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Please Cosponsor H.R. 757, the "Equitable Treatment of Investors Act"

Dear Colleague,

More than three years after Bernard Madoff's massive ponzi scheme finally came to an end, thousands of innocent defrauded investors still haven't been compensated by the Securities Investor Protection Corporation (SIPC). What's even more concerning is that many of these same investors whom government regulators failed to protect in the first place are now being threatened with lawsuits by the SIPC trustee.

In order to right these wrongs, we have introduced H.R. 757, the Equitable Treatment of Investors Act. This legislation would reaffirm and clarify key protections for ordinary investors that were put in place when Congress passed and amended the Securities Investor Protection Act (SIPA). In particular, the bill aims to properly shield innocent individual investors who have already been defrauded and financially devastated by Bernie Madoff from further "clawbacks" by the SIPC trustee.

When investors see the SIPC logo, they should have the utmost confidence in the account statements they receive. We do not believe these ordinary investors, who knew nothing about the fraud being perpetrated by Bernie Madoff, should be held to a higher standard than the federal government. After all, it was the Securities and Exchange Commission (SEC) that missed the Madoff fraud in the first place. Furthermore, the IRS was happy to rely on these same statements to collect taxes from the reported profits.

Our bill clarifies that for the purposes of SIPC protection, customers of registered brokers are legally entitled to rely on their brokerage statements as evidence of what their broker owes them. Indeed, in a world where customers do not hold physical securities, it could not be any other way.

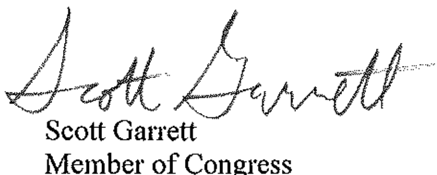
We introduced this legislation because we are concerned that the trustee in the Madoff case is ignoring the law and failing to provide prompt assistance to those who have been thrust into financial chaos.

We fear that if the current law is not clarified through my legislation, no customer can ever have confidence in his or her dealings with a broker. That is contrary to the policy goal of encouraging investment, which is critical to the economic revival our country needs.

Please see the attached commentary, which recently ran in *Marketwatch*, for a further discussion of SIPC's shortcomings in protecting investors.

Please help protect innocent investors and maintain confidence in our capital markets by becoming a cosponsor of this important legislation. To become a cosponsor, please contact Chris Russell (Garrett) at X54465 or chris.russell@mail.house.gov or Georgette Perros Sierra (McCarthy) at X55516 or georgette.sierra@mail.house.gov.

Sincerely,



Scott Garrett
Member of Congress

Carolyn McCarthy
Member of Congress

Investor protection agency protects scam artists
Commentary: SEC finally stands up to SIPC
By Ron Stein

HUNTINGTON, N.Y. (MarketWatch) — The Securities Investor Protection Corp., or SIPC, would have brokerage customers believe that they are protected from securities theft and fraud. The SIPC logo, always posted on brokerage walls and stamped on brokerage statements, is supposed to be a reassuring reminder to customers that they are covered in the event of brokerage theft.

But SIPC's history and recent behavior suggests that SIPC isn't particularly concerned about investors. If brokerage customers think they are covered, they are sadly mistaken.

Fortunately for the investing public, the authorities are beginning to take notice. The recent lawsuit by the Securities and Exchange Commission filed against SIPC over its decision to deny compensation to the victims of the Stanford fraud is a rare, strong signal by the SEC that it may finally be getting serious about protecting investors. Stanford victims invested in certificates of deposit that turned out to be part of a Ponzi scheme.

Despite the SEC's urging and even under threat of a lawsuit, SIPC maintained its position that it would not provide protection for Stanford victims because the Stanford unit that managed the CDs was an offshore subsidiary. The SEC argued that Stanford was invoking a technicality, and that Stanford victims are exactly the type of investors SIPC was established to protect. SIPC stuck to its position, and the SEC filed the unprecedented lawsuit.

On Feb. 9, the court handed the SEC an early victory by ruling that there will not be a full-fledged jury hearing in the case, which SIPC wanted. Instead, the court will make a summary ruling.

The SEC's allegations encompass longstanding criticisms of SIPC: that it clings to the letter of the law to reject investor claims, instead of embracing the spirit of the law that created it as an investor protection agency and using discretion to determine coverage. SIPC's critics say that SIPC takes the short view in only protecting a small segment of brokerage failure victims instead of the long view that would result in greater confidence among investors in their brokerages.

The victims of the Stanford fraud, as well as Bernie Madoff and MF Global — all SIPC member brokerages — are finding that SIPC denies coverage to the majority of victims. SIPC has been able to get away with it because the SEC has shown no inclination to assert its authority on an organization that it supposedly oversees. Until this lawsuit.

Certainly, the SEC has an interest in strong arming SIPC to do the right thing — the SEC has committed enough acts of incompetency that it needs a forceful back-end protection mechanism to help soften the blows of its own investigative and enforcement shortcomings. And that type of protection is exactly what Congress intended when it created SIPC in the Securities Investment Protection Act more than 40 years ago.

Why does SIPC fight so hard against providing the protection it was created to provide? Out of misguided loyalty to its brokerage members rather than the customers it is supposed to advocate for, it is loathe to raise dues on its membership.

It is a short-sighted position of economic convenience that has saved the broker-dealer industry billions in SIPC fees in the short-term, but has the devastating effect of eroding investor confidence over the long-term. A SIPC spokeswoman did not return a call seeking comment.

As a consequence of its failure to raise fees on the membership, its reserve is dangerously low compared to its exposure. SIPC does, however, have plenty of access to capital. Meanwhile, the same membership it is protecting now was underpaying for years — a mere $150 per broker in annual dues for most of the 1990s and 2000s. SIPC also has a line of credit, $2 billion, with the United States Treasury. It has the ability to raise the money, but it doesn't.

Aside from its brokerage members, SIPC is clearly loyal and generous to the small group of securities bankruptcy trustees it continues to hire over and over again at handsome compensation levels. So far, total fees paid to trustees, attorneys and consultants on the Lehman Brothers and Madoff liquidations are just shy of $1 billion ($544 million for Lehman, $404 million for Madoff). It is anticipated that fees on MF Global will be similarly stunning — about $25 million per quarter for the next year.

SIPC trustees bill by the hour, so what motivation do they have to quickly wind down a liquidation? What oversight and controls exist to keep their costs down? For James Giddens, the Lehman and MF Global trustee, and Irving Picard, the trustee on the Madoff case, their appointment meant an instant cottage industry, a steady and never-ending source of revenue for their for-profit law firms. The conflict is glaring, but has never been addressed.

Rather than consider stronger reforms that would both clarify and expand protections for investors, SIPC has chosen to stonewall, litigate and mislead. SIPC's expenditure of $1 billion on just two cases, not a dime of which went to customers, should tell investors everything they need to know: SIPC will sell out innocent investors to protect itself and its brokerage members.

But the SEC's lawsuit sends a clear message: SIPC exists to provide a safety net for victims of securities theft and fraud, and it's time to deliver on that promise.