

BERNARD LAWRENCE MADOFF

OPPOSITION REPORT

FEBRUARY 2009

Prepared for **XXXXXX**

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INTRODUCTION

This report summarizes the record of Bernard Madoff. It presents key attacks with respect to his public record prior to December, 2008.

The following sources were used for this report: campaign finance records from the Federal Election Commission and New York State Board of Elections; federal court records from PACER; news clippings from Lexis-Nexis; public statements, litigation records and regulatory action records from the U.S. Securities and Exchange Commission; and business records from the New York State Department of State and the Delaware Department of State.

Note:

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While key issues have been highlighted, the reader must draw his or her own conclusions.

Significant effort has been made to ensure the accuracy of this report. Before using this material, please be certain to understand the facts and nuances within the information presented.

Always double-check the facts to verify your claims. If any portion of the research is unclear, please call the author of the document for clarification before using the information.

EXECUTIVE SUMMARY

Bernard Madoff has been a fixture in the investing industry for nearly 50 years. Born in the late 1930's, Madoff started up his own investment firm at the age of 22. After years of growth, Madoff branched into investment banking. He served as chairman of NASDAQ in 1990, 1991 and 1993. His companies worked in various sectors of the investment industry including market making and hedge funds and served a worldwide base. His firm was known for delivering consistent returns in inconsistent markets. Madoff's main company, Madoff Investment Securities, included several of his family members.

Madoff could be questioned for the unusually consistent returns his firm was able to achieve. In 2001, investing insiders noted that others who have used Madoff's investing strategy had nowhere near the same degree of success. The insiders marveled "at the seemingly astonishing ability to time the market and move to cash in the underlying securities before market conditions turn negative; and the related ability to buy and sell the underlying stocks without noticeably affecting the market." The same insiders speculated that part of the returns Madoff was able to achieve came from other activities related to Madoff's market making. In 2001 Madoff refused to reveal total assets under management.

Regarding other issues, Madoff could be attacked for being the money manager for two accountants who illegally took in over \$440 million in the sale of unregistered securities in 1992. Madoff claimed that he did not know the money had been illegally raised. In the early 1990's Madoff started the controversial practice of paying brokers a penny a share to get their market orders. A NYSE letter to the SEC attacked Madoff, noting that another exchange previously had referred to such payments for orders as "bribes."

Madoff has been a consistent contributor to Democratic candidates and committees. His federal contributions from 1998 to 2008 total \$156,050. Madoff's largest recipient of his contributions was the Democratic Senatorial Campaign Committee with contributions totaling \$100,000.

TOP ATTACKS

May 2001: Investing insiders questioned the consistency of returns that Madoff was able to obtain as hedge fund portfolio manager. Investing insiders questioned Madoff's hedge fund's consistency of returns. A May, 2001 MAR/Hedge article stated, "Those who question the consistency of the returns, though not necessarily the ability to generate the gross and net returns reported, include current and former traders, other money managers, consultants, quantitative analysts and fund-of-funds executives, many of whom are familiar with the so-called split strike conversation strategy used to manage the assets." [MAR/Hedge, 5/2001]

- **Anonymous investing insiders noted that "others who use or have used... [Madoff's investing strategy] are known to have had nowhere near the same degree of success."** Investing insiders, on the condition that they would not be identified, noted that "others who use or have used the strategy—described as buying a basket of stocks closely correlated to an index, while concurrently selling out-of-the-money call options on the index of buying out-of-the-money put options on the index—are known to have had nowhere near the same degree of success." [MAR/Hedge, 5/2001]
- **The insiders also marveled "at the seemingly astonishing ability to time the market and move to cash in the underlying securities before market conditions turn negative; and the related ability to buy and sell the underlying stocks without noticeably affecting the market."** Anonymous investing insiders marveled "at the seemingly astonishing ability to time the market and move to cash in the underlying securities before market conditions turn negative; and the related ability to buy and sell the underlying stocks without noticeably affecting the market." [MAR/Hedge, 5/2001]
- **Experts asked why no one has been able to duplicate similar returns and also speculated that "at least part of the returns must come from other activities related to Madoff's market making."** A MAR/Hedge, May 2001 article, stated that experts asked "why no one has been able to duplicate similar returns using the strategy and why firms on Wall Street haven't become aware of the fund and its strategy and traded against it." Additionally, these experts speculated that "at least part of the returns must come from other activities related to Madoff's market making." [MAR/Hedge, 5/2001]

Madoff was the money manager for two accountants who illegally took in over \$440 million in sale of unregistered securities. Bernard Madoff, who ran and owned Bernard L Madoff Investment Securities, was the money manager for two Florida accountants who illegally took in over \$440 million in sale of unregistered securities; The accountants, Frank J. Avellino and Michael S. Bienes, who delivered on promise of returns between 13.5 percent and 20 percent, hired Madoff as their investment manager. Madoff claimed that he did not know the money had been illegally raised. [Wall Street Journal, 12/16/92; Minneapolis Star Tribune, 12/24/92]

Bernie Madoff became a significant trader in NYSE stock by paying brokers a penny a share to get their market orders. Madoff gained a large share of trades in the NYSE by paying brokers a penny a share to get their market orders. He said that this practice saved that \$ 26.50 fee per 1,000 shares to the NYSE, and puts a little extra money in the brokers' pockets. This diversion of business

hurt the NYSE and other exchanges. As of September 1991, Madoff alone handled about 10 percent of all trades in NYSE-listed stocks. Since 1980 the Big Board's share of trades in NYSE-listed stocks dropped from 85 percent to 68 percent, a reason the price of a seat on the exchange plunged from a pre-crash high of \$1.15 million in 1987 to a recent \$431,000. Madoff paid for the right to execute a trade by living off trading profits and the spread, the normal eighth-of-a-point difference between bid and asked. Experienced investors disagree as to whether this is good or bad for investors. Madoff and other electronic traders cut transaction costs dramatically. However, some critics argued they may reduce liquidity in markets. The Securities & Exchange Commission was about to begin a yearlong study that will generate some answers. [[Forbes](#), 1/6/92]

A NYSE letter to the SEC on the future of markets attacked Madoff, noting in a footnote that another exchange previously had referred to such payments for orders as “bribes.” The NYSE stated in a letter to the SEC that Madoff's practice of paying for orders prevented discovery of the best price for stocks by routing orders electronically instead of having them exposed to the auction process on the exchange floor. The American Stock Exchange also criticized Madoff's payment for orders, saying it encouraged brokers to route orders “based not on what is in the best interest of the customer, but on what is most remunerative for the broker.” In a submission to the SEC signed by its chairman, former Oklahoma Congressman James R. Jones, the exchange asked whether “there is any real moral distinction between kickbacks in the defense industry and cash payments for order flow in the securities industry.” Madoff replied, “People would like to apply pejorative-type terms. I think people that use that kind of terminology are unhappy they are losing business.” In a footnote, the Amex further criticized the practice of paying for orders. In a submission to the SEC signed by its chairman, former Oklahoma congressman James R. Jones, the exchange asked whether “there is any real moral distinction between kickbacks in the defense industry and cash payments for order flow in the securities industry.” Madoff replied, “People would like to apply pejorative-type terms. I think people that use that kind of terminology are unhappy they are losing business.” [[Washington Post](#), 4/14/93]

- **Madoff replied to criticisms of his trading system by stating that his trading method would only be a problem “if the customer was not receiving the best execution.”** Madoff said in reply to criticism of his trading system, “There'd only be a problem and it wouldn't matter whether it was the issue of paying a penny a share of it if you were using any of the inducements the exchanges used. It would only be a problem if the customer was not receiving the best execution. That is clearly not the case.” [[ABC Nightly Business Report](#), 4/14/93]
- **Testifying before the House Telecommunications and Finance Subcommittee, NYSE President Richard Grasso said payment for order flow raises “serious questions” concerning whether or not a broker is fulfilling his responsibility of giving his customer the best execution price.** NYSE President, Richard Grasso said, “Cash payments for orders puts the interests of intermediaries ahead of the interests of investors, and allows both the interposed dealer and the customer's brokerage firm to benefit at the expense of the investor.” Grasso said “third market” dealers, such as Madoff Investment Securities, which pays one penny for each trade sent its way, claim that they provide executions of customer orders at least equal to that available in exchange agency-auction markets. “However, we have not seen any substantiation of such claims,” Grasso said. He pointed out a recent study concluded that off-exchange executions were inferior to agency-auction executions. [[Securities Week](#), 5/17/93]

In 2001, Madoff refused to reveal total assets under management, but did not dispute that the figure was in the range of \$6 billion to \$7 billion. In 2001, Madoff refused to reveal the total assets under management of his hedge funds, but did not dispute that the figure was in the range of \$6 billion to \$7 billion. [MAR/Hedge, 5/2001]

Madoff said that he made markets in securities traded away from the major exchanges and had 100 employees in Manhattan. Madoff stated that he made markets in securities traded away from the major exchanges and had 100 employees in Manhattan. Madoff said, “We learned over the years to stick to what we know and control our costs. We were able to withstand a downturn without it really hurting our bottom line.” [Crain’s New York Business, 12/16/01]

Bernard L. Madoff Investment Securities developed a proprietary, state-of-the-art automated trading system that allowed Big Board members to bypass the exchange floor. Madoff developed an automated trading system that allowed Big Board Members to bypass the exchange floor. Madoff contended that “if the NYSE disappeared tomorrow, the world would go on.” He added, “There is no reason, with computers being the way they are, with communications being the way they are, that all orders (for NYSE-listed stocks) should automatically flow to the NYSE.” [Los Angeles Times, 2/9/92]

Madoff supported the introduction of decimal pricing to securities trading. Madoff supported decimal pricing for securities trading. He said, “Decimals will encourage more trading, and the greater volume could more than compensate for narrowing spreads.” [Ottawa Citizen, 6/6/97]

Madoff supported delays in NASDAQ’s Order Audit Trail System (Oats). The audit trail system was created to satisfy a settlement agreement the NASD signed with the SEC to resolve allegations of price-fixing and other abuses in the over-the-counter equities markets. Market-makers said they and the NASD had a laundry list of systems priorities that would make it difficult to meet the Aug. 1998 deadline for the start of Oats. Madoff, then the head of the Securities Industry Association’s Oats ad hoc committee, wrote in a letter to the SEC, “A technological undertaking of this magnitude will require more time, both for members and the NASD, to properly program and test the systems required to comply with the proposal. In addition, service bureaus that report trade data for many firms will need to upgrade their systems as well...The Committee is particularly concerned about the scarcity of qualified systems personnel in light of other demands on the industry such as the Year 2000 conversion, the continuing phase-in of the order-handling rules, the change to finer increments of trading and the conversion to a decimal based pricing system.” Madoff said the industry was further handicapped because the SEC had not yet approved the NASD’s rule filing for Oats, meaning firms did not have the technical specifications needed to modify their systems. Oats, which required firms to capture and report electronically 25 data elements relating to the handling and execution of orders, was meant to provide the NASD with an accurate time sequenced record of orders and transactions. [Investment Dealer’s Digest, 10/13/97]

The following were acknowledged Madoff feeder funds: New York-based Fairfield Sentry and Tremont Advisors’ Broad Market; Kingate, operated by FIM of London; and Swiss-based Thema. [MAR/Hedge, 5/2001]

- **Fairfield Sentry changed its investment prospectus in 2006.** [London Stock Exchange Aggregated Regulatory News Service, 5/18/06]

Madoff Investment Securities was a family run business. Bernard L. Madoff Investment Securities employed many of Madoff's relatives. The president of the company was Bernie's brother, Peter. His son, Andy, was the head of Nasdaq trading. Additionally, his nephew, Charles Wiener, niece, Shana also worked at the firm. Madoff's wife is Ruth Madoff. [[Wall Street & Technology](#), 8/2000]

Madoff supported the NYSE's repeal of Rule 390, which prevented its members from trading certain stocks on alternative systems. Madoff supported the repeal of Rule 390, which prevented members from trading stock listed before April 26, 1979. Madoff said the move would, allow more business to be done in more places—and that's good for everybody." The move enabled firms to send trades to electronic communications networks, allowing for investors to buy and sell anonymously. [[Los Angeles Times](#), 12/2/99]

Madoff Investment Securities owned a stake in MarketXT, an after-hours ECN. [[Business Wire](#), 4/12/04]

- **MarketXT was acquired by Tradescape.com in February 2000.** [[Business Wire](#), 4/12/00]
- **After a surge in volume on MarketXT, at least one dealer suspected the company of making its own markets in an effort to attract business.** Madoff Investment Securities owned a stake in the after-hours ECN in addition to being one of two designated market makers for the company. [[Traders Magazine](#), 5/1/02]

BIOGRAPHICAL TABLE

TYPE	DETAILS	SOURCE
Date of Birth	April, 1938	Nexis Public Records
Marriage	Ruth Madoff	<u>Wall Street & Technology</u> , 8/2000
Children	Andrew, Mark	<u>Wall Street & Technology</u> , 8/2000
Professional	Chairman of NASDAQ; 1990, 1991, 1993 Also see business affiliations below	[<u>PR Newswire</u> , 3/29/99; <u>NY Times</u> , 1/19/92; <u>Securities Week</u> , 11/25/91; <u>Newsday</u> , 1/15/91]
Business Affiliations	Madoff Securities Madoff Brokerage & Trading Technologies LLC Madoff Energy Holdings LLC Madoff Family Fund LLC Madoff Family LLC Madoff Technologies, LLC Madoff Energy III LLC Madoff Energy IV LLC Madoff Energy LLC	New York State Department of State; Delaware Department of State
Bankruptcy Court Search	None (pre-December, 2008)	PACER

CAMPAIGN FINANCES

Madoff has been a consistent contributor to Democratic candidates and committees. Madoff's federal contributions from 1998 to 2008 total \$156,050. The largest recipient of his contributions was the Democratic Senatorial Campaign Committee with contributions totaling \$100,000.

Madoff gave \$4,000 to Senator Charles Schumer while he served on the Committee on Banking, Housing and Urban Affairs. Madoff gave Senator Charles Schumer \$6,000, including \$4,000 when he served on the Committee on Banking, Housing and Urban Affairs. Schumer served on the Committee on Finance since 2005. [Federal Election Commission; Schumer's Senate Website, http://www.senate.gov/~schumer/SchumerWebsite/about_chuck/ac-bio_chuck.html]

- **Madoff contributed \$75,000 to the Democratic Senatorial Campaign Committee, while Schumer served as the Committee Chairman.** Senator Charles Schumer served as the chairman of the Democratic Senatorial Campaign Committee while Madoff contributed \$75,000 to the committee. In total, Madoff contributed \$100,000 to the Democratic Campaign Committee. [Federal Election Commission]

The following chart presents the contributions made by Bernard Madoff from 1998 to 2008:

Date	Candidate/Committee	Amount
9/12/2008	Democratic Senatorial Campaign Committee	\$ 25,000
4/24/2008	Jeff Alan Merkley/Jeff Merkley for Oregon	\$ 2,300
5/24/2007	Securities Industry and Financial Markets Association PAC	\$ 5,000
5/4/2007	Democratic Senatorial Campaign Committee	\$ 25,000
10/17/2006	Securities Industry and Financial Markets Association Fund A	\$ 5,000
9/30/2006	Democratic Senatorial Campaign Committee	\$ 25,000
9/22/2005	Securities Industry and Financial Markets Association Fund A	\$ 5,000
5/9/2005	Democratic Senatorial Campaign Committee	\$ 25,000
10/18/2004	James Matheson/Matheson for Congress	\$ 250
10/15/2004	Darlene Hooley/Hooley for Congress	\$ 250
10/15/2004	Martin Frost/Martin Frost Campaign Committee	\$ 250
8/18/2004	Charles E. Schumer/Friends for Schumer	\$ 1,000
8/18/2004	Charles E. Schumer/Friends for Schumer	\$ 1,000
7/8/2004	Securities Industry and Financial Markets Association Fund A	\$ 5,000
6/17/2004	Edward J. Markey/The Markey Committee	\$ 2,000
6/17/2004	Edward J. Markey/The Markey Committee	\$ 2,000
2/18/2004	Frank R. Lautenberg/Lautenberg for Senate	\$ 1,000
9/23/2003	Richard A. Gephardt/Gephardt for President Inc	\$ 2,000
3/25/2003	Ronald Lee Wyden/Wyden for Senate	\$ 2,000
3/25/2003	Ronald Lee Wyden/Wyden for Senate	\$ 2,000
4/8/2002	Charles E. Schumer/Friends for Schumer	\$ 1,000

Date	Candidate/Committee	Amount
4/8/2002	Charles E. Schumer/Friends for Schumer	\$ 1,000
8/30/2001	Charles B. Rangel/Rangel for Congress	\$ 1,000
11/3/2000	Securities Industry and Financial Markets Association Fund A	\$ 2,000
4/20/2000	Vito Fossella/Committee to Re-Elect Vito Fossella	\$ 1,000
3/10/2000	David R. Obey/A Lot of People for Dave Obey	\$ 1,000
1/13/2000	Hillary Rodham Clinton/Hillary Rodham Clinton for US Senate Committee Inc.	\$ 1,000
12/20/1999	Securities Industry and Financial Markets Association Fund A	\$ 2,000
12/20/1999	Securities Industry and Financial Markets Association Fund A	\$ 2,000
8/24/1999	Jon S. Corzine/Corzine 2000 Inc.	\$ 1,000
4/26/1999	Bill Bradley/Bill Bradley for President Inc	\$ 1,000
10/23/1998	Charles B. Rangel/Rangel for Congress	\$ 1,000
9/21/1998	Alfonse M. D'Amato/Friends of Senator D'Amato (1998 Committee)	\$ 1,000
5/22/1998	Charles E. Schumer/Schumer '98	\$ 1,000
5/22/1998	Charles E. Schumer/Schumer '98	\$ 1,000
5/15/1998	Edward J. Markey/The Markey Committee	\$ 1,000
5/5/1998	Wilbert J. Tauzin, II/The Billy Tauzin Congressional Committee	\$ 1,000

[Federal Election Commission]

The following chart presents the New York state contributions made by Madoff:

Date	Candidate/Committee	Amount
9/21/2004	SIFMA New York	\$ 750
8/30/2001	Rangel for the 106th Congress	\$ 1,000
8/21/2001	SIFMA New York	\$ 750
8/11/2000	SIFMA New York	\$ 750

[New York State Board of Elections]

The following chart presents the New York state contributions made by Madoff Investment Securities:

Date	Candidate/Committee	Amount
7/28/2006	SIFMA New York	\$ 750
8/11/2005	SIFMA New York	\$ 750
9/17/2003	SIFMA New York	\$ 750
9/3/2002	SIFMA New York	\$ 750
7/5/2000	NYS Senate Republican Conference Committee (Housekeeping)	\$ 1,000
6/30/2000	Democratic Assembly Campaign Comm.-Housekeeping Conference	\$ 1,000
12/29/1999	SIFMA New York	\$ 750

[New York State Board of Elections]

COURTS

PACER - Federal search:

No results (pre-December 2008) for Bernard Madoff were found.

BUSINESS AFFILIATIONS

Five Madoff-related companies were registered with the New York State Department of State. All companies are located at 885 Third Avenue in New York City. Additionally, four Madoff companies were registered in Delaware.

The following are Madoff-related companies registered with the New York State Department of State:

Name: Madoff Brokerage & Trading Technologies LLC
Initial DOS Filing Date: December 21, 2000
Current Entity Status: Active
Registered Agent: None
Address: 885 Third Avenue/18th FL, New York, New York, 10022-4834

Name: Madoff Energy Holdings LLC
Initial DOS Filing Date: March 3, 2008
Current Entity Status: Active
Registered Agent: None
Address: 885 Third Avenue, 18th FL, New York, New York, 10022

Name: Madoff Family Fund LLC
Initial DOS Filing Date: April 30, 2001
Current Entity Status: Active
Registered Agent: None
Address: 885 Third Avenue/18th FL, New York, New York, 10022-4834

Name: Madoff Family LLC
Initial DOS Filing Date: April 30, 2001
Current Entity Status: Active
Registered Agent: None
Address: 885 Third Avenue/18th FL, New York, New York, 10022-4834

Name: Madoff Technologies, L.L.C.
Initial DOS Filing Date: October 28, 1998
Current Entity Status: Active
Registered Agent: None
Address: 885 Third Avenue, New York, New York, 10022

The following are Madoff-related companies registered with the Delaware Department of State:

Name: Madoff Energy Holdings LLC
Incorporation Date: May 31, 2007
Registered Agent: Capitol Services, Inc
Address: 615 South Dupont Highway, Dover, DE 19901

Name: Madoff Energy III LLC

Incorporation Date: May 29, 2008
Registered Agent: Capitol Services, Inc
Address: 615 South Dupont Highway, Dover, DE 19901

Name: Madoff Energy IV LLC
Incorporation Date: October 7, 2008
Registered Agent: Capitol Services, Inc
Address: 615 South Dupont Highway, Dover, DE 19901

Name: Madoff Energy LLC
Incorporation Date: February 20, 2007
Registered Agent: Capitol Services, Inc
Address: 615 South Dupont Highway, Dover, DE 19901