

## ADVISOR FORUM

### **What would it mean for the retirement industry if 401(k) investors defrauded by Bernard Madoff were able to successfully file individual claims with the Securities Investor Protection Corporation? How are you advising your clients on the matter?**

#### **HBK Sorce Financial: Would Increase Need For Due Diligence**

An increase in claims filed with the SIPC could put pressure on investment committees going forward, **Dean Piccirillo**, principal and senior financial advisor at the Fort Myers, Fla.-based firm, told *DCSPA*.

"Clearly it continues to drive home the importance of due diligence and puts much more pressure on fiduciaries, including plan committees and investment advisory firms that are doing the consulting," he said.

Piccirillo said his firm has not run into any 401(k) investor claims in the Bernard Madoff case because the firm uses publicly traded mutual funds instead of custom built funds.

He said it was clear in the Madoff case effective due diligence wasn't being done and that he would advise any defrauded 401(k) investors involved to explore all the options open to them, which includes filing individual claims with the SIPC.

Piccirillo advises 80 plans and manages \$100 million in plan assets. In total, the firm manages more than \$1 billion in assets and works with both families and corporations.

#### **The (K)Larity Group: Better Understanding Of Investments Would Be Required**

Todd Lacy, managing partner of the Athens, Ga.-based firm, said it is critical that plan sponsors and investors are more careful about understanding the investments offered to their plan participants.

He noted the similarities between the Madoff case and the *LaRue v. DeWolff, Boberg Associates* Supreme Court case where **James LaRue** was allowed to sue his employer for money he claimed was lost in his 401(k) plan (*DCSPA*, 5/12).

"[In LaRue] the Supreme Court ruled that people could sue on behalf of their own account which reinforces the concept of an individual being able to seek retribution on behalf of their

own money," Lacy said. "It makes it that much more critical that plan sponsors are aware of what they or their participants are investing in."

The firm, which deals solely with the retirement plan market, advises 50 clients with about \$300 million in plan assets.

#### **Sageview Advisory Group: Advisors Role In Uncovering Problems Would Be Stressed**

"It's extremely important to work with a professional and make sure that the proper due diligence is done," **Randy Long**, ceo of the Irvine, Calif. branch of Sageview, told *DCSPA*. Long said the filing of individual claims would stress the need for additional due diligence on investment options in 401(k) plans by financial advisors.

He added it was the responsibility of plan sponsors and investment advisors to ask the proper questions, probe relationships, potential conflicts of interest and explore findings when it came to plan investments.

"There was a disconnect in the returns [Madoff] was getting and if a plan sponsor were working with an investment advisor, the advisor should have questioned that," he said.

The firm advises 400 plans with about \$8 billion in plan assets.

#### **Skloff Financial Group: Would Bring Fiduciary Responsibilities Into Question**

Individual filings with the SIPC could force plan sponsors to be held accountable for questions on due diligence and whether fiduciary responsibilities were met when selecting administrative and investment management service providers, according to **Aaron Skloff**, ceo of the Berkley Heights, N.J.-based firm. "I would encourage clients to speak with the trustees of the 401(k) plan or other retirement plans to understand what measures or lack of measures were being implemented to avoid such scandal," Skloff, who did not have any clients with Madoff investments, said of how he would advise clients on the matter.

He added victims of the Madoff Ponzi scheme who plan on filing claims with the SIPC may face several hurdles because "there may be a lack of clarity as to how the accounts were held and whether there were securities."

Skloff declined to reveal the number of DC plans the firm advises or its assets.

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**Dean Piccirillo**, principal and senior financial advisor at Fort Myers, Fla.-based **HBK Sorce Financial**

**Have a question for a sponsor or advisor? Email us suggestions at [jstoffregen@iinews.com](mailto:jstoffregen@iinews.com)**