The Litigation Aftermath of the Global Financial Crisis
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PONZI SCHEMES: US LAW OVERVIEW

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Introduction

“When the financial tide goes out is when you will see who is swimming naked”
Bernard Madoff
$20+ billion
On June 29, 2009, Madoff was sentenced to 150 years for what a federal judge called an act of "extraordinary evil."

Other Notable Ponzi Schemers

Tom Petters --3.65 billion
The Minnesota businessman founded Petters Group Worldwide Inc. and used one of his companies to bilk investors who thought their money was being used to buy electronic goods. The now-bankrupt Cambridge company Polaroid was once included among his businesses. On Dec. 2, 2009, Petters was convicted on 20 counts, including wire fraud, mail fraud, and money laundering. He was sentenced on April 8, 2010, to 50 years in prison.
Scott Rothstein
$1.2 billion

The disbarred Florida attorney, pleaded guilty to federal charges that he ran a $1.2 billion Ponzi scheme. Rothstein offered supposedly lucrative investments in fabricated legal settlements. Rothstein’s attorney said his client is focused on returning as much money as possible to investors. 50 Year sentence.

Miko Dion Wady--25 million

Concert promoter Wady was accused of bilking 250 investors in 3-year Ponzi scheme supposedly financing top-tier concert tours like Barbara Streisand and The Rolling Stones. A 37-count indictment charging Wady with wire fraud and money laundering was handed up on Dec. 1, 2009.
Robert Allen Stanford--$7 billion

On Feb. 17, 2009, Texas financier Robert Allen Stanford and three of his companies were charged with running a fraudulent $7 billion investment scheme, centering on a certificate of deposit program. The program allegedly targeted registered investment advisers. The scam hit a reported 30,000 investors around the world.

Andres L. Pimstein
$30 million

Florida resident Andres L. Pimstein received a civil injunction from the SEC on Oct. 30, 2008. His companies operated a $30 million Ponzi scheme, telling at least 80 investors that funds went toward buying iPods and other electronics from US vendors for resale in Chile. Investors were promised 36 percent returns. On March 20, 2009, Pimstein was sentenced to 17 years in jail after pleading guilty to 12 counts of wire fraud.
In 1903, Italian immigrant Charles Ponzi moved to the United States, where he founded the Securities Exchange Company and misled thousands of New England residents by promising 50 percent returns on investments through 1920. Ponzi received a jail sentence after fleeing to Texas and was then deported.

Overview

- Litigation Landscape in the United States
- Selected Key Legal Issues
- Regulatory Fallout
- International Components
Litigation Landscape

- **TWO MAJOR TYPES**
  - Secondary-Actor Claims
  - Clawback Litigations

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Litigation Landscape

**Secondary Actor Claims**

- **SECONDARY-ACTOR CLAIMS**
  - Search For Deep Pockets
  - Lawyer Driven Class And Derivative Actions in US
  - Claims more prevalent when no feeder fund can be found (e.g., direct investor claims)
- **Liquidator Driven Claims**
  - JP Morgan/ UBS etc
Litigation Landscape
Secondary Actor Claims

- Categories of Defendants
  - Hedge Funds and Investment Managers
  - Custodians
  - Limited Partnerships
  - Investment Advisors
  - Accounting Firms
  - Pension Trustees
  - Private/Charitable Foundation Trustees
  - SEC Itself
  - Divorce Participants

Litigation Landscape
Secondary-Actor Claims

- Claims include
  - Aiding and abetting fraud, blue sky securities fraud, CFTC
  - Breach of fiduciary duty
  - Negligence
  - RICO
Litigation Landscape
Secondary-Actor Claims

- **Defenses**
  - SCIENTER, loss causation
  - “RED FLAG” litigation
  - Exculpation clauses in offering docs

- **OFFSHORE FUNDS**
  - Jurisdiction and FNC
  - Choice of law issues!!

Litigation Landscape
Clawback Claims

- **SIPC Receiver or SEC Appointed Liquidator As Plaintiff**

- **Prevalent Claims**
  - Fraudulent Conveyance—elements similar
  - Preference—”intent to prefer” not needed in US
  - Third Party Actions: Aiding and Abetting Type Theories
Litigation Landscape
Clawback Claims

- Key Legal Issues
  - Red Flags—needed to recover Principal from Direct Transferees or from Secondary Transferees
  - Bayou II
  - 549(e) Defenses
  - Choice of Law Issues (viz Secondary Transferees)
- Feeder Fund Liquidators' cases (Fairfield)
  - Chapter 15 Process
  - Custodian Defenses
  - Forum Shopping—International Implications

Litigation Landscape
Clawback Claims

- Picard’s Collection Efforts to Date
  - Impact on Legal Claims
  - Economic Impact on aiding European Investors who were largely investors in Feeder Funds
- Calculating the Investor’s Loss—“Net Equity” Debate
- Corporate Veil in Feeder Fund Litigations
- Foreign Investor Quandary? Submit or Default?
CURRENT “After the Fact” ENFORCEMENT EFFORTS

- SEC INVESTIGATIONS of BMIS
  - Partial Settlement
- SEC/FINRA INVESTIGATIONS of Feeder Funds etc.
- DOJ/FBI Investigations of Funds and Advisors
- Department of Labor Inquiries re Pension Funds
- IRS and Private Foundations

Madoff - Triggered Regulatory Changes

- SEC Director of Enforcement Resigned
- Hedge Fund Regulatory Changes?
- Increased/Improved Enforcement Efforts
- SEC Perception in the Courts
QUESTIONS?