

Rep. Scott Garrett Opening Statement -- SIPC Hearing 9-23-10

“As mad as I am at Madoff, I’m even more upset at my own government over the way I’ve been treated in the aftermath of this fraud.” That is the gist of a quote from one of my constituents who was defrauded by Bernie Madoff, who was failed by the SEC and FINRA in protecting him while the fraud was ongoing, and who now faces a SIPC trustee who is threatening to “claw back” funds he withdrew from his Madoff account over a course of 15-20 years.

In a sense, innocent investors are being held to a higher standard than both the government that was supposed to protect them and that gladly took their tax payments, and the organization – SIPC – that was supposedly set up to protect them while instilling greater confidence in our securities markets.

We are holding today’s hearing to assess the limitations of the Securities Investor Protection Act (SIPA) and the Securities Investor Protection Corporation (SIPC) and to identify whether there are potential reforms that would better protect investors. It would seem to me that one major and fundamental reform would be for SIPC, through the actions of the trustee it has appointed, to see itself as an advocate for, rather than an adversary against, innocent defrauded investors, so that they feel as

though they are being assisted by the SIPC process, rather than hunted down and accused somehow of wrongdoing.

There's one piece of legislation that could go at least part way in making things right for once and potentially twice-victimized Madoff investors. My colleague from New Jersey, Congressman Bill Pascrell has introduced a bill, H.R. 5058, the Ponzi Scheme Victims Tax Relief Act, that would liberalize the ability of those who are victims of theft to receive a refund for taxes they had paid on gains that the SIPC trustee is now trying to take back from them. I am a cosponsor of this bill, which should perhaps go even further than a 10 year look-back since the SIPC trustee is going back further than 10 years in calculating so-called net winners and net losers.

Other aspects of the SIPC trustee's handling of this case are now in the process of working their way through the court system, where such matters have traditionally been decided. I'm concerned, though, about a looming deadline in December when the trustee will decide whether to go forward with potentially thousands of clawbacks from innocent defrauded investors.

SIPC leadership and the trustee have indicated that he will not be going after so-called "ordinary" people who are not leading a lavish lifestyle

and who had no knowledge of the fraud. But that's not what I'm hearing from my constituents and others. I spoke with one gentleman who years ago withdrew money to pay for college, but who leads a very modest lifestyle. He contacted the trustee's firm to get clarification that he wouldn't be clawed back, but was told that other than forgiving a small percentage of what the trustee had calculated that he owed, he otherwise was on the hook for the rest. In addition, he was told that anything he might recover in the form of a tax refund was also subject to seizure by the trustee.

I am also concerned that while these court cases are underway, the SIPC trustee has denied access to Madoff's records for victims and their attorneys. Access to these records is important for several key aspects of the case, including whether or not all transactions reported by Madoff over the years were actually fraudulent. If some of them weren't, the SIPC trustee's net equity formulation would be completely called into question. Inequitable access to these records results in a fundamental imbalance of the scales of justice and also calls into question whether ultimately there will be a fair trial in this case.

This all makes me feel very uncomfortable. The SIPC decal is supposed to mean protection. The SEC was supposed to provide protection. The IRS taking the tax payments also served as a government imprimatur.

SIPC is supposed to provide up to \$500,000 in protection based on the “reasonable expectations of customers”. In fact, SIPC was created at the behest of the securities industry to encourage confidence in a more efficient paperless process where investors would no longer have the peace of mind one gets from holding actual stock certificates. In their place, customers grew accustomed to depending on trade confirmations and account statements (regulated by the SEC and FINRA) to set their “reasonable expectations”.

As I said earlier, though, instead of SIPC meeting investors’ reasonable expectations, they are blaming the victims instead. Instead of customers being able to rely on their account statements to calculate their SIPC protection, they are instead at the mercy of the trustee’s formulation of net equity that doesn’t even take into consideration interest, earnings or the time value of money. Nor does this so-called “most customer-friendly methodology” take into account that receiving SIPC protection is separate and distinct from the distribution of assets recovered.

One of the results, unfortunately, is that SIPC has clearly lost the trust of many investors, as well as the trust of many members of Congress.

This hearing is timely. SIPC clearly needs the SIPC Modernization Task Force to assist it in re-focusing on its proper role going forward, so

I will look forward to hearing the testimony of several task force members who are witnesses before us today.