Madoff Ponzi Scheme: Major Donors to Demand More Due Diligence: Board Members or Trustees Can Avoid Personal Risk Through Independent Fiduciary Audit

Emphasis on fiduciary responsibility, especially in how it relates to corporate governance, is at an all-time high in the wake of the Madoff scandal. Many charity boards are now beginning to look at ways they can protect themselves and their stakeholders from exposure or widespread financial losses. Fiduciary duty forensic experts like Chris McConnell, AIFA®, are recommending that boards and executives should more carefully monitor the process used to enter into contracts, compensate employees, advisors, consultants and contractors.

Los Angeles, CA (PRWeb) January 12, 2009 -- Emphasis on fiduciary responsibility, especially in how it relates to corporate governance, is at an all-time high in the wake of the Madoff scandal. Many charity boards are now beginning to look at ways they can protect themselves and their stakeholders from exposure or widespread financial losses. Fiduciary duty forensic experts like Chris McConnell, AIFA®, are recommending that boards and executives should more carefully monitor the process used to enter into contracts, compensate employees, advisors, consultants and contractors.

According to McConnell, "Investment due diligence must be performed, preferably by an outside, independent fiduciary audit expert, in any area of potential financial risk." McConnell notes several reasons that a higher level of diligence is needed than many organizations have been providing. "Boards have turnover," says McConnell, and often lack the necessary expertise to investigate and analyze a given situation. "If they go it alone, they may wind up facing lawsuits for breach of fiduciary duty--some with personal liability. The undeniably clear trend in non-profit charity governance is this: charity board members and trustees will face a fiduciary audit. It's not if but when and whether it will be on friendly or adverse, unfavorable terms."

Trustees of museums, hospitals, foundations, endowments, colleges, universities, state, county and city public employees' and union pension and profit-sharing plans, family or private trusts, even HOA's (homeowners associations) are all examples of those who may find themselves at risk if they have not done all they can to prevent a breach of fiduciary duty.

Board experts also point out that it's often not just one or two board members who have contributed to a bad situation. Many more board members are potentially culpable and could be forced to resign or even face prosecution. In addition to the monetary impact, the publicity resulting from these penalties can be disastrous for a charity.

But while boards may want more detail, how much is too much? McConnell stressed that the board's role is to provide oversight, not to manage the business--a sentiment shared by most charity and non-profit treasurers. The red flags in the Madoff scandal underscore the need for improving or monitoring the process of investing an organization's assets. "When it comes to the organization's survival in this period of financial crisis, the board has the fiduciary responsibility to do this," said McConnell.

Compensation levels for key employees, advisors and or contractors, especially when a trustee may be conflicted or worse, involved in self-dealing should also be examined. A board's lack of focus, time, skill and attention--or its facility with numbers or compensation analysis, can further complicate the situation. Even in the best of circumstances, a board may be hard pressed to defend a compensation investigation due to disparate information and or a lack of documentation.

Careful boards are seeking guidance on hedge fund or investment contracts, agreements and pay levels due to their subjective nature and the complex facts these present. They desire to assure major donors and to avoid state attorney general and/or IRS investigations a lack of due diligence may create. And no volunteer board member will want to be personally exposed to a penalty excise tax.

Fulfillment of fiduciary duty begins with awareness, acknowledgment, education and training. This is best accomplished by using a checklist embodied in a customized, comprehensive investment policy statement with emphasis on potential conflicts, fees and costs; not a cut and paste, watered-down form many brokers and advisers pass off deflecting attention from their own potential conflicts and costs. McConnell observes that some trustees view their role as honorary. But as the Madoff scandal illustrates, nothing could be further from reality. He strongly encourages fiduciaries to understand fully the time commitment and gravity of their duty.

"Fiduciary duty is not simply a good idea or a best practice; rather, it's the highest standard known under the law," said McConnell. "It's rooted in the centuries-old concepts of trust. Courts often hold trustees and/or third party fiduciaries against the expert investment standard regarding personal liability."

Fiduciary training, education and proper due diligence audits by a 100% independent, trained fiduciary auditor are the best ways for boards and organizations to avoid exposure or loss. Taking these steps now can insulate at risk parties from avoidable complications down the road.

According to McConnell, "Charities often engage consultants to raise funds; the next natural and logical step is to invest those funds properly; Prudent trustee conduct will go from being a nebulous term to an action verb, an outcome best achieved with an independent, arms-length fiduciary audit." A fiduciary audit is an independent professional opinion - similar to a CPA's financial statement audit opinion. Boards and their advisors that ignore or shy away from this reality may become the next victims. In this case, investments and the causes they support may both go down the drain.

About Chris McConnell, AIFA®:
Chris McConnell received a BA, Economics/Accounting option from Rutgers University in 1983, passed the CPA exam for New York State in 1986, and received an MBA from Pepperdine University in 1990. He was certified as an AIFA® by the Center for Fiduciary Studies in 2003. He has 25 years of combined experience as a recognized fiduciary and compensation expert, in addition to his considerable securities industry experience.

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