Pyramiding scheme: Planning memorandum for an examination: The Art of the Interview

As a law enforcement professional that has enjoyed a career in the investigative field, I have arduously pursued furthering my knowledge and skills by staying current. I therefore found myself preparing for a conference I was attending in New York City whose primary subject was the detection of fraud. In anticipation, I elected to query a Report of Investigation, Case No. OIG-509: the Executive Summary by the US Securities and Exchange Commission, Office of Inspector General.

In my report I will share and conduct a virtual interview and provide a self-developed and useful interview technique, an investigative tool. Essentially, I intend to determine what occurred, what was corroborated, what lessons were learned and add to the methodology of an investigator. As well, I wish to determine if the upcoming conference addressing Domestic and International Markets might somehow enhance the application or utility of the Bernard Madoff’s Ponzi Scheme-Public Version report. My interest were especially heightened by my participation in the NYCFE conference of the former IG of the S.E. C, H. David Kotz, the investigator who conducted the examination of failure(s) of the SEC.

I had not previously read the publicized report, I had read media reports and been exposed to the extensive video coverage of the Madoff debacle. On this occasion, I wanted to drill down, engage in my own review; examine the available documents and reports to develop a better knowledge of the subject matter.

In my interpretation of the Madoff examination, I considered the abominable behavior by all the stakeholders; the series of denials or missed opportunities by many; the dismissive actions of the Agency which border on malfeasance; the practiced continuity or subscription to a confederation and consequential employment of inexperienced or mediocre investigators, coupled with the protracted time period: 16-years of vexed and untethered misbehavior. I will present my premise and application of DOA © To the known affiliations and fraternity-yes-fraternity. This debacle was hardly a mistake, an oversight or humiliation.

*It was a view, a practice and action reflecting a belief of superiority, supported by an institutional and economic barrier installed and skillfully perpetuated by charlatan(s); buttressed by members of an entity responsible for regulation and enforcement, rift with ineffective practices. All obscured by an elitist self-perpetuating recruiting practice and behavior wrapped in bureaucracy.*

The SEC/IG review is no ordinary or unremarkable summary report documenting investigative how-to methods or suggested techniques for conducting a securities investigation. This report resonates for a call to action as do lightning bolts in the midst of an approaching storm, you can’t help but to notice the nebulous clouds and downpour drawing attention to what must be covered; (what was not done,) what should be secured- (what could have been done,) and the aftermath, essentially, what was damaged (what failures occurred).

The impact of the Madoff debacle has arguably triggered a sea-level change to the allusion of deregulation or function of an oversight commission. In particular, the Executive Summary of the Investigation of failures of the SEC to uncover Bernard Madoff’s scheme presents a template of circumstances one should consider when conducting (an investigation) securities examinations and in my view applicable to most fraud reviews.

Consider how much damage a smooth talking swindler is capable of; ponder how available and identified investigative resources can assist in your forecast to project and assess a business practice using financial LEVERAGE; the Madoff debacle can be compared to a cataclysmic weather event similar to the recent widest tornado recorded in modern history at 2.6 miles in diameter, which left behind a trail of destruction 16.2 miles long; a climate change. Concurrently, consider what was learned with the Madoff examination; auditors were not skeptical enough. “Audits are not designed to detect fraud.” Given that I was conducting a review in the “wrap up phase,” I wanted to determine how the Madoff experience might help mitigate a reoccurrence of such an event; especially, considering the magnitude and frequency of somewhat previous similar events; such as the TYCO, ENRON and WORLDCOM implosions: What Ten Things did we not learn, specifically, from the Enron Scandal? Could what was uncovered in any of the three referenced implosions compare to what was learned with the Bernard Madoff debacle?

Drawing upon the cultivated lessons and collective experiences of my investigative work; including document examination, auditing methods and interviewing; I stepped a little out of my comfort zone. Unlike the investigations I had ever conducted, this was a securities examination; not Credit Card Fraud, Mortgage fraud, ID Theft or the takeover of an Annuity or other financial account. Subsequently, and having reviewed the Madoff/SEC Investigation Report, I developed a better appreciation of the circumstances and facts outlined in the report, delineating the incredible lack of imagination or know how of the examiners involved. The Madoff Investigation report percolated with acts of deception, manipulation and theft. Similar to the skilled occasional behavior of Insurance Brokers, Agents and Adjusters involved with catastrophic property claims; their actions appear to be more a coordinated synergetic and vertiginous convergence of personalities and relationships, a malevolence of sorts.

The SEC examination was more akin to an audit of the Insurance entities-Third Party Adjuster/Administrator or Managing General Agent. Where an organization’s operational practices and procedures are reviewed, evaluated and assessed for risks. Subsequently, the need to determine if what happened involved more an actual series of missed opportunities or if consequences v. designed outcome became a consideration; Evaluating and establishing practices and behavior of facilitators of the fund while cross checking facts which could be substantiated, beyond circumstance, giving rise to a scheme more akin to a strategy or paradigm? Review of the practices and outcome of the SEC examination fell squarely in the heart of fraternity, affiliation, influence- perdition of sorts by a trusted captain of industry- the unraveling of OZ.

In the pantheon of great investigators I have been privileged to know, I celebrate the fortuitous knowledge imparted to me by Rita R. Harfield, CPCU (Chartered Property Casualty Underwriter). It was during a summary review of findings and observations where the behavior of a person of interest, a potential subject’s experience, a Broker, a trusted business partner, prompted an evaluation of their skill set, their experience and most notable their responses. In this context it was an acknowledged experience over many years that was significant, “but was it the first year over many times” pondered Rita? That is, was it thirty years’ experience or was it one year’s experience repeated over thirty times. The premise was confounding.
Many a learned lesson would weigh heavily on what I had come to now understand as a watershed Moment! The implication of a distinguishable culpability, beyond a reasonable doubt, where comparison to a poor business plan or a mistake in judgment or carelessness was unsustainable. Essentially, the elements of this investigation like the many before identified a known actor engaged in deceit, bolstered by representations known to be false or fraudulent.

Madoff’s behavior was not dissimilar to criminal fraud scenarios where establishing or disproving the requisite behavior of deceit includes substantiating something of value was obtained during the course of the deception.

A lot of the transactions involved purported to have involved trades and the exchange of commodities. Independently checking the accuracy or reliability of the fund’s performance was a fundamental task. What was puzzling was the skepticism of the investigators. It struck me as a just criticism where reluctance appears to have set in; a kind of additional review was discouraged-something in line with-“My arms are too short to box with God.”

I. (Assessment)

Admittedly, I commenced the task of stepping into an area of assessment within my knowledge base, yet beyond my experience; I had not performed a securities examination: Yet a groundswell of knowledge sustained me as I purposely paced myself and digested each syllable, every reference-adhering to the fundamental lessons gleaned through the investigating process. Given the circumstances were not exigent, I chose to be deliberate-connect the dots-then try to disprove the facts, placing little reliance on the spin. I queried resources, utilized my network, and referenced a library of knowledge and experience, including third parties-cohorts. Soon after, I found myself applying a concept developed over decades of conducting interviews, or pray tell interrogations. I applied the fundamentals learned and developed: come to the interview armed with knowledge and project sangfroid. That is not to say; you, one, should have no interest in the outcome; but be prepared to follow wherever developments lead you.

Keep in mind; I had the enviable position of not having been part of the Agency or Investigative Commission during the course of the investigation. My interest after all was benign. Independent reading and education of the facts before attending the conference was my incentive. My instincts and training prompted me to qualify and quantify.

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4 The Enron Scandal: http://voices.yahoo.com/the-enron-scandal-crime-scandal-tragedy-controversy-136695.html
6 WorldCom Case Study Update: http://www.scu.edu/ethics/ethics/dialogue/cande/cases/worldcom-update.html
7 10 Things We Didn’t learn from [the] Enron Scandal: http://abcnews.go.com/Business/10-things-learn-enron-scandal-10-years/story?id=15048641
II.

(Look for the lie)

Look for the lie. Is there something known by the investigator, yet not being disclosed by the interviewee. Something so overwhelming that should have been done—seek out the indecision or choice not to resolve the issue straight forward.

A particular comment strikes out from the many observations offered by the contemporary view provided in the report regarding a financial plans performance v. the market’s performance. As suggested, the Madoff success in business proffered an unusual outcome, as it purported an “astonishing ability to time the market and move to cash in the underlying securities before market conditions turn[ed] negative and the related ability to buy and sell the underlying stocks without noticeably affecting the market.” [2001 Journal Articles (MAR Hedge by Michael Ocrant and Barron’s by Erin Arvedlund) about Madoff’s unusually consistent returns]

III.

(Due-diligence)

Embedded inside the investigative report was an innocuous remark, yet one which underscores the denial aspect of my proposition which I feel is strategic to determining an element of fraud, during an interview, seeking independent verification. As stated by the expert retained by the SEC:

“The most critical step in examining or investigating a potential Ponzi scheme is to verify the subject’s trading or activities through an independent third party.”

But, in my review it was not just the person of interest who demonstrated the requisite behavior, it was the Agency charged with oversight and regulation of security transactions.

IV.

(Lessons learned)

The autopsy of the investigation report suggests, when conducting a cause examination involving securities a team or teams should be assembled having analysis or investigative experience and [should] include planning for the examination. This is not much different than any credible group performing an examination. The scopes of the examination should not be narrow in focus but include significant steps to analyze matters of concern regarding trading and returns. Examiners should look for contradictions and inconsistencies running down each concern while not accepting verbal explanations alone at face value.

Inexperienced investigators were repeatedly assigned to conduct separate aspects of allegations made concerning suspected practices by Madoff. “Red flags and highly unusual fills for equity trades” … “Misrepresentations of [Madoff’s] unusually consistent, non-volatile returns over several years” were sited throughout the report. [Avoidance Incarnate] Again, it was the Agency engaged in the prerequisite conduct-almost as if fraudulent conduct of such magnitude was beyond comprehension.

V.

FORM AN INVESTIGATIVE TEAM: COMPOSED OF INDIVIDUALS WITH ANALYTICAL ACUMEN: TECHNICAL KNOW HOW; TOOLS; ADMINISTRATIVE COORDINATION AND LEGAL GUIDE TOTACKLE THE ISSUE:

Information developed and evaluated should be checked and verified by different team members and shared within the investigative group. The team should include individuals strong in audit skills, a CPA is desirable. Absent a CPA a CFE, CFCS is preferred; an individual versed in computer and technical skills. Recent revelations have accented that gangs are using technology such as IP masking, Meta data in JPGs and phishing techniques; a competent surveillance component and state-of-the-art field equipment-hardware and software that brings the observations in the field home to the management office; an attorney versed in the applicable statutes, regulations and compliance factors; an analyst knowledgeable in data mining with fundamental skills in excel, access and specifically the public and government financial reporters (e.g. FinCen); an administrative coordinator capable of tracking, indexing and formatting text, right down to variations in the font, word spacing, grammar and punctuation; and a lead investigator for each team-an individual grounded in conviction, knowledgeable and not bound to a desk. The tasks of desk examination can be left to the Director who equally handles the administration duties, personnel duties, assignment duties.

Each member of the team should know as much of the investigation as possible, each member should be utilized consistent with their strengths and be cross trained and able to pick up where another team member leaves off.

Unlike the SEC’s actions in the Madoff examination- do not rebuff offers of evidence and seek clarification where confused or unsure of fundamental aspects of operational matter(s) under investigation. Where an unusual occurrence is determined (e.g.; unusual returns where the majority of market funds are having a dissimilar experience; or a failure to produce financial statements; or nonexistent outside performance audits) such determination should be a cause for concern. Verify all transactional records reviewed and compare with documents obtained from an independent oversight entity.

My senses invoke that a lack of fundamental knowledge of yields, comparisons and evaluation of a suitable stock index by staff was incredible. How else could one qualify performance? However, my senses alone can arguably be refuted as instinct unsupported by facts. How about the fundamental utility of a dictionary or glossary of pertinent terms for reference and understanding; development of an appreciation of norms and anomalies of the particular financial transactions evaluated and reconciled; development and comparison of a beta set of like securities performance from which findings can be harnessed and measured throughout the examination and integrated into the review. I couldn’t decide? Was it some void that had suddenly taken grasp of all tenured local SEC investigators? Was the collective knowledge and resources of the SEC purged or otherwise engaged? The methodology I mentioned earlier, Denial-Omission-Avoidance, began percolating in my head. Such had guided me over so many other investigations. Could it be what I had advanced and relied on during an interview was indefensible?

10 SEC Executive Summary OIG-509 (according to the OIG’s expert) pg. 3, Para 4.
11 Securities Investments: cost of foregoing a safe return on an investment in hopes of making a larger profit.
Baron’s Dictionary of Finance & Investment Terms, 8th Ed.
12 Securities transactions agreement tied to stocks, commodities, currencies, or stock indexes. Options are traded on many exchanges.
Baron’s Dictionary of Finance & Investment Terms, 8th Ed.
VI
(The Premise)

To clarify my premise concerning how D.O.A. can be utilized, I think it necessary to state my premise as it regards fraud investigation and the application of my suggested methodology of interviewing. Given the prerequisite three elements of the “The Fraud Triangle” (a) Pressure, (b) Opportunity and (c) Rationalization are established; a similar assessment and application should be used to measure the cadence of the Fraud Interview (1) DENIAL, (2) OMISSION, (3) AVOIDANCE. The Fraud Triangle has long been part of the evaluation process applied when conducting an examination involving suspected fraud behavior. Although the “DOA” elements differ from the “Fraud Triangle” motivators, the considerations overlap when evaluating any particular scenario of misconduct; the attention to the Fraud Triangle components in this case serves as a good guide.

VII.
(Cognitive/Non Cognitive)

Drawing on the acquired lessons acclimatized during investigations; specifically, the verbal and non-verbal view of behavior learned during training and practice where I gained insight into what has come to be known as “kinetic interviewing.” I recall as a young investigator attending a training class presided by Former NYS Supreme Court Judge, Honorable Leslie Crocker Snyder. The crux of Judge Snyder’s presentation was “who is the greatest detective you have ever known in your life?” From this she built on the aspects and advantages of listening, observing, and adapting to the style of who was the most skilled detective one knew. Many in the audience singled out several television and film characters famous for portraying great sleuths. Some invoked the deliberate, intelligent benevolent investigator; Sherlock Holmes, a fictional detective famous for his logical reasoning and use of forensic science. Others singled out Columbo, a character who chose the utility of circumstantial speech through a meticulous dedicated approach; all logical choices eluding to current American culture.

Interviewing is very much like cooking; perhaps where the outcome is raised to the level of a feast created by a chef. The use of tools and extensions facilitate the outcome too. Specifically, you start with a series of ingredients, each measured by quantity and subject to the quality. You’re unsure of the outcome but have chosen to follow a recipe. The process employed is different. The manner in which you mix the ingredients is where the art of the interview is enjoined. Too much emotion, not enough information, yet clearly a need-you’re hungry-the interviewee is talking. The preparation might call for frying or par-broiling the food items—harsh words or steamy verbiage might be needed. Where baking or grilling, after food preparation-a plausible approach or method adaptable to the circumstances should be introduced. Certainly, if limited to baking the foodstuff as the recipe dictates, don’t boil or steam the item-consider freezing or preserving the mix-delay the interview or if ongoing-pause-re-evaluate. Many ah good chowder has been ruined because the cream was boiled, where the suet has separated and thinned the broth. Be patient-don’t rush the process-use every minute of time and most of all listen, use the space between you and the interviewee and lower your voice when needed to prompt attention. Silence too, is a tool of interviewing. Like the silence at the dinner table when all are enjoying the food prepared.

13 SEC ROI, Case OIG-509, pg. 2, Para 3.
14 Donald R. Cressey, Other People’s Money ( Montclair: Patterson Smith, 1973) p. 30
Interview notes provided by Former Inspector General H. David Kotz, outlining information collected and developed during an interview of Bernard Madoff (after his arrest in 2009); illustrates that Madoff offered an observation regarding an earlier examination in 2006, conducted by two SEC investigators-Madoff compared the interview style of the investigator to “Lieutenant Colombo.” Imagine for a moment-Bernie Madoff, the condescending and astute individual, who orchestrated this monumental “Ponzi Scheme”, maintained a dismissive and above the fray indignation as he admitted three years later (2009) the investigator pretended “as if the left hand didn’t know what the right hand was doing.”

Judge Snyder prompted us all to think of who could detect the inflection in your voice, the fletching of your behavior, and the incredulity of your responses. Finally, as clear as a bell ringing or the magic I felt the first moment I saw the cop on post detect, unravel and serve up righteousness; an image of my mother appeared in my mind; likened to a “Jessica Fletcher,” 19 “Robert Ironside,” 20 a perfect composite of cerebral maneuvering and disarming questions.

VIII.
(Curiosity)

Immediately, I grasped the concepts; re- socialized and I) listened more intently, II) observed more frequently, III) trained and educated myself more; as I studied the social and psychological mores of the masses, progressively developing an interview style and technique, which complimented my curiosity-a necessary component of investigation. The current day public image of the profession of conducting investigations is more akin to the images invoked by practices consistent with characters portrayed more in line with Leroy Jethro Gibbs with a cast or team of NCIS technicians.

I subscribed more to the “Goodfella” not quite a “God of Carnage,” but a portrayal of the wise, calculating, perpetually altering camellia, “the skipper”, the principled and consistent performer; gentle and giving in real life, yet able to project a penetrating and convincing personality relentlessly;

a) weaving the facts into a series of questions; b) seeking the truth, c) confirming what is known, d) developing and drawing on what is unknown and e) seeking explanation: the art of the interview.

15 The Bio-Kinetic Interview Technique-. http://www.mattepodygraph.com/bio_kenetc.html
17 http://en.wikipedia.org/wiki/Sherlock_Holmes
18 http://en.wikipedia.org/wiki/Columbo

7
(UTILITY OF THE DOA CONCEPT ©)

DENIAL, OMISSION, AVOIDANCE: DOA © an acronym I have developed and come to know well with several meanings. In this instance, I offer the acronym as a guide or reference point for determining a measureable status of a progressive interview.

- **Denial**- you’re the interviewer- the question has been asked and involvement in the occurrence you know to have taken place is denied. To deny-reject-contradict-rebuff.

- **Omission**- a fact or mention of an event has been omitted- Come back around-ask again but this time in a different manner. Perhaps offering examples of how things are forgotten or overlooked. Omit-leave out-neglects or fails to mention.

- **Avoidance**- the individual being interviewed does not want to talk about the event. Resistance is an emotion. Why is there an emotional response? Or, for that matter, why avoid anything to do with the occurrence. Avoid-evade-shun-circumvent-elude.

  - (A) Where one element is present, it alone does not support sustainable findings.
  - (B) Where two elements are present, it gives rise to incredulity.
  - (C) Where all three elements have been invoked, exercised or utilized you likely have a misrepresentation and sustainable independent investigative contrivance which can be artfully applied for an admission or a contravention.

19 http://en.wikipedia.org/wiki/Murder:_She_Wrote
Initially, I worked on a beat, a uniformed Police Officer, performing and conducting many personal and individual inactions and interviews of what I’ve come to recognize as “urban sociology”\textsuperscript{21}. Over a period of 20+ years I interacted with people seeking aid; directions, medical attention or investigation; thereafter I joined the Detective ranks and conducted my share of investigations and interviews of individuals to obtain information, sometimes conducting interrogations. Given a very limited estimate of 5 interactions a day, times 225 days of work per year, over 20 years; I conducted roughly 22,000 + interviews during my time with the NYPD.\textsuperscript{1} Moving through the series of organizations where I honed my skills, adding study and application of varied learned and applied investigative sciences, I concentrated on the cerebral miscreant; the fraudster who operated in the background, out of sight, who employed stealth and diversion. Frequently these investigations involved professionals; the Accountant, the Lawyer, more often the investigations involved a Banker, a Bookkeeper, the Vendor, the Retail employee, an Insurance Broker or Insurance Agent, and yes; the Sentinel; all who traded their escudo; their principles, some committing unspeakable crimes under cover of authority.

I evolved and so did my methodology. I journeyed into the private investigative practice, including auditing, underwriting and internal investigations; spending another 10 + years consistently interacting and interviewing 5 plus individuals per work day over a 200 day yearly work schedule; slowing the pace a little to an estimated 10,000 additional interviews. Arguably, I have performed at least 30,000 interactions involving interviews providing or seeking information. Within this context came the development of the measures employed during an interview and/or an investigation. Adapt a recognized focus drawn from a variety of sources forming a more strategic mechanism for planning, consolidation and tactical response for analysis; a form of ILP (Intelligence-led-policing\textsuperscript{22}). Given the prerequisites fraud conduct is suspected or has occurred: Deception, concealment, culpability and something of value has been appropriated; I move on to the interview. That is not to say each interview is conducted due to a behavior driven by fraud; but I am saying, regardless of the subject matter; I remain mindful with each professional interaction of the reliability and corroborative value of the information.

\textbf{X}

(\textbf{THE INTERVIEW})

\textit{Essentially, an interview falls within two categories:} one seeks information, the other provides information.

An interview can include confrontation, intervention, resolution or absolution. The tenses of speech are paramount during an interview as \textbf{the present relies on the past and is used to provide guidance for the future}. The interaction, interplay and symphony of an interview are essential in all parts and rely on each other in order to provide the bridge to what otherwise appears unconnected. The grammar used, the verbs, nouns, adjectives, adverbs all play a significant role. During and after an interview comes the appraisal process; an element of the communication process which allows for interpretation of emotions or cognitive responses. \textbf{The significance of the subject referring to something in the past while conducting an interview when all discussed is talked of in the present can signal a subtle admission requiring follow-up and confirmation.}

\textsuperscript{21} Sociology- https://en.wikipedia.org/wiki/Sociology
PREPARING FOR THE INTERVIEW

- Before the interview do your due-diligence. Given the interviewer is versed in the subject matter and has done an examination; collected documentation, performed an analysis and sought technical and independent support for preliminary findings; the absence of one to interview can still provide leads, knowledge, data from which an investigative foundation or scope can be developed. However, if conducting an interview use of a recorder should be considered. Absent use of a recording device; notes should always be taken.

- Personal, medical or questions protected by privilege or sexual orientation should be avoided. A second interviewer who can record or write responses to question asked or information sought should be incorporated into the interview process. This individual (the recorder) can also serve as a witness or buffer where circumstances warrant.

- Selecting a venue where to conduct the interview is paramount. Circumstances may warrant choosing a private place, non-custodial, possibly the interviewee’s residence, an office or other off-site location. If in a workplace environment; privacy and the discreet selection of a comfortable and accessible space should be chosen. HR should always be consulted before, during and after conducting an interview when the person of interest is an employee or business partner. ***

- Timed breaks for water or beverage consumption should be adhered to. Bathroom use or other personal needs of all involved in the interview should be accommodated and recorded.

- In advance of an interview both general and specific questions can be outlined in a cogent order with emphasis directed at the matter under review. Determine the need for a translator or other required participant. Do not over schedule or exceed the total number of participants in an interview beyond three individuals-this can be easily construed as imposing and coercive.

- Prior to commencing the interview consider restriction and guidelines annunciated by procedures of the entity; union or contractual agreements.

- Take a witness or interviewees statement when possible. Ask the interviewee or witness if they are willing to provide a statement and if they agree to include a declaration of said willingness in their statement. Allow the interviewee to write a statement in their own handwriting, use their own words, and write their own illustrations. Ask for their signature and endorsement on the statement-providing for a signature, date and time on each page and margin of the document. All present during the interview should sign the statement as being present when given.

- Overall, contact or unethical behavior directed at the interviewee should NEVER take place. The use of ploys, trickery or sub-rosa scenarios is not prohibited but should be recognized as not useful in all circumstances. NEVER force a witness or person of interest to provide a response.
ALL PARTIES SHOULD BE AWARE THE INTERVIEW IS BEINGRecorded.ii

1. If an interview is to take place the use of a voice recorder or video/voice recorder should be evaluated before the interview. Regardless of the venue, all participants should be aware the interview is being recorded. Although some states allow recording during an interview without providing notice, at least twelve states require “two-party consent,” before recording. At last look twelve states require consent of every party to a phone call or conversation in order to make the recording lawful. 27

ONE-PARTY CONSENT V. TWO-PARTY CONSENT:

2. “Federal Law permits recording telephone calls and in person conversations with the consent of at least one of the parties. See 18 U.S.C. 2511(2)(d). This is called a “one-party consent” law. Under a one-party consent law, you can record a phone call or conversation so long as you are a party to the conversation. Furthermore, if you are not a party to the conversation, a “one-party consent” law will allow you to record the conversation or phone call so long as your source consents and has full knowledge that the communication will be recorded. See the State Law: Recording section of this legal guide for information on state wiretapping laws.” 28

3. Secret audio recording, including wiretapping and eavesdropping may impose liability for recording audio of a conversation without consent of one or more parties. See Recording Police Officers and Public Officials 29. Recording Public Meetings and Court Hearings:

4. States in the US requiring Two-Party Consent (*Per Digital Media Law)

- California*
- Connecticut*
- Florida*
- Illinois*
- Maryland*
- Massachusetts*
- Montana*
- Nevada*
- New Hampshire*
- Pennsylvania*
- Washington*
- Hawaii

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30 SEC-Executive Summary OIG-509, pg. 7, 12.
Query European, Latin American or other international counterparts where applicable to obtain documentation or verification. Utilize the National Securities Clearing Corporation (NSCC)

Seek copies of brokerage accounts directly from the Depository Trust & Clearing Corporation Company (DTCC). [The parent serves as a managed accounts service which standardizes the exchange of account and investment information through one central gateway] has ten subsidiaries and three joint ventures; The subsidiaries include: NSCC; EuroCCP; Avox; DTC; FICC; DTCC Deriv/SERV LLC; Warehouse Trust Company LLC; DTCC Derivatives Repository Ltd; DTCC Solutions; DTCC Loan/SERV LLC: The joint ventures are NYPC; Omgeo LLC & MarkitSERV. http://www.dtcc.com/about/subs/

DTCC the Depository Trust & Clearing Corporation

http://www.dtcc.com/about/subs/ficc.php

EuroCCP
www.EuroCCP.co.uk

NYPC
www.nypcear.com

Omgeo LLC
www.omgeo.com

MarkitSERV
www.markitserv.com
**Derivatives Repository Ltd** is headquartered in London and regulated by the UK Financial Services (FSA). The entity is a trade repository which provides a suite of post trade recordkeeping and reporting services for (OTC) equity, credit and interest rates, derivatives. Coverage is being expanded to include foreign exchanges.

**DTCC Deriv/SERV LLC** is the only comprehensive trade database and centralized electronic infrastructure for post-trade processing of OTC credit derivatives contracts over their lifecycles, from confirmation through to final settlement. The **Warehouse Trust Company LLC**, an organization regulated as member of the Federal Reserve and the New York State Banking Department.

**GSD-Government Securities Division of the DTCC**

**NSCC-National Securities Clearing Corporation**

The National Association of Securities Dealers (NASD) should be queried for independent data.

Follow-up on any correspondence sent to FIs where leads suggest negative or inconsistent responses to claimed utility of an FI by the subject to clear trades, requesting trades done by or on behalf of a particular subject’s feeder fund.\(^\text{31}\) Plan the investigation in every facet possible all the way to the end.

Look for the “exclusive” or “special” fund limited to a set group of investors, with some special investors getting higher returns than others. Consider examining the possibility of a hidden third-party relationship, look to disprove lack of correlation to the marketplace through the tracing of funds.

**EDGAR** provides a general purpose search which can help to identify several activities or ongoing developments planned within a public company. Outlined are a few of the ways an investigator can research such information available via public access. An **EDGAR Central Index Key (CIK) Lookup** \(^\text{32}\) (CIK) number, Standard Industrial Classification (SIC) code, can be determined and researched within the database. A CIK is the unique number that the SEC’s computer system assigns to individuals and corporations who file disclosure documents with the SEC. All new electronic and paper filers, foreign and domestic, receive a CIK number.

The **EDGAR**- [http://www.sec.gov/edgar.shtml](http://www.sec.gov/edgar.shtml) system provides free public access to Public Companies and operations by outlining registration statements, prospectuses and periodic reports filed on **Form 10-K** \(^\text{33}\) (Audited annual financial statements), **Form 10-Q** \(^\text{34}\) (Unaudited

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\(^\text{31}\) **Feeder Fund**: A fund that is similar to a FUND OF FUNDS except that virtually all the underling investments are held by a master fund. Barron’s Dictionary of Finance & Investment Terms, 8th Ed.

\(^\text{32}\) [http://www.sec.gov/searchedgar/cik.htm](http://www.sec.gov/searchedgar/cik.htm)

\(^\text{33}\) [http://www.sec.gov/answers/form10k.htm](http://www.sec.gov/answers/form10k.htm)

\(^\text{34}\) [http://www.sec.gov/answers/form10q.htm](http://www.sec.gov/answers/form10q.htm)
quarterly financial statements). **Form 8-K** 35 (Current information including preliminary earnings announcements. An issuer must announce a definitive merger agreement and material information about a merger, including the agreement itself. Information regarding a bankruptcy petition can also be found on this form.) **Form F-6** 36 (Registration statement used by foreign issuers of **American Depositary Receipts**). 37 **Form S-1** 38 (General registration statement under Securities Act of 1933). EDGAR also provides access to comment and response letters. A **Historical Edgar Archives Search** 39 is available. EDGAR does not provide notice that a specific filling was subsequently amended or withdrawn. Additional search features including **executive compensation**, 40 proxy statements on **Schedule 14A** 41 or information statement on **Schedule 14C** 42 **Schedule TO** 43 or **Schedule 14D-9** 44 are also available.

Generally speaking, corporate insiders must disclose transactions on Form 4 to the SEC within two business days. (Effective 08/29/02) Requirements outlining disclosure requirements are described in Forms 3**5**, 4**6** and 5**7**. A PDF listing of **SEC 1933 Act, SEC 1934 Act, Municipal Advisor Registration, Proxy and Tender Offer Forms, Small Business Forms, Regulations, and Rules; International Business Forms, Forms outlining Regulations and Rules; EDGAR Forms and Regulations; Trust Indenture Act of 1939-Forms; Insiders (Officers, Directors & Significant Shareholders); Investment Company Registration & Reporting Forms; Investment Adviser forms; Broker-Dealer Registration & Reporting Forms; Clearing Agency Application; Municipal Securities Dealer Registration Forms; Transfer Agent Registration; SROs forms, Exchanges & Alternative Trading Systems forms; NRSROs (Nationally Recognized Statistical Rating Organizations) ; Forms for Tips, Complaints, Referrals, Whistleblower and Supplemental information for regulated entities or persons requested to supply voluntary information or directed to supply information pursuant to a Commission Subpoena. All can be accessed via

https://www.sec.gov/about/forms/secforms.htm

The EDGAR site outlines items 601 (b) (10) of **Regulation S-K** 48 and **Regulation S-B** 49 which describes examples of what constitutes a material contract. I have duplicated the listing to illustrate the plethora of information which can be gleaned from the site.
- Asset Purchase Agreements
- Bridge Loan Agreements
- Cash Bonus Plans
- Director Fee Agreements
- Director Indemnification Plans
- Employment Agreements
- Executive Compensation Plans and Incentive Plans
- Financial Services Agreements
- Joint Venture Agreements
- Lease Agreements
- Letters of Intent
- License Agreements
- Pension Plans
- Profit Sharing Plans
- Purchase Agreements
- Stock Option Agreements
- Stock Purchase Agreements
- Termination Agreements

**EDGAR** also provides searches specific to mutual funds and variable insurance products.
- Mutual Fund Searches (Searches after 2/5/06) [http://www.sec.gov/edgar/searchedgar/mutualsearch.htm](http://www.sec.gov/edgar/searchedgar/mutualsearch.htm)
- Variable Insurance Products (Searches after 2/5/06) [http://www.sec.gov/edgar/searchedgar/vinsurancesearch.htm](http://www.sec.gov/edgar/searchedgar/vinsurancesearch.htm)

**Interactive Data Filings and RSS Feeds**-

Three variations of the interactive data documents “Interactive Data for Mutual Risk/Return Summary”, “Interactive Data to Improve Financial Reporting” and a list of up to 100 of all the latest filings containing “XBRL” tagged data is available and updated frequently.

Highlighted are a few definitions of germane finance or investment terms which are not all encompassing-emphasizing the recognized function in the market place of some of the financial instruments: And as well highlighting the need for a technical understanding-and requisite participation of a technician versed in securities and the like. (A 2nd point which underscores the omission aspect of my proposition)
| DERIVATIVES: “‘are essentially’- bets- on which direction the price will move for some underlying value, which can be a commodity, a share of stock, a financial asset, foreign exchange or an index of these.” [CFCS-Certification Exam Study Manual, 2nd Ed, pg. 209] [CBO or CDO; Collateralized Bond or Debt Obligations: CMO; Collateralized Mortgage Obligation, etc.]
| Exercise Price: “price at which the stock or commodity underlying a call or put option can be purchased (call) or sold (put) over the specified period. For instance, a call contract may allow the buyer to purchase 100 shares of XYZ at any time in the next three months at an exercise or STRIKE of $[$$$.]”
| Commodity: “bulk goods such as grains, metals, and foods traded on a commodities exchange or on the SPOT MARKET.”
| Split: “increase in a corporation’s number of outstanding shares of stock without any change in the shareholders’ EQUITY or aggregate MARKET VALUE at the time of the split. In a split, also called a split up, the share price declines. If a stock at $100 par value splits 2-for-1, the number of authorized shares doubles (e.g. from 10 million to 20 million) and the price per share drops by half, to $50. A holder of 50 shares before the split has 100 shares at the lower price. If the same stock splits 4-for-1, the number of shares quadruples to 40 million and the share price falls to $25. Dividends per share also fall proportionately. Directors of a corporation will authorize a split to make ownership more affordable to a broader base of investors. Where stock splits require an increase in AUTHORIZED SHARES and/or a change in PAR VALUE of the stock, shareholders must approve an amendment of the corporate charter.”
| Stock: “ownership of a CORPORATION represented by shares that are a claim on the corporation’s earnings and assets. COMMON STOCK usually entitles the shareholders to vote in the election of directors and other matters taken up shareholder meetings or by proxy. PREFERRED STOCK generally does not confer voting rights but it has a prior claim on assets and earnings-dividends must be paid on preferred stock before any can be paid on common stock.”
| Futures: “A financial contract obligating the buyer to purchase an asset (or the seller to sell an asset), such as a physical commodity or a financial instrument, at a predetermined future date and price.” [CFCS-Certification Exam Study Manual, 2nd Ed, pg. 209]
| Reverse Split: procedure whereby a corporation reduces the number of shares outstanding. The total number of shares will have the same market value immediately after the reverse split as before it, but each share will be worth more. For example, if a firm with 10 million out-standing shares selling at $10 a share executes a reverse 1 for 10 split, the firm will end up with 1 million shares selling for $100 each. Such splits are usually initiated by companies wanting to raise the price of their outstanding shares because they think the price is too low to attract investors.”
| Options: “financial derivative that represents a contract sold by one party (option writer) to another party (option holder). The contract offers the buyer the right, but not the obligation, to buy (call) or sell (put) a security or other financial asset at an agreed-upon price. (The strike price) during a certain period of time or on a specific date (exercise date).” [CFCS-Certification Exam Study Manual, 2nd Ed, pg. 209]
| “Audit—professional examination and verification of a company’s accounting documents and supporting data for the purpose of rendering an opinion as to their fairness, consistency, and conformity with GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.”
| Swaps: “Traditionally, the exchange of one security for another to change the maturity (bonds), quality of issues (stocks or bonds), or because investment objectives have changed. Recently, swaps have grown to include currency swaps and interest rate swaps.” [CFCS-Certification Exam Study Manual, 2nd Ed, pg. 209]
“**Spring-loading**—the pre-acquisition earnings of an acquired company are underreported, giving the merged company the appearance of an earnings boost afterwards”

**QUESTIONS FOR THE INVESTIGATOR(S) NECESSITATING REMEDY:**
(What was learned in the Madoff review other than conformity and assembling a competent team?)

- Is the fund auditor related to the principle?
- Is the fund (subject foregoing the significant management and performance fees typically charged by asset managers?)
- Where information is provided; do the account statements provide actual prices v. average prices for each transaction? Do the documents provide detail audit trail data, including the date, time, and execution price for all trades in a given time period?
- Are returns for funds under review unusually consistent and non-volatile over several years?
- Are there misrepresentations of options trading?
- Is it possible option trades are always profitable (most of the time) thereby making it unprofitable or lacking in incentive for a counterparty to take the other side of the trade (hedge)?

Provide training or a training resource.

50 Derivative: Barron’s Dictionary of Finance & Investment Terms, 8th Ed
51 Commodities: Barron’s Dictionary of Finance & Investment Terms, 8th Ed
52 Stock: Barron’s Dictionary of Finance & Investment Terms, 8th Ed
53 Strike-See Exercise Price: Barron’s Dictionary of Finance & Investment Terms, 8th Ed
54 Split: Barron’s Dictionary of Finance & Investment Terms, 8th Ed
55 Reverse Split: Barron’s Dictionary of Finance & Investment Terms, 8th Ed
56 Audit-Barron’s Dictionary of Finance & Investment Terms, 8th Ed
57 **Spring-loading**—

http://money.howstuffworks.com/cooking-books10.htm

1 NYPD Typical work schedule (365 days, less 52 weekends or -104 days, - 12 holidays, -24 days off [Vacation/CDOs.] | **225 days total per year**. No allowances for sick-time.

\footnote{This listing does not purport to include all considerations or circumstances under which a lawful recording is undertaken.}


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Author's Biography:

Ernesto A. “Pete” Castillo

Pete holds both a Master of Arts and a Bachelor of Arts degree in Public Administration. Pete’s professional experience is concentrated in Risk Management and encompasses a career in law enforcement, as a NYPD Detective specializing in fraud investigations while assigned to the New York County District Attorney’s Office; to extensive investigative experience within the insurance and banking industries as an examiner, internal auditor and underwriter. Pete’s has served as an expert witness in the State Court, and summary witness within the Federal court.

Pete’s most recent assignment is the Fraud Investigative Analyst, for the Department of Justice, United States Attorney, the Middle District of Florida. Pete holds designations as a Certified Fraud Examiner and a Certified Financial Crime Specialist.

Pete is the former President and most recent Chairman of the New York Chapter of the Association of Certified Fraud Examiners (NYCFE).

Disclosure:

The information and narratives provided are based on the experience of the writer and sources referenced. Every effort has been made to carefully demonstrate lawfully useful and accepted best practices. The author makes no representation that this article is all inclusive or encompassing of every fraud malady or risk solution.