

Panel I. SEC Enforcement Issues

Presenters:

Chris LaFollette – Akin Gump Strauss Hauer & Feld LLP

Thomas Hagemann – Gardere Wynne Sewell LLP

David Peavler – SEC Forth Worth Regional Office

David Turner – Former Deloitte LLP

SEC Enforcement Issues

- **SEC Enforcement, 2008-2009: Change – an Inside View**
- **SEC Enforcement, 2008-2009: Critiques and Cases – an Outside View**
- **The One that (Almost) Got Away: Madoff and Lessons Learned**
- **What Lies Ahead and May be Coming Next**

Panel I.

The Failure to Uncover Madoff

Presenter:

Thomas Hagemann – Gardere Wynne Sewell LLP

The Failure to Uncover Madoff

Based on the Report of Investigation by the U.S. SEC Office of Inspector General August 31, 2009

The sixth time would have been the charm, we just know it...



The Failure to Uncover Madoff

“...despite three examinations and two investigations being conducted, a thorough and competent investigation or examination was never performed.”

– Madoff SEC-OIG Report, at p. 1

The Failure to Uncover Madoff

What am I missing here?



The Failure to Uncover Madoff

- “According to the OIG’s expert, the most critical step in examining or investigating a potential Ponzi scheme is to verify the subject’s trading through an independent third party.”
- “...the SEC conducted two investigations and three examinations ... based upon detailed and credible complaints ... that Madoff was misrepresenting his trading and could have been operating a Ponzi scheme.”
- “Yet, at no time did the SEC ever verify Madoff’s trading through an independent third party, and in fact, never actually conducted a Ponzi scheme examination or investigation of Madoff.”
 - Madoff SEC-OIG Report, at p. 3

The Failure to Uncover Madoff

But hey, international mail is expensive.



The Failure to Uncover Madoff

“An Enforcement staff attorney made several attempts to obtain documentation from European counterparties (another independent third party), and although a letter was drafted, the Enforcement staff decided not to send it. Had any of these efforts been fully executed, they would have led to Madoff’s Ponzi scheme being uncovered.”

– Madoff SEC-OIG Report, at p. 5

The Failure to Uncover Madoff

“Each member of the Enforcement staff accepted as plausible Madoff’s claim that his returns were due to his perfect ‘gut feel’ for when the market would go up or down.”

– Madoff SEC-OIG Report, at pp. 19-20

The Failure to Uncover Madoff

Say whaaat? But there's more...

The Failure to Uncover Madoff

“Shortly after the Madoff Enforcement investigation was effectively concluded [in August, 2006], the staff attorney on the investigation received the highest performance rating available at the SEC, in part, for her “ability to understand and analyze the complex issues of the Madoff investigation.””

– Madoff SEC-OIG Report, at p. 21

The Failure to Uncover Madoff



The Daily Show can now reveal that staff attorney's name ...

