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Carlo Ponzi or Bernie Madoff: Who Was the Bigger Villain?

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Dave Cotton is chairman of Cotton & Company LLP, Certified Public Accountants. Cotton & Company is headquartered in Alexandria, Virginia. The firm was founded in 1981 and has a practice concentration in assisting Federal and State government agencies, inspectors general, and government grantees and contractors with a variety of government program-related assurance and advisory services. Cotton & Company has performed grant and contract, indirect cost rate, financial statement, financial related, and performance audits for more than two dozen Federal inspectors general as well as numerous other Federal and State agencies and programs.

Cotton & Company's Federal agency audit clients have included the U.S. Government Accountability Office, the U.S. Navy, the U.S. House of Representatives, the U.S. Capitol Police, the U.S. Small Business Administration, the U.S. Bureau of Prisons, the Millennium Challenge Corporation, the U.S. Marshals Service, and the Bureau of Alcohol, Tobacco, Firearms and Explosives. Cotton & Company also assists numerous Federal agencies in preparing financial statements and improving financial management, accounting, and internal control systems.

Dave received a BS in mechanical engineering (1971) and an MBA in management science and labor relations (1972) from Lehigh University in Bethlehem, PA. He also pursued graduate studies in accounting and auditing at the University of Chicago, Graduate School of Business (1977 to 1978). He is a Certified Public Accountant (CPA), Certified Fraud Examiner (CFE), and Certified Government Financial Manager (CGFM).

Dave served on the Advisory Council on Government Auditing Standards (the Council advises the United States Comptroller General on promulgation of **Government Auditing Standards**—GAO's yellow book) from 2006 to 2009. He served on the Institute of Internal Auditors (IIA) Anti-Fraud Programs and Controls Task Force and co-authored **Managing the Business Risk of Fraud: A Practical Guide**. He served on the American Institute of CPAs Anti-Fraud Task Force and co-authored **Management Override: The Achilles Heel of Fraud Prevention**. He is the past-chairman of the AICPA Federal Accounting and Auditing Subcommittee and has served on the AICPA Governmental Accounting and Auditing Committee and the Government Technical Standards Subcommittee of the AICPA Professional Ethics Executive Committee. He authored the AICPA's 8-hour continuing professional education course, **Joint and Indirect Cost Allocations—How to Prepare and Audit Them**. He is presently serving on the AICPA's Performance Audit Standards Task Force and the Fraud Risk Guide Task Force, sponsored by COSO and the ACFE.

Dave served on the board of the Virginia Society of Certified Public Accountants (VSCPA) and on the VSCPA Litigation Services Committee, Professional Ethics Committee, Quality Review Committee, and Governmental Accounting and Auditing Committee. He is member of the Greater Washington Society of CPAs (GWSCPA). He is a member of the Association of Government Accountants (AGA) and past-advisory board chairman and past-president of the AGA Northern Virginia Chapter. He is also a member of the Institute of Internal Auditors and the Association of Certified Fraud Examiners.

Dave has testified as an expert in governmental accounting, auditing, and fraud issues before the United States Court of Federal Claims and other administrative and judicial bodies.

Dave has spoken frequently on cost accounting, professional ethics, and auditors' fraud detection responsibilities under SAS 99, *Consideration of Fraud in a Financial Statement Audit*. He has been an instructor for the George Washington University masters of accountancy program (**Fraud Examination and Forensic Accounting**), and instructs for the George Mason University Small Business Development Center (**Fundamentals of Accounting for Government Contracts**).

Dave was the recipient of the AGA's 2006 Barr Award ("to recognize the cumulative achievements of private sector individuals who throughout their careers have served as a role model for others and who have consistently exhibited the highest personal and professional standards") as well as AGA's 2012 Educator Award ("to recognize individuals who have made significant contributions to the education and training of government financial managers").

Ponzi Scheme Characteristics

- Promise of high or otherwise unrealistic returns based on semi-plausible investment theory or scheme (i.e. misrepresentation)
- Early investors are paid from money provided by later investors
- Scheme can continue as long as the investor base increases at a rate that will sustain payments to earlier investors
- Often, the scheme continues longer than the arithmetic would predict, because many investors reinvest their “earnings”
- Schemes collapse eventually because
 - 1) Promoter disappears; or
 - 2) Stream of new investors needed cannot be maintained; or
 - 3) Too many investors decide to withdraw their funds.



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**Defining
Characteristics**



Ponzi Scheme Characteristics

- Promise of high or other **Descriptive Characteristics**
plausible investment theories
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Why Is It Fraud?

- Definition of fraud*:
 - ❖ A *representation*
 - ❖ About a *material* point,
 - ❖ Which is *false*,
 - ❖ And *intentionally or recklessly* so,
 - ❖ Which is *believed*
 - ❖ And *acted upon* by the victim
 - ❖ To the victim’s *damage*.

* Fraud Examination, Third Edition, Albrecht, Albrecht, Albrecht, and Zimbelman;
South-Western; 2006

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Is the Social Security Program a Ponzi Scheme?

NO!, according to the Social Security Administration:

“Social Security is and always has been ... a ‘pay-as-you-go’ system Its structure, logic, and mode of operation have nothing in common with Ponzi schemes or chain letters or pyramid schemes.”

--SSA Research Note #25



Is the Social Security Program a Ponzi Scheme?

YES!, according to Paul Samuelson, Nobel Laureate Economist:

“The beauty of social insurance is that it is actuarially unsound. Everyone who reaches retirement age is given benefit privileges that far exceed anything he has paid in. ...

“Social Security is squarely based on what has been called the eighth wonder of the world—compound interest. A growing nation is the greatest Ponzi Scheme ever contrived.”

--Newsweek, February 1967



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The Social Security Misrepresentation

- The “Trust Fund”
- If SS had always been a pay-as-you-go program, taxes taken from us until 2010 would have been lower
- The government told us that the “surplus” was being put in the SS Trust Fund and was earning interest
- 2010 was the crossover year—benefits paid exceeded taxes taken for the first time since 1935
- “Not to worry” the government said, “the trust fund will sustain the program until ~~2041~~”

~~2037~~

2033



The Social Security Misrepresentation

- “The Social Security Trust Fund is not funded nor can it be trusted” – David Walker
- “Wait, wait,” you say, “what about the government bonds in the Trust Fund?”
- True, the SS Trust Fund “purchased” U.S Treasury bonds and those bonds pay interest
- Those bonds are IOUs ...
- IOUs from the government to itself



The Social Security Misrepresentation

- The Real Deal, Sylvester J. Schieber and John B. Shoven, Yale University Press, New Haven, CT, 1999
- What about that Trust Fund?



From The Real Deal

One pundit put this into a personal context to explain the issue. He considered a situation where a worker saves \$10 per week and puts it in a box marked "Reserve." Over a period of a year the worker saves \$520 but from time to time needs money and, instead of borrowing from a bank, borrows from his reserve fund and puts in an IOU equal to the amount borrowed. The IOU is a promise to return the amount borrowed in full plus 6 percent interest. The worker continues contributing to the fund and borrowing for ten years at which point he has a box full of IOUs with an accumulated value of \$8,000. In this case, the analyst argues, it is clear that the worker has accumulated no savings and that the reserve is "pure fiction."



Is the Social Security Program a Ponzi Scheme?

Here are the **ONLY** differences between Ponzi's Scheme, Madoff's Scheme, and the Social Security Scheme Program:

- The promised rate of return
- The length of the payback time period or cycle
- Voluntary versus compulsory
- Fraud versus law



The Payback Period/Cycle

- Schieber and Shoven point out that Social Security is actually quite similar to Ponzi's scheme in this regard.
- Ponzi promised a payback every 90 days and the scheme collapsed roughly 7 months after it started—it lasted about 3 promised cycles.
- Social Security promises a payback over a generation (we pay in during our working years and draw out during our retirement years).
- It has been 76 years since Social Security started. It has lasted three generations—three promised cycles—and is now exhibiting clear signs of collapse.



Father of the Ponzi Scheme





**Carlo Pietro Giovanni Guglielmo
Tebaldo Ponzi**



Carlo Pietro Giovanni Guglielmo Tebaldo Ponzi

- 1882: born in Lugo, Italy
- 1903: arrived in the United States (Boston)
- 1903-1907: odd jobs
- 1907: moved to Montreal, Canada. Assistant teller in Banco Zarossi
- 1908-1911: sent to St. Vincent-de-Paul prison for forging a \$424 check
- 1912-1914: sent to Atlanta Prison for smuggling illegal immigrants across the US-Canadian border



Carlo Pietro Giovanni Guglielmo Tebaldo Ponzi

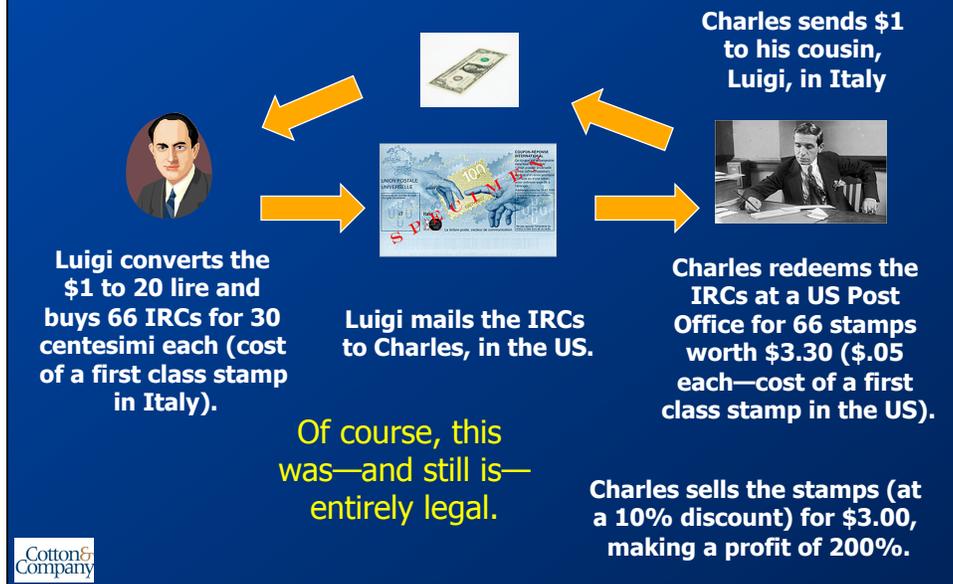
- 1918: married Rose Gnecco.
- 1918: discovered International Reply Coupons (IRC)



International Reply Coupons



International Reply Coupons



Ponzi Starts His Scheme

- Charles explains this IRC concept to a few friends
- His friends invest based on Charles' promise to double their money in 90 days
- Their money doubles in 90 days
- They tell their friends
- And so on
- Jan 1920: Charles founds the SEC ("Securities Exchange Company")

Ponzi's Fame Spreads

- Feb 1920: \$5,000 (about \$54,000 in 2008 dollars)
- Mar 1920: \$30,000 (about \$328,000 in 2008 dollars)
- May 1920: \$420,000 (about \$4.6 million in 2008 dollars)
- Jul 1920: \$3,000,000 (about \$32.4 million in 2008 dollars)



Spending the Ill-Gotten Gains

- Lexington, Mass. Mansion (5 acres, air conditioned with heated pool, and servants' quarters)
- Sapphire blue Locomobile
- Hanover Trust Bank stock (25% interest)
- Deposits in several other banks
- Bought the Carney Building in Boston
- Bought apartments in Winthrop and the West End
- Bought C&R Construction Company
- Bought the Napoli Macaroni Factory
- Bought an Import-Export company
- First-class travel for his family



The Locomobile



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Ponzi's Fame Draws Skepticism

- A Boston financial expert reported the infeasibility of the scheme
- Ponzi sued him for libel; was awarded \$500,000 in damages
- Jul 1920: Boston Post reported favorably on Ponzi and the SEC (“all investors have been paid on time; no one has lost a penny.”)
- Ponzi and his SEC were deluged with investors *begging* Ponzi to take their money

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Skepticism Mounts

- The Boston Post and Massachusetts officials decided to investigate further
- The Post asked Clarence Barron to have a look
- Barron reported that despite the fantastic returns, Ponzi had not invested any of his own money
- Barron also reported that the volume of IRC business the SEC was doing would require 160 million IRCs to be in circulation; but there were only 27,000 actually issued at the time
- The Postal Service reported that there was not any significant buying or selling of IRCs



Panic Starts, Stops, Then Starts Again

- The news caused a mild panic; but Ponzi was able to placate investors by paying out \$2 million in three days
- Ponzi hired a publicity agent to do some image improvement



William McMasters

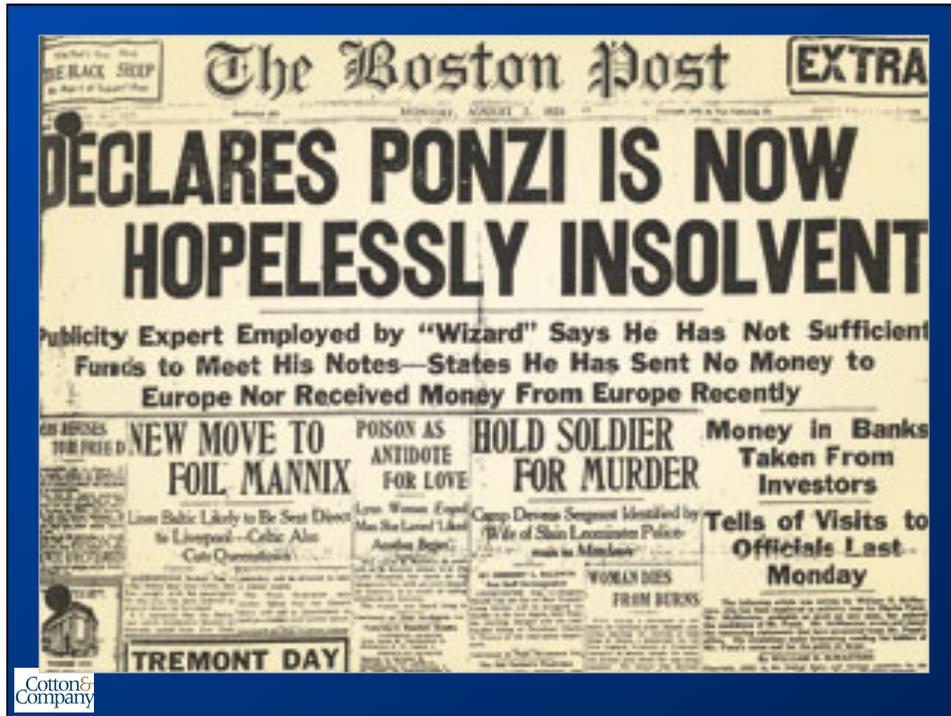


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- McMasters blew the whistle in a Post article on Aug 2, 1920.

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- On Aug 11, 1920, the Post ran a front-page article about Charles' past scrapes with the law.

The Authorities Close In and Close Ponzi Down

- Aug 12, 1920: The Feds indict Ponzi for mail fraud (86 counts)
- 6 banks collapsed as a result of the ensuing panic
- “Investors” eventually recovered about 30 cents on the dollar
- Nov 1, 1920: Charles pleads guilty to mail fraud and is sentenced to 5 years in Federal prison
- Massachusetts then indicted Charles on 22 larceny counts
- Charles asserted that his plea deal with the Feds prohibited the state charges
- His case went all the way to the SCOTUS



Be Careful When You Make a Plea Deal

- SCOTUS ruled that the Federal plea bargain did not preclude state or local charges; and said there was no double jeopardy, because the Fed charges (mail fraud) were not the same as the state charges (larceny)
- Charles represented himself at the first state trial (on some of the larceny charges) and was acquitted
- The jury failed to reach a verdict at his second state trial
- The state finally got a conviction on the third try; Charles was sentenced to 7-9 years



On the Lam

- While awaiting the outcome of his appeals, Charles shuffled off to Florida and formed Charpon Land Syndicate, selling swampland and promising 200% returns on investments
- He was found guilty of violating Florida law and sentenced to a year in the Florida State Prison
- He skipped out on his bond, changed his appearance and tried to leave the country
- He was caught in Louisiana and sent back to Massachusetts to serve his term there.



End Game

- Charles got out of prison in 1934; and was immediately deported to Italy
- He ended up working for Ala Littoria (Air Italy) in Brazil; but the airline closed its office there during WWII
- Jan 1949: Charles died in a charity hospital in Rio with just enough money to cover his burial



Departing Comments from the Famous Con-man

Even if they never got anything for it, it was cheap at that price. Without malice aforethought I had given them the best show that was ever staged in their territory since the landing of the Pilgrims! It was easily worth fifteen million bucks to watch me put the thing over.

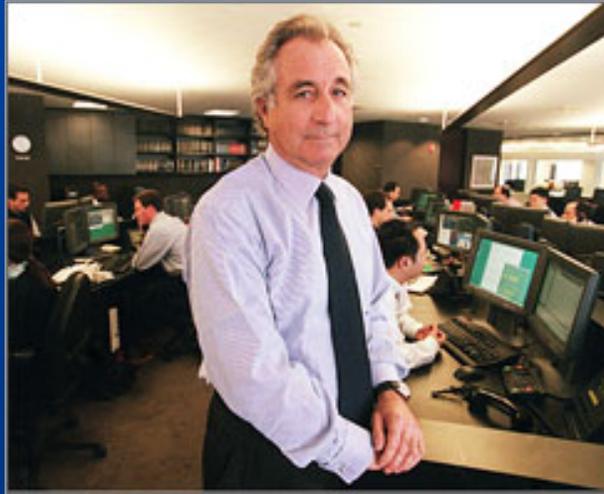
[From Scams - and how to protect yourself from them, ISBN 1409232913.]



Mother of All Ponzi Schemes



Bernard Lawrence “Bernie” Madoff



By Ruby Washington, The New York Times/AP

Bernard Lawrence “Bernie” Madoff

- Apr 29, 1938: Born in Queens, NY
- 1959: Married Ruth Alpern
- 1960: BA in political science, Hofstra University
- 1960: Bernie founded Bernard L. Madoff Investment Securities (BLMIS) LLC; initially traded penny stocks; developed some innovative IT applications; evolved into a “market maker” and third-market provider executing OTC orders
- BLMIS also had a little-publicized investment management and advisory division



Friends in High Places

- 1984-1987: Bernie served on the board of NASD
- 1985: Chaired the NASD Trading Committee
- 1989-1990” Served on the NASD Trading Committee
- 1985-1993: Served on the NASD International Committee
- 1990-1993: Served on the NASD Strategic Planning Committee
- 1989-1991: Served on the board of NASDAQ
- 1990-1991: Chaired NASDAQ
- 2001: Served on the NASDAQ National Nominating Committee



A Scheme Most Simple

- The trading side of the business was legitimate; the investment management side was not
- Instead of investing money with client funds, Bernie deposited the funds into an account at Chase Manhattan Bank
- Bernie decided what each client’s “returns” would be and directed back-office workers to generate false trading reports to yield those returns
- The workers entered false trades using historical trading dates that (if the trades had actually been made) would have generated the needed returns—“Reverse Engineered Trades”
- Prosecutors allege that a computer program specially designed for this purpose facilitated the process



A Scheme Most Simple

- If clients asked for funds, Bernie simply pulled the funds from his Chase account
- Bernie never promised to double anyone's money in 90 days
- He never made any explicit promises
- But, he always—amazingly—generated modest positive returns (averaging 15%), even when the markets headed in a different direction



Affinity Fraud

- (A fraud that preys upon members of an identifiable group of people or organizations)
- Some of Bernie's marks:
 - Kentucky University
 - Women's Zionist Organization of America
 - Elie Wiesel Foundation
 - Wunderkinder Foundation (established by Steven Spielberg)
 - Lappin Foundation
 - Stony Brook University Foundation
 - James Harris Simons family foundation
 - New York Mets owners Fred Wilpon and Saul Katz
 - North Shore-Long Island Jewish Health System
 - Julian J. Leavitt Foundation
 - Fairfield, CT retiree pension fund



Affinity Fraud

- Why is this type of affinity fraud beneficial to running a Ponzi scheme?
- Bernie was particular about from whom he took money; his clients were special; so if he condescended to take your money, you were indeed grateful



Spending the Ill-Gotten Gains

- Ocean-front home in Montauk, Long Island (\$3 million)
- Upper East Side Manhattan penthouse (\$7 million)
- Home in France (\$1 million)
- Mansion in Palm Beach, Florida (\$11 million)
- 55-foot sportfishing yacht named *Bull*
- \$7 million 88-foot Leopard yacht (also named *Bull*)
- \$45 million in various securities
- \$12 million (half) interest in BLM Air Charter
- Furniture and art (\$9.9 million)



A Lotta Bull



National Liquidators



A Lotta Bull



A Lotta Bull



Sitting Bull



A Lotta Bull



Giving Back (or Pump-Priming)

- Bernie served on boards that in turn invested their endowments with BLMIS (and went belly up when the scheme collapsed)
 - Chais Family Foundation
 - Robert I. Lappin Charitable Foundation
 - Picower Foundation
 - JEHT Foundation
- Donated \$6 million to lymphoma research
- Gave \$230,000 to political causes since 1991 (most to the Democratic Party)



Giving Back (or Pump-Priming)

- The Madoff Family Foundation--\$19 million; donated to many worthy causes (that were subsequently forced to close because of the fraud)



A Family Affair

According to trustee Irving Picard:

- Bernie's brother Peter deposited \$32,146 in BMLIS—and withdrew over \$16 million
- Son Andrew deposited \$1 million –and withdrew \$17 million
- Son Mark deposited \$745,482—and withdrew \$18.1 million
(Exactly two years after Bernie's arrest, 46-year-old son Mark was found dead; ruled as suicide by hanging. 48-year old son Andrew died of lymphoma on 3 Sep 2014.)



How Could a Fraud this Big *Not* Be Detected?

- Where were the whistleblowers?
- Where was the SEC?
- Where were the auditors?



Where Were the Whistleblowers?

- SEC received its first complaint about Madoff in 1992
- Harry Markopolos, financial analyst, first informed the SEC in 1999 that BLMIS's performance was mathematically impossible; he followed up with more details in May 2000, March 2001, October 2005 ("The World's Largest Hedge Fund is a Fraud" detailed 30 red flags indicating that Madoff was running a Ponzi scheme), in June 2007; and again in March 2008
- The SEC received other complaints and tips from April 2004 to December 2006
- In May 2001, *MARHedge* and *Barron's* both "published articles questioning Madoff's unusually consistent returns and secretive operations."



Where Was the SEC?

- The SEC investigated the 1992 complaint but focused on a Madoff feeder fund, not Madoff himself
- In 2004 and 2005 conducted two examinations. The teams "were relatively inexperienced" and did "insufficient planning."
- The "teams discovered suspicious information and evidence and caught Madoff in contradictions and inconsistencies," but "either disregarded these concerns or simply asked Madoff about them." "Even when Madoff's answers were seemingly implausible, the SEC examiners accepted them at face value."
- Neither investigation obtained data from third parties that would have revealed the fraud.



(Quotes are from the SEC/OIG Report of "Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme.")

Where Was the SEC?

- “The relatively inexperienced Enforcement staff failed to appreciate the significance of [Markopolos’] analysis ... and almost immediately expressed skepticism and disbelief.”
- “[The examiners] were confused about certain critical and fundamental aspects of Madoff’s operations” and when “Madoff provided evasive or contradictory answers to important questions ... they simply accepted as plausible his explanations.”



(Quotes are from the SEC/OIG Report of “Investigation of Failure of the SEC to Uncover Bernard Madoff’s Ponzi Scheme.”)

Where Was the SEC?

- SEC’s biggest mistake appears to have been the failure to verify Madoff’s trades by obtaining information from third parties about those trades.
- SEC “staff drafted a letter to the NASD” requesting information that “would have assisted in ... verifying [Madoff’s] trading activity” but the letter was not sent because “it would have been too time-consuming to review the information that would have been obtained.”
- Had the letter been sent, “NASD would have provided ... data that would have indicated that Madoff did not ... execute ... trades ... and the data would likely have provided the information necessary to reveal the Ponzi scheme.”



(Quotes are from the SEC/OIG Report of “Investigation of Failure of the SEC to Uncover Bernard Madoff’s Ponzi Scheme.”)

Where Was the SEC?

“When Madoff’s Ponzi scheme finally collapsed in 2008, an SEC Enforcement attorney testified that it took only "a few days" and "a phone call ... to DTC" to confirm that Madoff had not placed any trades with his investors' funds.”



(Quotes are from the SEC/OIG Report of “Investigation of Failure of the SEC to Uncover Bernard Madoff’s Ponzi Scheme.”)

Where Was the SEC?

But, of course, hindsight is always 20-20 or better.



SEC's Failure to Find the Fraud Helped the Fraud

- Following SEC's investigations, "... investors who may have been uncertain about whether to invest with Madoff were reassured by the fact that the SEC had investigated and/or examined Madoff ... and found no evidence of fraud."
- "Madoff proactively informed potential investors that the SEC had examined his operations."
- SEC's investigations "lent credibility to Madoff's operations and had the effect of encouraging additional individuals and entities to invest with him."



(Quotes are from the SEC/OIG Report of "Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme.")

Where Were the Auditors of Bernie's \$56 Billion Fund?

Operating out of a strip mall on Long Island.





**David
Friehling**



March 18, 2009

- **U.S. says auditor "sold his license" to Madoff**
- *U.S. Attorney's Office in Manhattan says Friehling "not charged with knowledge of the Madoff Ponzi scheme" but is accused of deceiving investors by falsely certifying he audited Madoff financial documents and helping "foster the illusion" Madoff was a legitimate investor.*
- *SEC says Friehling and his firm "did not perform anything remotely resembling an audit" or try to confirm that stocks Madoff purportedly bought for customers even existed.*





March 18, 2009

Authorities say Friehling failed to conduct independent verification of Madoff operation's assets, review sources of its revenue including commissions or examine a bank account through which billions of dollars of client funds flowed.

Friehling's and his family's personal accounts at Madoff firm had an accumulated balance on November 30, 2008 of more than \$14 million, and withdrawals from the largest of these accounts totaled over \$5.5 million since 2000, the SEC said.



March 18, 2009

SEC says Friehling took steps to hide his investments with Madoff, replacing his own name on his account with his wife's name and later renaming it the "Friehling Investment Fund" to try to conceal his conflict of interest.

Friehling and his firm received \$186,000 a year in fees for providing the purported auditing work to Madoff firm along with bookkeeping and tax services for the confessed swindler and various Madoff family members, SEC says.



Friehling told the AICPA that his firm did not do any audits—thereby evading any peer review requirements



The New York Times

November 4, 2009

Madoff's Accountant Pleads Guilty in Scheme

- ... admitted ... that he had produced the rubber-stamped audits that allowed Mr. Madoff to conceal his enormous Ponzi scheme ...
- ... pleaded guilty to one count each of securities fraud and investment adviser fraud and four counts of making false filings to the [SEC].
- ... also pleaded guilty to three counts of obstructing the administration of the federal tax laws ...
- ... he admitted that he had never adequately audited the Madoff operation and, as an investor in the scheme, had never been a truly independent auditor.
- ... insisted that he had not known about the Ponzi scheme. He had simply trusted Mr. Madoff, taking whatever figures he was given and plugging them into his supposedly independent audits ...





November 3, 2009

Madoff's Auditor David Friehling Pleads Guilty to Fraud

- "In what was the biggest mistake of my life, I put my trust with Bernard Madoff."
- "At no time was I ever aware Bernard Madoff was engaged in a Ponzi scheme."
- ... admitted that he took the financial records handed him by Madoff "at face value," failing to independently verify the assets of Madoff's investment company or ensure that his bank account records or charts listing the purchase of securities were accurate.



114 years.

4--Madoff Accountant Pleads Guilty to 9 Counts - Video
- FoxBusiness.com2.flv



After 30-40 years of success, why did Madoff's fraud finally collapse?



The End Came Swiftly



The End Came Swiftly

- Early Dec 2008: Bernie told one of his sons that he was having trouble meeting \$7 billion in redemptions.
- Dec 9, 2008: Bernie told his sons that he planned to pay \$173 million in BLMIS staff bonuses early.
- Dec 10, 2008: Bernie's sons demanded to know how or why he could pay bonuses when he was having trouble meeting promised payments to investors.
- Bernie confessed to his sons that he was “finished,” that his fund was “just one big lie,” and “basically, a giant Ponzi scheme.”
- Dec 11, 2008: Bernie was arrested and charged with securities fraud



The End Came Swiftly

- Mar 12, 2009: Madoff pleaded guilty to all (11) charges against him.
- “I knew what I was doing was wrong, indeed criminal ... When I began the Ponzi scheme, I believed it would end shortly and I would be able to extricate myself and my clients.”
- “As the years went by I realized this day, and my arrest, would inevitably come.”



150 years
(Maximum Sentence)

November 14, 2139
**(Projected release date, including time off
for good behavior)**



Butner Medium Federal Correctional Institution
North Carolina



Other Convictions/Pleas To Date

- **Frank DiPascali**, Madoff aide/CFO: 10 felony counts including conspiracy and tax evasion
- **David G. Friehling**, “independent” auditor: 9 criminal charges
- **David Kugel**, Madoff trader/analyst: 6 criminal counts including conspiracy, securities fraud, and bank fraud
- **Craig Kugel**, HR employee at BLMIS: subscribing to false tax returns, conspiracy to obstruct the IRS, making false statements



Other Convictions/Pleas To Date

- **Enrica Cotellessa-Pitz**, Madoff’s controller: conspiracy and making false filings to the SEC
- **Peter Madoff**, BLMIS Chief Compliance officer and senior managing director: conspiracy to commit securities fraud and falsifying records
- **Irwin Lipkin**, former Madoff controller: conspiracy and making false statements in employment records
- **Eric Lipkin**, “member of Madoff’s inner circle”: conspiracy, bank fraud, and falsifying records



Convictions Following Trials in Fall 2014

Annette Bongiorno, portfolio manager



Sentence: 6 Years



Convictions Following Trials in Fall 2014

JoAnn Crupi, portfolio manager



Sentence: 6 Years



Convictions Following Trials in Fall 2014

Jerome O'Hara, computer programmer



Sentence: 2.5 Years



Convictions Following Trials in Fall 2014

George Perez, computer programmer



Sentence: 2.5 Years



Convictions Following Trials in Fall 2014

Daniel Bonventure, operations director



Sentence: 10 Years



Civil Suits To Date

Too numerous to list



Ponzi v Madoff: Similarities

- Classic signs of a Ponzi scheme
 - Victim confidence
 - Affinity targets
 - Unrealistic returns
 - Promises kept
 - Re-investments
 - Life-style indicators
- Suspicions, whistleblowers, and investigations
- Family member involvement
- Many “net winners”
- Massive losses to losers

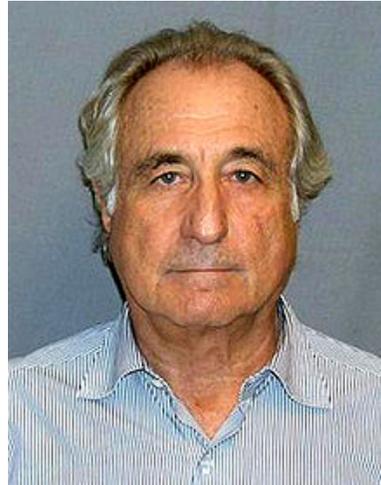
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Ponzi v Madoff: Differences

- **Education** (Ponzi—none; Madoff—college degree)
- **Promises** (Ponzi—outrageous; Madoff—modest)
- **Use of technology** (Ponzi—none; Madoff—computer program)
- **Complexity of strategy** (Ponzi—simple and open; Madoff—secretive and too sophisticated to understand)
- **Regulatory oversight** (Ponzi—none; Madoff—extensive)
- **Duration** (Ponzi—less than 1 year; Madoff—30-40 years)
- **Auditors** (Ponzi—none; Madoff—David Friebling)
- **How caught** (Ponzi—by authorities; Madoff—confessed)
- **Size** (Ponzi—\$33 million; Madoff—\$65 billion)
- **Penalty** (Ponzi—7 years; Madoff—150 years)

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Sources

- [Fraud Examination, Third Edition](#), Albrecht, Albrecht, Albrecht, and Zimbelman; South-Western; 2009.
- [Frankensteins of Fraud](#), Joseph T. Wells, CFE, CPA; Obsidian Publishing Company; 2000.
- [Report of Investigation, Case No. OIG-509, United States Securities and Exchange Commission, Office of Inspector General, \(Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme\)](#), August 31, 2009.
- [New York Times](#), "Madoff Goes to Jail After Guilty Pleas," March 12, 2009.
- [No One Would Listen: A True Financial Thriller](#), Harry Markopolis, 2010, Wiley.
- [Wikipedia](#), Charles Ponzi, Bernard Madoff, Universal Postal Union, International Reply Coupon.
- [Scams - and how to protect yourself from them](#), ISBN 1409232913.]
- [The Real Deal](#), Sylvester J. Scheiber and John B. Shoven, Yale University, 1999.

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