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## About This Series...

*A periodic update of the tax, due diligence, and business fraud issues for those clients and friends of the firm affected by the alleged fraud of Bernard L. Madoff and his business.*

# MADOFF MATTERS

## The Alleged Madoff Scheme: Implications and Considerations

The financial scandal caused by the alleged fraud of Bernard Madoff and his business, Bernard L. Madoff Investment Securities LLC, has affected both individuals and corporations and has led to an enormous amount of information from the media and financial and legal advisers.

In response, Holtz Rubenstein Reminick LLP thought it would be helpful for us to sift through all of the data and keep you updated on the most vital information that may have a direct effect on you. These e-news bulletins will be sent periodically to keep you informed and will be available on our website, [www.hrrllp.com](http://www.hrrllp.com).

The firm also will hold a Town Hall-style meeting on January 21, 2009 from 3-5 p.m. at the Jumeirah Essex House in Manhattan. Its purpose is to enable taxpayers and CEOs, CFOs, and Controllers of both for-profit and not-for-profit organizations to voice their concerns, ask specific questions, and hear possible solutions. It will be conducted by senior members of Holtz Rubenstein Reminick's Madoff Response Team, along with representatives from the legal and investment advisory professions. See below for registration information.

The HRR Response Team has been assembled to handle the accounting, tax, and business fraud issues resulting from the scheme. The team consists of Timothy W. Mulcahy, Partner-in-Charge of HRR Taxation Services; Joel R. Podgor, Partner-in-Charge of HRR White Collar Crime and Tax Fraud Services, and Gordon Siess, Partner-in-Charge of HRR Not-for-Profit Services, along with Managing Partner Frank Candia.

This issue, we focus on tax implications, claims with the SIPC, clawback provisions, and insurance policy coverage.

### Tax Implications

A **protective refund claim** can be made for any years where the statute of limitations still is open.

- For most taxpayers that would be 2005 to 2007.
- Amended income tax returns would be filed eliminating any falsified income received from Madoff.

A **deductible theft loss** could be taken on your income tax return.

- Generally, the deduction is available in the year the theft was discovered. Theft losses must be reduced by any potential recoveries from, for example, litigation, class action law suits, the Securities Investor Protection Corporation (SIPC), or from homeowners insurance.
- If the loss is greater than your 2008 income it would create a net operating loss that could be carried back three years, thereby creating refunds for those years. Any remaining loss could then be carried forward to future years.
- It's important to note that the uncertainty of the case makes it likely that you will not know what, if anything, you will recover from lawsuits or insurance claims before the filing deadline of your 2008 income tax return. This may prevent you from deducting the entire loss in 2008.

### SIPC Claims

Irving Picard, the court appointed trustee for Bernard L. Madoff Investment Securities LLC, mailed out claim forms to more than 8,000 potential victims of the alleged Ponzi scheme run by Madoff. The claim forms were sent to those who had open accounts at Madoff's investment advisory business within the last 12 months.

Those who did not receive a form still are able to file a claim. Those who invested through feeder funds are not generally covered by SIPC directly, but you still may want to make a personal claim.

- Claim forms can be found at <http://www.sipc.org/cases/sipccasesopen.cfm>.

It is important that you gather all available documentation related to your Madoff accounts when preparing the claim form. You will be asked to produce account statements, purchase and sales slips, cancelled checks, receipts from the debtor, proof of wire transfers, etc.

- Claim forms must be received by the trustee no later than March 4, 2009. Holtz Rubenstein Reminick is prepared to assist you in completing these claim forms.

### Clawback Provisions

If you received distributions from your Madoff accounts you may be subject to claims by the trustee to recover such distributions.

- There have been prior cases involving Ponzi schemes where investors were forced to return past distributions of fictitious profits. After collecting such past distributions from investors the Trustee would then distribute these amounts on a pro rata basis.
- Should such a request come from the Trustee you should seek legal advice.

### Insurance Policies

It is possible that your homeowners or other insurance policies may cover a portion of your losses. You should review your policies with your attorney to explore possibilities on filing a claim. This should be done immediately as there could be a short time frame in which a claim must be made.

*For more information, contact Senior Tax Manager Stephen Aponte at (212) 697-6900, [SAponte@hrrllp.com](mailto:SAponte@hrrllp.com).*

**TO OPT OUT OF THESE MESSAGES, PLEASE E-MAIL [MadoffMatters@hrrllp.com](mailto:MadoffMatters@hrrllp.com).**

## Madoff Town Hall Meeting: You're Invited

### "Implications and Consequences of the Alleged Fraud of Bernard Madoff"

Wednesday, January 21, 2009 • 3 to 5 p.m.  
at the Jumeirah Essex House • 160 Central Park South, Manhattan

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