

Fatally Foreign: Extraterritorial Recovery of Affordable Transfers and Principles of Comity in the Madoff Securities SIPA Liquidation Proceeding

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Bernie Madoff's investment firm, Bernard L. Madoff Investment Securities LLC (Madoff Securities), famously imploded in December 2008 under the weight of the largest Ponzi scheme in U.S. history.[1] Some of Madoff's largest customers were offshore "feeder funds" that pooled capital from various investors around the world principally in order to "feed" investments into Madoff Securities. In many cases the vast majority, or all, of the capital in the feeder funds was channeled directly to, and as investments in, Madoff Securities. When feeder funds received distributions from Madoff Securities, they would often in turn distribute assets to their own customers, many of whom were foreign institutions and individuals. In an important recent decision from the United States District Court for the Southern District of New York, the court dismissed recovery claims asserted by the Madoff Securities trustee against foreign subsequent transferees that had received distributions from foreign Madoff feeder funds on the basis that section 550(a)(2) of the Bankruptcy Code[2] does not apply extraterritorially under the circumstances and, alternatively, international comity considerations prohibit recovery from these foreign entities.