turnarounds
&workouts
News for People Tracking Distressed Businesses

March 2009 Volume 23, Number 3

Learning from Madoff

Fraud Has Lessons for Restructuring Professionals

by Julie Schaeffer

Restructuring professionals may be wise to heed some of the lessons learned from the nation's largest accounting firms' failure to catch the multibillion-dollar Madoff fraud.

Some of the nation's largest and most reputable accounting firms all gave clean bills of health to the numerous funds that invested with Bernard L. Madoff Investment Securities.

As just about everyone who listens to the news now knows, Madoff has since confessed to defrauding clients of more than $50 billion in a massive Ponzi scheme that was committed over a number of years, according to the U.S. Attorney's office for the Southern District of New York.

continued on page 2

Conway MacKenzie, BT&T Join Forces

Mutual Benefits from Transatlantic Affiliation

by David Buzzell

Two turnaround firms – one a veteran in the U.S. and the other a new face in Europe – are joining forces in a transatlantic venture that both anticipate will be mutually beneficial. Earlier this year, Conway MacKenzie and Bryan, Tappy & Tilley (BT&T) signed an affiliation agreement.

Conway MacKenzie has long been a presence in the Midwest, providing turnaround services to middle market companies since its founding in 1987 by Van Conway and Don MacKenzie. The firm opened an office in Shanghai in 2005, set up shop in New York and Atlanta in 2007, and will soon open offices in Houston and Los Angeles. According to Conway, an affiliation with BT&T is a good fit with Conway MacKenzie's long-term

continued on page 2

Victoria Restructuring Successful

Precedent Set for Other Asset-Backed Securitizations

by Julie Schaeffer

Structured investment vehicle (SIV) Victoria Finance Ltd. has undergone a successful restructuring – and the solutions utilized could prove helpful in the restructuring of other SIVs and distressed asset-backed securitization facilities, say several partners at New York-based Seward & Kissel LLP, which led the advisory team of Victoria's collateral agent, Deutsche Bank Trust Company Americas (DBTCA).

In the heyday of the last economic boom, Victoria Finance was a $6 billion structured investment vehicle run by Ceres Capital Partners LLC. S&P had assigned the company's long-term debt its highest AAA rating, and the future looked good for the company – until late 2007. At that time, Victoria, like many SIVs, had difficulty refinancing its short-term

continued on page 2

Madoff, *from page 1*

How is it possible that some of the nation's most reputable accounting firms, as well as the Securities and Exchange Commission (which didn't even learn about the fraud until Madoff volunteered his confession), missed one of the largest securities frauds in history?

To start, much of the money invested in Madoff's firm was done through feeder funds set up by outside firms that funneled the money they received from investors to Madoff.

All the firms running feeder funds had well-known accounting firms as their auditors – but it appears that all those firms did was check the statements that Madoff himself produced. In fact, the 64-page document one feeder fund, Rye Select Broad Market Fund, sent to all its potential investors contained the statement "Valuation provided by the counter party affiliate [Madoff] will not be subject to independent review."

Had auditors looked further, they would have found "one red flag after another," according to James Hedges IV of LJH Global Investments, a boutique firm that invests in hedge funds and private equity for high net worth families.

Hedges says he investigated Madoff closely in 1997 when he was advising the wealth manager Bessemer Trust, and says he couldn't grasp Madoff's investing strategy despite repeated requests for an easy-to-understand explanation. Madoff was secretive about his asset base and he was charging no fees other than trading commissions, which seemed too good to be true, adds Hedges. (Hedges ultimately passed.)

Madoff's firm, it turns out, also used a small New York accounting firm, Friehling & Horowitz, which reportedly had offices in a strip mall and had only three employees, including a secretary, an accountant, and a partner in his seventies who lived in Florida.

"This was not a Big Six accounting firm," says one bankruptcy attorney who could not speak on the record due to his close ties to the case. "To invest that much money with a manager that has its books audited by an accounting firm no one has ever heard of really ought to have been a huge red flag for investors."

However, Ronald S. Niemaszyk, a principal at Jordan, Patke & Associates, Ltd., a Chicago-area accounting firm that specializes in hedge fund audits, says the

continued on page 4

Affiliation, *from page 1*

business plan. "We want to stay in the middle market space – it's our strength – but we really need geographic coverage."

Conway continues, "With our affiliation with BT&T, we've got Europe covered. We've got a platform of offering professional personnel without the cost of putting them on airplanes. BT&T provides us with a greater awareness of the local dealings and the nuances of the markets in Europe."

BT&T was set up last November, but its founders are old hands at the turnaround business. One of BT&T's founders, Alan Tilley, was Managing Director of Glass & Associates' European operations until Glass's acquisition by Huron Consulting Group in 2007. Tilley remained with Huron to groom his successor in preparation for retirement, which came 14 months later. Tilley's retirement didn't last long. As he recounts, "After my retirement, two former Glass executives called and asked me to help set up another venture." Tilley agreed, and with that call, BT&T was born.

BT&T's affiliation with Conway MacKenzie came later when Tilley met up with Conway in New York. "I put it to him that there were a lot of mutual benefits to both of us. We had European expertise and knowledge and needed a U.S. partner. He needed a European partner, so we took it from there. We signed an agreement in January and we're off and running."

Conway was equally sold on the arrangement. "I've known Alan for many years. He's a good guy. We've had some common dealings, and his organization has done some good work in Europe and the automotive industries. As our practice grows, we will have a need from time to time to have dedicated resources in Europe. He likewise needs the same thing for European-based companies with U.S. operations. We supplement each other's respective teams. He's got people on the ground in Europe and, of course, we have an American team. It's actually a pretty good fit for both of us."

Conway adds, "If we need four or five people over in Europe, it's easier for us to make that commitment if we have this exclusive affiliation instead of having to ship people from the U.S. over to Europe. There are cost benefits to the client and both our firms have a better, more efficient coverage of operations on both continents."

continued on page 4

Victoria, *from page 1*

funding and experienced a significant decline in the market value of its portfolio, which had a large amount of collateralized debt obligations (CDOs), including those with residential and commercial real estate exposure. By January 2008, S&P had lowered its rating of Victoria's long-term debt to B-, six steps below investment grade, as the company's net asset value slumped to 21 percent of its capital.

According to Greg Cioffi, a partner in Seward & Kissel's global bank and institutional finance and restructuring group, on January 8, 2008, Moody's lowered its ratings of Victoria's commercial paper notes below P–1 and its medium-term notes below Aa3, triggering an enforcement event and pushing Victoria past the point of no return. The company's enforcement manager was required to liquidate its assets as quickly as possible.

But in this case, the company got a reprieve. "Looking at the market when this enforcement event occurred, very few investors thought it advisable to sell the assets," says Cioffi. "So upon entering enforcement mode, Victoria's senior creditors suspended liquidation until the completion of a restructuring."

Cioffi says the restructuring was unique in that senior creditors could choose from two alternatives in an effort to maximize their recovery – the most popular of which was "vertical slicing." With that option, senior creditors received a vertical slice of the assets and cash in Victoria's portfolio based on their share of Victoria's liabilities. "This let each creditor maintain exposure to every asset in the SIV portfolio, thereby effectively eliminating the argument that certain creditors were permitted to cherry-pick the highest-performing assets," says Cioffi.

According to Cioffi, these creditors had several choices for dispensing with their vertical slices. A creditor could sell part or all of its vertical slice in an asset foreclosure sale and participate in the sale by credit bidding its senior obligations in exchange for its vertical slice – a pay-in-kind (PIK) transaction. Or, a creditor could sell its vertical slice to a special-purpose vehicle created specifically to hold the vertical slices of all participating creditors, with a view toward repackaging and resecuritizing such assets, or selling them at a later date in asset sales similar to PIK sales.

continued on page 4

Research Report

Who's Who in Lyondell Chemical Company

by Francoise C. Arsenault

Lyondell Chemical Company (Lyondell), together with its consolidated subsidiaries, is a refiner of heavy, high-sulfur crude oil, a significant producer of gasoline blending components, a manufacturer of chemicals, and a North American manufacturer of plastics. Since its spin-off from Atlantic Richfield Company in 1989, Lyondell has grown by the strategic acquisition of the businesses or subsidiaries of Millennium Chemicals Inc., Arco, and Occidental Petroleum Corp., as well as the non-Lyondell shares of joint ventures such as Lyondell-CITGO Refining LP.

In December 2007, Lyondell and Basell AF S.C.A. merged. Basell, a Dutch subsidiary of the industrial conglomerate Access Industries, was the world's largest producer of polypropylene and advanced polyolefin products, a leading supplier of polyethylene and catalysts, and the industry leader in licensing polypropylene and polyethylene processes. The combination of the two companies created the third-largest independent chemical company in the world. As a result of the merger, Basell indirectly acquired all of Lyondell's outstanding common shares in an all-cash transaction and Lyondell became a wholly-owned indirect subsidiary of Basell (Basell was renamed LyondellBasell Industries AF S.C.A.).

LyondellBasell is geographically diverse and has extensive global manufacturing, supply, technical, and commercial infrastructures. Including its joint ventures, LyondellBasell operates more than 60 facilities in 19 countries, sells products in more than 100 countries, and employs approximately 17,000 people worldwide. With the exception of Basell Germany Holdings GmbH, Lyondell and 78 of its subsidiaries and affiliates comprise what is essentially the U.S. operations of LyondellBasell's global, vertically integrated industrial business. Lyondell, which is headquartered in Houston, Texas, employed 8,000 workers in the United States at the time of its bankruptcy filing.

According to company officials, a combination of external factors caused an unusual confluence of downcycles in Lyondell and its 78 affiliates' businesses. External factors included a rapid rise and then recent dramatic drop in crude oil prices, sustained and unprecedented volatility in commodity prices, the unfolding global economic collapse, and the unavailability of credit in the worldwide markets. The same factors negatively impacted Lyondell's suppliers and customers, causing the company's costs to increase and its sales and margins to decrease. The impact on Lyondell's businesses resulting from a general decrease in demand for fuels, chemicals, and polymers products was compounded by the loss of refining and chemical production resulting from hurricane activity along the Gulf Coast and lower margins caused by rapidly rising raw material costs.

On January 6, 2009, Lyondell and its 78 affiliates filed for Chapter 11 reorganization in the United States Bankruptcy Court for the Southern District of New York (Manhattan). A final hearing to consider final approval of Lyondell's motion for bankruptcy court approval of $8 billion in DIP financing, the largest bankruptcy loan in U.S. history, was held on February 25, 2009. The DIP lenders include Apollo Management LP, UBS Securities LLC, Cerberus Capital Management LP, ABN Amro Holding NV, Citigroup Global Markets, Inc., and other financial institutions. In its bankruptcy filing, Lyondell listed $27 billion in assets and more than $19 billion in debts.

The Debtor

Volker Trautz is the Chief Executive Officer of Lyondell Chemical Company. **Gerald A. O'Brien** is Vice President. **Kevin M. McShea** is the Chief Restructuring Officer. **Douglas Pike** is Vice President of Investor Relations. **Alan S. Bigman** is Vice President and Chief Financial Officer.

Cadwalader, Wickersham & Taft LLP is serving as bankruptcy counsel. **Deryck A. Palmer**, **John J. Rapisardi**, **George A. Davis, Jr.**, **Andrew M. Troop**, **Howard R. Hawkins, Jr.**, and **Mark C. Ellenberg**, partners, and **Jessica L. Fink**, special counsel, work on the case.

The Houston firm of **Susman Godfrey L.L.P.** also is serving as bankruptcy counsel to Lyondell. **Vineet Bhatia**, a partner with the firm, directs the work.

Evercore Partners, Inc. is acting as investment banker and financial advisor to Lyondell. **Daniel A. Celentano** and **David Ying**, both Senior Managing Directors with the firm, work on the engagement.

AlixPartners, LLP and **AP Services LLC** are providing restructuring advice. **Kevin M. McShea**, a Managing Director with the firm, is serving as the Chief Restructuring Officer of Lyondell. Other members of the AlixPartners team include **Jan Kantowsky**, **Peter D. Fitzsimmons**, **Meade A. Monger**, **Stephen J. Taylor**, **Becky A. Roof**, and **Eric A. Hillenbrand**, Managing Directors, and **Mark Christiansen**, **Carianne J. Basler**, **Jamie R. Lisac**, **Michelle C. Campbell**, and **Bryan M. Gaston**, Directors.

Clifford Chance LLP is the restructuring advisor to the European entities. **Mark Hyde**, a partner in the London office and Head of Insolvency Practice, directs the work.

The Official Committee of Unsecured Creditors

The Committee includes **Wilmington Trust FSB**, as successor trustee; **Law Debenture Trust of New York**; **Pension Benefit Guaranty Corporation**; **BASF Corporation**; **Air Liquide Large Industries U.S.LP**; **Veolia ES Industrial Services**; and **United Steel Workers**.

Brown Rudnick LLP is serving as the counsel to the Committee. **Edward S. Weisfelner** and **Steven D. Pohl**, partners with the firm, are working on the case.

Peter J. Solomon Company is the investment banker to the Committee. **Anders J. Maxwell**, a Managing Director, heads up the team.

Mesirow Financial Consulting, LLC is the financial advisor to the Committee. **Larry H. Lattig**, Executive Vice President and Senior Managing Director, leads the engagement.

Chemical Markets Associates, Inc. is assisting the Committee with industry knowledge and asset valuation issues. **David H. Witte**, Executive Vice President, leads the engagement.

The Trustee

The U.S. Trustee is **Diana G. Adams**.

The Judge

The Judge is the **Honorable Robert E. Gerber**.

Madoff, *from page 2*

"reputation of the firm, or specialized experience within an industry, is more meaningful than the size of the firm."

"A good indicator of an auditor's knowledge of the industry (or lack thereof) is shown by a review of the financial statements," says Niemaszyk. "Many industries have required disclosures or specific titles for financial statements. As an expert in the field of audits of investment and private equity partnerships, I can give you a pretty good

continued on page 6

Affiliation, *from page 2*

BT&T has two main offices. One group of five senior professionals work near Frankfurt. A second group of seven key people are based in London. "Our team is a carefully selected balance of competencies and languages," says Tilley. "We have a mix of CEOs, CROs, and CFOs, and we knew we had to have English, German, and French covered particularly. We also have a link with a team in Spain. We can call on them as well."

More importantly, the affiliation allows the two firms to better serve their clients. "Basically, the client is getting one company with a common philosophy," says Tilley. According to Tilley, both BT&T and Conway MacKenzie "operate from a senior professional model that doesn't leverage up jobs with younger people." Consequently, "our chain of command is shorter and our experience level is higher, with senior professionals who have run companies in distress." According to Tilley, the senior professional model is "much more cost-effective because training costs aren't built into the fee structure, which is inevitable with a leveraged model."

Conway MacKenzie's average professional has 20-30 years of experience, says Conway. "We don't have a pyramid model, with a 40-50 year old guy at the top and a group of young people at the bottom. That's not our model. We don't hire anybody out of college. Our youngest professional is close to thirty years old, with eight years of experience prior to joining us."

Tilley says that both BT&T and Conway MacKenzie have a "developed skill set" with manufacturing companies. "Between us, we have done more auto supplier restructurings than anyone around." He notes, however, that "we work with a lot of other industries as well, including printing and laboratory equipment."

His firm is just gearing up, Tilley says. Inquiries are building and BT&T has started working on a couple of assignments. "The liquidity situation is just beginning to unfold. In the auto industry, there is a lot of uncertainty as to whether the government is going to step in and provide funding. There is uncertainty about whether GM Europe will be thrown to the wolves. We are in a period where people are looking for solutions, so our phones are quite busy."

The same can be said for Conway MacKenzie. ¤

Victoria, *from page 2*

One problem with the vertical slicing was easily addressed with protections built into Victoria's restructuring documents. "In some cases, creditors with relatively small vertical slices would be restricted from selling their slices, since doing so would be prohibited by certain minimum denomination or increment requirements set forth in the documentation governing the underlying assets," says Robert Frier, a director at DBTCA. "So we allowed such creditors to enter into an arrangement whereby the restricted vertical slice would be held by a custodian for the creditor's benefit. The restructuring documents also imposed limitations on the number of PIK sale dates, thereby increasing the possibility that asset sales would occur in bulk and limiting the possibility of minimum denomination and increment difficulties."

As simple as it sounds, the restructuring was not without challenges – perhaps the largest of which were what Andrew Silverstein, a partner in Seward & Kissel's global bank and institutional finance and restructuring group, calls "disputes as to proper allocations of certain dollars under the priority of payment provisions that could have held up the restructuring effort."

Specifically, there were different

continued on page 8

Calendar

National Association of Bankruptcy Trustees
NABT Spring Seminar
April 17-18, 2009
The Peabody, Orlando, Florida
Contact: www.nabt.com

Turnaround Management Association
TMA Spring Conference
April 28-30, 2009
Intercontinental Hotel, Chicago, Illinois
Contact: www.turnaround.org

American Bankruptcy Institute
27th Annual Spring Meeting
May 7-10, 2009
Gaylord National Resort & Convention Center
National Harbor, Maryland
Contact: www.abiworld.org

Renaissance American Management and Beard Group
Sixth Annual Conference on Distressed Investing – Europe
May 7-8, 2009
The Le Meridien Piccadilly Hotel – London, UK
Contact: www.renaissanceamerican.com

ALI-ABA
Chapter 11 Business Reorganizations
May 14-16, 2009
Langham Hotel, Boston, Massachusetts
Contact: www.ali-aba.org

Renaissance American Management and Beard Group
Second Annual Conference on Southwest Healthcare Transactions
May 21, 2009
The Omni Mandalay Hotel – Las Colinas (Dallas)
Contact: www.renaissanceamerican.com

International Association of Restructuring, Insolvency & Bankruptcy Professionals
8th International World Congress
June 21-24, 2009
Contact: www.insol.org

Special Report

Restructuring Departments of European Accounting Firms

Firm	Senior Professionals	Representative Clients
BDO Stoy Hayward LLP 55 Baker Street London W1U 3LL www.bdo.uk.com	Shay Bannon Malcolm Cohen David Gilbert Andy Harris Simon Michaels Tony Nygate Mark O'Leary Mike Prangley Mark Shaw Kim Stubbs	Banks and Financial Institutions Bondholders Law Firms Debtors
Deloitte Reorganisation Services Athene Place 66 Shoe Lane London EC4A 3BQ www.deloitte.com	Nick Dargan (ndargan@deloitte.co.uk) Gerry Loftus (geloftus@deloitte.co.uk) Aidan Birkett (abirkett@deloitte.co.uk) Neville Kahn (nkahn@deloitte.co.uk) Guillaume Cornu (gcornu@deloitte.fr) Jim Noble (jnoble@deloitte.it) Jochen Wentzler (jwentzler@deloitte.de) Albert Hannack (ahannack@deloitte.at)	Banks and Financial Institutions Corporates Lawyers Government and Public Sector Private Equity and Investors Bondholders Trustees
Ernst & Young LLP 1 More London Place London SE1 2AF www.ey.com/uk	Alan Bloom (abloom@uk.ey.com) Andrew Wollaston (awollaston@uk-ey.com) Gareth Hughes (ghughes@uk.ey.com) Maggie Mills (mmills@uk.ey.com) Keith McGregor (kmcgregor@uk.ey.com)	Debtors Banks and Financial Institutions Private Equity Automotive Chemicals Retail
Grant Thornton UK LLP 30 Finsbury Square London EC2P 2YU www.gti.org	Mark Byers (mark.r.byers@gtuk.com) Jean-Pascal Beauchamp (jean-pascal.beauchamp@grant-thornton.fr) Thorsten Trippler (trippler@ol.grantthornton.de) Ramón Galcerán (rgalceran@audihispana.com) Stefano Salvadeo (salvadeo@studiobernoni.it) Peter den Hertog (peter.den.hertog@agt.nl) Paul McCann (paul.mccann@grantthornton.ie) Vincent Vocat (vvocat@bfb.ch)	Banks and Financial Institutions Bondholders Corporates Hedge Funds Private Equity Houses
KPMG ELLP 8 Salisbury Square London, EC4Y 8BB www.kpmg.com	Philip Davidson (philip.davidson@kpmg.co.uk) Tammo Andersch (tandersch@kpmg.de) Pascal Bonnet (pascalbonnet@kpmg.com) Angel Martin Torres (amartin@kpmg.es) Federico Bonanni (fbonanni@kpmg.it) Klaas Wagenaar (wagenaar.klaas@kpmg.nl)	Lenders Law Firms Private Equity Hedge Funds Corporates
Moore Stephens LLP 1 Snow Hill London EC1A 2DH www.moorestephens.com	Phillip Sykes (phillip.sykes@moorestephens.com) Jeremy Willmont (jeremy.willmont@moorestephens.com) David Rolph (david.rolph@moorestephens.com) Steve Draine (steve.draine@moorestephens.com)	Banks and Financial Institutions Bondholders Law Firms Debtors Private Equity
PricewaterhouseCoopers Business Recovery Services Plumtree Court London EC4A 4HT www.pwc.com	Daniel Schwarzmann (daniel.schwarzmann@uk.pwc.com) Ian Schneider (ian.schneider@uk.pwc.com) Peter Spratt (peter.spratt@uk.pwc.com) Tony Lomas (tony.lomas@uk.pwc.com) Mark Batten (mark.c.batten@uk.pwc.com)	Debtors Banks and Financial Institutions Private Equity Bondholders Government and Public Sector
Zolfo Cooper 10 Fleet Place London, EC4M 7RB www.zolfocooper.com	Simon Freakley (sfreakley@zolfocooper.eu) Simon Appell (sappell@zolfocooper.eu) Alastair Beveridge (abeveridge@zolfocooper.eu) Peter Saville (psaville@zolfocooper.eu) Anne-Marie Laing (alaing@zolfocooper.eu) Paul Hemming (phemming@zolfocooper.eu)	Lenders Private Equity Hedge Funds Bondholders Law Firms Corporates

Worth Reading

Fluctuating Fortunes – The Political Power of Business in America

Author: David Vogel
Publisher: Beard Books
Hardcover: 348 pages
List Price: $34.95

by Henry Berry

Politicians fall into two camps: business is either a power for good that fulfills society's basic objectives of prosperity, jobs, and economic security, or business is a power for plutocracy and disproportionate shifting of resources, wealth, and opportunity. Vogel shies away from such ideological thinking. Instead, he is "interested in presenting a new way of thinking about the political power of business." *Fluctuating Fortunes – The Political Power of Business in America* focuses entirely on the political power of business.

The book is scrupulously objective "in describing and explaining the amount of power [business] does have." It does not advocate for any power that business should or should not have. Vogel leaves that dicussion to political partisans and ideologues. In so doing, the author follows the waxing and waning of business's power from the 1960s, dominated by the Democratic Kennedy and Johnson administrations, to the late 1980s, which closed with the Republican Reagan administration in ascendence. This eventful period of U.S. history, encompassing the tumultuous counterculture of the 1960s and the popular conservativism of Reagan, illustrates the author's fundamental point about the fluctuating power of business.

Paradoxical as it may sound, Vogel's study of business power from the 1960s through the 1980s shows that, as public confidence in the long-term strength of the economy grows, the power of business diminishes. When the economy is strong, the public, primarily the influential middle class, take their prosperity for granted and assume that the business fundamentals making for the prosperity are sound and permanent. Thus, in the 1960s when the economy was growing at over four percent annually and corporate profit reached nine percent, the highest since World War II, the public became concerned about social issues such as poverty, product safety, and environmentalism, which inevitably reduced the political power of business. Only a few years later, with the economy in recession in the Carter years of the mid-1970s, when corporate profits fell to under six percent, the lowest since World War II, and the auto manufacturer Chrysler was on the verge of bankruptcy, the political power of business rose. Baby boomers who had once denigrated General Motors and other major corporations were now enrolling in business schools and seeking executive jobs in corporations. During the Reagan presidency, entrepreneurialism was again extolled, while support for and membership in unions declined. Notes the author: "the second half of the 1970s and the early 1980s witnessed a substantial increase in the ability of business to define the terms of political debate and affect government decisions."

Vogel's book ties together social history, politics, psychology, and economics for an enlightening discussion of business power in American society. The book's analyses of business history can be easily applied to current circumstances for a better understanding of not only whether the power of business would be stronger or weaker, but also how such power shapes the political dialogue and ideas and economic prospects.

Author of many books and articles on government-business relations, David Vogel is a Professor at the Haas School of Business and the Department of Political Science at the University of California, Berkeley.

Madoff, *from page 4*

take on the auditor's competence by looking at the financial statements of a hedge fund for about five minutes."

Whether not looking beyond the reports Madoff provided is acceptable is debatable. Cindy Fornelli, Executive Director of the Center for Audit Quality, a Washington-based public policy organization that represents public company auditors, has publicly stated that it is not the responsibility of a capital management firm's accountant to audit the firm's underlying investments, especially in a fund-of-funds situation. But Niemaszyk says that, in this case, the auditors may have wanted to look deeper: The fact that Madoff used an unknown auditor should have prompted the auditing firms to do more than usual to ensure that the fund's assets were indeed there.

And that's a lesson for the restructuring industry as well as hedge funds, says the restructuring attorney. Anyone working on restructurings, mergers, and acquisitions would be wise to consider the red flags behind the Madoff failure – because the impact will be more immense than has even been reported. "It's the gift that will keep on giving for a while, but unfortunately, it will be really sad," he says. "What people haven't focused on yet is the fact that investors who were lucky enough or smart enough to get their money out before the failure are going to have to turn it back over because of fraudulent conveyance laws."

He points to the failure of the Bayou hedge funds in August 2005 after they, too, were proven to be a massive Ponzi scheme. In that case, Principals Samuel Israel III and Daniel Marino disseminated false financial reports indicating that the funds had enjoyed substantial investment gains when in fact they had experienced substantial losses, created a phony accounting firm to certify those false financial reports, and made, based on those false reports, redemption payments of more than $135 million to themselves. When the scheme collapsed, hundreds of investors lost principal investments totaling approximately $250 million. "The trustee litigated and won on the obligation of investors who got paid out earlier, and they were forced to the pay money back," says the restructuring attorney. ¤

Special Report

People to Watch – 2009
Business Professionals Making Their Mark

Name	Firm	Outstanding Achievements
Domenic Aversa	Morris Anderson Cleveland, OH daversa@morrisanderson.com Tel. (216) 533-2154	Served as CRO for $170mm Tier One automotive plastic injection molder. Served as CEO for $130mm furniture manufacturer with national retail franchise base. Served as CRO for $200mm residential home products manufacturer. All three companies were restructured through operational initiatives and divestitures, saving approximately 1,900 jobs.
Gregory A. Charleston	Conway McKenzie Atlanta, GA gcharleston@c-m-d.com Tel. (770) 394-9905	Recently advised $40 million auto accessories supplier in Canada; Contech, a $250 million automotive die cast mfr.; $50 million RV dealer in Georgia; Progressive Moulded Products, a $500 million automotive plastic injection molding company; $50 million railcar mfr. in Colorado; Suburban Newpapers, a $10 million group of community newspapers; and others.
Sherman Edmiston III	Huron Consulting Group Chicago, IL sedmiston@ huronconsultinggroup.com Tel. (866) 229-8700	Managing Director. Focused on financial restructuring advisory services and M&A expertise to secured creditors, private equity firms, and hedge funds. Significant transactions include Plastech, Dura Automotive, Meridian Technologies, Oglebay-Norton, Diversified Machines, and Grove Worldwide.
Michael J. Epstein	CRG Partners New York, NY michael.epstein@crgpartners.com Tel. (617) 875-6418	CRO, The Antioch Company, $200 million retailer – emerged from bankruptcy w/significant return to creditors. Crisis manager, $100 million retailer – returned to profitability. Restructuring advisor, $500 million manufacturer – considerable stakeholder return. Led restructuring, $200 million firm – all 5 divisions sold, no personnel lost.
Shawn Hassel	Alvarez & Marsal Phoenix, AZ shassel@alvarezandmarsal.com Tel. (602) 459-7000	Managing Director. Current assignments include financial advisor to $5 billion national homebuilder and $500 million global technology manufacturing company. Other recent notable advisory assignments include CRO at Leiner Health Products, CFO/CRO at Vitesse Semiconductor, Inc., and financial advisor to Trussway Corporation.
Monty Kehl	Mesirow Financial Consulting Houston, TX mkehl@mesirowfinancial.com Tel. (713) 425-4934	Managing Director. Financial advisor to several unsecured creditors' committees, including The Bombay Company and Uni-Mart. Financial advisor to International Bedding Corp., where end result was an out-of-court restructuring of approximately $80 million of secured debt. Financial advisor to First Magnus Litigation Trust.
Carl S. Lane	AlixPartners Chicago, IL clane@alixpartners.com Tel. (312) 346-2500	Currently CRO of Motor Coach Industries International, manufacturer of intercity motor coaches, whose plan of reorganization was confirmed in less than five months. Financial advisor to international consumer financial services company that reorganized out-of-court. Other engagements include Bally Total Fitness, Federal Mogul, and Orius Telecommunications.
Doug Lane	UBS Investment Bank San Francisco, CA doug.lane@ubs.com Tel. (415) 352-6087	Extensive cross-border restructuring experience (Satmex, Doman, Ainsworth). Advised Ainsworth Lumber using novel out-of-court Canadian restructuring through use of CBCA instead of CCAA. Lead arranger on Lyondell Basell's $8 billion DIP facility that included first roll-up construct now used by Aleris, Smurfit Stone, and others.
Joseph L. Luzinski	Development Specialists, Inc. Miami, FL and New York, NY jluzinski@dsi.biz Tel. (305) 374-2717	Senior Vice President and one of the principals of DSI. Currently serves as financial advisor to the Trustee of Dreier LLP and as plan administrator of the Coudert Brothers LLP reorganization plan. Also serves as the bankruptcy trustee in the Gosman matter and assisted the State of New York and the trustee in the liquidation of the Bernard J. Ebbers Trust.
Henry Owsley	Gordian Group New York, NY hfo@gordiangroup.com Tel. (212) 486-3600	Founder and CEO. Recent notable engagements include Enron, Heilig-Meyers, IdleAire, IES, Mississippi Chemical, Osyka, RAB, Refco, Solutia, and Summit Global Logistics. Co-author of definitive book in field, *Distressed Investment Banking: To the Abyss and Back*, has been ranked number one among individual distressed investment bankers by the *Deal* magazine.
David Prager	Goldin Associates New York, NY dprager@goldinassociates.com Tel. (212) 593-2255	Heads the financial team at monoline insurer Syncora during its restructuring. Financial advisor to lenders of MXEnergy. Co-heads engagements as forensic financial advisor to SEMGroup creditors' committee and as financial advisor to counterparties of FGIC. Recently became the youngest managing director in the history of the firm.
Robert Riiska	Focus Management Group Los Angeles, CA r.riiska@focusmg.com Tel. (310) 255-8871	Head of Focus' West Coast practice. Current assignments: advisor to DIP lenders of Hartmarx; advisor to car dealership group, $250MM nationwide REIT, publicly-traded vehicle manufacturer, and urban magazine publisher. Recent assignments: consultant to debtors of Advanced Marketing Services; CRO to $150MM direct response marketer.

Gnome de Plume

Another Close Call

by Christopher Beard

It was scary out there. Things were falling apart, and nobody seemed to get it.

The stock market was falling every day. Confidence in the banking system was visibly eroding. There was nothing but bad news, and news coverage was fixated on the decline. Nouriel Roubini, the NYU Stern Professor, was saying the big banks are broke and should be nationalized. Richard Shelby, the ranking minority member on the Senate Banking Committee from Alabama, said we should bury them. The macho traders on CNBC were adamant that Chapter 11 is the cost of failure.

The problem, of course, is the fallout from closing one of the major banks would be somewhere between traumatic and catastrophic. The unintended consequences are limitless. The time frame for containing the damage is years. The impact would be convulsive and global.

Where was the leadership? President Obama is brilliant and articulate, but was confused and ineffectual when he spoke publicly about the market. He is clearly unfamiliar and uncomfortable with economic issues.

Tim Geithner, Secretary of Treasury, went through a rugged confirmation process and has no charisma and no gravitas. Larry Summers, counsel to the President, has the background and experience, but they didn't send him out in public. Why? It's not clear, but the government's talented economic team was not in the game.

Nancy Pelosi and Harry Reid, the Democratic congressional leaders, are guerilla fighters for their own agendas, not statesmen. Barney Frank and Chris Dodd are the most capable congressional leaders, but their influence is limited by the taint of their awkward relationships with Fannie Mae. All in all, the congressional Democrats can't deliver.

We were sinking fast, and then we got lucky. Citigroup, the bank under the most pressure, reported good news, two consecutive profitable months. Geithner went on several TV shows to give more definition to the Treasury plans. He was largely ignored, but at least he was doing something.

Ben Bernanke, Fed Chairman, gave a strong speech to the Council on Foreign Relations leading up to the Group 20 Meeting. He took every opportunity to reinforce the Fed's support of the major banks. In short, he told the world that the U.S. government is squarely behind the big banks because they are too big to fail. Get over it. He said the time will come to visit the issue of whether we should permit such dominant banks, but not now. Bernanke lacks charisma, too, but he speaks with the authority of a professor, which he was.

And Jamie Dimon, CEO of JPMorgan Chase gave a stunning speech to the Chamber of Commerce. In the past few years the business community has been serving up to the general public sensational news stories about crooks, grossly overpaid incompetents, and the vulgarities of nouveau riche investors. Jamie Dimon was balanced and insightful. He is a successful senior banking executive who needs to stay involved to make a constructive contribution and restore the reputation of the business community.

Whatever the problem, the booming stock market last week seems to have given the government religion. Somebody noticed leadership works and is making everybody work the Sunday news shows. The administration is finally getting its priorities straight, and it's aggressively trying to get in front of the issues facing the banking system.

I hope.

Christopher Beard is the publisher of Turnarounds & Workouts

Future Issues:

- *Special Report: Regional and Local Bankruptcy Accounting Firms*
- *Special Report: Outstanding Young Restructuring Lawyers*
- *Research Report: Who's Who in Spectrum Brands, Inc.*

Victoria, *from page 4*

interpretations of the appropriate application of Victoria's available cash to the SIV's senior obligations. Some creditors thought funds should be applied to each senior obligation on a pay-as-you-go basis, at the time such obligation became due and payable. Others thought funds should be applied to all senior obligations on a pro rata basis, regardless of whether such obligations were due and payable.

"We got around that by computing the maximum amount of exposure for the dispute and holding that cash in escrow so that, when court determination is made, those monies can be allocated appropriately," says Silverstein. "DBTCA, as collateral agent, has filed an interpleader complaint to facilitate the resolution of the competing claims, which is currently pending in the Supreme Court of the State of New York."

According to Kal Das, Practice Head of Seward & Kissel's global bank and institutional finance and restructuring group, the concept of vertical slicing is being used not just by asset-backed securities but by hedge funds as well. "A lot of investors are looking to redeem out and are confronting the same problems SIVs did when entering liquidation mode: The assets are dramatically undervalued, so if the hedge fund liquidates them, it will get pennies on the dollar," he explains. "Hedge funds are utilizing vertical slicing techniques in much the same way Victoria did. These funds are effecting redemptions by transferring vertical slices to special-purpose vehicles that are beneficially owned by the hedge fund investors." ¤

Turnarounds & Workouts is published monthly by Beard Group, P.O. Box 4250, Frederick, MD 21705 (240) 629-3300. Fax (240) 629-3360.
 ISSN 0889-1699. Publisher: Christopher Beard. Editor: Nina Novak (nina@beard.com). Assistant Editors: David Buzzell, Julie Schaeffer, Francoise C. Arsenault. Subscription Rate: $397/year. Send comments and coverage suggestions to above address or chris@beard.com.