

## When – and whom – to ask when investments seem too good to be true

By Jeff Zbar

**Richard Lydecker has heard of attendees at tax planning, investment or wealth management seminars who are approached by hucksters looking for investors with money to spend.**

The promoters promise strong earnings, often regardless of the economy. They claim to have a list of satisfied clients who've ridden the investment to high returns. It sounds almost like a script. Yet, if asked for details – reports, financial statements or any supporting literature – they claim some cloak of secrecy.

**“That’s all nonsense,” said Lydecker, a former prosecutor and now senior partner with Miami law firm Lydecker Diaz. “If they need to keep things so secret, I’d have to be desperate to do business with them.”**

Local and national Ponzi schemers and other con artists have been able to prosper because people are not doing proper due diligence on whom they give their money to. Lawyers and accountants recommend people check out potential investments and managers before handing over their cash.

The problem with investors who bought into schemes pushed by Scott Rothstein, Bernard Madoff and others are that people “lose common sense,” said CPA and board-certified tax lawyer Nick Jovanovich, a shareholder with law firm Berger Singerman in Fort Lauderdale.

“You don’t get even, consistent returns amid a market roller coaster,” he said. “Steady gains just can’t happen. If it looks too good to be true, it probably is.”

The truth lies in the due diligence the investor performs – before handing over a check. Where should the research begin? Start with the Internet. Searches for the investment company or manager’s name. Most law firms that handle litigation have research departments that can delve into this using such online databases as Lexis or Westlaw, Jovanovich said. If the law firm charges a research fee, it may be money well spent for a comprehensive search. The result could be as small as an article about the investment firm or the individual.

**Ask for literature, including a prospectus, from the investment house, Lydecker said. If it’s a private business, ask for financial statements. Do the documents have facts that can be substantiated, or is it a puff piece full of unsubstantiated, unsupported promises?**

Request copies of federal filings from the promoter, including tax returns, or an Edgar search of 10-Q or 10-K filings with the SEC. Ask to see the audits of an independent accounting firm. If they balk, walk, Jovanovich said.

Also, find out which brokerage is backing the investment, said Tim Devlin, tax partner with Daszkal Bolton LLP in Boca Raton. With Madoff, for example, he was an investment adviser who had his own brokerage firm. That should set off warnings, Devlin said.

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Instead, if looking to invest in a small, individual investment advisory shop, it should have a large, established brokerage behind them so their securities are held with a clearing firm independent of the advisory firm, he said. A small advisor Devlin knows clears all his trades, securities and investments through Schwab, for example. Many schemers print results on paper, which should be another warning. Investors working with legitimate brokerages should be able to log on anytime to see their investments, he said.

Should something go wrong, “you have the full faith and credit of the company ... you can sue if your securities” have been jeopardized, Devlin said. “When you get a statement from them, you actually have the securities that are on those statements. With a Ponzi, there are no checks and balances.”

Ask for references, including previous or current investors. But, beware the opinions they offer. They could be planted referral sources whose sole purpose is to promote the investment.

“You almost have to do a Google search on the referrals,” Jovanovich said.

**Remember to check the obvious sources. All too often, prospective investors in an ongoing business may ask for – then fail to call – banks, lenders or other investors where a business owner claims the company or partnership proceeds are held, Lydecker said. In one case, someone claimed a \$35 million bank line of credit, he said. It didn’t exist.**

**“Nobody picked up the phone to call the bank,” he said. “That line of credit was made by the fraudulent company at Kinko’s. Had they picked up the phone, they would have known it was one big fraud.”**

If you ask an accountant or attorney to review the investment opportunity, don’t be seeking a “rubber stamp,” Jovanovich said. He won’t pass opinion on actual investments, but may recommend a forensic accountant who has experience with the investment or search process.

Even with exhaustive research, prospective investors might not have definitive information on which to base an opinion, Jovanovich said. “You could have spent two years analyzing Madoff and not have been any better off.”