

FINPRO Insights

Timely information about financial and professional risk issues



This Issue

- 1 New Beginnings: Message from Greg Spore, Marsh's FINPRO Midwest Zone Leader
- 2 Employment Law Update: New Year, New Laws, and Heightened Exposures
- 3 The Financial Crisis: Are We Out of the Woods?
- 5 New Beginnings in the Health Care Industry and the Growing Marketplace for Regulatory Coverage
- 7 Ponzi Schemes, Investment Scams and the Crime Marketplace

New Beginnings: Message from Greg Spore, Marsh's FINPRO Midwest Zone Leader

It is very fitting that the theme of this edition is “new beginnings” as earlier this year I was asked to lead FINPRO’s Risk Metrics and Analytics initiative. As a result of a culmination of efforts from various risk practice groups, we released FINPRO’s new securities and class action severity analysis model known as IDEAL (Identify Damages, Evaluate and Assess Limits). This new model uses actuarial and statistical regression techniques to provide our clients and prospects with a full distribution of securities class action settlement amounts using client-specific independent variables, which include market capitalization, industry sector, price earnings ratio, and total assets, among others. This highly customized approach not only allows us to quantitatively examine the risk of securities class action litigation, but it also increases client/prospect awareness of potential sources of claims and provides explanations as to the drivers of premium pricing for directors and officers liability insurers.

As we embark on new beginnings via the enhancement of the suite of FINPRO analytical tools available to our clients and prospects, it is done within the context of the legal and business landscapes currently surrounding us. In this regard, our FINPRO Insights writers highlight that which is new on Capitol Hill whether it be for financial institutions, healthcare entities or consumer products companies, as well as provide commentary on developments in employment laws and crime/fidelity.

I encourage you to utilize all of our tools, inclusive of this newsletter, to their maximum potential and certainly provide your feedback so that we may continue to produce quality resources to assist you in all insurance and risk decision making processes. It is our privilege and pleasure to be of service to you. Read on! ■

Employment Law Update: New Year, New Laws and Heightened Exposures



The past 18 months were overwhelming for employers. Layoffs and the national unemployment rate reached historic highs. President Obama ushered in the year with passage of the Lilly Ledbetter Fair Pay Act as well as other significant employment-related legislation, such as the ADA Amendments Act and the Genetic Information Non-Discrimination Act. Moreover, the United States Supreme Court ruled on a number of employment law cases that are already affecting the employment litigation landscape (e.g., *Ricci v. DeStefano*; *Gross v. FBL Financial Services* and *14 Penn Plaza LLC, et al v. Pyett et. al*). Further, the Equal Employment Opportunity Commission (EEOC) announced a record-breaking increase in the number of discrimination charges filed. Although there were significant changes in 2009, employers may view 2010 equally as challenging. The United States Supreme

Court is poised to decide several cases that may further impact the employment litigation landscape:

- *Lewis v. City of Chicago*: at issue is—in a disparate impact discrimination claim—does the statute of limitations under Title VII (i.e., the 300 days) start the date an employer announces its policy, which it deems to be facially neutral, or the date that the policy actually becomes effective;
- *Quon, et al. v. Arch Wireless, City of Ontario, the Ontario Police Department*: the Supreme Court will decide if a police officer has a reasonable expectation of privacy in personal text messages (transmitted by an officer to his wife and other employees) on a police SWAT pager; and
- *Thompson v. North America Stainless, LP*: does Title VII provide protection against retaliation to a third party who did not engage in a protected activity.

The EEOC recently reported that employees in the private sector filed 93,277 charges of discrimination (the second highest number in the EEOC's history) fiscal year 2009. Armed with a more robust 2010 budget and the blessing of the Obama Administration, which is determined to expand and protect employee rights, the EEOC has promised “faster and efficient resolution of charges.” To this end, the EEOC has revamped its charge intake process and announced plans to focus additional resources on cases involving discriminatory use of credit reporting and other employment background check methodology in hiring, termination, and other employment-related decisions. Cases pertaining to disability, particularly those arising from employer's response to pandemics (i.e., H1N1 flu virus) and caregiver discrimination are also on the EEOC's

radar. In view of these modifications, employers should expect increased EEOC enforcement activity.

Once health care reform issues have subsided and a jobs bill is passed, many anticipate that the Administration and Congress will once again turn their attention to proposed legislation in the employment arena, including the following:

- *Protecting Older Workers Against Discrimination Act*: would overturn the 2009 Supreme Court decision in *Gross* by allowing plaintiffs alleging age discrimination under the Age Discrimination in Employment Act (ADEA) to prove their claims by showing that age was a “motivating factor” in the alleged discrimination, consistent with the standard applied in Title VII cases;
- *The Employment Non-Discrimination Act*: prohibits discrimination in employment on the basis of gender and sexual orientation;
- *The Arbitration Fairness Act*: restricts whether and when mandatory arbitration can be used to resolve certain employment-related disputes, particularly class actions;
- *Employee Free Choice Act*: facilitates the joining of unions by employees and allows for stricter penalties for violations of the National Labor Relations Act, among other provisions; and
- *Healthy Families Act*: requires employers to provide employees paid sick leave.

In addition to the pending federal bills, several states are considering legislation that would broaden employee rights with respect to alternative work schedules, paid leaves of absence, and treatment of domestic partners and caregivers. These legislative changes

are not limited to the United States. The United Kingdom, for example, is also considering a major legislative overhaul with its Equality Act of 2010, which is intended to expand, consolidate, and harmonize many of the U.K.'s anti-discrimination laws.

Compounding the exposures presented by the judicial and legislative landscapes are the potential employment-related hazards associated with social networking websites. Most of the claims arising from employees' or employers' access of social networking websites appear to be claims of invasion of privacy or defamation. However, the use of social networking media could also lead to claims of discrimination based on an employee's refusal to "friend" another, or

third party discrimination claims if an employee harasses clients or customers via a social networking website. Employers' use of social networking websites, as part of their background checks on potential job applicants, can also potentially lead to claims of discrimination if a job applicant is denied employment as a result of information obtained from a social media website.

Many employment law experts attribute increases in employment litigation to unemployment and the economic downturn, while others blame the increase on expansion of employee rights or a combination of these factors. Although reasonable minds may differ on the root cause of the heightened

exposures, there is a general consensus that employers should expect the employment litigation landscape in 2010 to mirror that of 2009. Accordingly, employers are advised to remain vigilant in creating and implementing adequate workplace policies and procedures that address traditional, as well as emerging, exposures. Finally, it is imperative, particularly during these times, that employment practices liability insurance function as a critical component in managing employment-related exposures.

For more information about this topic, please contact your FINPRO representative or Adeola I. Adele at Adeola.I.Adele@marsh.com or (212) 345-1724. ■

The Financial Crisis: Are We Out of the Woods?

Many leading analysts believe the U.S. economy will emerge from the credit crisis and recession in 2010. Although there have been positive developments in late 2009 and early 2010 to support this forecast, companies have every reason to remain cautious. They face the scrutiny of a more vigilant federal government and activist shareholders who want to avoid the same pitfalls that caused the global financial crisis in the first place.

Although all industry sectors have been affected by the economic crisis, it has been acutely felt by banks, hedge funds, insurance companies, asset managers, mortgage lenders, and others who comprise the financial institutions (FIs) sector. The following illustrates the extent of their losses: insurers are predicting significant losses in claims payouts resulting from credit crisis lawsuits, of which 206 were filed between January 2007 and November 2009 (Recent Trends in Securities Class Action Litigation: 2009 Year End Update/NERA) a total of 140 bank failures in 2009, an additional 16 failures as of February



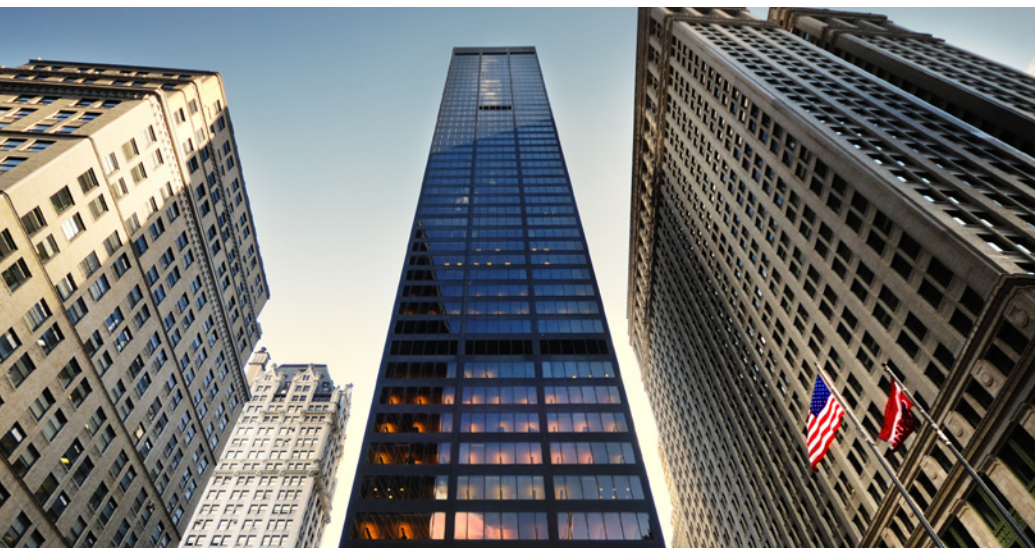
2010, and another 702 banks noted as "problem banks" by the FDIC; and a number of hedge fund failures, among other ills.

In an attempt to minimize the impact of the crisis, the federal government provided substantial aid to many entities. These funds were distributed as a short-term solution while the government developed long-term strategies to repair the financial services sector via regulatory investigations and legislative reform.

In addition, the "Wall Street Reform and Consumer Protection Act of 2009" (the Act), which was passed by the House of Representatives in December 2009 and is now working its way through the Senate, includes stringent controls on

mortgages, credit card fees, lending, executive compensation, and government oversight to protect against systemic risk. Further, the White House supports the Volcker Rule, which would restrict the size of the largest financial institutions as well as prohibit organizations that contain a bank from investing in hedge funds or engaging in any type of proprietary trading operations. The Securities and Exchange Commission (SEC) also continues to aggressively investigate instances of insider trading, short selling, and investment fraud.

Despite the challenging economic environment in 2010 for all industry groups, many analysts and experts envision significant opportunities for



revenue growth via mergers and acquisitions (M&A). Much of that is in the form of rescue transactions for severely distressed companies. Many experts believe that these levels of M&A activity will continue, but there will be less rescue transactions, which would reflect a more meaningful increase in actual activity from 2009. It is likely that a more stable economy in 2010 will enable companies with available cash and healthy balance sheets to acquire those still distressed companies with strong, undervalued assets, a solid core business, and/or experienced management.

In preparation for a more robust M&A environment, government officials are focusing their efforts on enforcing antitrust measures to protect the consumer and generate competition. Currently, the Department of Justice and the Federal Trade Commission (FTC) are working to modify the merger guidelines that were last updated in 1992. During the first quarter of 2010, the FTC has been very active in bringing antitrust actions against a number of high profile companies from consumer products and media to financial institutions and life sciences. Further, the FTC has been intimately involved in select potential deals by establishing conditions for certain transactions to ensure that they do not create monopolies.

While financially strong companies will likely seek opportunities to make domestic acquisitions in 2010, they are

also looking to grow organically and through acquisitions abroad. Expansion internationally is appealing to many U.S. firms because several foreign economies fared better than the U.S. during the recent crisis. Additionally, expanding overseas is of particular interest to U.S. firms because many foreign governments do not have as stringent legislative and regulatory environments.

The increase in activity overseas, however, has also led to an increased number of allegations against companies and their executives for violating the Foreign Corrupt Practices Act (FCPA). A recent FBI sting operation in December 2009 led to 16 indictments that named 23 U.S. business persons as potential violators of the FCPA. In this same regard, in mid-February 2010, the intergovernmental Financial Action Task Force on Money Laundering cited 28 countries with significant deficits in their controls to counteract money laundering and the financing of terrorist activities.

Historically, many U.S. companies did not heed warnings from foreign officials when transacting business deals, but this is no longer the case as several foreign governments now seek to engage in deal analysis and antitrust enforcement. In fact, antitrust authorities have imposed merger control fines in Belgium, Cyprus, France, Greece, Germany, Israel, Norway, and South Africa, among others.

Since the onset of the financial crisis in late 2007, there has been a significant increase in class action filings. Active institutional and individual investors—in conjunction with the plaintiffs’ bar—are attempting to recoup some of the staggering losses they incurred when their stock holdings suddenly and rapidly decreased in value. In late 2009, there was a surge in filings of class actions with a longer filing delay time between the initial stock drop and the actual filing date. This indicates that the remaining pool of viable litigation continues to shrink as plaintiffs’ law firms revisit potential cases that were assigned lower priority during the heavy class action filing periods from 2007 to mid-2009. The crisis-related cases are expected to progress very slowly through the court system, yet 31 of these legal actions were dismissed in 2009 with another seven cases disposed of through mid-February 2010. Experts anticipate that it will take years to understand the full effects of the economic crisis litigation on corporations, individuals and insurers.

In light of the foregoing, insurers have responded in a variety of ways:

- insurers of distressed organizations (i.e., companies with active litigation as well as those with depressed stock prices but no pending lawsuits) have imposed high premium increases, extensions of the aggregate limit of liability for an additional 12 months, and no coverage for acts prior to the policy inception date;
- there is overall less available insurance market capacity as some insurers have exited the FI industry entirely; others have elected to offer only “Side A” non-indemnifiable loss coverage for directors and officers liability insurance (D&O);
- several insurers have opted not to renew hedge fund and bankers professional liability policies;
- during the latter part of 2009 into the first quarter 2010, insurers have modified their strategies toward financial institutions to account for the economic rebound, which has resulted in the stabilization of capacity;

- some insurers have imposed customized and industry-specific policy exclusions and less flexibility in terms of enhancements; and
- many insurers are performing stringent due diligence at renewal time, delving into the quality of relationships between insureds and their regulators, and scrutinizing potential M&A activity.

In order to secure desired insurance policy pricing and terms at renewal time, insureds should:

- keep an open dialogue with insurers about changes to their business that could affect their exposures;

- monitor the regulatory and anti-trust exclusions on their policies, if applicable;
- be prepared to discuss the potential effects of any proposed and newly enacted legislation and regulations on their business; and
- address the need for locally admitted D&O programs if they are transacting business overseas, as this may accommodate for exposures including extradition as well as civil fines and penalties brought pursuant to the FCPA.

As we embark upon new beginnings for a majority of industry sectors, it is

critical that a company's leadership be cognizant of new regulations, shareholder sentiment, proposed and passed legislation, and the overall impact of these exposures, as well as the changes in protection provided by insurers to accommodate for these liabilities.

For more information about this topic, please contact your FINPRO representative or Jill A. Berube at Jill.A.Berube@marsh.com, (212) 345-6184. ■

New Beginnings in the Health Care Industry and the Growing Marketplace for Regulatory Coverage

In addition to the health care reform activity occurring in Washington, DC, health care organizations are subject to a myriad of government regulations, many of which impose financial penalties on entities that fail to comply. Risk managers, strategic risk officers, and chief financial officers of health care companies all face the uncertainty of finding effective risk transfer options for these regulatory exposures. Fortunately, today's insurance marketplace is providing insurance buyers with more opportunities to obtain coverage for costs associated with these types of claims.

In the interest of promoting good corporate conduct, the government levies financial penalties for violations of certain statutes and regulatory requirements. As they relate to the health care industry, these include the Fair Labor Standards Act (FLSA); the Health Insurance Portability and Accountability Act (HIPAA); Centers for Medicare and Medicaid Services Recovery Audit Contractors program audits; and Red Flag and Health Information Technology for Economic and Clinical Health (HITECH) Act privacy reporting. When a company has knowingly violated such regulations, it can be difficult to make the argument



that they should be allowed to transfer their financial responsibilities through the purchase of insurance. However, when a transgression is unproven or inadvertent, insurance protection seems more reasonable. Insurance coverage for health care regulatory violations contemplates two types of costs: (1) financial penalties (e.g., injunctive relief orders, repayment requirements, and interest payments) and (2) defense costs.

The debate surrounding insurance coverage for health care financial penalties is mired in a broader discussion of whether it contravenes public policy to allow an entity to avoid

government-imposed assessments for violating statutes that are intended to protect the public interest. The treatment of this issue varies by jurisdiction and is the reason that most, if not all, health care directors and officers liability insurance (D&O) and errors and omissions liability insurance (E&O) policies limit coverage to matters that are insurable under the law. This limitation not only protects insurance companies from penalties if they provide coverage for matters that are not legally insurable, but it also prevents insureds from receiving coverage for actions that are statutorily prohibited.



The majority of health care D&O/E&O insurance policies today also contain exclusions relative to coverage for costs associated with taxes, injunctive or non-monetary relief, criminal fines/penalties, restitution or disgorgement of funds, and other governmental related exposures. In addition, policies may be limited by the definition of the term “claim,” which may not include matters such as subpoenas, audits, and investigations.

Although insurance coverage for health care financial penalties is constrained by public policy considerations, there is flexibility with respect to the costs incurred defending regulatory claims. As such, the insurance marketplace has evolved to allow defense cost coverage for claims in which the underlying matter is not insurable (e.g., the fines assessed as a result of a violation of a certain statute). The extent of this coverage can vary significantly and must be closely scrutinized.

There are several instances that demonstrate that the insurance marketplace is evolving to provide insureds with regulatory coverage. Consider the following:

- **FLSA** – Initially all employment practices liability policies included exclusions for all FLSA matters. Smaller employers were later granted a sublimit of liability for coverage for defense costs associated with FLSA claims. Today there are a limited number of insurers who provide defense cost coverage for FLSA claims for smaller employers with no restrictions.

- **Red Flag/HITECH/Cyber Security** – Insurance policies providing Red Flag and HITECH privacy reporting coverage were originally limited to actual damages. Insurers eventually expanded coverage to include defense and investigatory costs relative to a data breach. Many insurance policies have evolved to include affirmative grants of coverage for the costs of customer notifications and credit monitoring.
- **ERISA** – Fiduciary liability policies originally provided coverage for liability for damages to plan participants. As it became clear that governmental penalties could also be assessed against individual plan fiduciaries, insurers modified the majority of these policies to cover personal penalties pursuant to Employment Retirement Income Security Act (ERISA) sections 502(I) and 502(L).

As a result of efforts to provide insurance coverage for health care regulatory matters, insurers currently provide coverage for defense costs, damages, or both. In fact, a recent survey of health care insurers reveals underwriters’ willingness to generally, on a case-by-case basis, amend their policies to include coverage for the following:

- **HIPAA** fines and penalties where insurable by law;
- **antitrust** and privacy claims where insurable by law;

- all claims brought by government agencies related to the performance of professional services, but still excludes coverage for sanctions, taxes, fines or costs to comply with injunctive relief;
- defense costs associated with Medicare fraud and abuse-type claims; and
- antitrust violations, enrollee disputes pursuant to Medicare, HIPAA claims, and claims brought by non-federal or state governmental bodies.

Despite these advances, many insurers remain wary of unquantifiable risk and are still reticent to grant regulatory coverage to health care entities. Some insurers are unwilling to make coverage enhancements, because it would be akin to giving insureds a blank check to fund protracted and expensive disputes with regulators; other insurers continue to believe that public policy concerns overshadow their ability to provide coverage for governmental exposures.

Notably, there are other areas of the insurance marketplace in which underwriters have been able to work through these issues and provide comprehensive coverage to clients.

- **Financial institutions** now receive cost of corrections coverage for the costs associated with their efforts to prevent known issues from escalating into litigation. Many view funding the cost to correct a known problem as akin to the financial exposure that health care organizations face when confronted with government investigations.
- **Bermuda** insurers are able to cover U.S.-based punitive damages since they are not constrained by the “where insurable by law” restrictions that restrict U.S. underwriters. A similar approach could be taken for government fines and penalties against health care organizations, such that entities purchasing Bermuda “punitive wrap-around policies” could request that they apply to regulatory matters in addition to punitive damages.

- Many insurers are now willing to remove the small sublimits of liability that they have long imposed on defense cost coverage for government claims. A logical next step would be to provide some measure of coverage for indemnification (settlements or judgments) that goes beyond that which is currently available.

As the regulatory and legislative landscapes shift in the health care

sector, thereby increasing potential exposures, it is imperative that policy terms and conditions are carefully crafted to accommodate for the growing number of liabilities. Fortunately, to the extent that health care underwriters seek to be competitive and gain market share, insureds inure a benefit. As such, insureds that employ firm and strategic advocacy for policy language that broadens the scope of coverage may likely

realize that their goals can be achieved as the insurance marketplace for health care entities evolves.

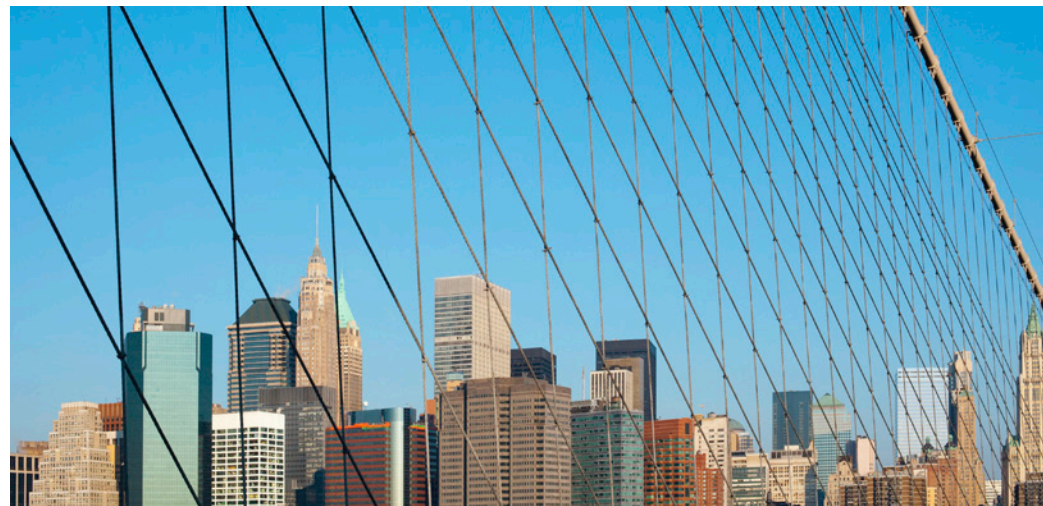
For more information about this topic, please contact your FINPRO representative or Mark Karlson, FINPRO HealthCare Leader at Mark.R.Karlson@marsh.com or (860) 723-5660. ■

Ponzi Schemes, Investment Scams and the Crime Marketplace

In the current economic climate, corporate downsizing, reductions in non-income producing departments (e.g. internal audit, human resources, and legal), wage freezes, and overall financial challenges, are all potential motives for increased employee dishonesty or theft. Additionally, outsourcing of employee functions as a means of cost containment continues to be a trend for all organizations.

Outsourcing presents additional challenges in terms of vetting and oversight of outside vendors. Accounting and vendor fraud (e.g., vendors submitting false invoices for services never rendered, or submitting inflated invoices) are areas where some of the most common large fidelity bond/crime insurance losses currently occur.

Instances of forgery are also becoming more prevalent, given current technological capabilities that facilitate the fraudulent reproduction of checks and other types of financial instruments. Furthermore, the increasing popularity of online transactions coincides with an increase in the sophistication of criminal perpetrators from a technology perspective. Despite regular upgrades in security measures by businesses, cyber-thieves continuously hone and update their methods. According to recent surveys by the Surety & Fidelity Association of America, U.S. insurers that underwrite crime and fidelity insurance have experienced increases in both



frequency and severity of losses. The losses that have garnered the most attention are the several high-profile Ponzi schemes that involved investment managers who caused losses of vast sums of client money for which they were liable.

A Ponzi scheme, named after Charles Ponzi—who perpetrated a fraud upon thousands of New England residents in the 1920s by convincing them to invest in a postage stamp speculation scheme—is an investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors.

In 2009, more than 150 Ponzi schemes collapsed as compared to approximately 40 in 2008, according to the Associated Press (AP). Investors saw more than \$16.5

billion disappear in 2009, said to an (AP) analysis of scams in all 50 states. The total dollar figure for lost investments was actually higher in 2008 largely due to the Madoff case.

Regulatory enforcement efforts have ramped up, in large part because of the discovery of Madoff's fraud, estimated by the AP to be between \$21 billion and \$50 billion. As reported by the AP, the U.S. Justice Department's criminal division stated that, "The financial meltdown has resulted in the exposure of numerous fraudulent schemes that otherwise might have gone undetected for a longer period of time." Many experts believe that, although the recession was the primary cause of the collapse of so many Ponzi schemes, the Madoff case brought greater regulatory scrutiny and heightened public awareness to these

scams, thereby contributing to the demise of a multitude of them.

Ponzi schemes often share common characteristics. In fact, the Securities & Exchange Commission (SEC) has published the following Ponzi scheme warning signs:

- high investment returns with little or no risk;
- overly consistent returns;
- unregistered investments;
- unlicensed sellers of securities;
- secretive and/or complex strategies;
- inability to provide information in writing; and difficulty receiving payments or cashing out investments, but being encouraged to “roll over” promised payments for an offer of even higher investment returns.

According to the SEC, there are some basic steps that can be taken to avoid falling victim to Ponzi schemes and other investment frauds. Investor clients should consider the following (and verify all of the responses from independent sources):

- Is the seller licensed?
- Is the investment registered?
- How do the risks compare with the potential rewards?
- Do I understand the investment?

The SEC has also taken a number of steps to reduce the occurrence of fraud including: revitalizing the enforcement division; revamping the handling of complaints; enhancing safeguards for investor assets; conducting risk-based examinations and improving risk assessment capabilities; improving fraud detection procedures for examiners; recruiting knowledgeable staff and providing training; and advocating for a whistleblower program, among others.

Although regulators are keenly aware of Ponzi schemes and attempt to mitigate their effects, organizations can seek to contain these losses and exposures with additional protection in the form of fidelity bonds or crime insurance

policies. The following examples demonstrate the way in which various fidelity bonds or crime insurance policies could apply in the event of a Ponzi scheme-type:

- The fidelity bond insuring the perpetrating securities dealer, investment advisor, or fund entity would provide coverage for its employees’ theft of assets of the insured firm, or indirectly, the theft of assets of a third party for which the insured firm was proven to be liable.
- The fidelity bond is written for a securities dealer or any financial institution, and the employees of such institution were in collusion with a perpetrating firm’s employees, causing a theft of assets of the insured firm or assets of a third party for which the insured firm was liable.
- The perpetrating firm is included as a named covered advisor on another organizations’ fidelity bond or crime policy (e.g., a client trust operation), effectively adding the perpetrating firm’s employees as covered employees under the policy for loss caused to the named insured entity.
- A securities firm has “disclosed agents” coverage under their fidelity bond, extending coverage for situations where the perpetrating firm’s employees are acting as an “introducing agent” on behalf of customers (i.e., transmitting buy/sell orders of securities into customer accounts carried on the securities firm’s records) and engage in theft during the transmittal process.
- ERISA Pension Plan clients of a perpetrating firm would be covered against theft of assets if the perpetrating firm was bonded as an ERISA fiduciary, but only if:
 - the perpetrating firm had an ERISA bond for the specific purpose of protecting client plans against theft of plan assets, or
 - if the crime policy had an ERISA endorsement covering plans against theft of assets.

Organizations or individuals who invested their own or their clients’ assets with a perpetrating firm—and were victims of the perpetrating firm’s fraud—would not be covered by their own fidelity bond, regardless of any financial hardship suffered. The Securities Investor Protection Corp. (SIPC) may afford protection for such customers if their securities were missing as a result of the securities brokerage’s failure, but only up to \$500,000 per customer (or \$100,000 for money losses).

SIPC recently stated that the amount that it has committed to advance victims of the Madoff scheme is more than \$500 million dollars, which exceeds the total of all previous payouts since SIPC’s inception in 1970.

“Excess” SIPC insurance is available on a very limited basis in the private insurance marketplace. This coverage could provide additional limits of liability in excess of the \$500,000 per customer available from SIPC. It is important to note that the underwriting scrutiny for excess SIPC coverage is extremely rigorous. Typically, only brokerages that can furnish evidence of legitimately audited, very strong financial statements and internal controls, are able to pass the scrutiny and obtain such coverage.

As the heightened awareness of Ponzi schemes and other investment scams continues and regulators arm organizations with information to detect these frauds, the overall exposure may experience a decline over period of time. However, the underlying threat always remains, given the fluctuation in the economy and the evolution of perpetrators’ methods to commit crimes. Understanding the exposure and the insurance coverage protection available to address it continues to be of paramount importance.

For more information about this topic, please contact James Kardaras at James.Kardaras@marsh.com or (212) 345-0879. ■



What's Your Opinion?

As always, we welcome your feedback. Please send your comments to FINPRO.Library@marsh.com.

The information contained in this publication is based on sources we believe reliable, but we do not guarantee its accuracy. This information provides only a general overview of subjects covered; is not intended to be taken as advice regarding any individual situation or as legal, tax, or accounting advice; and should not be relied upon as such. Recipients of this publication should consult their own insurance, legal, and other advisors regarding specific coverage and other issues.

Statements concerning legal matters should be understood to be general observations based solely on our experience as insurance brokers and risk consultants and should not be relied upon as legal advice, which we are not authorized to provide. All such matters should be reviewed with your own qualified legal advisors.

Marsh is part of the family of MMC companies, including Kroll, Guy Carpenter, Mercer, and the Oliver Wyman Group (including Lippincott and NERA Economic Consulting).

This document or any portion of the information it contains may not be copied or reproduced in any form without the permission of Marsh Inc., except that clients of any of the MMC companies need not obtain such permission when using this report for their internal purposes, as long as this page is included with all such copies or reproductions.

Copyright 2010 Marsh Inc. All rights reserved. Compliance No. MA10-10090