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Shoring up shaky foundations

By Josh Nathan-Kazis
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One year after the arrest of Bernard Madoff sent shockwaves through the world of Jewish philanthropy, only a handful of charities and foundations that had invested in Madoff's funds have publicly outlined the reforms they have made in their investment processes. Many others have yet to identify measures taken to change these practices, while still others say they have little intention of doing anything differently at all.

"The Madoff experience has been devastating in the Jewish community," said Mark Charendoff, president of the Jewish Funders Network, an influential organization that supports Jewish donors and foundations. "I think the only outcome that can be worse than going through this is going through it and not learning any lessons."

But in the year since Madoff's December 11, 2008, arrest for masterminding a $65-billion Ponzi scheme, it's not clear how many lessons have been learned. Charendoff says that while there was a sense immediately after the scandal broke that investment policies among Jewish foundations required reexamination, he has not yet seen major changes as a result.

In the broader not-for-profit world, some individual institutions have publicly discussed measures to reform their procedures. These include the Jewish Community Foundation of Los Angeles, whose Madoff investments were valued at $18 million, and Yeshiva University, which had indirect investments with Madoff valued at $110 million. The North Shore-Long Island Jewish Health System, which had $5.7 million worth of investments with Madoff, has also discussed the measures it has taken to address flaws in its investment practices.

As if to illustrate Charendoff's point, however, some foundations that suffered Madoff losses told the Forward that they saw no need to examine and change their investment practices. One, the Robert I. Lappin Charitable Foundation, a major player in the Boston Jewish community until it lost the entirety of its $8-million endowment to Madoff, says that it will not make significant alterations to its governance or practices.

When asked what went wrong, the foundation's sole trustee, Robert Lappin, said that the answer is "very simple. We got involved with a crook."

"That question I think assumes that there was some flaw or mistake in making the investment," Lappin said. "I don't agree with that. There was every reason to invest with Madoff. The only thing that was lacking was the prescience to identify him as a thief and a scoundrel. So I don't see any far-reaching or important changes in investment philosophy."

Some observers don't agree that charities and foundations duped by Madoff share none of the blame. "My position is that both the fiduciaries [of the charities] and the auditors should have known better," said William Josephson, who ran the New York State Charities Bureau from 1999 to 2004. "And I really don't have a lot of sympathy for those who didn't."

A number of Jewish charities and foundations declined to comment for this story: the Elie Wiesel Foundation for Humanity, which had Madoff investments valued at $15.2 million; Congregation Kehilath Jeshurun in New York, which had investments valued at $3.5 million; the Carl and Ruth Shapiro Family Foundation, which was invested with Madoff to the tune of $145 million; Friends of Yad Sarah, which had $1.5 million invested in J. Ezra Merkin's Madoff feeder fund, and SAR Academy, which had $1.3 million with Merkin. The JCC Association of North America and the Ramaz School did not respond to requests for comment.

Marc Stern, acting co-executive director of the American Jewish Congress, which lost $21 million of its $24-million endowment, said that his organization has made changes to its practices, but he would not elaborate. "We've done what we think is adequate," he said, adding: "We think we were taken by a sophisticated crook."

Jewish Funds for Justice, which oversaw a donor-advised fund with a $3.9-million Madoff account, hired an outside law firm to examine what went wrong with that fund. The firm determined that the policies and personnel of the organization were not at fault, and no changes were made to the organization's investment practices.

Whether these foundations and charities were innocently misled is a matter of some dispute, for other Jewish charities turned down offers to invest with Madoff. The Reconstructionist Rabbinical College divested from Fairfield Greenwich Group, a Madoff feeder fund, after determining that its account statements did not sufficiently explain its returns, according to David Teutsch, former RRC president and now director of the college's Levin-Lieber Program in Jewish Ethics. "When we saw we could not trust their explanations, we immediately sold, even though we were making a nice profit," Teutsch said. Similarly, although Ezra Merkin served on the investment committee of UJA-Federation of New York, the organization did not invest with him, due to stringent policies concerning conflict of interest. And according to Kenneth Bandler, a spokesman for the American Jewish Committee, that organization's investment committee once turned down an offer to invest with Madoff's fund, because they "couldn't get enough information about how Madoff achieved the high, steady returns."

Different paths

The foundations and charities that did act in the past year took different paths to reform. The board of L.A.'s Jewish Community Foundation decided to hire an outside consultant to vet new investments, require more consensus by investment committee members on their decisions and bar investments in funds managed by committee members.

Meanwhile, Yeshiva University (YU) retained a law firm and an investment adviser to review its practices. YU has not made the firm's findings public, but did say that as a result, the university recently hired a chief investment adviser, and implemented a conflict-of-interest policy for the investment committee. That policy is significant at YU, where Merkin, a money manager who ran one of the major Madoff feeder funds, managed portions of the YU endowment while serving as chair of the investment committee. Madoff also served as treasurer of the YU board of trustees. At North Shore-LIJ, it turned out that the losses were caused by the donations from one individual who had specifically requested that his money be invested with Madoff. This was contrary to the policy of entrusting the finance committee to make all investment decisions.

"It was the lone exception that was made," said Terry Lynam, a spokesman for North Shore-LIJ. "Clearly it's not going to happen again."

Experts on not-for-profit management and business ethics differ on what charities and foundations should do differently. A June 2009 study by the National Committee for Responsive Philanthropy found that the 105 Jewish and non-Jewish foundations that were affected most significantly by Madoff had disproportionately small boards of trustees, often with only two or three members. The study's authors argued that these findings demonstrated a need for diverse boards of at least five members, even at small family foundations. Others do not agree, pointing to victimized charities that have large boards, such as YU and Hadassah. Jeffrey Solomon, president of the Andrea and Charles Bronfman Philanthropies, said that a board's understanding of its role is more important than its size. "It's really the attention to governance, to ethics, to responsible behaviors, and the understanding that this is money that is supposed to serve the public interest and has to be treated as a sacred resource of the community," he said.

Charendoff's organization advises small foundations to hire consultants to ensure that investments and related issues are handled properly. "Just because you're a genius at making money in one given area doesn't mean that that genius travels by osmosis into every other area of foundation life," he said. "Funders have to have the humility to reach out for expertise in areas like investments, like legal requirements, like due diligence."