

Statement of Chairman Garrett
SIPC Oversight Hearing, March 7, 2012

I am aware that today's hearing is fashioned as a broader oversight hearing of the Securities Investor Protection Corporation, or SIPC, and is not meant to be focused solely on one particular aspect of SIPC's work. But to me, the failures of SIPC in regards to the Madoff liquidation are so fundamental relative to the protections SIPC is supposed to provide to investors, and so antithetical to the goals that the Securities Investor Protection Act (SIPA) and Congress set out to achieve, that I am going to focus much of my time and energy today on the circumstances of that particular case.

I also think it is worthwhile to hear today about SIPC's work in regards to the Lehman bankruptcy, and also worth examining the long-awaited and recently released report issued by the SIPC Modernization Task Force. My reading of the report, unfortunately, is that it is somewhat of a missed opportunity to seriously study the shortcomings of SIPC exposed by recent broker-dealer failures.

Let's return to the failure of the Madoff firm and once again examine the facts of this case:

- The Madoff firm was regulated by both FINRA and the SEC and repeatedly received government stamps of approval that it was operating legally;
- The firm proudly displayed the SIPC logo, which, again, implies government backing since SIPC is backed by the U.S. Treasury;
- Madoff investors paid taxes to the IRS for years – again, another government agency saying that its investments and profits were real;
- Since around the same time that SIPA was enacted, investors no longer hold stock certificates, so the only proof of ownership they have is the statement they receive from a government-regulated broker-dealer.

So, the federal government both provided a stamp of approval and relied on that stamp of approval, yet innocent private citizen investors are being held to a higher standard.

Instead of being provided protection by SIPC, as Congress intended in order to increase confidence and investment in our markets, innocent investors are instead being sued by a trustee chosen by SIPC.

Am I the only one here who responds to that fact pattern and says, “Something is not right here?”

An additional irony is that if the trustee is successful in suing individual investors, it will largely be to pay off institutional investors, the same class of investors that the Trustee has repeatedly tried to sue because he believes “they should have known better.”

Because of my concerns over these issues, I 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 shield innocent individual investors who have already been defrauded and financially devastated by Bernie Madoff from further clawbacks by the SIPC trustee.

In addition, the bill clarifies that for 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 stock certificates, it could not be any other way.

Finally, H.R. 757, would end an ongoing conflict of interest by having the SEC, rather than SIPC, select trustees for SIPC liquidations.

Several of my colleagues have already joined me in cosponsoring this bill, and I urge others to do the same.

I look forward to the testimony of our witnesses and to a hearty discussion of SIPC's activities and role – past, present and future.