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Madoff Put Under Surveillance As Probes Open

By **Evan Weinberger**

Law360, New York (December 17, 2008) -- Disgraced fund manager Bernard Madoff was placed under house arrest and electronic surveillance by a federal court judge Wednesday, as investigations into the alleged \$50 billion Ponzi scheme perpetrated by Madoff began to pile up.

Magistrate Judge Gabriel W. Gorenstein signed off on the order after readjusting the terms of Madoff's bail agreement.

The New York Times reported that Judge Gorenstein dropped the number of signatures needed for Madoff's bail order after two of the fund manager's sons refused to guarantee the bond. Only Madoff's wife and brother agreed to guarantee the bail bond.

Madoff agreed to surrender homes in Montauk, N.Y., and Palm Beach, Fla., if he flees. He also agreed to a 7 p.m. to 9 a.m. curfew, according to media reports.

Judge Gorenstein also ordered Madoff's wife, Ruth, to surrender her passport by noon Thursday.

Madoff's counsel at Dickstein Shapiro LLP could not be reached for comment.

In the meantime, the first of what is expected to be many congressional investigations was announced on Wednesday. Paul Kanjorski, a Pennsylvania Democrat and the chairman of the House Financial Services subcommittee on capital markets, insurance and government sponsored enterprises, said that his subcommittee would begin an investigation into Madoff's scheme as soon as Congress comes back into session in January.

"Unfortunately, these events have only further weakened already-battered investor confidence in our securities markets, and they have raised even more troubling questions about the effectiveness of our regulatory system," Kanjorski said in a statement. "These

matters therefore demand expeditious and careful review by the capital markets subcommittee.”

The investigation will also include a look into how the U.S. Securities and Exchange Commission missed what is being called the biggest Ponzi scheme in history, Kanjorski said.

On Tuesday, SEC Chairman Christopher Cox issued an apology for the commission's handling of the Madoff case and announced an internal investigation into how regulators missed the scheme.

“I am gravely concerned by the apparent multiple failures over at least a decade to thoroughly investigate these allegations or at any point to seek formal authority to pursue them,” Cox said. “Moreover, a consequence of the failure to seek a formal order of investigation from the commission is that subpoena power was not used to obtain information, but rather the staff relied upon information voluntarily produced by Mr. Madoff and his firm.”

Cox said in the statement that he wanted all staff contacts and relationships with the Madoff family and firm “and their impact, if any, on decisions by staff regarding the firm” included in the investigation

On Wednesday, information emerged that Shana Madoff, Bernard's niece and a compliance lawyer at Bernard L. Madoff Investment Securities LLC, is married to a former SEC assistant director in the office of compliance inspections and examinations, Eric Swanson, Reuters reported.

According to the Reuters report, Swanson was a member of an examination team looking into Madoff's broker-dealer operations from 1999-2004. The SEC said that Swanson was not part of a 2005 investigation into the firm, and Reuters reported that Swanson became romantically involved with Shana Madoff after his compliance team investigated the firm's operations.

On Wednesday, Cox reiterated that there was no information that any SEC officials had acted inappropriately. “I want to emphasize that there is no evidence that anyone is aware of at this point that any personnel did anything wrong,” he told reporters after an SEC meeting.

The House and SEC investigations will not be the last ones into the Madoff case, according

to John Hogan, a partner at Holland & Knight LLP heading up the firm's newly formed Madoff Advisory Group.

"I think there are going to be a number of investigations," he said.

Patrick Begos, the head of the investment & financial affairs litigation group at Begos Horgan & Brown LLP said that the investigations would focus on who knew what and when. The SEC will come under scrutiny as will self-regulatory organizations like the Financial Industry Regulatory Authority, Begos said.

"With a fraud this size, there's almost no question that there are a lot of people who either knew about it or should have known about it and had responsibility to act and didn't," he said. "I can't imagine the New York attorney general not getting involved."

A criminal complaint filed last Thursday charged Madoff with securities fraud for allegedly defrauding investors of as much as \$50 billion. The SEC moved in after learning that Madoff had told two senior employees, later revealed to also be Madoff's sons, that he had been paying returns to investors for years out of the principal received from other investors, according to documents filed in the U.S. District Court for the Southern District of New York.

Madoff allegedly said he had been insolvent for years and estimated that the losses would be at least \$50 billion, although investigators have yet to confirm that number.

Madoff faces a maximum penalty of 20 years in prison and a maximum fine of \$5 million.

Madoff's firm was placed under a bankruptcy receiver and will be liquidated, although Begos said it was unclear what assets the firm had left.

That, he added, will widen the potential civil litigation coming out of the case to financial advisers, brokers and other individuals that wealthy investors who lost astounding amounts of money in the case will attempt to sue. "There will be questions about what liability those people will have," Begos said.

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