NIAP
Network for Investor Action and Protection

NIAP Bullets on Clawbacks

- Clawing back innocent investors is unfair and there is no basis for it. The Trustee sued several wealthy and institutional Madoff investors, asserting that they were complicit in the fraud. But that standard does not apply to the planned clawbacks of those the Trustee has determined pulled more money out of Madoff than they put in.

- There is no clawback policy and therefore no consistency. Not all so-called “net winners” (and we would include the reminder that no honest Madoff investors were winners) are being clawed back--only about half, according to the Trustee. The lack of any clarity on who is being clawed back and why makes it an alarmingly unjust, inequitable, and unfair process.

- The Trustee is acting as if this is a standard bankruptcy, rather than a SIPC-protected brokerage bankruptcy. Under no circumstances should SIPC claims be paid out only based on what assets get recovered and clawed back—those claims should be paid regardless of what assets are recovered.

- Those investors who get unfairly sued will be the victims of a triple-whammy: their investments and savings were wiped out in the fraud; they are not eligible for the SIPC claims they thought they would be; and they will likely have to pay money back to the Trustee. Those who managed to get by after the first two blows will be crippled by the third.

- Most of the so-called “net winners” were regular people who built honest lives and businesses and were using Madoff funds for everyday living expenses.

- “Net winners” tended to be in the fund longer and thus are older folks with almost no ability to pay the Trustee back.