SIPC

SECURITIES INVESTOR PROTECTION CORPORATION

and its Accountability to the American Investor

Presented by:

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CONGRESS IDENTIFIES A NEED FOR SIPA
SIPC's MISSION DEFINED IN 1970

Bankruptcies of brokerage houses "may lead to loss of customers' funds and securities with an inevitable weakening of confidence in the U.S. securities markets."

"lessened confidence has an effect on the entire economy..."

"similar, in many respects, to...the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation."

H.R. Rep. No. 91-598 (1970)
116 Cong. Rec. 39345 (1970)

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SIPC: UNDERFUNDED AND OVERWHELMED

The Stanford, Petters, and Madoff scandals have revealed that:

SIPC has long ignored its Congressional mandate to protect the investor.

SIPC has consciously elected to underfund itself over the years which has benefited its broker-dealer membership. From 1995 to 2008, it assessed each member broker-dealer a mere $150 per year for SIPC coverage. SIPC's consistent underfunding has now left it incapable of responding to the kind of brokerage failure it was designed to address.

Trustees have for the first time ever in a SIPA proceeding tried to use "clawback" and re-victimize the same victims that SIPA intended to protect

If allowed to proceed, all US tax payers will be victimized by "clawback" as billions of dollars in taxes are refunded while trustees are first in line for payment.

President Nixon Proclaims that SIPC Will "Insure" Securities


The American Presidency Project

Richard Nixon

President Nixon signs the SIPA in 1970, proclaiming "This legislation establishes the Securities Investor Protection Corporation (SIPC), a private nonprofit corporation, which will insure the securities and cash left with brokerage firms by investors against loss from financial difficulties or failure of such firms."

United States. SEC 1971 Annual Report, 37th Annual Report.

SIPC'S MISSION DEFINED 1971 SEC Annual Report

SEC Describes Passage of SIPA & Creation of SIPC

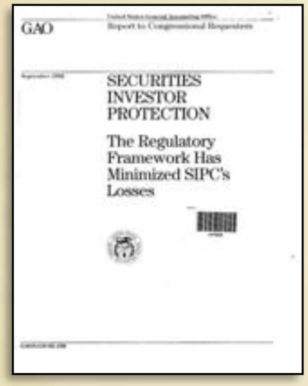
"In order to restore public confidence in the safety of the markets, Congress passed the Securities Investor Protection Act of 1970."

"This legislation, the most important in the securities field in 30 years, established the Securities Investor Protection Corporation to **provide insurance** for customer accounts."

"**Customers are now insured.**"

United States. SEC 1971 Annual Report, 37th Annual Report.

REPEATEDLY IDENTIFYING THE THREAT


GAO
Report to Congressional Requesters

SECURITIES INVESTOR PROTECTION

The Regulatory Framework Has Minimized SIPC's Losses

1992 GAO Report

"The major risk that SIPC faces, therefore, is that broker-dealers will lose or steal customer cash"

"A major SIPC liquidation could damagepublic confidence."


Securities and Exchange Commission
OFFICE OF INSPECTOR GENERAL

OVERSIGHT OF SECURITIES INVESTOR PROTECTION CORPORATION

EXECUTIVE SUMMARY

BACKGROUND

2000 SEC SIPC Audit - Office of Inspector General

"the Act protects customers whose securities were misappropriated NEVER PURCHASED or stolen."

United States. GAO 1992 Report to Congressional Requestors, September 1992 GAO/GGD-92-109.
United States. SEC 2000 SIPC Audit, Oversight of Securities Investor Protection Corporation (Audit 301) March 31,2000.

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“LEGITIMATE EXPECTATIONS”

SIPA was enacted in 1970 in order to protect the “**legitimate expectations**” of customers of SEC-regulated broker/dealers and to encourage investment in American securities.

For decades and until now in numerous Ponzi scheme cases, including a case that went to the Second Circuit, *In re New Times Securities Services, Inc.*, 371 F. 3d 68, 72 (2d Cir. 2004), SIPC has recognized that customers’ “**legitimate expectations**” are derived from statements and trade confirmations received from the fraudster and has paid based on the victims’ last statement.

“The best way to track your brokerage account activity and performance is to carefully review your statements.”*.

* “Understanding Your Account Statements,” updated 2007, published by SIFMA, SIPC, NASAA

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“LEGITIMATE EXPECTATIONS”

Now SIPC says

150 million Americans can no longer rely on their brokerage statements.

SIPC's COVERAGE DEFINED

2000 New Times Securities

In sworn testimony, Stephen Harbeck, President & CEO of SIPC, clarified to the court that:

- SIPC would replace securities that were listed on falsified account statements
- even if the securities had never been purchased:

Harbeck:
- If you file within sixty days, you'll get the securities, without question. Whether --if they triple in value, you'll get the securities. . . . Even if they're not there.

Court:
- **Even if they're not there?**

Harbeck:
- Correct.

Court:
- **In other words, if the money was diverted converted…**

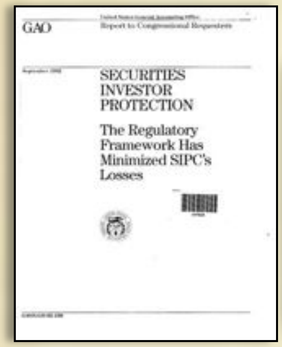
Harbeck:
- **And the securities were NEVER PURCHASED.**

Court:
- Okay.

Harbeck:
- **And if those positions triple, WE WILL GLADLY GIVE THE PEOPLE THEIR SECURITIES POSITIONS.**

Transcript at 37-39, In re New Times Securities Services, Inc., No. 00-8178 (Bankr. E.D.N.Y. July 28, 2000).

WARNINGS THAT SIPC's FUND WAS INSUFFICENT



1992 GAO REPORT

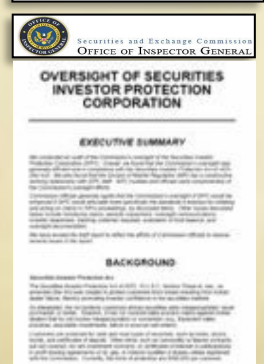
"The $1 billion fund may not be sufficient to finance worst-case situations such as massive fraud at a major firm"

"SIPC continues to make only limited preparations for the potential liquidations of large troubled firms."

2000 THE STREET - SIPC'S SCROOGELIKE WAYS DRAW SCRUTINY

"SIPC officials say … the $1.1 billion fund is inadequate."

"INDUSTRY EXPERTS SAY A FUND AS BIG AS $40 BILLION WOULD BE REQUIRED"



2000 SEC AUDIT OF SIPC

"Given the rapidly changing securities environment ….evaluate the SIPC Fund and assessment"

United States. GAO 1992 Report to Congressional Requestors, September 1992 GAO/GGD-92-109.
Kowalski, R. 2000 "SIPC's Scroogelike Ways Draw Scrutiny, theStreet.com,Aug. 7, 2000.
United States. SEC 2000 SIPC Audit, Oversight of Securities Investor Protection Corporation (Audit 301) March 31,2000.

WARNINGS THAT SIPC'S FUND WAS INSUFFICENT

2000 Letter to GAO

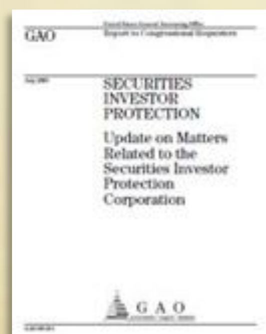
From the Energy & Commerce Committee

signed by:

JOHN D. DINGELL

"the adequacy of the SIPC fund is not covered in SEC inspections or in independent financial statement audits."

"This program needs a lot of work."



GAO

SECURITIES INVESTOR PROTECTION

Update on Matters Related to the Securities Investor Protection Corporation

GAO

2003 GAO REPORT

"The SIPC fund was at risk in the case of failure of one or more of the large securities firms."

"Even if SIPC were to triple the fund in size, a very large liquidation could deplete the fund."

United States Cong. House Committee on Energy Commerce, Letter to Acting Chairman SEC and President SIPC June 20, 2000.
United States. GAO 2003 Report to Congressional Requestors, July 2003 GAO-03-811.

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WARNINGS THAT SIPC'S FUND WAS INSUFFICENT

2003 Letter to SIPC, SEC & GAO

signed by:

BARNEY FRANK

PAUL E. KANJORSKI

JOHN D. DINGELL

"THE SIPC FUND WAS AT RISK IN THE CASE OF FAILURE OF ONE OR MORE OF THE LARGE SECURITIES FIRMS."

"It is totally unacceptable and we urge SIPC to fix these shortcomings, which we consider to be significant, with all deliberate speed before a major problem occurs."

"We are deeply troubled by this state of affairs."

United States Cong. House Committee on Energy Commerce, Letter to Chairman SEC, President SIPC, and Comptroller US GAO 08/11/ 2003.

MADOFF NEWS BREAKS AND SIPC SCRAMBLES

2009 Reuters


REUTERS

Madoff trustee poring over hundreds of claims: SIPC

Harbeck said staff from SIPC and the SEC have met to figure out the best way to settle claims but a formal decision has not been made yet. **"Settling claims in a Ponzi scheme that has gone on for 30 years is unprecedented"** he said.

"I assume that some time within the fairly near future, the trustee, SIPC and the SEC will agree on a methodology as to how we are going to help these people ...," said Harbeck."

2009 Congressional Testimony

Harbeck testifies at a House Committee hearing that **SIPC was indeed investor protection (except for market risk) and agreed it performed an insurance like function.**

Younglai R. , **"Madoff trustee poring over hundreds of claims: SIPC"**, **Reuters,** Jan. 23, 2009.
House Committee Hearing, Committee on Financial Services, "Assessing the Madoff Ponzi and the Need for Regulatory Reform," **Jan. 5, 2009.**

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SIPC CHANGES ITS POSITION

"SIPC is not now and never was a FDIC-like 'insurance' entity." *

SIPC inserts this change to its website removing any reference to the word "insurance," and removes certain pages from both its website and public archived sites, in the immediate aftermath of the Madoff fraud.

*Stephen Harbeck, SIPC Press Release, February 4, 2010

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TENS OF THOUSANDS OF INDIRECT INVESTORS DISCOVER THEY ARE NOT PROTECTED

In 1970, Senator Edmund S. Muskie proclaimed, in urging the prompt enactment of SIPA: "…after this bill is enacted, no American will lose his savings through a brokerage firm bankruptcy." (Federal Broker Dealer Ins. Corporation: Hearing on S2388, 3988 and 3989 before the Subcommittee on Securities of the Senate Committee on Banking and Currency, 95th Cong. 10(1970) at 147.)

"The protections that everyone thought were so widespread don't really fit today's business model," said Steven B. Caruso, a partner at law firm Maddox Hargett & Caruso."*

The proliferation since 1970 of hedge funds, feeder funds, pension plans, trusts, family partnerships and similar investment vehicles has left virtually thousands of indirect investors with no safety net whatsoever.

*Source: Wall Street Journal, June 18, 2010

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SIPC INVOKES "CLAWBACK"

SIPC is trying to change the statutory definition of covered claims and is trying to turn a victim's asset (SIPC protection) into a liability ("clawback"), thus shifting the responsibility from Wall Street to the investor.

THE NUMBERS:

- Hypothetical investor invested $1million in 1988 (20-years ago) and made and withdrew a return of 10% or $100,000 per year.
- Of the $100,000 per year, 50% was used to pay income taxes and 50% for living expenses.
- Fraud discovered in 2008 and the final account balance was $1million.
- $1million = total taxes paid
- $2million = total withdrawals

HISTORICAL PRECEDENT IN ALL PRIOR SIPC CASES (prior to Madoff):

- Investor has positive "Net Equity" of $1million. ($1m final account balance)
- Investor would receive maximum SIPC protection of $500,000.

SIPC'S NEW MATH:

- Investor has negative "Net Equity" of $1million. ($1 million deposits - $2 million withdrawals)
- Investor owes SIPC $600,000 of "claw back".
- Note: State laws limit recoupments to anywhere from 2 – 6 years.

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SIPC WAS UNDERFUNDED:

From 1995 thru 2008

SIPC assessed each member $150 per year

Only after the fraud was detected did SIPC increase the assessments to .25% of net operating income.

SIPC's Annual Reports (1995-2008) cumulative.
$70,085,485,470,000 = value of US equities traded in 2008/$816,322 TOTAL SIPC Member Assessments in 2008
Assessments in 2008

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A STUNNING REVIEW OF SIPC ANNUAL MEMBER ASSESSMENTS

Year	Total SIPC Member assessments	# of Shares traded in US Equities Markets	Value of Shares traded in US Equities Markets	SIPC Member assessments as a % of Trades
1998	$ 1,186,279	367,988,569,349	$ 12,836,894,800,000	0.0000092%
1999	$ 1,136,318	592,121,998,234	$ 19,412,574,520,000	0.0000059%
2000	$ 1,108,632	705,230,666,000	$ 30,858,845,250,000	0.0000036%
2001	$ 1,083,173	778,725,889,000	$ 21,423,891,580,000	0.0000051%
2002	$ 1,050,096	804,801,889,821	$ 17,564,649,510,000	0.0000060%
2003	$ 1,083,178	777,441,849,368	$ 16,759,548,460,000	0.0000065%
2004	$ 972,817	822,712,194,324	$ 20,385,271,910,000	0.0000048%
2005	$ 927,597	857,139,278,744	$ 24,211,985,630,977	0.0000038%
2006	$ 894,941	1,093,372,323,678	$ 33,598,086,520,000	0.0000027%
2007	$ 852,025	1,242,268,883,778	$ 45,230,126,330,000	0.0000019%
2008	$ 816,322	3,010,950,676,240	$ 70,085,485,470,000	0.0000012%
10 year total	$ 11,111,378	11,052,754,218,536	$ 312,367,359,980,977	0.0000036%

In US dollars ($'s)

SIPC's Annual Reports (1995-2008) cumulative.

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SIPC SEEKS TO RELY ON ITS OWN UNDER FUNDING TO JUSTIFY NON PAYMENT OF CLAIMS

2009 Congressional Testimony

Congressman Ackerman:

"Which Madoff investors are eligible for their SIPC insurance?"*

Mary Schapiro, Chairman SEC:

"The tragic truth is there is not enough money available to pay off all the customer claims."*

Congressman Sherman:

"There is no more obvious fraud than someone selling insurance … that doesn't have any capital."

"Any insurance regulator…would close you [SIPC] down in a second"**

*House Committee Hearing, Committee on Financial Services, "SEC Oversight: Current State and Agenda" July 14, 2009.

**House Committee Hearing, Committee on Financial Services, "Assessing the Madoff Ponzi and the Need for Regulatory Reform," Jan. 5, 2009.

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PAST TURNS OUT TO BE PROLOGUE

1998 Newsday

"The agency…is deliberately making it hard for individuals to get their money back because it wants to protect its members, who are most of the nation's brokers."

"SIPC does what it does because it's owned by brokerage firms, not the government."

2000 The Street

"SIPC…has defined its role so narrowly that it doesn't use enough of its resources to help victims of broker fraud."

"doles out lucrative contracts to a handful of lawyers who keep the purse strings tight when overseeing the liquidation"

"Picard…hired as a trustee on seven liquidations"

"Require brokers to pay more than $150 each annually into the fund. "It's nothing," says Joe Borg, Alabama's chief securities regulator."

"Many Unhappy Returns: Ex-Stratton Customers still fighting to recoup $130m," Newsday, Dec. 20, 1998.
Kowalski, R. 2000 "SIPC's Scroogelike Ways Draw Scrutiny, theStreet.com,Aug 7, 2000

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PAST TURNS OUT TO BE PROLOGUE

2000 New York Times


The New York Times

INVESTOR BEWARE; Many Holes Weaken Safety Net For Victims of Failed Brokerages

"They are very aggressive in attempting to prove that investors' claims do not come within certain legal definitions within the S.I.P.C. statute. And the loser is the investor."

"Since 1971, trustees have received $320 million, 37% more than has been paid to wronged investors."

"Trustees overseeing the cases have allegiance to the corporation that appointed them, rather than to wronged investors."

Morgenson, G. 2000, Investor Beware: Many Holes Weaken Safety Net for Victims of Failed Brokerages, New York Times, Sep. 25, 2000

2001 Letter to SIPC & SEC ALARM BELLS

From the Energy & Commerce Committee

“SIPC policies and practices may unduly limit the actual protection afforded customers.”

“Critics argue that SIPC’s main goal has been to protect its industry-supplied fund rather than to protect customers as contemplated by SIPA.”

“…significant deficiencies on the part of SIPC and on the part of SEC that appear to have operated to the detriment of investors.”

“request by Rep. Paul Kanjorski and me asking…to recommend ways to improve collections and increase reimbursement of victims of financial schemes.”

Signed by:

John D. Dingell:

Ranking Member
Committee on Energy and Commerce

United States Cong. House Committee on Energy Commerce, Letter to Acting Chairman SEC and President SIPC June 20, 2001

MORE ALARM BELLS

2001 New York Times

"Mr. Dingell said, "the large number of claims denied…has raised concerns that SIPC policies may unduly limit the actual protection afforded customers.""

Representative Paul E. Kanjorski, Democrat of Pennsylvania, "Both Congress and the administration must address these concerns and deficiencies promptly, especially as more Americans than ever -- roughly 50 percent -- are invested in the stock market."

2003 GAO Report


GAO

SECURITIES INVESTOR PROTECTION

Update on Matters Related to the Securities Investor Protection Corporation

GAO

"SIPC should improve its controls over the fees awarded to trustees and their counsel for the services rendered and their expenses."

"Since 1996, SIPC has charged each broker-dealer member an annual assessment of $150."

"Many Holes Weaken Safety Net for Victims of Failed Brokerages," The New York Times, Sept. 25, 2000
United States. GAO 2003 Report to Congressional Requestors, July 2003 GAO-03-811.

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SIPC INTENDS TO CLAWBACK INVESTORS TO REPAY ITSELF

"[Clawback recoveries] will, with the Court's approval, be allocated to the Customer Fund and be subject to a supplemental pro rata distribution to the remaining over-the-limits customer-claimants and SIPC, as subrogee for its cash advances to the Trustee to satisfy allowed customer claims."

"Mr. Harbeck said in an interview…"this is a zero-sum game — a dollar we give to someone who is not eligible is a dollar we do not have for someone who is.""

April 14, 2010, the Trustee's Third Interim Report
Henriques D., "protection Chief Struggles with Madoff Claims", New York Times December 8, 2009

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INVESTORS AWAIT PAYMENT, YET SIPC HAS PAID OUT NEARLY $100 MILLION TO ITS TRUSTEE

In the 18 months from December 2008 through May 2010 the Trustee and his law firm

have billed SIPC $96.7 million.*

$1,317,980 a week – the equivalent of 118 years of member assessments using the 2008 rates.

"[Picard] has worked on at least nine cases…handling more SIPC liquidations than any other attorney, Harbeck said."**

*April 14, 2010, the Trustee's Third Interim Report

** *Kolker, C. and Scinta, C., "***Madoff Trustee Picard May Take Five Years to Pay Back Investors," Bloomberg** - *January 21, 2009*

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2009/10 CONGRESSIONAL REACTIONS

Before the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises

Rep Scott Garett

- "looking for justice…for their reliance on what government assured them…through this [SIPC] program" *

Rep Jackie Speier

- "For 19 years they [brokers] were only paying $150 per year….the insurance product is out of date." *

Rep Ron Klein

- "The SIPC Series rules provide for the classification of the claims in accordance with the "legitimate expectations" of a customer based on the written transaction confirmations sent by the broker/dealer to the customer. …let's follow the law…SIPC has a responsibility to make sure the law is followed" *

Rep Michelle Bachmann

- "Mr. Stephen Harbeck, President of the SIPC, recently testified before our Committee that the SIPC trust fund only has $1.6 billion in funds available"
- "Unfortunately, the SEC actually had this information at its fingertips and did not act."**

•House Financial Services Sub Committee on Capital Market Hearing, "Additional Reforms to the Securities Investor Protection Act," Stmt . Dec. 9, 2009.
**House Financial Services Sub Committee on Capital Market Hearing, "Assessing the Madoff Ponzi and the Need for Regulatory Reform," Stmt . Feb. 4, 2009.

THE MADOFF FRAUD HAS AFFECTED CITIZENS IN NEARLY EVERY STATE

There is virtually not a region in America that has not been affected by the scandal.

www.madoffmap.com

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SIPC AND THE TRUSTEE'S BEHAVIOR WILL COST THE US TAXPAYER

Roughly 40% of every dollar SIPC does not pay will be borne by the US Taxpayer, since refunds will be paid out to victims of the Madoff fraud instead of SIPC claims.*

SIPC's refusal to pay claims is shifting the burden of this fraud from the broker-dealer industry (that funds SIPC) to the US taxpayer, yet another Wall Street Bailout

*The $1.2 billion of protection that SIPC is refusing to pay will result in refunds from the US Treasury estimated to be $480 million.

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SIPC ignored all the warnings

+

They were underfunded

+

They knew it

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SIPC is now trying to change the rules and is ignoring its Congressional mission

Rather than assessing its 4,539 members to pay their obligation,
SIPC, a member-owned not-for-profit group, continues to victimize the innocent investors it is mandated to protect.

SIPC and PR firm, The Hastings Group, have branded victims as “net winners” in order to justify “claw backs.”

This is unprecedented in a SIPA proceeding.

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If the Madoff Fraud were not so large and SIPC were properly funded, SIPC would have paid the victims as Congress intended, as they did in the *NEW TIMES* case and other SIPC cases BEFORE.

Only Congress can force SIPC to follow the law and the congressional mandates as set forth in SIPA.

FOR ADDITIONAL INFORMATION PLEASE CONTACT:

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