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## '92 Ponzi Case Missed Signals About Madoff

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Daniel Sutherland for The New York Times

In Nantucket, Mass., sits one of Frank Avellino's homes. His dealings with Bernard L. Madoff, which began decades ago, are drawing scrutiny in the wake of the government's Madoff investigation.

By ALEX BERENSON  
Published: January 16, 2009

Seventeen years ago, federal investigators questioned for the first time whether [Bernard L. Madoff](#) was connected to a [Ponzi scheme](#). Their inquiry centered on Frank Avellino, an accountant who had been funneling investors to Mr. Madoff since the 1960s.

The investigators did not get far. Within days, Mr. Avellino agreed to return to investors the money he and his partner had raised and to pay a small fine to the Securities and Exchange Commission. The inquiry petered out, and Mr. Avellino — represented in the case by Ira Lee Sorkin, the same lawyer who now represents Mr. Madoff — kept sending money to Mr. Madoff.

Now questions have again arisen about the ties between Mr. Madoff and Mr. Avellino. A lawsuit claims that Mr. Avellino warned his housekeeper, who had invested with him, that her money was lost 10 days before Mr. Madoff's fraud became public.

Through his new lawyer, a former federal prosecutor, Mr. Avellino declined to comment on his relationship with Mr. Madoff.

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Michael Bienes with his wife, Dianne, in 2005. Mr. Bienes and Frank Avellino ran Avellino & Bienes, a now-defunct firm that used to funnel investors to Bernard L. Madoff.

But archived court documents from the 1992 case reveal numerous red flags that raise questions about the S.E.C.'s failure to examine Mr. Avellino and Mr. Madoff long before Mr. Madoff's apparent Ponzi scheme spread worldwide. The documents show that Mr.

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Avellino and Michael Bienes, his business partner, kept almost no records at Avellino & Bienes, a firm that oversaw \$440 million. When court-appointed auditors asked Mr. Avellino to prepare a balance sheet, he responded that "my experience has taught me to not commit any figures to scrutiny."

Subsequently, Mr. Sorkin and Mr. Avellino managed to curtail the audit, even though a federal judge eventually concluded that Mr. Avellino had not been a credible witness in the case.

The S.E.C. also took at face value Mr. Avellino's depiction of the deal he offered investors, which guaranteed returns of up to 20 percent a year while requiring him and Mr. Bienes to make up any shortfalls.

It is unclear whether commission investigators even discussed the case with Mr. Madoff. His name does not appear in the agency's complaint, which referred only to an unnamed broker.

The government lawyers who handled the case are now in private practice. Richard Walker, then head of the S.E.C.'s New York office, is general counsel of [Deutsche Bank](#). Kathryn Ashburgh, the lead lawyer on the case, works from her home in McLean, Va. And Keith W. Miller, a senior lawyer in the New York office, is a partner at Paul, Hastings, Janofsky & Walker. Through a spokesman, Mr. Walker declined to comment on the case. Mr. Miller and Ms. Ashburgh did not return calls.

Mr. Avellino did not respond to calls or visits to his homes in Nantucket, Mass.; Palm Beach, Fla.; and New York, or to messages left with his son Joseph Avellino in Chester, N.J. Gary Woodfield, the former federal prosecutor who represents Mr. Avellino, also declined to comment. Francis B. Brogan, a longtime lawyer for Mr. Avellino and a partner at Greenberg Traurig in Fort Lauderdale, Fla., asked that questions be e-mailed to him, then did not respond.

Mark Raymond, a lawyer for Mr. Bienes, said that his client had no knowledge of Mr. Madoff's fraud and had lost tens of millions of dollars, most of his savings, in the fraud. Mr. Bienes worked mainly as a fund-raiser, while Mr. Avellino actively managed Avellino & Bienes, according to court documents and people who knew the men.

Mr. Avellino has been connected to Mr. Madoff for his entire career. After graduating from the [City University of New York](#) in 1958, Mr. Avellino began working as an accountant at a firm run by Saul Alpern, Mr. Madoff's father-in-law.

Mr. Madoff also briefly ran his securities business from the firm's offices. As early as 1962, according to the S.E.C.'s complaint against him, Mr. Avellino began raising money for Mr. Madoff, who was running a small brokerage company. Mr. Bienes joined in 1965.

In 1977, Mr. Avellino and Mr. Bienes formed an accounting firm in Midtown Manhattan. Mr. Avellino owned half the company; the remainder was owned by Mr. Bienes and his wife, Dianne. In 1980, the Bieneses moved to Fort Lauderdale, while Mr. Avellino remained in New York.

The two men gradually shifted their focus from accounting to raising money for Mr. Madoff. Their business expanded until 1992, when the S.E.C. received marketing materials showing that Avellino & Bienes had promised investors annual returns of up to 20 percent. Commission officials said at the time that they believed they had stumbled upon a Ponzi scheme.

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