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Will wave of new anti-Ponzi laws 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 to 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.

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. 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.

"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 that 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.

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.