

Former chairman of GM financial arm charged in Madoff-related fraud

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New York State Attorney General Andrew Cuomo on Monday charged J. Ezra Merkin, a multi-millionaire hedge fund manager and former chairman of GMAC Financial Services, the financial arm of General Motors, with bilking investors out of \$2.4 billion by funneling their money, without their knowledge, to convicted Ponzi scheme operator Bernard Madoff.

According to the civil complaint filed by Cuomo with the New York Supreme Court, Merkin collected \$470 million in management and incentive fees over a fifteen-year period by claiming to be carefully managing the money his clients invested in his three hedge funds, while funneling the bulk of the funds to Madoff's operation.

Cuomo's lawsuit seeks payment of damages and disgorgement of all fees by Merkin, as well as restitution and other "equitable relief."

One of Merkin's funds, Ascot Partners LP, was, from its inception in 1992, a "feeder fund" for Madoff, according to the complaint. It had reported net assets of \$1.8 billion in December of 2008, when Madoff confessed to authorities that he had for years been running the world's biggest pyramid scheme. Ascot was wiped out, along with hundreds of millions of dollars in two other Merkin funds that had been investing heavily with Madoff.

Merkin, known as a savvy Wall Street insider, philanthropist and pillar of New York's social and cultural establishment, engaged in a "panoply of lies" to dupe hundreds of clients, including many nonprofit organizations and charities, according to Cuomo's complaint.

The complaint charged Merkin with using his position on the boards of nonprofits, including Yeshiva University and UJA-Federation of New York, a Jewish charity, to steer their investments to ventures in which he had a personal stake, without disclosure. Merkin headed the

investment committees on the boards of Yeshiva and UJA (United Jewish Appeal).

Yeshiva lost \$110 million invested with Merkin. Other schools that lost tens of millions of dollars include New York University, New York Law School, Tufts University and Bard College. New York University sued Merkin in December. New York Law School has also sued Merkin, as has the real estate magnate and *New York Daily News* publisher Mortimer Zuckerman.

The complaint raises Merkin's close association with money manager Victor Teicher, stating that Teicher was Merkin's primary financial adviser from the 1980s. He managed two of Merkin's hedge funds, Ariel Fund Ltd. and Gabriel Capital Corp., from 1988 until at least 1998, according to Cuomo.

Teicher was indicted for insider trading in 1988, convicted in 1990 and jailed for a year starting in 1994 after his appeal was denied. In 2000, he was barred by the Securities and Exchange Commission (SEC) from working in the securities industry.

Cuomo included an email from Teicher to Merkin as part of his complaint. "The Madoff news is hilarious," wrote Teicher to Merkin on December 12, the day after Madoff's arrest. "I'm yours to help in any way I can; unfortunately, you've paid a big price for a lesson on the cost of being greedy."

The complaint further alleges that Merkin illegally used money from his hedge funds for personal purposes, including more than \$91 million to buy art for his Manhattan home. Merkin is one of the world's largest collectors of paintings by Mark Rothko. The total value of his Rothko collection is estimated at \$150 million-\$200 million.

Cuomo does not charge that Merkin was aware that Madoff—another former pillar of Wall Street who served three terms as chairman of the Nasdaq stock exchange—was operating a Ponzi scheme, in which he

falsely told his clients that he was investing their money in stocks when, in fact, he was paying existing clients with funds received from new investors. Rather, he alleges, Merkin concealed that he was handing most of his investors' money to Madoff and deliberately leading them to believe instead that he was managing their investments.

The complaint does, however, include portions of depositions given by Merkin, in which he admits to knowledge of "skepticism" in financial circles toward Madoff's investment business. In fact, Madoff was investigated at least nine times by the SEC, but the financial regulator refused to proceed against the former Nasdaq head.

Many prominent investment managers refused to do business with Madoff and steered their clients away from the secretive "guru" who miraculously generated steady returns of 1 percent or more a month for decades, despite the gyrations on the stock market and through bear as well as bull markets. One Wall Street whistleblower repeatedly urged the SEC to investigate Madoff, warning in one letter that "Madoff Securities is the world's largest Ponzi scheme."

There was an odor of fraud surrounding Madoff of which Merkin was undoubtedly well aware.

Cuomo charges that some 85 percent of investors in Merkin's Ascot fund did not know until Madoff was arrested that he had control over virtually all of Ascot's assets. The complaint cites a presentation to one nonprofit organization in which Merkin indicated that only 15 percent of Ascot was invested with Madoff.

It adds that Merkin misrepresented the role of Morgan Stanley by referring to the bank as Ascot's "principal prime broker." The complaint states: "By asking investors to wire their funds to the Morgan Stanley account, and describing Morgan Stanley as a prime broker, Merkin further concealed Madoff's role in Ascot, and misleadingly gave comfort to investors by claiming that some or all of Ascot's assets were held at a major brokerage firm."

Morgan Stanley has issued no comment on the indictment of Merkin.

The Merkin indictment is part of what is but the first stage of the fallout from the Madoff scandal. A large number of "feeder funds" funneled investors' money to Madoff, in many cases without their knowledge, in return for hundreds of millions of dollars in fees.

On April 1, Massachusetts regulators accused Fairfield Greenwich Group in New York of defrauding investors

by misrepresenting its knowledge of how Madoff ran his business. Fairfield's Sentry Funds had placed 94 percent of its assets, or \$7.2 billion, with Madoff, Massachusetts Secretary of the Commonwealth William Galvin said.

Thousands of investors, including many middle-class people as well as the rich and famous, have been wiped out as a result of the fraud. A good many elderly investors who have lost their life savings had never heard of Bernard Madoff. They invested with other money managers who, like Merkin, handed their money over to Madoff and received a cut in the profits generated by the scam.

The fraud goes far deeper and extends far wider than the machinations of a few brokers and fund managers. What is being exposed by the collapse of the edifice of paper values on the basis of which the ruling elite enriched itself is a vast web of fraud and criminality that lies at the very heart of contemporary capitalism.

The rise and fall of figures such as Madoff and Merkin are emblematic of the growth of financial parasitism over three decades during which virtually all of the limited government controls over the banks and finance houses put into place after the 1929 Wall Street crash were progressively dismantled, by Democratic as well as Republican administrations.

The removal of all regulatory restraint is itself an expression of the decay of American capitalism. The growth of financial parasitism has gone hand in hand with the systematic dismantling of large sections of industry and a relentless attack on the jobs and wages of the working class.

Merkin, perhaps even more directly than Madoff, reflects the corruption of all aspects of official society, including the rarified heights of the cultural establishment.



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