Early Suspicions About Bernard Madoff

By Stephen Lendman
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On December 12, 2008, the Wall Street Journal headlined: "Top Broker Accused of $50 Billion Fraud. Bernard L. Madoff….was arrested by federal agents (the previous day) after his sons turned him in for running what they said their father called a giant Ponzi scheme."

Too late to matter, the SEC, in a civil complaint, cited an ongoing $50 billion swindle in asking a judge to seize the firm and its assets. "Our complaint alleges a stunning fraud that appears to be of epic proportions," according to Andrew Calamari, SEC's New York associate director of enforcement who was derelict in his duty since being appointed on November 14, 2004 after joining the agency in 2000.

In a separate criminal complaint from an equally derelict agency, the FBI's Theodore Cacioppi said Madoff "deceived investors by operating a securities business in which he traded and lost investor money, and then paid certain investors purported returns on investment with the principal received from other, different investors, which resulted in losses of billions of dollars."

Quotes from two Madoff employees were part of the complaint saying that he ran the investment business on a separate floor, kept financial statements under lock and key, and was "cryptic" about the firm's dealings. The two employees were unnamed but were believed to be Madoff's two sons, Andrew (the company's director of trading) and Mark (its senior managing director and compliance officer).

According to Mr. Cacioppi, Madoff told him and another agent: "There is no innocent explanation (and that he) paid investors with money that wasn't there," said he was "broke," and decided "it could not go on."

He was arrested, charged in federal court with criminal securities fraud, didn't enter a plea, was released on $10 million bond, and placed under 24-hour house arrest in his luxury Manhattan apartment. A preliminary hearing is scheduled for January 12.

On May 7, 2001, Barron's ran an Erin Arvedlund article titled: "Don't Ask, Don't Tell" that expressed doubts about Madoff's spectacular performance. Year in and year out, in up markets and down, he produced average annual compounded 15% returns or more for over a decade, and some of his larger multi-billion dollar-run funds never had a down year. Needless to say, he attracted investors who raved about him.

Not ordinary ones nor would Madoff accept any. His firm Bernard L. Madoff Investment Securities LLC operated as a securities broker/dealer globally. It was headquartered in New York and provided executions for broker-dealers, banks, and financial institutions. He was also one of the world's largest hedge fund managers, handling billions of dollars for a select clientele.

According to National Association of Securities Dealers' (NASD) records as of November 17, he had about $17.1 billion under management. On December 22, Bloomberg reported that loss calculations are still being tabulated, and its latest tally showed investors had about $36 billion with his firm. On December 11, Madoff told employees that he may have cost his clients $50 billion, according to the FBI complaint.

At least half of his clients were other hedge funds. The rest was a who's who of high net worth individuals, banks, pension funds, universities, charities, insurers, other money managers, New York and other synagogues, and the Palm Beach Country Club he belongs to – if it'll keep him or if he can afford the dues after being stripped of his assets.

Some notable investors include:

— HSBC Bank

— Bank Medici of Austria

— Royal Bank of Scotland

— Royal Bank of Canada

— Fairfield Sentry Ltd.

— Sumitomo Life Insurance Co.

— UBS Bank

— BNP Paribas

— sovereign wealth funds

— Sterling Equities, Inc run by New York Mets owner, Fred Wilpon

— Yeshiva University

— Tufts University

— Hadassah

— the Thyssen family

— Senator Frank Lautenberg

— Jeffrey Katzenberg

— the (Eliot) Spitzer family

— Liliane Bettencourt, heiress to the L'Oreal empire, called the world's wealthiest woman, number 17 on the Forbes 2008 list of the world's richest people

— charities set up by Steven Spielberg, Mortimore Zukerman and Elie Wiesel

In total, over 4000 investors who, according to legal experts, may end up losing everything. As explained above, tallying the damage continues, and according to Madoff, it's around $50 billion.

Even sophisticated people lose out when they forget the old rule that if something looks too good to be true, most likely it is – especially in investing. Caveat emptor is key, but Madoff's clientele wanted none of it. Who can argue with success even though for many it was baffling. More on that below.

Nonetheless, his faithful reckoned that he was well respected. He'd been in business since 1960, served as vice-chairman of the NASD, was a member of its board of governors, and chairman of its New York region. He also chaired the Nasdaq's board of governors, served on its executive committee, and was chairman of its trading committee.

In addition, he was chief of the Securities Industry Association's trading committee in the 1990s and earlier this decade when he represented brokerage firms in discussions with regulators about new stock market trading rules.

In business for nearly 50 years, his web site highlighted the "high ethical standards" of his firm. It stated:

"In an era of faceless organizations owned by other equally faceless organizations, Bernard L. Madoff Investment Securities LLC harks back to an earlier era in the financial world: The owner's name is on the door. Clients know that Bernard Madoff has a personal interest in maintaining the unblemished record of value, fair-dealing, and high ethical standards that has always been the firm's hallmark."

He'll now defend that "hallmark" in US v. Madoff in US District Court for the Southern District of New York.

Early in December, he confessed to his sons that he ran "a giant Ponzi scheme," but unlike its originator (Charles Ponzi (1882 – 1949) did it globally. It's a pyramid scheme based on high promised returns (for Charles short-term ones), that require continued new investor funds to keep it going. If they slow or stop, the jig is up, and that's what happened to Madoff.

According to the Wall Street Journal, he suffered reversals in the recent market turmoil, chose not to tell investors, gambled on a rebound, assumed a high-risk strategy, and lost. It got worse as hedge fund redemptions increased ($7 billion according to the FBI complaint). He had trouble meeting them (he told his son) as new investor money dried up, finally stopped trying, confessed, called his business a fraud, "all a big lie," and said he was "finished" because the firm was insolvent.

Since the bull market ended in 2000, more people and the press began asking questions. Until recently, how could he prosper when so many others hit hard times. Madoff was secretive, abhored monitoring, and wasn't even registered with the SEC until September 2006. Nonetheless, early on, the agency was alerted that he was running a scam and did nothing.

In a December 22 Matt Renner Truthout article, former SEC criminal investigative lawyer Gary Aguirre spoke out and pointed fingers. He mentioned how his supervisor quashed his own attempt to subpoena Morgan Stanley's CEO John Mack in connection with his probe into possible insider trading by Pequot Capital Management, a prominent hedge fund.

He explained that as an investment advisor, the SEC had regulatory authority over Madoff. Yet after repeated complaints (over nine years) about a Ponzi scheme fraud, nothing was done to investigate. He speculated why:

— perhaps "personal links" between him and SEC staff;

— a reluctance to "apply the securities laws to the big players, to Wall Street's elite;" they only go after small fry;

— Washington's revolving door culture in all government agencies that allow officials to "rotate out to the private sector and earn more money;" but from the SEC, it's for much higher salaries so a manager making $200,000 can jump to $2 million on the outside, provided "they play the game;" and, of course,

— the unregulated climate since the Reagan era, under Democrats and Republicans, with little expected change under Obama.

The fox guards the hen house. The SEC failed dismally in its mandate. One bank failed after another. All the majors are insolvent. Given the magnitude of the problem, "you have to ask yourself, how could anybody miss the red flags…." In addition, the common practice of market manipulation and insider trading made Wall Street feel it was invulnerable. It still does even in the current environment, with suggestions of more criminal fraud to be uncovered, and Madoff now exposed as a swindler.

It's for the courts to handle him criminally and to process the dozens of lawsuits to follow.

James Petras on Madoff

James Petras wrote a jewel of a Madoff article titled: "Bernard Madoff: Wall Street Swindler Strikes Powerful Blows for Social Justice." He explained 11 reasons to give thanks given the type of clientele he attracted and how some use their wealth.

They practically "forced their money on (him)." Nonetheless, he "insisted they have recommendations from existing investors, deposit a substantial amount and guarantee their own solvency. Most considered themselves lucky to" be with him. His "standard message was that the fund was closed….but because they came from the same world (as himself) or were related to a friend, colleague or existing clients, he would take their money."

Petras listed the similarities with other high-level scams:

— "constant high returns;

— unmatched by any other broker;

— a lack of third party oversight;

— a backroom accounting firm physically incapable of auditing the multi-billion dollar operation;

— a broker-dealer operation directly under his thumb; and"

— an atmosphere of total secrecy he insisted on – "Don't Ask, Don't Tell;" more on that below.

Michael Hudson on Madoff and Ponzi

Hudson cuts through the fog on economics and finance and provides relevant historical perspective – currently in his latest article titled "Wealth Creation, or a Ponzi Scheme?" He explains how "financial cycles end in Ponzi schemes" with Madoff one example among many. "What (he) did was, in a nutshell, what the economy as a whole has been doing under the moniker (of) 'wealth creation.' " From that perspective, Madoff's scheme was pocket change, but try finding that said in the dominant media.

He and Charles Ponzi sold "hope, pandering to peoples' unrealistic desire to believe that a new way to make easy gains had been discovered, with no visible upper limit (on how long they) can persist in excess of the economy's own rate of growth."

Hudson explains that governments are instrumental in creating bubbles. They "need to be orchestrated by opinion makers, topped by public officials giving a patina of confidence." Alan Greenspan was America's lead "bubblemeister" much like Robert Walpole was for Britain during the early 18th century South Sea Bubble, and the same story is repeated throughout history.

"Today's balance sheets confuse bubble wealth with real capital formation" so that "investments (are what) accountants say they are." The same holds for "asset and debt values, given today's leeway for financial fiction." As a result, financial dealings became "decoupled from the 'real' economy." We live in a world of illusions. Media touts, government spokespeople and Fed chairmen effectively sell them, and everything works well until it doesn't.

Hudson shows how different "the actual economy is from what economic textbooks (and classical Adam Smith economics) teach. The recent stock market and real estate bubbles are much like pyramid schemes…." Money pours in from pension plans, mutual funds, and bank credit for real estate to bid up prices.

Something is terribly wrong. Value is divorced from "price, windfall and capital gains as distinct from earned income." Also, "market prices rise and fall," but debt remains. When it can't be repaid, "savings are wiped out" much like today.

"Instead of reducing the debt overhead by earning their way out of (it), economies (like America) have sought to inflate" as a way to do it – but not by the conventional inflation of creating higher prices and wages. It's by "asset-price creation," and America took the lead in doing it.

After Nixon closed the gold window in 1971, "The US economy (became) unique in being able to create credit and foreign debt" with no limit. The result has been "unparalleled" debt growth "relative to income, production and wages."

Madoff is one actor (a bit player) in a greater scheme with government in the lead role. It "replaced industrial growth with purely financial wealth creation in the form of a real estate, stock market" and other asset class bubbles. Classical economics got turned on it head. Losses since mid-2007 are off the charts – at least $7.7 trillion and rising from real estate, financial assets, life insurance and pension fund reserves. Trillions more disappeared earlier – at least $4 trillion from 1998 – 2002, more still from "pump and dump" schemes, plus countless billions from foreign wars and huge amounts of waste, fraud and abuse, all down a black hole and unaccounted for.

The financial system alone accounts for many lost trillions. As Hudson puts it: "Property and credit have become costs instead of a benefit, institutional forms of rent and interest-extracting overhead rather than helpful inputs." Things reached their mathematical limits. The economy is in free fall. Contagion is spreading globally. An economic dark age approaches, and ordinary Americans now suffer for their government's (and Wall Street's) crimes with no end of pain in sight. Madoff just played the game until he gave it up when his operation collapsed. When the government collapses, we print more money. When it happens to Wall Street, we give it to them.

When homeowners are foreclosed, workers laid off, sick people aren't treated, poverty and hunger increase, homelessness reaches record levels, and the American dream becomes a nightmare, no help like that is forthcoming.

Madoff will be prosecuted in federal court. He was charged with one count of securities fraud that carries a maximum 20 year sentence and $5 million fine. Because of his influence and connections, expect much less than that, incarceration (if any) in a minimum security ("country club") prison, and after the commotion subsides, a quiet early release or eleventh-hour Marc Rich-type pardon.

Compare that to the mandatory minimum five year hard time sentence for possessing five grams (less than one-fifth of an ounce) of crack cocaine – harming no one but the person involved, usually a black teenager. For 50 grams (less than two ounces), it's ten years hard time – no reprieves, early releases, eleventh hour pardons, or judicial fairness for persons with no influence or connections.

Madoff Actively Bought Influence

According to the Center for Responsive Politics, "Madoff and Company Spent Nearly $1 Million on Washington Influence." He and his wife Ruth gave $238,200 to federal candidates, parties, and committees since 1991. Democrats got 88% of it.

Overall, he and others at his firm gave $372,100 in campaign contributions since 1991, 89% to Democrats. The company also spent $590,000 on lobbying over the same period, all but $10,000 with Lent, Scrivner & Roth.

Those in Congress he contributed to included:

— Senator Charles Schumer

— Senator Hillary Clinton

— Senator Christopher Dodd,

— Rep. Charles Rangel, and others

He also gave $102,000 to the Democratic Senatorial Campaign Committee.

Madoff – "The anti-Semite's new Santa"

That's according to Bradley Burston in his December 17 Haaretz article headlined: "The Madoff betrayal – Life imitates anti-Semitism." Christmas came early this year in the form of Bernard Madoff. He's the "answer to every Jew-hater's wish list. The Aryan Nation at its most delusional couldn't have come up with anything to rival this."

Burston is a bit over the top, but The New York Times spells out what he means in a December 23 Robin Pogrebin article titled: "In Madoff Scandal, Jews Feel an Acute Betrayal." Throughout the country, they're "sending up something of a communal cry over a cost they say goes beyond the financial to the theological and the personal." After all, the Ten Commandments teaches – "Thou shalt not steal."

But here's "a Jew accused of cheating Jewish organizations trying to help other Jews….of betraying the trust of Jews and violating the basic tenets of Jewish law. A Jew, they say, who seemed to exemplify the worst anti-Semitic stereotypes of the thieving Jewish banker."

According to Rabbi David Wolpe of Sinai Temple, Los Angeles, "I'd like to believe someone raised in our community, imbued with Jewish values, would be better than this." Is that his concern, or perhaps something else?

Many Jewish charities, educational institutions, and other organizations representing Jewish and Israeli interests lost fortunes in the scandal. The Jewish Community Centers Association of North America for one, and the Chais Family Foundation that had to shut down its educational projects in Israel.

According to Rabbi Jeremy Kalmanofsky of Temple Ansche Chesned, New York, "The Jewish world is not going to be the same for a while." For Rabbi Burton Visotzky of the Jewish Theological Seminary: "The fact that he stole from Jewish charities (emphasis on "Jewish") puts him in a special circle of hell." Unstated, but perhaps implied, is it's OK to steal from "goyim" or at least not as bad.

The Anti-Defamation League (ADL) went further. It stated that Madoff's arrest prompted an outpouring of anti-Semetic comments on web sites around the world, one calling Madoff "an ideal poster boychick" for this kind of thievery with others much less nuanced in their postings. ADL's director Abraham Foxman (well known for his bigotry and hypocrisy) said "Jews are always a convenient scapegoat, and the fact that so many of the defrauded investors are Jewish created a perfect storm for the anti-Semites."

In contrast, "Rabbi without borders" Jennifer Krause makes the most sense by viewing the scandal "in the much greater context of a human drama that is playing out in sensationally terrible ways in America right now. The Talmud teaches that a person who only looks out for himself and his own interests will eventually be brought to poverty. Unfortunately, this is the metadrama of what's happening in our country right now. When you have too many people (who only care about themselves and not others), we're (all) brought to poverty."

Perhaps Mr. Foxman took note – a man known for his antipathy to Islam, disdaining Palestinians, and praising the convictions of innocent Muslims under American kangaroo court justice.

Barrons Suspicions in 2001

At a 1999 New York hedge fund conference, Madoff got lavish praise from those on the Street who knew him. After its 1971 founding, his brokerage firm helped “kick-start the Nasdaq….in the early 1970s and (became) one of (its) top three market-makers….(It also became) the third-largest firm matching buyers and sellers of New York Stock Exchange-listed securities.”

In addition, he managed billions for private investors and performed spectacularly as described above. “When Barrons asked (him) how he (did it), he (said), ‘It’s a proprietary strategy. I can’t go into it in great detail.”

One of his hedge-fund-offering memoranda described the strategy this way:

“Typically, a position will consist of the ownership of 30 – 50 S & P 100 stocks, most correlated to that index, the sale of out-of-the-money calls on the index and the purchase of out-of-the-money puts on the index. The sale of the calls is designed to increase the rate of return, while allowing upward movement of the stock portfolio to the strike price of the calls. The puts, funded in large part by the sale of the calls, limit the portfolio’s downside.”

Options traders call this a “split-strike conversion” strategy. Simply put, it means Madoff apparently invested mainly in the largest S & P stocks. At the same time, he bought and sold offsetting options on them, to buy and sell shares at a fixed price on a future date. “The strategy, in effect, create(d) a boundary on a stock, limiting its upside, while at the same time protecting against a sharp decline” in its share price. In theory, when it works, it’s a market-neutral strategy for positive returns no matter which way the market goes.

It got some on the Street wondering if “Madoff’s market-making operation subsidize(d) and smooth(ed) his hedge-fund returns.” Why would he do it? Because with access to a huge capital base, he could make larger bets with less risk. It works like this:

“Madoff Securities (stood) in the middle of a tremendous river of orders, which means that its traders (had) advance knowledge, if only by a few seconds, of what the big customers in the market (were) buying and selling. By hopping on the bankwagon, the market-maker effectively lock(ed) in profits. As such, throwing a little cash back to the hedge funds (was) no big deal. And the funds’ consistent returns attract(ed) more capital. When Barron’s ran that scenario by Madoff, he dismissed it as ‘ridiculous.’ “

Nonetheless, some on the Street “remain(ed) skeptical about how (he) achieve(d) such stunning double-digit returns using options alone. Three option strategists for major investment banks” didn’t believe it, and one of his former investors said: “Anybody who’s a seasoned hedge-fund investor knows that split-strike conversion is not the whole story.”

More puzzling was that he charged no money-management fees, including for his private accounts. When asked to explain, he said “We’re perfectly happy to just earn commissions on the trades.”

Even so, no one understood his strategy, even people “who have all the trade confirms and statements.” One happy investor added: “The only thing I know is that he’s often in cash” when volatility gets extreme. The person refused to be identified because “Madoff politely request(ed) that his investors not reveal that he (ran) their money.”

He said: “If you invest with me, you must never tell anyone” that you’re doing it. “It’s no one’s business what goes on here.” According to an investment manager of an asset pool with money in a Madoff fund: "When he couldn't explain (to me) how (he was) up or down in a particular month, I pulled the money out." When they had the chance, his investors wish they had as well. Hindsight teaches painful lessons.

Whisleblower Harry Markopolos on Madoff

It's a 21-page November 7, 2005 document to the SEC on the Wall Street Journal's web site explaining that "The World's Largest (Madoff-run) Hedge Fund is a Fraud." He collected "first-hand observations" from fund-of-fund Madoff investors and from heads of Wall Street equity derivative trading desks. Every senior manager said "Bernie Madoff was a fraud."

Markopolos himself is a "derivatives expert" with experience following the strategy Madoff used. He said "Very few people (anywhere) have the mathematical background needed to manage these types of products," but he's one of them. He outlined a list of "Red Flags" that made him suspicious that "Madoff's returns (weren't) real." Because careers and his own safety were on the line, his report was unsigned. He wrote it solely for internal SEC use. He suggested the "highly likely" possibility that "Maddof Securities is the world's largest Ponzi Scheme," but he worried about his powerful political connections.

Markopolos listed 29 Red Flags. Below is a sampling:

— why would Madoff Securities (BM) charge only undisclosed commissions on trades and not operate like other hedge funds – taking a 1% management fee + 20% of the profits;

— why does Madoff not let hedge and fund of fund investors mention his firm's name in their performance summaries or marketing literature; why the secrecy; any money manager with great returns should want all the publicity he or she could get;

— Madoff's split-strike strategy was inferior to an "all index approach" and "incapable" of consistently generating high returns; "BM's strategy should not be able to beat the return on US Treasury bills due to" its glaring weakness;

— BM's protection "put" option buying strategy hurts returns; it should have challenged him to earn average 0% ones, not the spectacular performance he achieved;

— given the estimated size of his assets, "there (weren't) enough index option put contracts in existence to hedge the way BM" claimed; his strategy was mathematically impossible;

— counterparty credit exposures for firms like UBS and Merrill Lynch were too large for these companies to approve;

— BM's high returns could only be generated by so-called "front-running" his customers' order flows by using advance information unavailable to others; the practice is illegal and those using it are guilty of securities fraud.

Markopolos concluded as follows:

"I am pretty confident that BM is a Ponzi Scheme, but in the off chance he is front-running orders and his returns are real, then this case qualifies as insider trading under the SEC's bounty program as outlined in Section 21A(e) of" The Securities Exchange Act of 1934 establishing the agency. "However, if BM was front-running, a highly profitable activity, then he wouldn't need to borrow funds from investors at 16% implied interest. Therefore it is far more likely that (he was) a Ponzi Scheme….The elaborateness of (his) secrecy, his high 16% average cost of funds, and reliance on a derivatives investment scheme that few investors (or regulators could comprehend provide strong evidence) that this (was) a Ponzi Scheme," and Madoff was a swindler.

In May 1999, Markopolos alerted the SEC's Boston office of his suspicions, urged it investigate Madoff, and followed up with repeated futile requests until the New York office (on January 4, 2006) got involved, based on his allegations, according to the Wall Street Journal.

The SEC learned plenty but didn't act. It discovered that:

— Madoff personally "misled the examination staff about the nature of his" Fairfield and other hedge fund accounts strategy;

— he failed to inform his Fairfield funds investors that he was the investment advisor; and

— he violated rules requiring that investment advisors register with the SEC; they must do so if they have more than 15 clients.

Using Markopolos' documents, SEC also investigated his allegations of front-running and Ponzi scheme practices, concluded they weren't substantiated, and recommended closing the case because Madoff "agreed to register his investment advisory business and Fairfield agreed to disclose information about Mr. Madoff to investors." It justified its action saying that the "violations (it uncovered) were not so serious as to warrant an enforcement action" – clearly due diligence negligence to give a Wall Street insider a free pass and very typical of how SEC operates.

In early 2008, Markopolos tried again through SEC's Washington office after getting an email from Jonathan Sokobin, an official charged with searching for big market risks. With low expectations he responded by emailing a very strong subject line: "$30 billion Equity Derivative Hedge Fund Fraud in New York." He cited an unnamed Wall Street pro who recently redeemed money from Madoff after learning that supposed trades in his account were never made.

Sokobin never responded. Markopolos heard nothing further until December 11 when a friend said Madoff was arrested. He was vindicated. "I kept firing bigger and bigger bullets at Madoff, but couldn't stop him. I finally felt relief," no thanks to the SEC, Wall Street's culture of fraud, big fish protecting each other because they all do similar things of one sort or other, and SEC acts more as facilitator than regulator.

In a December 23 letter to the Wall Street Journal, former SEC Boston office "examiner of advisers and funds" Eric Bright wrote:

"it wouldn't be the first time that something (like the Madoff case) fell through the cracks. The revolving door there is the biggest problem. Many staff regulators who are ambitious and competent quit to pursue jobs in the financial industry that pay multiple times their government salaries.

During my time at the SEC, I heard the excuses about why cases that we, the examination staff, uncovered failed to warrant actions by the enforcement staff. Too small….too complicated….too politically connected, don't rock the boat….It is time to rethink the structure of the regulatory system because what we have isn't working."

SEC Non-Enforcement Under George Bush

A December 24 New York Times Eric Lichtblau article highlighted how "Federal Cases of Stock Fraud Drop(ped) Sharply" under George Bush. The article states that "Federal officials are bringing far fewer prosecutions of fraudulent stock schemes" than eight years ago and suggests that the administration has been lax in "policing Wall Street" and "something of a paper tiger in investigating securities crimes."

According to a Syracuse University research group using DOJ data, prosecutions dropped from 437 cases in 2000 to 133 through November 30 this year. At the SEC, it's even worse. It undertook a disturbingly low 69 investigations in 2000, then practically none in 2007 with only seven – an 87% decline in due diligence.

According to Jacob Zamansky, a New York lawyer who specializes in representing aggrieved investors, "the SEC has completely fallen down on the job. They're more interested in protecting Wall Street than protecting individuals. The new administration has to do a complete overhaul of the SEC." Chances for that are practically zero. More on that below.

Former New York prosecutor Sean Coffey is as critical as Zamansky in calling SEC's enforcement efforts "awful." It "neutered the ability of the enforcement staff to be as proactive as they could be. It's hard to square the motto of investor advocate with the way they've performed the last eight years."

Data also show that the FBI (DOJ's main investigative arm) has been as negligent as the SEC, and Syracuse research group's co-director, David Burnham said it's "no surprise" given the administration's priorities and strongly pro-business stance.

Even the SEC's own internal data suggest that the agency has been lax and prefers wrist-slaps alone for its limited number of actions against infractions, hardly a way to deter them.

Barack Obama – Wall Street's Hired Hand

Since Ronald Reagan, and especially under Bill Clinton and George Bush, Wall Street got a free ride. Foxes guard the hen house. Regulators don't regulate. Investigations aren't conducted. Criminal fraud goes undetected. Little is done to eliminate it, and, except for rare instances like the Madoff scandal (that a business reversal and confession revealed), only small offenders need worry.

Section 4 of the Securities Exchange Act of 1934 established the SEC. It's mandated to enforce the Securities Act of 1933, the Trust Indenture Act of 1939, the 1940 Investment Company Act and Investment Advisers Act, Sarbanes-Oxley of 2002, and the Credit Rating Agency Reform Act of 2006. Overall, it's responsible for enforcing federal securities laws, the securities industry, the nation's stock and options exchanges, and other electronic securities markets. It's charged with uncovering wrongdoing, assuring investors aren't swindled, and keeping the nation's financial markets free from fraud.

It has five commissioners, a chairman, four main divisions (Corporation Finance, Trading and Markets, Investment Management, and Enforcement), 11 regional offices, a large staff and budget, and increasingly a culture of non-enforcement.

Enough for The New York Times (on December 15) to highlight its "String of Setbacks" under its current chairman, Christopher Cox. As Wall Street's top cop, the SEC has "increasingly conduct(ed) autopsies" of failed institutions instead of adequately performing preventive "biopsies." Madoff is the latest "black eye" from an agency wreaking of taint for lack of due diligence.

Earlier, "H. David Kotz, the commission's new inspector general, documented several major botched investigations. He told lawmakers of one case in which the commission's enforcement chief improperly tipped off a private lawyer about an insider-trading inquiry."

Another involved the agency's Miami office where investigators "inexplicably dropped an important inquiry involving securities sold by Bear Stearns (BS)." A third instance "documented the lack of any significant oversight....over (BS) in the months leading to its collapse."

SEC's enforcement division has been hampered by Bush administration budget cuts and regulatory changes making it harder to impose penalties, even in cases of egregious wrongdoing. Other problems also exist, including accusations that its employees engage in illegal insider trading and falsify financial disclosure forms. And there were "repeated instances of the failure by officials to pursue investigations."

Experts accused the Bush administration of hollowing out the commission, hobbling its enforcement and inspection efforts, and according to leading authority on SEC history, Joel Seligman, weakened the agency's ability and commitment to deter fraud.

Mary Schapiro will head the SEC for Obama. Under her stewardship, sharks on the Street will flourish. Business as usual will continue. She spent years advocating for Wall Street to be self-regulating, currently heads the Financial Industry Regulatory Authority (FINRA), was president and is now chairman and CEO of the National Association of Securities Dealers (NASD), is a former SEC commissioner, ran the Commodity Futures Trading Commission, and is expert at quashing investigations about fraud. Whether she'll roust any in her new post is problematic and doubtful as she likely was appointed to allow it. She's a consummate insider, considered safe, and no wonder Wall Street and the dominant media applauded her selection. That alone is the tip-off.

On her watch (beyond lip service), expect less enforcement, not more, and why so is simple. Eventually she'll return to the private sector to be well compensated for services rendered. Besides, there's no doubt where her interests lie, which ones she'll represent, and that's why she was chosen in the first place. Wall Street is in good hands with Mary Schapiro.

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Also visit his blog site at sjlendman.blogspot.com and listen to The Global Research News Hour on RepublicBroadcasting.org Monday through Friday at 10AM US Central time for cutting-edge discussions with distinguished guests on world and national issues. All programs are archived for easy listening.

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