport Connecticut, including the uninsured, Lori Richards, director of the SEC’s Office of Compliance Inspections and Examinations, and Linda Thomsen, the Director of the SEC’s Division of Enforcement.

The last two, of course, would seem to bear extensive responsibility for the SEC’s failure. Little wonder that, as further discussed below, they refused to answer any questions about what happened with regard to Madoff.

The Senators’ views were pretty much of a piece. They simply could not believe that the SEC, and FINRA too, missed this fraud. They could not believe that the SEC never issued subpoenas to Madoff despite Markopolos’ constant warnings to it, or that FINRA had not caught Madoff though FINRA and its predecessor, the NASD, inspected Madoff once every two years since 1960 and had the power to make, and should have made, inquiries regarding Madoff’s brokerage business that would have revealed the fraud. Senators commented on the detail and thoroughness of the views Markopolos presented to the SEC and certain of the red flags he presented. Those red flags included ones often talked of now: the absence of an independent custodian of securities, the use of a three person — in reality a one person — accounting firm, the articles written circa 2000 and 2001, the discovery circa 2006 or 2007 that Madoff — and, it seems likely, members of his family and other personnel — had lied to regulators about his accounts, the number of customers, and his investment strategy, the fact that Madoff was willing to leave on the table fortunes made by other investment managers (which indicates he wanted nobody questioning him), and the fact that word was out all over Wall Street that Madoff was not on the up and up, several houses refused to do business with him because of such concerns, and Markopolos had named names regarding the Wall Street experts the SEC should talk to. (Most of these points have been discussed here previously.)

Professor Coffee pointed out that, as has also been discussed here previously to some extent, the absence of an independent custodian and the less than puny nature of the accounting firm should have set off alarm bells and that, as one who has participated in the FINRA disciplinary process, he knew FINRA most certainly did have the power to make relevant inquiries and to throw people out of the broker-dealer business if they refused to answer the inquiries. He also made clear that the SEC, by rule, had deliberately and

inexcusably permitted incompetent accountants to audit brokers, and that (although the SEC had done little to combat them) Ponzi schemes have been a growing industry in recent years, with \$9.6 billion lost to them in 2002 and over one billion dollars being lost to them in four others of the last dozen years.

Dr. Backe explained the havoc being caused the people in the medical practice, who had relied on the SEC and FINRA. Luparello, the head of FINRA, admitted the system had failed to protect investors, but, as one would expect, tried to excuse the failure by false claims that Coffee debunked.

Harbeck said that SIPC has \$1.7 billion, does not know the total amount of claims, can draw on a two lines of credit, and should have a much larger line of credit because of inflation and the growth of the market since its one of its lines was set in 1970.

The two officials of the SEC took the cake. They were delighted to repeatedly tell the Committee how passionate they and their colleagues are about their jobs, how hard they and their colleagues work, how much they want to stop fraud, how seriously they take the Madoff matter, how they follow the evidence, what the Commission does in the abstract. But answer questions about the facts of what happened in the Madoff mess, for which they apparently bear some or a lot of responsibility? Not a chance. No way. Answering such questions supposedly would jeopardize a pending internal investigation and possible criminal cases for perjury (presumably against one or more members of the Madoff family and its supporting personnel.) It would seem that the Senate Committee must have agreed in advance to this limitation on their testimony, although why it did so was never explained, nor did the two officials ever explain the reasons why answering questions about the facts of what happened in the Madoff case would injure an internal investigation or subsequent prosecutions. Simpleton though I may be, such reasons are surely not self evident to me. To me, the refusal to answer seems part and parcel of an impending SEC cover-up, the way that federal agencies always try to cover up their delicts: via secrecy; the way federal agencies always cherry pick and put forward only the good things while hiding all the bad that they are able to hide.

So, testify about the SEC's examination of Madoff? No. Testify about "how we dealt with Mr. Markopolos' complaint and the investigation we began and then closed?" No. Testify about questions regarding Madoff's auditor? No. Testify about the question of a custodian for Madoff? No. Testify about who in the SEC saw Markopolos' complaint? No. Testify about whether the bad consequences the SEC was warned of by Markopolos came true? No. Testify about other pertinent matters? No.

You know, I think these two officials, who each are likely to share in responsibility for wrecking the lives of thousands but now won't tell Congress what they or their colleagues did, should do the decent thing, the honorable thing, and commit suicide.*

To Be Continued.

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