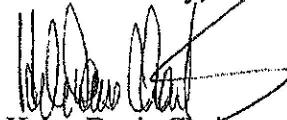
statement is his asset. Similarly, the bank from which he borrows money has a right to rely upon the balance shown on the borrower's brokerage statement when making decisions with respect to credit.

The proposed amendment is, thus, absolutely essential in order to restore confidence in the American securities markets. The lives of many long-time Madoff investors are being destroyed by the fear that the meager funds they have left (from the sale of their residences, their furniture, and their jewelry) will be taken away from them by Trustee Picard as he claws back money they took out of Madoff over the years to pay their taxes and to support themselves. No innocent investor should have to worry that, at some point in the future, his assets could be "clawed back" by a bankruptcy trustee.

As a key figure in the Obama administration, I hope that you will accept responsibility to work with the Madoff victims to correct the Trustee's misinterpretation of "net equity," expedite the SIPC payments, and help restore America's confidence that the SEC can be an effective watchdog for the individual investor.

Thank you very much for your consideration of the issues raised in this letter. I would very much appreciate the opportunity to meet with you and your staff to discuss how the concerns of hundreds of Madoff investors can be resolved. I have a number of suggestions for ways that the SEC can prevent such catastrophes in the future. As time is of the essence to many victims, I look forward to hearing from you as soon as possible.

Yours sincerely,



Helen Davis Chaitman

HDC:leb

cc: Irving Picard, Esq.
David Sheehan, Esq.

EXHIBIT 1

SEC Breaks Up Investment Company That Paid Off Big but Didn't Register

By Randall Smith, Staff Reporter [Wall Street Journal 12/1/92]

Two Florida accountants have returned $441 million to investors after regulators charged them with a huge sale of unregistered securities, their lawyer said.

The two accountants, Frank J. Avellino and Michael S. Bienes of Fort Lauderdale, promised, and apparently delivered, annual returns of 13.5% to 20% to their investors. Their main office is located in New York City.

However, in a complaint filed Nov. 17 in federal Court in Manhattan, the Securities and Exchange Commission charged the two men with operating an unregistered investment company because they didn't register as securities the promissory notes they gave their investors.

Investments in Stocks

The SEC complaint said the money collected from investors was turned over to an. unnamed broker-dealer, who managed the accounts at his own discretion. One person familiar with the case said the broker put the money into listed stocks. The complaint said Messrs. Avellino and Bienes kept the difference between the fixed interest they paid to investors and the returns generated by the broker's investment decisions.

In an announcement, the law firm for the two accountants, Squadron, Ellenoff, Plesent & Lehrer, said the partnership of Avellino & Bienes is dissolving and had returned all principal and interest due its noteholders as of Nov. 16. Ira Lee Sorkin, a partner in the law firm, said the return was completed Nov. 24.
The SEC said the two men ended their 22-year-old accounting practice and began focusing exclusively on their more-profitable investing business in 1984. Although 13.5% to 20% rates of return are high by historical standards, they wouldn't have been impossible to attain. For example, from Jan. 1, 1984, to Oct. 31, 1992, the Vanguard Group stock index fund showed a 14.85% annual return, according to Morningstar Inc., a mutual fund data service.

As of Oct. 30, the SEC said the two men had nine different trading accounts with the broker-dealer with an equity value of $454 million. At the same time, they had issued notes totaling, $441 million either through new sales to investors or the rollover of interest payments.

Martin Kuperberg, SEC senior associate regional administrator in New20York, said, "The investing public must get the protection afforded by the federal securities laws, such as a prospectus, certified reports, and fidelity bonds." However, Mr. Sorkin said his clients didn't know they were subject to such requirements.

'Nothing to Indicate Fraud'

None of the officials involved in the case would disclose the name of the broker-dealer whose trading apparently produced results good enough to draw in such a large sum of money. However, Mr. Kuperberg said that the returns appeared to have been generated legitimately "Right now, there's nothing to indicate fraud," he said.

Neither Mr. Avellino nor Mr. Bienes, both 56 years old, were available to comment, according to their New York office. Mr. Sorkin characterized the sales of unregistered securities as "technical violations."

The investors' money was ordered returned by federal judge Kenneth Conboy, who named New York attorney Lee Richards as trustee. Mr. Richards, in turn, has hired the accounting firm of Price Water-house & Co. to audit the partnership's financial records.

EXHIBIT 2

The Wall Street Journal
December 16, 1992

Wall Street Mystery Features a Big Board Rival

By RANDALL SMITH

This article was published in the Dec. 16, 1992, edition of The Wall Street Journal.

Here's a tantalizing Wall Street mystery:

The Securities and Exchange Commission recently cracked down on one of the largest-ever sales of unregistered securities. Investors had poured $440 million into investment pools raised by two Florida accountants, who for more than a decade took in money without telling the SEC or making required financial disclosures to investors.

The pair had promised investors hard-to-believe annual returns of 13.5% to 20% -- to be obtained by turning the money over to be managed by an unnamed broker.

Regulators feared it all might be just a huge scam. "We went into this thinking it could be a major catastrophe," says Richard Walker, the SEC's New York regional administrator.

But when a court-appointed trustee went in, the money was all there. Indeed, the mystery money manager was beating the promised returns by such a wide margin that the two accountants ditched their accounting business in 1984 to concentrate on their more lucrative investing sideline.

Who was the broker with the Midas touch? The SEC, which last month went to court to shut down the operation, won't say. Neither will the lawyer for the two accountants, Frank J. Avellino and Michael S. Bienes of Fort Lauderdale.

But the mystery broker turns out to be none other than Bernard L. Madoff -- a highly successful and controversial figure on Wall Street, but until now not known as an ace money manager.

Mr. Madoff is one of the masters of the off-exchange "third market" and the bane of the New York Stock Exchange. He has built a highly profitable securities firm, Bernard L. Madoff Investment Securities, which siphons a huge volume of stock trades away from the Big Board. The $740 million average daily volume of trades executed electronically by the Madoff firm off the exchange equals 9% of the New York exchange's.

Mr. Madoff's firm can execute trades so quickly and cheaply that it actually pays other brokerage firms a penny a share to execute their customers' orders, profiting from the spread between bid and asked prices that most stocks trade for.

In an interview, the 54-year-old Mr. Madoff says he didn't know the money he was managing had been raised illegally. And he insists the returns were really nothing special, given that the Standard & Poor's 500-stock index generated an average annual return of 16.3% between November 1982 and November 1992. "I would be surprised if anybody thought that matching the S&P over 10 years was anything outstanding," he says.

In fact, most investors would have been delighted to be promised such returns in advance, as the accountants' investors were. That's especially true since the majority of money managers actually trailed the S&P 500 during the 1980s.

The best evidence that the returns were very attractive: the size of the pools mushroomed by word-of-mouth, without any big marketing effort by the Avellino & Bienes artnership. The number of investors eventually grew to 3,200 in nine accounts with the Madoff firm. "They took in nearly a half a billion dollars in customer money totally outside the system that we can monitor and regulate," says the SEC's Mr. Walker. "That's pretty frightening."

An SEC civil complaint filed in New York federal court Nov. 17 charged that Messrs. Avellino and Bienes "have operated A&B as an unregistered investment company and have engaged in the unlawful sale of unregistered securities," and ordered the money returned to investors by a court-appointed trustee, New York attorney Lee Richards.

The two 56-year-old accountants declined to comment. Their attorney, Ira Lee Sorkin, says they didn't know that the notes they had issued to their clients should have been registered with the SEC, and he says that investors got their money back and haven't complained.

If the notes had been registered, they would have had to include a description of how the money was being invested, and by whom. In addition, Avellino & Bienes would have had to send investors annual reports and financial statements.

But how did Mr. Madoff rack up his big investment returns? Early investors in the late 1970s were told -- and Mr. Madoff confirms -- that their money was being used to engage in so-called convertible arbitrage in securities of such companies as Occidental Petroleum Corp., Limited Stores Inc. and Continental Corp. Promised annual returns in this period, one investor said, were 18% to 20%. In such a strategy, an investor buys a company's preferred stock or bonds that pay high dividends and are convertible into the company's common stock; the investor simultaneously sells borrowed common stock of the same company in a "short sale" to hedge against a stock-price decline.

The investor earns the spread between the higher dividend paid on the convertible securities and the lower dividend on the common stock, plus interest from investing the proceeds of the stock short sale. Using borrowed money, or leverage, to magnify returns, an investor can reap double-digit returns. But the strategy carries big risks if interest rates rise and stock prices go down.

Mr. Madoff said his investment strategy changed around 1982, when his firm began using a greater variety of strategies tied to the stock market, including the use of stock-index futures and "market-neutral" arbitrage, which can involve buying and selling different stocks in an industry group.

Mr. Madoff said, "The basic strategy was to be long a broad-based portfolio of S&P securities and hedged with derivatives," such as futures and options. Such a strategy, he said, allowed the investors "to participate in an upward market move while having limited downside risk." For example, he said, the Madoff firm made money when the stock market crashed in 1987 by owning stock-market index puts, which rose in value as the market declined.

In the mid-1980s, one investor says, the limited reports that Avellino & Bienes sent to investors changed, and investors stopped being told in which securities their money was invested. The interest rate on some new notes sold by the accountants was also lowered to 16% or less. One investor who complained about the vaguer reports and lower returns was told that if he didn't like them, he could withdraw his investment. He chose to remain.

Perhaps the biggest question is how the investment pools could promise to pay high interest rates on a steady annual basis, even though annual returns on stocks fluctuate drastically. In 1984 and 1991, for example, the stock market delivered a negative return, even after counting dividends. Yet Avellino & Bienes -- and Mr. Madoff -- maintained their double-digit returns.

The answer could be that Mr. Madoff's use of futures and options helped cushion the returns against the market's ups and downs. Mr. Madoff says he made up for the cost of the hedges -- which could have caused him to trail the stock market's returns -- with stock-picking and market timing.

Certainly, the investment pools' returns were less astounding by the standards of the early 1980s, when short-term interest rates briefly topped 20%. But the annual returns on Treasury bills hit a peak of 14.7% in 1981, and remained under 12% in the three other years that bills had double-digit returns, 1979-82, before falling later in the '80s.

One person familiar with the Avellino & Bienes case speculated that having the assets of the investment pools under management may have helped Mr. Madoff's firm by giving him an inventory of securities that could help him to execute other trades for his firm. Not true, said Mr. Madoff: "One thing has nothing to do with another."

As the investment pools swelled, two other accountants, Steven Mendelow of New York City and Edward Glantz of Lake Worth, Fla., started their own pool, Telfran Ltd., to invest in Avellino & Bienes notes. Telfran by itself sold $89.6 million in unregistered notes, a separate SEC civil lawsuit charges. The two men, also represented by Mr. Sorkin, declined to comment. The SEC said Telfran made money by investing in