

This document contains information that has been collected in connection with an investigation conducted by the U.S. Securities and Exchange Commission Office of Inspector General (OIG). It contains confidential, privileged and sensitive information and should not be recopied or distributed without the express consent of the OIG.

Interview of Bernard L. Madoff

At approximately 3:00pm on June 17, 2009, Inspector General H. David Kotz and Deputy Inspector General Noelle Frangipane interviewed Bernard L. Madoff at the Metropolitan Correctional Center, 150 Park Row, New York, NY. Madoff was accompanied by his attorney, Ira Lee Sorkin of the firm of Dickstein Shapiro, LLP, as well as an associate from that firm, Nicole DeBello.

The interview began with IG Kotz advising Madoff of the general nature of the OIG investigation, and advising that we were investigating interactions the Securities and Exchange Commission (SEC) had with Madoff and his firm, Bernard L. Madoff Investment Securities, LLP (BLM), going back to 1992. At that point, Sorkin advised Madoff that his only obligation was to tell the truth during the interview.

The interview began with Madoff stating that the prosecutor and trustee in the criminal case “misunderstood” things he said during the proffer, and as a result, there is a lot of misinformation being circulated about this scandal, however, he added, “I’m not saying I’m not guilty.”

2006 Exam:

Madoff recalled that with respect to the 2006 OCIE exam, “two young fellows,” (Lamore and Ostrow) came in “under the guise of doing a routine exam.” He said that during that time period, sweeps were being done of hedge funds that focused on front-running, and that was why he believed Ostrow and Lamore were at BLM.

Madoff recalled that they were there for two months, and that they “spent 90% of their time looking through emails.” He opined that this is “routine for the SEC now, they feel that’s the way they find things.”

Madoff stated that Ostrow and Lamore looked through bank reconciliations, expense accounts, and checks. He stated that he didn’t understand what they were looking for. He said that he had “tons of capital,” and so he “didn’t understand why they were looking at that stuff.” Madoff stated that Ostrow was “so cryptic” and that he spent a “huge amount of time looking at invoices for expenses.” Madoff stated that he didn’t know what Ostrow was looking for, because he was looking at cancelled checks and phone bills. He stated that he surmised that Ostrow was looking for wrongdoing pertaining to something that was going on in the industry at that time, namely, people paying independent contractors.

This document contains information that has been collected in connection with an investigation conducted by the U.S. Securities and Exchange Commission Office of Inspector General (OIG). It contains confidential, privileged and sensitive information and should not be recopied or distributed without the express consent of the OIG.

Madoff also noted that during the 2006 exam, Ostrow in particular kept asking for computer runs. He stated that they taxed his computer programmer in that they "kept asking her to do different runs" and to reformat the material.

Madoff stated that Ostrow and Lamore asked him, "Do you do a retail business?" to which he replied no. He stated, however, that "At this time (2006), I was trying to conceal." He also told them, "I don't manage money."

Madoff stated that "Everything the SEC did prior to 2006 was a waste of time."

When asked whether he was the one who told NYRO staff about the DC exam just prior to this, he stated, "Yes", confirming that NYRO didn't know DC had done an exam. He said that the SEC NYRO staff insisted it was a routine exam, and that "we haven't been here in ten years." to which Madoff replied, "You were just here." (Referring to DC OCIE staff).

Madoff recounted a conversation with Ostrow:

WO: "So tell me about this article." (Ostrow referring to the MarHedge article, leaning back with his hands behind his head "like Lieutenant Colombo.")

BM: "What about it?"

(Madoff stated that Ostrow was "acting as if I didn't do this business.")

BM: "Lori Richards has a whole file I sent her with this info. They have it."

WO: "Well, it's a big organization; we don't talk to each other."

Madoff stated that he thought Ostrow was pretending that he had not been aware of the other ongoing examination, but Ostrow was acting "as if the left hand didn't know what the right hand was doing."

Madoff stated that he "really got annoyed" with Ostrow for repeatedly asking BLM to generate computer runs.

Madoff stated that during this exam, they "never looked at front running." He stated that two months after they left, he received a letter citing him for "two ridiculous violations," which they were wrong about; the violations they cited were incorrect. He went on to state that when BLM submitted their response to the SEC letter and copied it to FINRA, FINRA responded like, "What the heck? Are you nuts with this nitpicking?" Madoff stated, "After two months, they found 2-3 nitpicky things, and they were wrong about those things."

Madoff stated that he did not provide false documents to the OCIE examiners, except the client statements. He stated that he did not provide or make false records for the SEC. He added that they "never asked for DTC records" or other records that needed to be prepared.

This document contains information that has been collected in connection with an investigation conducted by the U.S. Securities and Exchange Commission Office of Inspector General (OIG). It contains confidential, privileged and sensitive information and should not be recopied or distributed without the express consent of the OIG.

He stated that Ostrow and Lamore “never really got into books and records as related to stock records or DTC records.” Madoff stated that “they never even looked at my stock records” or did a “box count.” He said he was “astonished” that they didn’t ask for DTC records, and stated that only a regulator could get those records from DTC, and the SEC would “have to go to DTC.” He added that DTC does not have separate accounts for each customer, but rather, provides a global report, but stated that if they went to DTC, they would’ve seen his market-making position, and that it “would’ve been easy for them to see” the Ponzi scheme.

Madoff stated that the SEC could’ve gone to counterparties, and if they had, they “would’ve seen it,” adding, “they didn’t do any of that.” He stated that “it’s the only thing to do,” and clarified, “If you’re looking at a Ponzi scheme, it’s the first thing you do.”

Two years prior to 2006 exam, OCIE inquiry:

Madoff recalled that two years before Ostrow and Lamore came to examine BLM, he received a phone call from Lori Richards, which he characterized as an inquiry for a hedge fund sweep. He stated that while in the lobby of his building, his personal cell phone rang:

LR: “Bernie, its Lori.”

BM: “Hi Lori.”

LR: “I need you to help me out. Can you tell me about your hedge funds.”

BM: “I don’t have a hedge fund.”

LR: “I didn’t think so.”

BM: “I execute trades for hedge funds.”

Madoff recollected the call lasting about 15 minutes, and stated that John McCarthy may have been on the call, but could not remember for sure. He remembered Richards telling him that he’d probably get a call from McCarthy and that they may need more information from him.

Shortly thereafter, Madoff received a call from McCarthy, during which McCarthy told him, “You’ll get a letter after the first of the year.” Madoff stated that when he got the letter, it was readily apparent to him that they were focused on front running and thought it was part of a sweep that the SEC was doing on front running. He recalled the letter was seeking the names of hedge funds he did business with, a description of his split-strike conversion strategy, copies of “maybe” two years of statements from large hedge funds, and his P&L trading profit in those securities.

Enforcement Investigation:

Madoff said it was “amazing to me” that he didn’t get caught during the Enforcement investigation, because they specifically asked him, “Are these securities at DTC?” They further pressed, “What is your account number.” He replied, “646.” Madoff stated that it was “obvious they thought that something was amiss.” He went on

This document contains information that has been collected in connection with an investigation conducted by the U.S. Securities and Exchange Commission Office of Inspector General (OIG). It contains confidential, privileged and sensitive information and should not be recopied or distributed without the express consent of the OIG.

to say that when they asked for the DTC account number, "I thought it was the end game, over. Monday morning they'll call DTC and this will be over... and it never happened."

Madoff stated that when nothing happened, he thought, "After all this, I got away lucky." But he said he thought it was just "a matter of time," saying "that was the nightmare I lived with." When Enforcement did not follow up with DTC, "I was astonished."

Madoff stated that the Enforcement investigators "asked all the right questions, but it was still focused on front-running." He said that the investigators dismissed the allegation of a Ponzi scheme as "inconceivable to them."

He noted that the SEC never asked him about his accounting firm. He stated, "I used a small accounting firm, but I also used KPMG London and they were terrible."

Madoff stated that he got the impression through all the exams and investigations that "it never entered the SEC's mind that it was a Ponzi scheme." He noted that there was a DTC Terminal in the cage, but, "They never went in to the cage."

When questioned as to why he didn't bring an attorney to the testimony he gave in the Enforcement investigation, Madoff stated, "I didn't think I needed one." He added, "I had good answers for everything. Everything made perfect sense." He said he did not come to the testimony without an attorney because he was trying to fool the SEC into thinking he had nothing to hide. He also denied that he ever changed course during his testimony. He said, "No, that's not what I said. Options are not part of the model, that's what I said."

When questioned as to whether he was concerned about Frank DiPascali giving testimony, Madoff answered, "No, he didn't know anything was wrong, either."

Madoff further stated that he was surprised that the Enforcement investigators never asked for options contracts. He stated that he only had a master contract, and that, "You can't replicate options records." When we asked him if he had options contracts ready in case the SEC asked for it, he answered, "No."

Madoff stated he "was relieved" when he got the letter from Enforcement indicating the case was over. He was relieved all he had to do was register.

Fairfield Greenwich:

Madoff stated that the widely-reported telephone call with Fairfield Greenwich related to an argument that was going on between BLM and the SEC as to whether BLM had to register as an IA. Madoff stated that the problem was with the Fairfield Greenwich prospectus mention of Madoff. He said, "I told my clients I'm not an investment adviser. I wasn't giving investment advice." Madoff stated that this was the crux of his argument with the SEC, that "I'm not giving advice, I'm employing a

This document contains information that has been collected in connection with an investigation conducted by the U.S. Securities and Exchange Commission Office of Inspector General (OIG). It contains confidential, privileged and sensitive information and should not be recopied or distributed without the express consent of the OIG.

strategy.” Madoff went on to state that the reason he said what he did during the telephone call with Fairfield Greenwich is that he was trying to impart this view of his role, and added, “Look, these guys aren’t rocket scientists. That’s the problem.”

Exams and Investigations Generally:

When questioned did he ever steer exams towards front-running, he answered, “No. I didn’t have to.”

Madoff stated that he didn’t have to tell examiners his role in the industry, because they already knew.

Madoff stated that the investigators didn’t ask him questions regarding the Ponzi because “everybody dismissed this aspect.” He didn’t believe from the examinations that there was any focus on a possible Ponzi scheme.

Madoff stated that there were two points at which he thought “the jig was up”:

1. During the on-site OCIE exam, because he thought it was routine for the SEC to check with an independent third party
2. Right after his testimony during the Enforcement investigation when they asked him “what’s your DTC account number?”

Madoff noted that it was standard operating procedure for the SEC to give two week’s notice to prepare documents, but stressed that he “never prepared any records for SEC investigations or examiners.” He said the only one at fault is Ostrow, because “that’s his job on-site.”

When asked about whether he was concerned the SEC would do an IA exam after he agreed to register, Madoff responded no, and that in general, he understood IA exams to be less rigorous than BD exams, noted that the cycle for IA exams was different, and had no reason to think that an IA exam would be any different than a BD exam.

Madoff stated that he was “worried every time” he was examined or investigated by the SEC, and that “it was a nightmare for me,” because “it was very basic stuff.” He added, “I wish they caught me six years ago, eight years ago....”

Madoff told us that everything he told Lamore, Ostrow, and the Enforcement investigators and his strategy and the computer model was true. But, he added, that “even with artificial intelligence, you still need to have a gut feel.” He said, “It’s a combination of technology and trader’s feel, and I was a good trader.”

Madoff noted that there are two schools of thought on how to deal with exams:

1. Make the examiners crazy, make things difficult for the examiners (in connection with this, Madoff noted that every firm keeps books and records differently, and that having an examination is “like getting a tax audit, it’s a pain in the ass.”).

This document contains information that has been collected in connection with an investigation conducted by the U.S. Securities and Exchange Commission Office of Inspector General (OIG). It contains confidential, privileged and sensitive information and should not be recopied or distributed without the express consent of the OIG.

2. Cooperate with the examiners, make it easy (which Madoff stated is what “we always did.”).

Madoff stated that SEC examiners didn’t always look at the big picture issues, rather, they focus on minutia. He stated that he didn’t have any suggestions as to how to fix that problem. However, he stated that he believed the problem with SEC examiners is a combination of the “experience they have and the procedure they use.” He said, “It all comes down to budgets, I guess.”

Madoff indicated that it lent to the credibility of his firm that he had passed examinations by the SEC. He stated that some clients would ask him when was the last time he’d had an exam, and he’d give them the date.

Lori Richards:

Madoff stated that “he had known Lori for a number of years.”

Stated that he sent Lori Richards a copy of his strategy (likely referring to documents he provided to SEC in 2004).

Stated that he doesn’t know Lori really well, but he’s on a first-name basis with her. He stated that she’s a “tough regulator.” He said she’s “not a pals-y wals-y, let’s go for drinks” type of person.

Ostrow:

Madoff indicated that Ostrow was an “obnoxious guy,” and noted that Ostrow wore an SEC jacket with the word “Enforcement” emblazoned across the back. Madoff stated that Ostrow wore this jacket in the BLM offices, as well as while going in and out of the building. Madoff also stated that this jacket “caused an uproar” in the BLM offices, and that it did not look good to have someone walking through the building with a jacket such as that. Madoff asked Ostrow if he was in the Division of Enforcement with the SEC, which Ostrow indicated he was not.

Madoff stated that Ostrow “was very cryptic.” Madoff stated that Ostrow was “doing things that made no sense to us at all.” He added that Ostrow was a “total asshole.” He said Ostrow “was an idiot,” citing Ostrow’s repeated requests for computer runs, which would take eight hours to run off. Madoff stated, “I almost came to blows with him.” Madoff also characterized Ostrow as a “blowhard” who acted aggressively and was not intimidated by Madoff. He noted that Ostrow “talked tough, but didn’t look at anything.”

Lamore:

Madoff said he thought Lamore understood options.

This document contains information that has been collected in connection with an investigation conducted by the U.S. Securities and Exchange Commission Office of Inspector General (OIG). It contains confidential, privileged and sensitive information and should not be recopied or distributed without the express consent of the OIG.

Mark Donohue:

Madoff stated that Mark Donohue looked at the right things for front-running, but only would have discovered it was a Ponzi scheme if he had gone to DTC.

Madoff stated that communications from Donohue “just dropped off.” He stated that during the exam, he called Donohue:

BM: “Is there something going on here I should know about?”

MD: “No, we’re just trying to understand the business. Sunlight is the best disinfectant.”

DTC:

He stated that reconciling records with DTC was something they “should’ve done in ‘06.” When questioned as to whether the Ponzi scheme would have been uncovered by the SEC if it had gone to DTC, he stated, “Yes. It’s very easy to do.”

He stated that in 2006, it was clear they asked about front-running because there were sweeps of the industry at that time for front-running. But in trying to discover a Ponzi scheme, he stated, “It’s very easy if you want. You must do a third party check. It’s absolutely a must.” He went on to add that “It’s Accounting 101 to look at DTC, do a box count” if you are looking for a Ponzi scheme.

When asked if his accounts were segregated at DTC to see if there was trading, he replied, “Yes, of course.”

Madoff stated that in the very beginning, he was buying stock. However, later on, if the SEC asked for DTC records, there would have been no way of duplicating a DTC record.

When asked, “Did you ever have fake DTC records ready in case the SEC asked for them?” Madoff answered, “No.”

1992 Exam:

Regarding the 1992 Investigation and examination of Avellino and Bienes, Madoff stated that the DTC records he provided during the OCIE exam were good. He said, “I returned the money immediately.”

Madoff stated that Dick Walker (then head of NYRO) said, “I told the examiners that if Bernie Madoff is handling these accounts, you have no problem.”

Madoff stated that “I had no idea these guys (Avellino and Bienes) had thousands of clients.”

This document contains information that has been collected in connection with an investigation conducted by the U.S. Securities and Exchange Commission Office of Inspector General (OIG). It contains confidential, privileged and sensitive information and should not be recopied or distributed without the express consent of the OIG.

He said the SEC saw that the trades were real in 1992. When asked if the SEC did in later exams what they did in '92, would they have uncovered the Ponzi scheme?, Madoff answered, "Absolutely." He added, "There is no way they can avoid being criticized for not doing that in 2006."

Madoff said that in 1992, the SEC came for the examination and recalled John Gentile was the supervisor. Madoff described Gentile as an "Italian guy wearing a short sleeve shirt," and called him a "no bullshit" guy. Madoff stated that Gentile came to BLM and wanted to see the stock record, the DTC records, and the blotters. Madoff said that Gentile, "knew what he was looking at and that was it." (Madoff also contrasted this experience with Ostrow who "comes in like he's Colombo.").

On dealing with SEC:

Madoff stated that he was the only representative from BLM that dealt with SEC staff because that was the way he "always" handled exams. He said, "I always dealt with the exams. My brother handled the market making exams."

Madoff stated that 2003 was the first time he could've been caught by the SEC.

Madoff said that when the MarHedge and Barrons articles came out, he expected the SEC to come to him, and that he was surprised the SEC didn't follow up with him. He also mentioned that Erin Arvedlund ("That idiot woman from Barrons.") didn't know what she was talking about, and that it was obvious she was not familiar with the industry.

Madoff stated that he was "kidding" when he said he was on the "short list" to become SEC Chairman, and that he didn't remember telling anyone that Cox would be Chairman before he was named.

Madoff stated that when comparing the SEC and NASD (FINRA), "the level of skill of the staff is pretty much the same." However, he noted that people in the industry are more concerned about an SEC exam than a FINRA exam in general.

Madoff denied that he ever acted as a reference for an SEC employee who was seeking a job. He also stated that he never called anyone at the SEC or Congress to influence an examination of his firm.

On beginning the Ponzi scheme:

Madoff stated that the "problem occurred when I made commitments for too much money and then I couldn't put the strategy to work." He stated, "I had a European bank, I was doing forward conversion, they were doing reverse conversion." He stated that the returns he typically generated, "I thought I was going to be able to do." He explained that when that didn't happen, he thought, "Fine, I'll just generate these trades

This document contains information that has been collected in connection with an investigation conducted by the U.S. Securities and Exchange Commission Office of Inspector General (OIG). It contains confidential, privileged and sensitive information and should not be recopied or distributed without the express consent of the OIG.

and then the market will come back and I'll make it back... and it never happened." He added, "It was my mistake not to just be out a couple hundred million dollars and get out of it."

Mary Shapiro:

Madoff stated that Mary Shapiro was a "dear friend," and that she "probably thinks I wish I never knew this guy."

Madoff stated that Shapiro was a Commissioner and signed the order in the 1992 Avellino and Bienes matter.

Annette Nazareth:

Madoff stated that he knows Nazareth better than he knows Lori Richards. He said he knew Nazareth "very well," and mentioned that she also knew his brother and two sons. He also noted that he was Chairman of the Market Structure Committee when she was the head of Market Regulation.

Arthur Levitt:

Madoff stated that he knew Levitt at Amex, before he was at the SEC, and stated that he knew Levitt "very well." Madoff stated that he went to lunch with Levitt once, to complain to Levitt that he "had to do something about internet stocks." Madoff stated that Levitt subsequently "went on t.v. and gave a warning about it."

Christopher Cox:

Madoff never met Cox.

William Donaldson:

Madoff stated that he and Donaldson were "sort of like competitors," and noted that they had "mutual respect for each other."

Elisse Walter:

Madoff stated that he knows Walter "pretty well," and characterized her as a "terrific lady."

Linda Thomsen:

Madoff stated that he met Thomsen at SIA meetings, but did not know her well.

This document contains information that has been collected in connection with an investigation conducted by the U.S. Securities and Exchange Commission Office of Inspector General (OIG). It contains confidential, privileged and sensitive information and should not be recopied or distributed without the express consent of the OIG.

Other SEC Staff:

Madoff stated he does not know Commissioners Paredes, Aguilar, or Casey. He stated that he knew economists at the sec, but just as part of working in the industry.

Harry Markopolos:

Madoff expressed disdain for Markopolos and the fact that Markopolos has received a lot of press, stating that Markopolos calls himself a “seer.” He called Markopolos a “joke in the industry.” We went on to state that “this was a guy who was just jealous” of his business. He stated that “hedge fund guys are just marketers.”

On Eric Swanson and Shana Madoff:

Madoff denied that he ever dealt with Swanson, and denied knowledge of the romance. He stated that he “found out after the fact.” He said that his brother was afraid to mention it to him. Madoff stated that he “didn’t even know she was going with him until a couple of years afterwards,” and estimated he found out six months before the wedding. He said he brother said to him, “Shana is dating Eric Swanson.” Madoff replied, “Who?” Peter said, “He works for Lori Richards.”

Madoff described Eric as a “straight sort of guy.” Madoff stated that the relationship between the two “never gave him any comfort” about being examined by the SEC, and denied ever asking Shana to go get information or otherwise influence an examination.

Simona Suh and Meghan Cheung:

Madoff stated that Suh and Cheung “acted professional” and that they were “knowledgeable as much as attorneys can be.” However, he noted that they were not as knowledgeable as an industry insider.

Reputation, Strategy, and Industry:

Madoff noted that he was in the securities industry for 50 years prior to his arrest and that he “wrote a good portion of the rules when it comes to trading.”

Madoff stated, “I’m very proud of the role I played in the industry... of course I destroyed that now.”

Madoff stated that he served on the committee as to who should register as Investment Advisers. He said that they were trying to get hedge funds to register, and stated that “nobody wants to register” because then, they would be subject to prosecution

This document contains information that has been collected in connection with an investigation conducted by the U.S. Securities and Exchange Commission Office of Inspector General (OIG). It contains confidential, privileged and sensitive information and should not be recopied or distributed without the express consent of the OIG.

for fraud. He noted that IAs start as small operations, as opposed to BDs which are generally formed from large businesses.

He noted that there is a general feeling in the industry that Broker-Dealers have a harder time in exams than Investment Advisers. Madoff stated that he wasn't concerned about registering because there would be a more thorough IA exam, because there was the understanding that IA exams were easier than BD exams, and also, the IA exam cycle is different. He further stated that he had the understanding that the first IA exam that a newly registered entity got was actually less rigorous than a BD exam. Madoff said that he took the position that he was not required to be registered as an IA.

Madoff stated that when dealing with the SEC, there was "never any hint" that SEC was looking for signs of a Ponzi scheme or that they were looking at his trading. He stated that this was "primarily because of the reputation I had." He had not been aware of the specificity of the complaints brought to the SEC's attention.

Madoff stated that OCIE was looking for front-running, and even if somebody said he was doing a Ponzi scheme, they'd "probably discount this accusation" because they'd think "Why would he do a Ponzi scheme?" He added, "Of course they'd be shocked it's a Ponzi." He stated that they would be "astonished."

Madoff stated that he'd heard that Merrill Lynch, Goldman Sachs, and Credit Suisse wouldn't do business with him, however, he stated that David Kamansky (Merrill Lynch CEO), Dan Tully (former Chairman and CEO Merrill Lynch), and the Chairman of Morgan Stanley (he did not name John Mack) were clients of his. He stated that these people did business with him and did not think the returns of 10-12% were unusual. He stated that if you look at his strategy day-to-day, it would be "extremely volatile, however, month-to-month it would show low volatility. He stated he would hold on to a loss until it became viable again, and that the strategy itself was real, "not that exotic," and "not that unusual." He noted that he sent Lori Richards a copy of his strategy.

Madoff stated that the SEC focused only on front-running in exams, noting the "returns weren't that spectacular." He stated that "credible people knew it could be done or else they wouldn't be clients." He stressed that the strategy made sense, and that stories of 300% returns were "total nonsense." He stated that "All you have to do is look at the types of people I was doing this for to know it was a credible strategy." He added that "They knew the strategy was doable," and that they "Knew a lot more than this guy Harry [Markopolos]."

Madoff noted that the industry is growing incredibly complicated. He gave the example of when his firm put up a credit default swap and didn't know how to put it on the books. Madoff said he didn't know, and it wasn't in manuals, so he called [Personal Privacy] He said [Personal Privacy] didn't know, but conferenced in another industry person, who told him to put it in his London office books. He said he called Merrill Lynch, Lehman Bros, five firms total, all of which didn't know. He said

This document contains information that has been collected in connection with an investigation conducted by the U.S. Securities and Exchange Commission Office of Inspector General (OIG). It contains confidential, privileged and sensitive information and should not be recopied or distributed without the express consent of the OIG.

the NASD had no clue. Madoff stated that today, lots of trades are done off the books because people don't know what to do with them.

Madoff stated that the only problem with SEC Headquarters is that he had "too much credibility with them and they dismissed the Ponzi."

Madoff said, "You can't have the transparency the regulators want you to have because it's proprietary and detrimental." He stated, "By and large the industry is honest." He added, "I got myself in a terrible situation, it's a nightmare... The thing I feel worst about besides the people losing money is that I set the industry back." Madoff noted that he "did work in the industry long before I did anything wrong." Madoff spoke of the situation, "It's a tragedy, it's a nightmare."

Madoff insisted that his market making business was totally walled off from the financial side.