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November 4, 2011

The Honorable Mary Schapiro  
Chairman  
Securities and Exchange Commission  
100 F St., NE  
Washington, DC 20549

Dear Chairman Schapiro,

Thank you for your response of October 19, 2011, offering a conditional commitment to review the Government Accountability Office's (GAO's) related findings prior to the Securities and Exchange Commission's (SEC's) reconsideration of its earlier approval of the method to be used in valuing customer claims in the SIPA liquidation of Bernard L. Madoff Investment Securities LLC (BLMIS).

It is my expectation that in the next sixty days the GAO will be able to provide its findings related to concerns about a SIPC conflict of interest in regards to the Madoff net equity calculation. I will ensure that my staff will keep your staff apprised of the GAO's progress.

I can understand the need for the Commission's participation in a future proceeding in the Bankruptcy Court, when and if the U.S. Court of Appeals for the Second Circuit directs that court to hear recommendations for claims valuation. It would appear, however, that the timing of any such action in the Bankruptcy Court is anything but clear. Future involvement of the Bankruptcy Court is further clouded by the recent decisions in the Federal District Court for the Southern District of New York, which significantly circumscribe the Trustee's authority to pursue clawback actions against innocent customers. Those decisions all provide a constructive reminder that SIPA is a securities law statute, intended to provide protections and recoveries for the customers of failed broker-dealer firms with greater timeliness and efficiency than is achievable through typical bankruptcy proceedings – and in so doing, to engender customer confidence and strengthen the functioning of our securities markets.

At this juncture, three years after the closing of the Madoff firm, it is difficult to give this SIPC liquidation a passing grade. Out of roughly 5,000 customer accounts, about 2,700 have been denied any protection under SIPA. Another 800 received payments from the SIPC Fund substantially less than their "reasonable expectations" based on account statements and trade confirmations. Further, of the approximately 1,500 accounts deemed eligible for SIPA relief, the predominant benefits will go to a small number of professional investment funds, which the Trustee, himself, asserts provided the liquidity permitting Mr. Madoff to perpetuate his fraud.

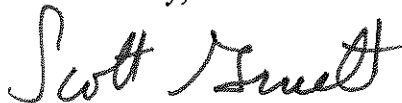
The SEC Inspector General's report in the Becker inquiry provides further evidence challenging the propriety of the processes employed in this receivership. It seems beyond dispute that resorting to regular bankruptcy practice to employ the Net Investment Method in this case was importantly (perhaps solely) driven by SIPC's frantic concern that it lacked the reserves to cover advance payments to customers if the traditional SIPA use of the Final Statement Method was employed.

Your decision to have the Commission reconsider the matter of account valuation for the purposes of SIPC coverage offers an opportunity, which I hope you will seize, to look more broadly at the entire policy rationale for this SIPA receivership.

Without bold and authoritative leadership by the Commission to assert full control over the Madoff receivership, it is entirely predictable that this deeply flawed process will continue on for years at a cost to SIPC of over \$1 billion for legal billings – a massive amount that would be much more appropriately spent to remunerate victims. In the end, if nothing is done to change the current course of this receivership, the results have the potential for a public scandal that will tarnish the SEC's reputation. Moreover, the practical effect of this liquidation to date is to leave securities investors in a total quandary in regards to protection of their accounts under SIPA. I continue to believe a reasonable resolution of the myriad issues is desirable and achievable – one that addresses the needs and concerns of all innocent victims.

I appreciate your efforts to rebuild the SEC's capabilities and its reputation for protecting the public's rightful interest in the honest and efficient functioning of our securities markets. It is my Subcommittee's desire to support you in those efforts. I believe that the recommendations which we develop from the GAO findings will provide substantive support for the Commission to guide the Madoff receivership to a just and timely conclusion, and I look forward to working cooperatively with you toward that end.

Sincerely,

A handwritten signature in black ink that reads "Scott Garrett". The signature is written in a cursive, slightly slanted style.

Scott Garrett

Chairman

Subcommittee on Capital Markets  
and Government Sponsored Enterprises