

Congress of the United States
Washington, DC 20515

November 3, 2011

Mr. Stephen P. Harbeck
President
Securities Investor Protection Corporation
805 15th Street, N.W., Suite 800
Washington, D.C. 20005

Dear Mr. Harbeck:

We are writing to inquire about the status of the Securities Investor Protection Corporation Modernization Task Force. As you know, on June 17, 2010 the Securities Investor Protection Corporation (SIPC) announced the formation of the 13-member SIPC Modernization Task Force as “part of a full-scale review of the operations of SIPC.”¹ The Task Force’s mandate, as explained by Task Force Chairman Orlan Johnson, is to propose statutory amendments to the Board that may be necessary or prudent in light of changes in the securities industry, judicial rulings interpreting the Securities Investor Protection Act of 1970 (SIPA), and other factors that should be accounted for given the passage of time. SIPC Board Vice Chair Sharon Bowen further elaborated that the Task Force would provide a “written report, or series of reports” to “aid the SIPC Board, and Members of Congress, in enacting reforms that better protect investors and reinforce confidence in the capital markets.”²

As Members of the House Committee on Financial Services, we strongly support efforts to ensure that SIPC is working in its utmost capacity to protect investors – particularly at a time of great economic uncertainty and unpredictability in the financial markets. That is why we are concerned that more than sixteen months since the Task Force’s formation, we have yet to see any visible progress on recommendations. In that time, we have seen a report released by the Office of the Inspector General of the Securities and Exchange Commission which found that SIPC’s overseeing agency, the SEC, “does not inspect SIPC’s activities in any systematic fashion” and has no definite plans to inspect the Corporation in the near future.³

We have also seen the overreaching of SIPC-appointed trustee Irving Picard, who has aggressively and improperly gone after those already hurting from their lost savings in Bernard L. Madoff Investment Securities accounts. U.S. District Judges Jed Rakoff and Colleen McMahon recently tossed out the majority of counts Picard sought against several large-scale Madoff investors, with Judge McMahon explaining in her opinion that, “The trustee’s theories fail.”⁴ But for those who have already settled with Picard to avoid costly legal battles, they

¹ SIPC Press Release, 6/17/10, <http://sipcmmodernization.org/releases061710.cfm>.

² SIPC Press Release, 6/17/10, <http://sipcmmodernization.org/releases061710.cfm>.

³ SEC Office of Inspector General, “SEC’s Oversight of the Securities Investor Protection Corporation’s Activities,” 3/30/11, <http://www.sec-oig.gov/ReportsAuditsInspections/2011/495.pdf>.

⁴ Grant McCool & Jonathan Stempel, “Most of \$19.9 billion Madoff case against JPMorgan tossed,” *Reuters*, 11/1/11.

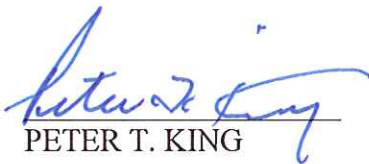
cannot get their funds back despite the new rulings. At a time when SIPC is handling the largest liquidations in its history, the need for increased oversight and reform is even more evident.

In his dual role as SIPC Chairman and Chairman of the Modernization Task Force, Orlan Johnson testified before Congress in September 2010 that, "It is our goal to make a full set of Recommendations [to the SIPC Board] in the first quarter of 2011."⁵ Now in the fourth quarter of 2011 without any indication that reform proposals are on the horizon, could you please answer the following questions regarding the Task Force:

1. What is a realistic projection for completion of the Task Force's report and/or recommendations to SIPC? Is there a reason why the review has taken longer than expected?
2. Once the recommendations are received, does SIPC have a plan in place to ensure prompt action is taken on Task Force recommendations?
3. What do you anticipate to be the areas within SIPC most in need of reform?
4. The OIG's March 2011 report found that "reviews are particularly necessary" of trustee fees because there are "few, if any, limits on the fees that may be awarded."⁶ In light of Judge Rakoff's and Judge McMahon's recent rulings and the \$225 million in fees charged to date by Irving Picard and his law firm, do you believe that the trustee appointment process and fee system needs to be reformed under SIPC?

Thank you for taking our concerns into consideration and we look forward to a prompt and timely response.

Sincerely,


PETER T. KING
Member of Congress


GARY L. ACKERMAN
Member of Congress

CC: Orlan Johnson, SIPC Chairman and Chairman of the SIPC Modernization Task Force

⁵Orlan Johnson, SIPC Chairman, Testimony, House Financial Services Subcommittee on Capital Markets, 9/23/10, <http://financialservices.house.gov/Media/file/hearings/111/Johnson092310.pdf>.

⁶ SEC Office of Inspector General, "SEC's Oversight of the Securities Investor Protection Corporation's Activities," 3/30/11, <http://www.sec-oig.gov/Reports/AuditsInspections/2011/495.pdf>.