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## Wave of anti-Ponzi laws coming — but will they work?

Tresa Baldas / Staff reporter  
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State lawmakers and Congress are trying to tackle Ponzi schemes through legislation, but lawyers are skeptical about whether new laws can stop the scams, much less snare them.

With plenty of fraud statutes already on the books, attorneys argue, it's not more laws that are needed but more oversight, and more victims who are willing to come forward and name the con artists.

"Our fraud statutes can certainly cover these schemes — it's just that the government needs to be aware of them, and the only way to be aware of them is if an investor smells a rat, or an accountant or lawyer smells a rat," said Paul Monnin, a partner at DLA Piper and a former federal prosecutor who prosecuted several Ponzi schemes.

"You can have all the FBI agents in the world, and unless they're involved as investors, they're not going to know about [a fraud] unless someone drops a dime."

And files a lawsuit.

"A nonlegislative way to address this is to encourage civil plaintiffs who suspect themselves of having been defrauded in a larger scheme to contact the authorities," Monnin said.

In recent months, several Ponzi schemes have popped up across the country. It started with disgraced financier Bernard L. Madoff, charged in December with running a \$50 billion Ponzi scheme that defrauded millions of investors.

Shortly after came the arrest of 76-year-old Arthur Nadel, a Florida fund manager and philanthropist who was charged in January with defrauding investors at six Florida-based hedge funds of potentially \$300 million.

January also saw the surrender of Nicholas Cosmo, who was arrested and charged with running a \$370 million mail fraud Ponzi scam after surrendering to U.S. authorities at a suburban New York train station.

### 'Ponzi cops'

Meanwhile, lawmakers across the country are taking a crack at Ponzi schemes through legislation.

A proposed bill in Florida would give a special team of elite state prosecutors the power to prosecute Ponzi schemes by adding securities fraud and money laundering to the list of crimes they can prosecute.

Proposed legislation in Connecticut would force hedge funds to provide greater transparency by disclosing their fees and other information about investment strategies, and require them to obtain a license and conduct an annual audit.

Congress has proposed a similar hedge fund bill, which would require funds worth more than \$50 million to regularly disclose the value of their investments, and abide by stricter oversight and greater transparency in both their operations and investments.

Also on Capitol Hill, legislators have proposed a bill to amend the Internal Revenue Code to provide tax relief to individuals harmed by Ponzi schemes who have paid taxes on "phantom" earned income. Another proposed federal

bill is asking for \$110 million to hire 500 new FBI agents, 50 new assistant U.S. attorneys and 100 new U.S. Securities and Exchange Commission (SEC) enforcement officials to crack down on Ponzi crimes.

More Ponzi cops sound good to Florida securities attorney Burton Wiand, who is the court-appointed receiver in the highly watched case of Arthur Nadel, the Florida hedge fund manager accused of ripping off investors of as much as \$350 million. Nadel is charged with securities fraud and faces life in prison.

"We need regulators who have their antennae up and are much more vigilant to see these kinds of things," Wiand said. "We need to have people walking around with a big stick."

Wiand, a financial services litigator at Tampa, Fla.-based Fowler White Boggs, believes a main reason Ponzi schemes have exploded in recent years is a lack of disclosure and registry requirements. Some investment operators, particularly smaller ones, don't have to register with any state or federal authorities, he said, nor are they audited.

That needs to change, Wiand said.

"Investment advisement registry is not that onerous, but it certainly would let the public and regulators know who is doing this business," Wiand said.

### **Open it up**

It would also help if investment managers were forced to be more open about their investments, said Stefani Eisenstat, a securities and commercial litigator at Riney Palter, a Dallas corporate litigation boutique.

"Ongoing disclosure requirements is what needs to be beefed up," Eisenstat said.

She views federal legislation that would require investment managers to be more transparent with their operations as a good thing. But, she stressed, legislation is not the cure-all for Ponzi schemes.

"There's nothing lawmakers and regulators can do to protect people from themselves," Eisenstat said. "Investors need to continually be reminded that no one but them can guarantee their investments . . . .As the saying goes, 'If something appears too good to be true, it usually is.' "

Investors also can't count on regulations and federal reporting requirements to be foolproof, said Frank Razzano, a Washington partner at Philadelphia-based Pepper Hamilton who focuses his practice on SEC enforcement.

Razzano noted that fraud continues to persist even in regulated entities. For example, he noted, the cooked-books scandal involving Enron Corp. and WorldCom Inc. occurred under the eyes of auditors and accountants, despite federal reporting requirements.

So what's the answer?

"The best solution to inhibiting fraud is vigorous enforcement," Razzano said. "It is vital [that] the perpetrator recognize that if he or she violates society's norms, apprehension and punishment will be certain to follow."