

## Understanding and resolving complex Ponzi schemes

Bernard Madoff has done much to raise the profile of Ponzi schemes. The press now report their discovery or prosecution nearly everyday. But whilst the perpetrators may eventually go to jail in a blaze of publicity, their victims are often left nursing losses that they have little or no chance of recovering - until now.

A new book by ICC FraudNet member Kathy Bazoian Phelps (pictured) and Hon. Steven Rhodes aims to improve their situation. It is simply called 'The Ponzi Book', and it provides a legal resource for unravelling Ponzi schemes once they have collapsed.

The one constant in all Ponzi schemes is that they eventually collapse. This is because they are dependent on an influx of new investor funds to continue, as there is no underlying legitimate business generating profits, even though victims believe there is. And when they unravel, the myriad of issues that arise can be quite complex.

The book identifies these issues, explains how they can be dealt with and/or overcome, and details the legal strategies that specialists use to do so. It provides a complete understanding of the competing rights, claims and defences of all the parties impacted by a Ponzi scheme, and it covers the administrative procedures that courts and professionals use in Ponzi cases.

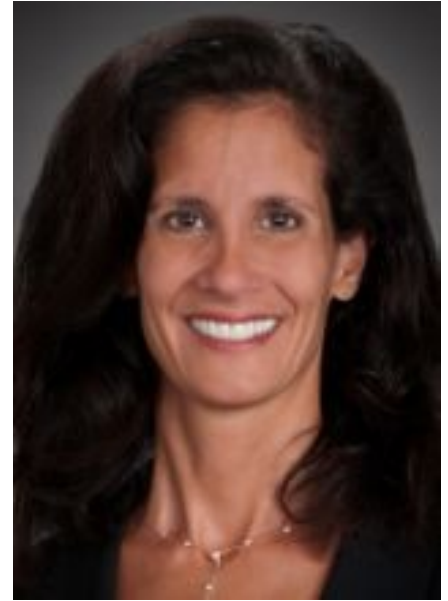
The whole point in a Ponzi scheme case, says author Kathy Bazoian Phelps, is to get money back to the defrauded investors. This is not easy, but it can be achieved. For example, the trustee in the Bernard Madoff case recently made a second distribution to investors of about \$2.4 billion, bringing the total returned to investors to over 50%. This is a major achievement, but the path to get to this point has been hard fought, and certain

issues such as those relating to time-based damages remain reserved for a subsequent hearing. The issue of claims allowance and distribution plans is varied and subject to many equitable considerations, which is why it is given an entire chapter (20) in the book.

The process of recovering funds in order to be able to make distributions to defrauded investors is also quite involved, she adds. It encompasses a wide variety of tort and statutory claims that can be brought against third party defendants. New decisions in Ponzi scheme cases that address these issues are published almost daily, and the book summarises the state of the law on these various claims.

Aiding and abetting, for instance, is just one legal theory that has seen a great deal of legal action in recent years. In the Scott Rothstein case, one investor won a jury verdict of \$67 million against TD bank, the only jury verdict to date on this theory against a financial institution. Needless to say, the fallout from this verdict in the banking industry has been significant. The result has been that many other financial institutions and professionals such as attorneys and auditors are now settling aiding and abetting claims long before the cases get anywhere near a jury.

It is also usual for Ponzi schemes to end up in both an insolvency and criminal proceeding, which can lead to disputes over assets that are simultaneously subject to forfeiture by the government AND administration by a trustee or receiver in an insolvency proceeding. The book explains the issues that arise in these parallel proceedings and provides a detailed case study depicting the nature of the problem. It also analyses the many decisions that arose from the Rothstein Ponzi, to demon



strate the competition for assets between the government on the one hand, and the bankruptcy trustee, creditors' committee, Rothstein law firm clients, investors and even Rothstein's wife, on the other.

If you want a single source to assist with the dissemination of Ponzi frauds, 'The Ponzi Book' ([www.theponzibook.com](http://www.theponzibook.com)) may well be the best place to start. It is useful to both practitioners and those parties impacted by a Ponzi scheme. Importantly, it is refreshingly readable and accessible to non-lawyers. And as an additional benefit, Kathy Bazoian Phelps also publishes a regular blog detailing the latest cases and developments, which helps keep everyone up to date. See [www.theponzibook.blogspot.com](http://www.theponzibook.blogspot.com)

The book (22 chapters) is available from the LexisNexis online store ([www.lexisnexis.com/ponzibook](http://www.lexisnexis.com/ponzibook)) as a soft-bound volume or in e-format for handy access. Price \$225. Once bought, it is likely to demand regular reading as there appears to be no let up in the number of Ponzi fraud cases being reported and the number of disenchanted victims grows along with the size of their losses.