

***Oral Testimony March 7, 2012***

***Ron Stein, CFP***

***Network for Investor Action and Protection***

***Subcommittee on Capital Markets and Government Sponsored Enterprises***

Chairman Garrett, Ranking Member Waters and Members of the Subcommittee, my name is Ron Stein, and I am the President of the Network for Investor Action and Protection (“NIAP”) -- a national not for profit organization comprised of small investors dedicated to improving our Nation’s investor protection regime. I am also a Registered Investment Advisor, Certified Financial Planner, and a member of the financial services community.

NIAP’s primary constituents are individual, non-institutional investors who are often the least equipped to deal with the fallout arising from Madoff-like catastrophes, but include an increasing number of regular investors concerned about protecting their assets.

To supplement my written testimony which goes into great detail about the Madoff liquidation and the urgent need for HR-757, I wish to emphasize the following points.

A majority of the Madoff victims have not and will not receive any of the SIPC advance guaranteed by Congress under the SIPA statute due to the misguided and inequitable methodology adopted by SIPC and the Trustee, which minimizes investor protection and the amount that SIPC needs to pay to defrauded investors.

Despite assertions to the contrary, the payment of SIPC advances has nothing to do with investor-to-investor fairness or parity nor does it reduce the amount of the customer fund available for distribution to customers. SIPC advances come from the SIPC fund, not from customer property.

Over three years into the fraud, it appears as though the Madoff liquidation has protected SIPC and enriched the Trustee and the Trustee's law firm at the expense of the customers. The Trustee has acknowledged in court filings that his method for calculating net equity

has saved SIPC over a billion dollars: money that should be paid to victims. At the same time the cost of the liquidation has exceeded \$450 million and this Committee has been told to expect that an additional billion dollars will be spent before the process is complete. Ironically, it would have cost approximately the same amount to pay each Madoff victim the full measure of SIPC advances guaranteed by Congress when it enacted SIPA.

SIPC and its trustee have fashioned a net equity methodology which consciously ignores reasonable customer expectations as reflected in customer account statements, destroys the certainty Congress intended under SIPA law, and virtually ensures that no rational investor can have confidence in our capital markets or in the protections that SIPC promises but fails to deliver. These core principles of basic investor protections were the fundamental reasons – indeed, the stated purposes for enacting SIPA.

Despite an explicit Congressional prohibition to the contrary, in the Madoff liquidation, the Trustee has been given carte blanche to

create whatever definition of Net Equity he wants, including the one which favors SIPC over customers. As a result, customers can never be sure until long after the fact what protections they have if their brokerage firm fails.

Moreover, in light of the clawback cases the Trustee has brought, no investor will ever be able to safely withdraw funds from their brokerage account for fear that years later some SIPC Trustee will seek to recover those monies under the rationale that it was “other people’s money”.

Victims who have lost everything are now forced to defend against lawsuits that treat them as thieves and victimizes them a second time.

How can investors be asked to rely on a system which leaves wide open whether and to what extent SIPC will provide coverage, and in which investors remain subject to claw back in perpetuity even though they withdrew funds from their own accounts in good faith under the reasonable assumption that it was their own money?

Simply put, as of now, no investor can have confidence in the validity of their account statement.

Enactment of HR-757 is a crucial step in restoring sanity to the SIPA process: It will make clear that account statements which reflect positions in real securities will be honored in the event of a brokerage firm failure; it will end the use of claw-backs against innocent victims, and it will end the cozy relationship between SIPC and their short list of Trustees.

I also commend Congressman Ackerman for his legislation which, among other things, would aid indirect investors who are often just as damaged both financially and emotionally from an event like "Madoff".

Thank you for allowing me to testify. I would now be pleased to respond to any questions.