Madoff lawsuits charge JPMorgan and HSBC with complicity in Ponzi scheme

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18 December 2010

Two years after the arrest of Bernard Madoff, ample evidence has emerged that a substantial number of major financial institutions profited from and knowingly facilitated his Ponzi scheme.

Irving H. Picard, the trustee for the investors who were defrauded by Madoff, filed a lawsuit against JPMorgan Chase on December 2 alleging that the bank knew that Madoff's transactions were fraudulent but continued doing business with him.

"While many financial institutions enabled Madoff's fraud, JPMC [JPMorgan Chase] was at the very center of that fraud and thoroughly complicit in it," said David J. Sheehan, an attorney for Picard and a partner at Baker & Hostetler LLP, the trustee's court-appointed counsel.

Madoff pled guilty on March 12, 2009 of operating a Ponzi scheme for more than a decade that masqueraded as an investment firm. He admitted that for years he had not invested the money of his clients. Instead, in classic Ponzi fashion, he paid dividends from funds provided by new investors. Madoff, 71, is currently serving a 150 year sentence.

The total in losses from his scam is now estimated at $20 billion.

Picard had a deadline of December 15 to present all of his charges. He had spent the previous two years gathering information to support the lawsuits.

Instead of making trades with the money he received from investors, Madoff simply deposited the funds in an account at JPMorgan Chase, from which he paid dividends. He was able to maintain the scheme as long as he continued attracting investors. This inflow, however, fell off sharply after the September 2008 financial panic, making it impossible for Madoff to keep paying his clients.

"JPMC was BLMIS' [Bernard L. Madoff Investment Securities'] primary banker for more than 20 years and was responsible for knowing the business of its customers—in this case, a very large customer," said Sheehan. "Madoff would not have been able to commit this massive Ponzi scheme without this bank. JPMC should pay the price for its central role in enabling Madoff's fraud."

Picard alleges that JPMorgan made $1 billion in fees and profits from its role as Madoff's main banker and is seeking to recover an additional $5.4 billion in damages as part of the lawsuit.

In a press release issued earlier this month, Picard wrote: "JPMC had clear, documented suspicions about the legitimacy of BLMIS' operations. Instead of acting on that information, it simply continued to collect fees and profit from the fraud."

Picard has filed the complaint with the bankruptcy court but it has not been publicly released because JPMorgan claims it contains confidential information. "While JPMC may want to hide the full extent of its significant role in the Madoff fraud from the public, we intend to move to have the complaint made public as soon as possible," Picard said.

Picard also filed a $9 billion lawsuit against London-based HSBC on December 5, claiming that HSBC "enabled Madoff's Ponzi scheme through the creation, marketing and support of an international network of a dozen feeder funds based in Europe, the Caribbean and Central America."

The bank "earned hundreds of millions of dollars by selling, marketing, lending to and investing in financial instruments designed to substantially assist Madoff by pumping money into BLMIS and prolonging the Ponzi scheme," according to Picard.

Although the complaint against JPMorgan Chase remains under seal, elements of its likely contents emerged earlier this year in the form of 500 internal JPMorgan documents leaked to the French weekly *L'Expresse*.

Among the documents is a report, dated October 2008, in which the bank notes that "the investment performance achieved by it's [Madoff's] funds, which is so consistently and significantly ahead of its peers year-on-year, even in the prevailing market conditions, appears too good to be true, meaning it probably is."

The report was filed with the UK's Serious Organized Crime Agency in October 2008 after employees of a JPMorgan subsidiary in Europe were threatened with violence for attempting to withdraw holdings from a Madoff-related fund. A representative of Aurelia Finance, a Geneva firm acting as an advisor to one of Madoff's feeder funds, said that its "Colombian friends" would "create havoc" if the JPMorgan employees withdrew the money. JPMorgan did not file a similar report with US regulators.

Last year, a Palm Beach, Florida partnership that lost $12.8 million in Madoff investments filed a lawsuit claiming that JPMorgan "quietly liquidated its entire $250 million cash position" with Madoff before his fraud became public, while helping him to continue to defraud investors.

"Rather than protect other victims of Madoff's fraud as it had already protected itself, Chase chose not only to protect Madoff but to partner with him in the fleecing of his victims by providing exactly the same range of services, for substantial fees, after learning of his criminal enterprise," the Florida firm said in a press release.

The case was thrown out by US District Judge Barbara S. Jones in New York, who said the "plaintiff alleges no facts to demonstrate" that JPMorgan did actually make a discovery of fraud. The ruling is contradicted by evidence presented by *L'Expresse* and other news sources that JPMorgan strongly suspected Madoff's business was fraudulent.

Particularly striking is the fact that the bank account in which Madoff held investors' funds nearly hit zero several times in 2008, a fact that JPMorgan could not have failed to notice, considering that the account had previously held billions.

JPMorgan Chase and HSBC are only two of many banks and hedge funds that suspected Madoff was perpetrating a fraud but continued to direct investors to his operation, raking in fees on his returns.

The suits filed against JPMorgan Chase and HSBC vindicate the analysis of the Madoff scandal made by the *World Socialist Web Site* from the time of Madoff's arrest. While the media depicted the big Wall Street firms as shocked and entirely innocent bystanders, the WSWS wrote on December 16, 2008:

"Madoff's scam could not have been carried out without the complicity of the highest echelons of the financial elite and the government… What is being widely reported as the largest financial fraud in history goes far deeper and extends far wider than the machinations of a single broker and fund manager… To a great extent, the entire economy has been transformed into a giant Ponzi scheme. The collapse of trillions in paper assets will assume ever more malignant forms."

It is now clear that a decision was made, under conditions of mounting public outrage over the machinations of Wall Street and the government bailout of the banks, to make Madoff, a relative small fry in comparison to the likes of JPMorgan Chase and Goldman Sachs, a sacrificial lamb. It was decided to "throw Bernie to the wolves" in order to focus public anger on him and divert attention from those whose swindling was on a far greater and even more destructive scale.

To this day, Madoff is the only significant Wall Street figure to have been imprisoned as a result of the financial crisis. Angelo Mozilo, the former Countrywide Financial CEO charged with insider trading and securities fraud, recently reached a settlement with the Securities and Exchange Commission requiring only that he pay a fine of $67.5 million, one seventh of his lifetime compensation as head of the country's biggest purveyor of sub-prime mortgages.