

## The Massachusetts Securities Division Issues Subpoenas; Draws Massachusetts into the Madoff Scandal

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Within days of news of the alleged Ponzi scheme perpetrated by Bernard Madoff, the Massachusetts Secretary of State, William F. Galvin, acting through his Securities Division, issued subpoenas ordering Bernard Madoff and his related funds to turn over all records related to money he managed for Massachusetts residents. A separate subpoena was issued to Cohmad Securities Corporation, a firm that marketed Madoff's investment products and is located in the same building in Manhattan as Madoff's firm. Specifically, Galvin is asking for all names and addresses of Massachusetts-based investors and any notes, emails, meeting agendas and telephone records that relate to investments Madoff made on their behalf from 2000 onwards.

Reports indicate that Massachusetts investors have suffered significant losses. The largest reported loss to date is the \$3.3 billion invested by Rye Investment Management, a unit of Tremont Holdings Inc., which is owned by Massachusetts Mutual Life Insurance Company. In addition, three philanthropic organizations, the Robert I. Lappin Charitable Foundation, the Chais Family Foundation and the JEHT Foundation have been forced to shut down due to their investments with Madoff.

The Massachusetts Securities Division is entrusted with the task of administering and enforcing Massachusetts General Law, Chapter 110A, the Uniform Securities Act, and the regulations promulgated thereunder. It regulates the offer and sale of securities and the people who sell or give advice about securities in the Commonwealth of Massachusetts through its power to file administrative complaints. The remedies available to the Securities Division include administrative sanctions, including a \$25,000 fine per violation and an order seeking an accounting, disgorgement or rescission, or may turn to the Attorney General's Office to file a court action seeking injunctive relief or criminal prosecution.

In recent years, Secretary Galvin has been among the most aggressive securities regulators often teaming with the New York Attorney General to investigate high profile allegations of securities violations in a very public manner. With this approach, the Massachusetts Securities Division has been able to achieve large settlements with minimal litigation from their investigatory targets. A number of case highlights appear in a "White Paper," recently posted on the Secretary's website and entitled *States' Demonstrated Record of Effectiveness in Their Investor Protection Efforts Underscores the Need to Avoid Further Preemption of State Enforcement Authority (.pdf)*.

The Massachusetts Securities Division's disposition of the auction rate securities matter involving UBS Securities serves as a good example of Secretary Galvin's approach to these matters. In June of this year, the Massachusetts Securities Division filed an administrative complaint against UBS Securities, LLC and UBS Financial Services, Inc. in connection with their marketing and sales of auction rate securities. This was followed by similar actions filed by securities regulators in New York and Texas. These states, coordinated through the North American Securities Administrators Association ("NASAA") with the help of the SEC negotiated an investor refund exceeding \$19 billion. Other examples include:

- Massachusetts, with the assistance of NASAA and the cooperation of the SEC also negotiated an investor refund in excess of \$10 billion from Merrill Lynch for significantly misstating the nature of auction rate securities and the overall liquidity of the auction market.
- Merrill Lynch also agreed to buy back CDOs fraudulently sold to the city of Springfield after the Massachusetts Securities Division and the Massachusetts Attorney General began to investigate.

We anticipate that the Massachusetts Securities Division will take an activist role in the Madoff scandal as well as in other investigations

that will likely emerge from the current financial crisis. There will undoubtedly be another very public wave of subpoenas issued by the Massachusetts Securities Division as they follow the trail in search of money for Massachusetts victims.

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