

December 18, 2008

### MADOFF INFORMATIONAL ALERT

Bernard Madoff's alleged massive fraud, discovered last week, has affected and will continue to affect many domestic and international financial institutions, hedge funds, charitable foundations, and individuals who have reported staggering losses. It seems likely that any business involved in the auditing or vetting of Madoff investments will find themselves a target of litigation.

In the wake of the Madoff collapse, victimized investors are scrambling to find out whether they will be able to recover any portion of their investment and the extent of their potential liability to government-appointed trustees and a variety of private parties. Reed Smith has extensive experience handling the insurance recovery issues that arise from large, complex frauds, and seeking recovery for victims from alleged wrongdoers and others. Our international insurance recovery and fraud recovery teams work hand-in-hand to achieve maximum results for our clients.

Complex and expensive investigations and litigation are inevitable. Financial institutions and investment advisers almost certainly will face lawsuits by clients and investors who were affected by Madoff's fraud. First-party crime, liability and other types of insurance could be a potential source of monies to help mitigate losses. Further, entities and individuals who experienced considerable losses may face bankruptcy issues that could impact insurance coverage.

All those affected by the scheme should:

- Look at first-party insurance policies that may cover an organization's or individual's own losses, such as commercial crime, fidelity, and credit risk insurance.
- Review liability policies that may cover claims by third parties, including directors' and officers' liability policies, errors and omissions or professional liability policies, Investment Advisor or broker/dealers policies, comprehensive general liability coverage, financial institution bonds, and other liability policies.

- Determine whether recovery is available under another entity's insurance, so-called "Other People's Insurance" or "OPI." The bank, foundation, charitable organization or individual may be deemed an "other insured," "additional insured," or "loss payee" under another entity's insurance policy, such as hedge funds that invested with Madoff.
- Check your policies to determine whether they cover investigations in connection with investor losses.
- Pay close attention to the notice provisions of all potentially applicable insurance policies, which not only may require prompt reporting claims, but may also permit reporting of occurrences and/or circumstances that could give rise to future claims. These provisions may be important to consider, particularly in the context of renewals, where reporting under expiring coverage may be advantageous.
- Seek advice from experienced insurance coverage counsel like the Reed Smith international Insurance Recovery Group on whether you have coverage for their financial losses under existing insurance policies and how to access that coverage in a cost effective way. We can also identify potential gaps in coverage and unique circumstances that require specific coverage. Counsel can help determine which policy best meets your needs, and can assist in the negotiation of policies to avoid future losses.

For additional information, contact any of the attorneys listed below, or the Reed Smith attorney with whom you regularly work.

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