



THE CHAIRMAN

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

October 19, 2011

The Honorable Scott Garrett
Chairman
Subcommittee on Capital Markets
and Government Sponsored Enterprises
House of Representatives
2244 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Garrett:

Thank you for your recent letter regarding the liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act. Your letter relates your concern about the treatment of the Madoff fraud victims, and, particularly, your recommendation that the Commission delay its reconsideration of the method for calculating BLMIS customer claims until the Government Accountability Office has, at your request, reviewed some of the issues related to the calculation of customer claims. I appreciate your views and would like to give you a brief update on the progress of the Commission's reconsideration.

As you note in your letter, in connection with the recent Report of Investigation issued by the Commission's Office of Inspector General (Case No. OIG-560), the Inspector General recommended, and I agreed, that the Commission should reconsider its position that net equity for purposes of paying BLMIS customer claims should be calculated on a cash in/cash out basis, in constant dollars by adjusting for the effects of inflation. Because of concerns about the participation of the Commission's former General Counsel in the Commission's earlier decision making process, the Inspector General recommended that the Commission conduct a re-vote in a process free from any possible bias or taint.

Following its first consideration of the issue, the Commission filed a brief in the United States Bankruptcy Court for the Southern District of New York supporting the trustee's determination that net equity should not be based on securities positions listed on the last account statements received by customers of BLMIS, but rather should be based on a "cash-in/cash-out" method. The Commission differed with the trustee, however, as to whether, in determining customer claims under the cash-in/cash-out method, the amount of the payment should be calculated in constant dollars, an issue the bankruptcy court indicated it would address at a later time. The bankruptcy court decided to adopt the cash-in/cash-out approach rather than the last account statement approach, and that decision was appealed directly to the Court of Appeals for the Second Circuit. In a decision issued at the end of July, a panel of that court upheld the

bankruptcy court's determination. Petitions have been filed seeking a rehearing en banc of the panel's decision.

We expect that once the propriety of the cash-in/cash-out approach has been settled in the higher courts, the bankruptcy court will take up the issue of whether a constant dollars adjustment should be made. In order for the Commission's decision upon reconsideration of this issue to have a meaningful influence in the liquidation proceeding, it will be necessary for the Commission to express its views to the bankruptcy court in accordance with the court's schedule. While I agree that the GAO work product may benefit the Commission in its reconsideration, it may be necessary for the Commission to re-vote on the matter and advise the bankruptcy court of its position before the GAO work product is available. Of course, if the GAO has completed its review prior to our reconsideration of our earlier decision, we will certainly carefully review its findings and conclusions in connection with that reconsideration.

In the meantime, I have directed the Commission staff to review the issue of whether the constant dollar approach should be re-adopted by the Commission .

Thank you again for your letter. Please call me at (202) 551-2100, or have your staff call Eric J. Spitzer, Director of the Office of Legislative and Governmental Affairs at (202) 551-2010 if you have any questions or comments.

Sincerely,



Mary L. Schapiro
Chairman