

Gathering Documents for a Madoff Claim

As victims of a Ponzi scheme, such as Bernard Madoff's alleged fraud, most people scour their homes and businesses in an attempt to gather every month of their brokerage statements. While these statements are important because of the nature of this alleged crime, the statements all too often do not reflect all of the actual financial occurrences. It is important to think of all of the sources of related information that will be needed to process a claim, support a legal position, and prepare tax returns.

Reasons for Gathering Documents

Criminal Investigation/Prosecution. The existence of a criminal investigation may require you to provide documentation, an interview, and possibly testimony in court. As investigators begin to unravel the inner workings of a fraud, they also will need to start securing evidence of the fraud.

Evidence of the fraud will include documents such as your Madoff brokerage statements and any conversations and correspondence you had with Bernard Madoff or anyone employed by him. Brokerage statements and investor testimony will be contrasted to the actual operations of the Ponzi scheme to prove that no investments were made by Madoff, nor that Customer 1's deposits were used to pay Customer 2's withdrawals.

Step two of the criminal investigation will be to recreate actual deposits and withdrawals into and out of Madoff's firm to calculate exactly how much money may have been stolen by Madoff. To assist law enforcement you may need to provide copies of independent third party statements to substantiate monetary transactions with your Madoff account. While your Madoff statements will list deposits and withdrawals, law enforcement will look to obtain corresponding evidence of those deposits and withdrawals from other sources.

Victims in an investment Ponzi scheme are issued false statements reflecting profits that were never realized. While a Madoff statement may reveal a balance of \$1,000,000, the question becomes what was the actual investment into the fund before profits? In all likelihood, your loss will be limited to your actual investment in the fund, not the balance shown on your last Madoff statement. The reason is that the money you gave to Madoff most likely was never invested. So this really becomes a theft of the net amount you paid into your Madoff account – total deposits less total withdrawals.

Civil Litigation. You also may need to gather documents to recover some of your losses in a civil action. The documents you already have provided to the criminal investigators also may be used in a civil lawsuit. Once again, you will need to provide documentation of your Madoff account statements, conversations or correspondence with Madoff's firm or any intermediary, and third party-records establishing deposits and withdrawals with your Madoff account. In addition, calculations of supposed profits also may be useful in obtaining a judgment. To establish the profits of your account, your Madoff brokerage statements and copies of your tax returns will be of assistance.

Tax Obligations. Each year you were provided with Form 1099, listing profits made by your Madoff account. Your tax preparer used these documents to include the profits as additions to your income and you paid taxes due on those amounts. However, since the investments never actually took place but were allegedly fabricated by Madoff, the taxes should never have been paid. To explore this issue you should review your tax returns with a qualified accountant to discuss possible amendments to your previous returns, filing for a casualty or bad debt loss, and/or filing for a refund based upon a claim of right.

Where Do I Start?

After falling victim to fraud, it is important to think about the best way to start gathering and organizing your records. These are some of the documents that you will need to collect, organize and make copies of:

1. Madoff brokerage statements.
2. Prospectus and investment information provided by Madoff or feeder investment firms.
3. Trading confirmations from securities purchases or sales.
4. Emails or letters received from Madoff or his associates.
5. Lists of any phone or face-to-face conversations you had with Madoff or his associates. Try to write down the date, place, those present, and the topic of conversation.
6. Financial statements with corresponding canceled checks and wire transfers from payments made to (or withdrawals made from) your Madoff account – from banks, credit unions, other investment firms, or any financial institutions you use.
7. Federal and state tax returns for the time periods your Madoff account was open.

Securing Documentation

It is important to think about all of the sources you used to fund, and withdraw funds from, your Madoff account. Most often, investors use wire transfers and checks from a primary bank checking account to fund their investment accounts. In other cases, investors may have funds directly deposited into an investment account. Luckily it is rarely the case that investors make cash deposits into an investment account. That is because cash is extremely difficult if not impossible to trace and document.

Banks and other financial institutions usually retain statements for approximately seven years. When requesting statements from your bank or financial institution you also will want to request the specific checks or wire transfers related to deposits/withdrawals of your Madoff account. The canceled check or wire transfer will provide investigators with proof that the transfer actually occurred.

Also, it is important to gather all tax-related documents, including returns and supporting documents for the years you maintained a Madoff investment account. Your tax preparer also may have these documents. The Internal Revenue Service also can provide copies of your tax returns, going back six years, at a cost of \$57 for each return. Complete and submit IRS Form 4506, along with a check made payable to the United States Treasury. For more information, visit www.irs.gov.

For additional information, contact Joel Podgor, Partner-in-Charge of White Collar Crime and Tax Fraud Services at 212-697-6900, Podgor@hrrllp.com.