WINER WEALTH MANAGEMENT, INC.

THE WINER WEALTH ADVISOR

Information to Help You Build and Preserve Wealth

COMMENTARY: FALL 2008

LESSONS FROM THE BERNARD MADOFF SCANDAL

By now, I'm sure that most of you have heard about Bernard Madoff, the former chairman of the NASDAQ stock exchange and founder of Bernard L. Madoff Investment Securities LLC who was arrested and charged with securities fraud. According to allegations, Madoff collected money to invest from wealthy clients, made up false statements to show strong, consistent and ultimately unrealistic performance, and used the money from new clients to pay interest and meet redemptions from existing clients. This is known as a "Ponzi scheme" and Madoff's is estimated to have generated more than $50 billion in losses for his investors.

The Madoff scandal is one of several recent high-profile cases where advisors and/or money managers absconded with the funds entrusted to them by their clients. Madoff's clients (including Nine West founder Jerome Fisher, publisher and real estate mogul Mort Zuckerman and Dream Works CEO Jeffrey Katzenberg) never saw this coming. Could they have? Could they or their advisors have done anything to prevent their losses? Perhaps. So let's look at a few safety tips that might have helped Madoff's investors avoid such catastrophic losses.

1. Know What You Own and How Your Money is Being Invested. As an investment advisor, I believe it's important for my clients to know what they own in their portfolios as well as how I'm investing their money and why. It's important that they understand the investment strategies I'm using to manage their money and feel comfortable that my strategies are appropriate and in accordance with their risk tolerance and return objectives. By all accounts, Madoff kept his investment strategy secretive and few, if any, of his investors or the advisors who recommended investments with him knew what he was doing. He even encouraged his investors to refrain from publicizing their investment with this, adding to the allure and exclusivity. When asked by Barron's in 2001 how he was able to deliver 15% average annual returns for more than a decade without a single down year, all Madoff would say was "It's a proprietary strategy. I can't go into it in great detail." Now we know why.

I believe it's also important for my clients to know how the mutual fund and private money managers I've selected to manage portions of their portfolios are investing their money and why I selected those particular managers. As a result of media headlines like "The Best Funds to Own Now" and "The Five Top Funds for 2008," individuals are regularly encouraged to invest in whatever is "hot" now, without developing an understanding of how those "hot" investments are generating their high returns, how much risk is being taken and whether or not the investment is appropriate for their individual needs and circumstances. To find out how a mutual fund manager is investing your money, you need only read the fund prospectus, purchase a Morningstrar review and analysis, visit their company website or look for articles and news stories about them on the internet. All Bernard Madoff's investors knew was that he delivered consistent high returns. But they had no idea how or what risks were associated with his investment strategy.

We now know that there were some financial advisors who concluded that it was physically impossible for Madoff to have delivered the kinds of returns he claimed to have delivered because, at one point in time, it would have required trading more options than were physically available in the marketplace. Although they raised their concerns to the SEC as far back as 2001, the SEC was unable to find enough evidence to validate those skeptical advisors' concerns.

2. Don't Put All Your Eggs in One Basket. You might think that I'm contradicting my belief that individuals should have one (and only one) central financial coordinator or advisor. I'm not. And as my clients' sole advisor, I would NEVER put all of a single client's assets in only one investment with one money manager. All but a few of my clients' portfolios contain as many as 10 to 20 investments and are diversified among different asset classes, money managers and investment strategies. Even my smallest $2,000 Roth IRA or custodial account is invested in one mutual fund that invests in more than 30 other mutual funds and ETFs to avoid having all of my smallest "eggs in one basket."

According to The Wall Street Journal: "The foundation of Nobel Prize-winner Elie Wiesel confirmed this week that it invested $15.3 million or 'substantially all' of its assets with Mr. Madoff." That's just reckless, and a good example of how even smart people can do dumb things with their money.

3. Use An Independent Custodian. It should have been a big red flag that Bernard Madoff held, managed and priced all of his clients' assets. He also generated his own client statements. Clearly, there were potential conflicts of interest and few checks and balances. And the CPA's who supposedly audited Madoff's books have some explaining to do! But Madoff's investors and the advisors who recommended Madoff were willing to overlook those issues (now seen as glaring red flags) because of Madoff's reputation and the returns his investors were allegedly getting. Obviously, investment performance can be made to look better if the prices reported to clients can be manipulated, which is allegedly how Madoff showed winning returns, year after year, in spite of periods of market turmoil.

At our firm, our clients' assets are held at independent third party custodians like TD Ameritrade and Fidelity that price each client's securities daily and generate monthly account statements. With most firms, daily account balances can be viewed online. Our firm has no input on either the pricing of securities or the generation of monthly account statements. Each month, we reconcile our internal records with each independent third-party custodian to ensure that the account balances in our internal records match our clients' account balances at each custodian and to make sure that the data in our quarterly reports will be accurate.

4. Have checks and balances. As I wrote previously, I believe that most individuals are best served by having one (and only one) central financial advisor, someone who can manage their investments, help with retirement planning, risk management, tax minimization and wealth transfer planning and integrate their financial expertise with the client's other legal and tax advisors. Their advisor should also be responsible for monitoring the clients' investments and making sure that the client stays on track towards meeting his or her financial goals. On the other hand, the client must take some responsibility for reviewing and monitoring his investments and making sure that the advisor is meeting his needs and objectives and helping him meet his financial goals.

I also believe that it's in an individual's best interest to have his financial advisor, accountant and attorneys be independent from one another. That way, the individual has checks and balances among his or her advisors. If something doesn't seem right about an investment or a money manager (like in the case of Bernard Madoff), it's possible that the client's CPA or attorney might notice. Alternatively, if the individual's CPA or estate planning attorney has overlooked something or made a critical mistake, an independent financial advisor like me might catch it.

As many of you know, I was mentioned in the Wall Street Journal in 2005 for identifying an oversight by two CPAs and saving the beneficiaries of an inherited IRA more than $700,000 in taxes. Although I am not a tax advisor, I know things about the taxation of IRAs and qualified plans that many CPAs don't know as well as specialized tax-saving, wealth-building strategies that are commonly overlooked. By being independent from my clients' CPAs and estate planning attorneys and sharing my specialized expertise in related areas, everyone benefits.

For example: When a self-employed client qualifies to contribute to a Roth IRA in addition to his SEP IRA or qualified plan, I will generally suggest to his or her CPA that we move money from the client's taxable investment account to a Roth IRA, where it can grow and ultimately be withdrawn tax-free. Every time, without exception, the client's CPA will say: "That's a great idea!" But not once has a CPA ever called to make the same recommendation. By sharing this and other strategies, my client is able to create greater wealth, saves money on taxes, and has checks and balances to make sure everything is in order and nothing important is overlooked.

Whenever we take on a new wealth management client, we review every aspect of their financial situation including their investments, insurance tax and estate planning. By being thorough, we have at times discovered some major oversights, like the time I noticed that a client's previous advisor had, on four separate occasions, taken money from his qualified plan and invested it in four non-qualified annuities. The money was supposed to have been invested in "qualified" annuities. Because her mistake went unnoticed by the client's financial advisor, pension administrator, CPA and two different annuity companies for two years, the client could have ended up with a serious tax problem had the IRS noticed the four untaxed distributions.

I am certainly not the only professional who believes it's important and in my clients' best interest to communicate with, share information and keep an eye on their other advisors. Many of our entertainment clients have CPAs and business managers who, while they do not manage investments themselves, review their clients' investments to ensure that our firm is meeting their clients' needs, expectations and objectives and managing their clients' money appropriately. Since I do the same, I have no problem with that and believe that close communication with my clients' business managers and tax advisors is in our common clients' best interests. It's all part of sharing information and having good checks and balances.

In the case of Bernard Madoff, many of his clients did not have the same checks and balances. Some were referred by CPAs who were not really investment advisors, yet received fees to recommend investments and money managers and did not provide the level of due diligence they should have before recommending that their clients invest with Mr. Madoff. They also most likely did not provide the level of oversight that was needed. I would be nervous about recommending an investment with any money manager who invested, priced, held custody and generated statements himself, and where the entire operation was as secretive as Madoff's. Yet, once again, most of his investors and their advisors were willing to overlook this because of their longstanding relationships with Madoff and his reputation. Also, until his Ponzi scheme unraveled, Madoff's investors received dividends, statements that showed a steady profit and their money when they asked to make a redemption.

5. KISS (Keep It Simple Stupid). I have at times encountered individuals or financial advisors who cast dispersions on my use of publicly traded mutual funds for high net worth clients. People in the hedge fund industry have always told me that wealthy individuals want hedge funds, investments with private money managers and investments with greater exclusivity or cache. Perhaps not anymore! In 2008, many of the best known, most exclusive hedge funds imploded, went out of business and lost billions of dollars for their wealthy investors. An investment with Bernard Madoff was about as exclusive as you could get. Now that his exclusive A-list clients have lost billions of dollars, perhaps investors will recognize the prudence and simplicity of investing in common, liquid investments like stocks, bonds, ETFs, and mutual funds that are publicly traded and listed on major exchanges like the New York Stock Exchange. These investments are valued independently at least daily, if not minute-by-minute while the exchange is open. You can compare their reported returns against your own portfolio tracking software. Most brokerage firms also allow you to track the value and price changes of your investments online and you can cross reference the prices you see online with what's reported in the newspaper. If you can't look up the prices and performance of your investments in the newspaper or on the Internet, that should raise a red flag and prompt you to ask some questions about the pricing and security of your investments.

One final thought: If an investment sounds too good to be true, it probably is. Reportedly, Madoff claimed consistent annual returns of 10% to 12% with almost no volatility and no annual losses over the last 20 years. Few if any legitimate investment managers can make that claim and back it up with third-party evidence.

NO REQUIRED MINIMUM DISTRIBUTIONS IN 2009

A bill was recently signed into law that waives required minimum distributions (RMDs) for the owners of IRAs and qualified retirement plans over age 70½ and their beneficiaries in 2009.

However, **RMDs are still required for 2008** and must be taken prior to December 31st to avoid the 50% IRS penalty. Please call us if you have any questions.

BACK TO OUR MONTHLY NEWSLETTER DISTRIBUTION SCHEDULE

By popular demand, The Winer Wealth Advisor newsletter will continue to be distributed on a monthly basis. Our market commentary will continue to be distributed weekly.

If you are not receiving both of these regular publications and would like to receive the one you're not getting, please let us know.

TIME IS RUNNING OUT FOR YEAR-END MANEUVERS

If you're planning to sell stocks for tax loss harvesting or you need to take your required minimum distribution for 2008, time is running out. So do it now. With the massive amount of selling expected before year-end, back offices will likely be overwhelmed. And with old systems now merged into new ones, as well as overworked and understaffed employees, mistakes can and will happen. If you wait until the very last minute and encounter a problem, you may not have time to correct it by year-end, leading to more problems.

Here are a few smart planning tips you can use before year-end:

- Roth IRAs – If your 2008 income does not exceed $100,000 (single or joint), and you have traditional IRAs, 401(k)s, or other stock-invested retirement plans that allow distributions from the company plan, consider converting to a Roth IRA at a lower cost.

  For example, let's say you had $200,000 in a traditional IRA a year ago when stocks were peaking. Assuming a 28% tax rate, you might have paid $56,000 to convert that account to a Roth IRA. Now, your traditional IRA is worth only $100,000. A Roth IRA conversion today will cost you $28,000 or less, if the lower conversion amount leaves you in a lower tax bracket.

  If you believe tax rates may increase next year, then you will want to make sure your conversion is done in 2008 to lock in this year's tax rate. Regardless of whether tax rates increase, converting may still pay since you have until October 15, 2009, to change your mind and undo ("re-characterize") the 2008 Roth conversion.

- Capitalize on Stock Loss – When harvesting capital losses at year-end, understand the wash sales rule. If you buy back the same security (or something substantially identical) within 30 days before or after the sale, the tax loss will count.

- Wash Sale Rules Apply to IRAs – In the past, some tax professionals thought the IRA could be used to avoid these wash sale rules. However, if you sell GE stock (for example) in your taxable account at a loss and immediately buy GE in your IRA, you would get no capital loss on the GE sale.

- Charitable Rollovers are back! – This year, due to market decline, individuals may have few appreciated securities for charitable donations. The Emergency Economic Stabilization Act (EESA) of 2008 (the "Bailout Bill") was signed into law October 3, 2008. Included among the numerous non-bailout provisions is the retroactive reinstatement of the charitable IRA direct rollover provision, which allows what the tax law calls "Qualified Charitable Distribution" (QCD) from IRAs to qualified charities.

  If you are age 70½ or older, an IRA owner or IRA beneficiary, and are charitably inclined, you could fulfill your philanthropic intentions through your IRA. You can save taxes by using QCDs to take required minimum distributions from your IRA. Many charities are looking for creative ways to boost donations and here's one way!

Remember, time is running out. Don't wait until the very last minute. Only three days left!

A HUMOROUS CASE STUDY IN FINANCIAL PLANNING

Dan was a single guy who lived at home with his widowed father and worked in his father's extremely successful business. Upon learning that he was the sole heir to his sickly father's fortune, he decided to look for a wife with whom he could share his future inherited fortune.

One evening, at a social engagement, he spotted the most beautiful woman he had ever seen. Her natural beauty took his breath away.

"I may look like just an ordinary man," he said to her, "but in just a few years, my father will die and I'll inherit $20 million."

Impressed, the woman obtained his business card and three months later, she became his stepmother.

Women are so much better at financial planning than men!

HAPPY HOLIDAYS

On behalf of Winer Wealth Management, Inc., its staff and associates, I would like to wish you and your loved ones a happy, healthy and prosperous New Year!

NEW YEAR'S ROCKIN' EVE AT THE RACK IN WOODLAND HILLS

Dick Clark is not the only person who puts on a "New Year's Rockin' Eve!"

If you're looking for something fun to do this New Year's Eve in the Los Angeles area, I'll be taking off my financial advisor hat, strapping on a guitar and rockin' in the New Year from 9:00 PM to 1:00 AM with the band Jetstream at The Rack at the Promenade Mall in Woodland Hills.

The Rack is located at 6100 Topanga Canyon Blvd. in Woodland Hills. Jetstream plays classic rock, blues and R&B.

PLEASE DON'T KEEP US A SECRET!

In these tough economic times, you may know people who have lost money in the financial markets and are concerned about their investments and financial future.

You may also know people who are retiring or changing jobs.

Please feel free to pass our name along to anyone you believe could benefit from our wealth management or financial planning services and expertise. You would be doing them and us a big favor.

Your referrals are how we grow our business and they are always greatly appreciated!