

*Sharon Bowen:*

Good afternoon everyone, welcome to the SIPC Modernization Task Force Public Hearing. My name is Sharon Bowen. I am Co-Chair for the Task Force. I am also Vice Chairman of SIPC, and a partner at the law firm Latham and Watkins. I am joined today by some of my fellow members of the task force: Joseph Borg, director of the Alabama Securities Commission; Steven Caruso, an attorney with Maddox, Hargett & Caruso; a law firm which represents public investors; John Coffee, Adolf A. Berle Professor of Law, Columbia University Law School; and, James Giddens, Lehman Brothers trustee, and an attorney with Hughes, Hubbard & Reed. We are here in our individual capacities as members of the Task Force, and not on behalf of our respective organizations or SIPC.

The Task Force was formed in 2010 to do a comprehensive study of the SIPC statute, and SIPC's operations and policies. Our mission is to make recommendations to the SIPC board on ways to modernize the SIPC statute, and where to further SIPC's goal of customer protection. The Task Force met for the first time on June 16, 2010, and since that time there have been many more meetings, either by phone or in person, to discuss concerns related to SIPC.

The Task Force will complete its initial work this month, and then draft its report. The report will contain the Task Force recommendations, which we expect to present to the SIPC Board in the fall. The report will be made public. This forum is an opportunity for the Task Force to hear directly from you, and any concerns that you may have about SIPC and the protection it offers. We are grateful to each of you for taking the time to join us today. This meeting is being streamed online live over the web, and over a telephone conference line. Only those present here today will be able to speak. For those who aren't able to be here in person, the Task Force encourages you to voice any concerns that you have in writing. You can do so, on the Task Force website at [www.SIPCmodernization.org](http://www.SIPCmodernization.org).

This meeting is being recorded. The audio will also be available on the Task Force website. A transcript of the meeting will also be made available on the website within the next few days. Because this is our chance to hear from you, we will not be taking any questions today. We will however listen closely to your comments and report back to the entire Task Force your concerns and comments. Again, thank you for joining us. With that, we can begin.

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*Woman:* Hi, I'll just call people's names in the order that they signed up. First speaker is Timothy Murray.

*Timothy Murray:* Hello. Tim Murray. I know most of you by your faces, and I've seen you at different hearings and stuff. I don't really have a lot to say. My family was a Madoff investor, we had 18 people in about half a dozen accounts, three generations of people. And, we were long-term investors, and we paid our income taxes regularly. So, the trustee would call us net winners. I'm just now getting used to that word, "net winner." When he first said it, it was like, I had to stop and think, "Oh, we are, because it's hard to understand how anybody could've gone through this to be considered a net winner."

I mean, to me, the net winners are, are Madoff, Picower family, and so on. One thing that is concerning some people is the trustee has about \$10 billion that he's collected. And, he's got approved claims I think, if we use round numbers, about \$7 billion. He's suing innocent investors, he's already got more money in the bank than he has claims to pay. And, four undetermined claims, and he would have to get \$3 billion from for those four undetermined claims. The other thing is, I don't know if you guys know, but we haven't been able to get our records from him. You know, we were investing in it for 30 years with Madoff. He has the records, we don't. I know that Congressman Garrett asked that we could be provided – asked Johnson if we could be provided the records, and he said he knew no reason why we couldn't.

I mean, it just seems like such an obvious thing, that somebody writes you a letter saying, involving millions of dollars, that we should have the records to backup that letter. It's kind of weird for me, because I was hoping I could talk to you. It's like, this is input and not a dialogue, I guess.

*Sharon Bowen:* We're here to really hear your concerns sir.

*Timothy Murray:* Yeah, yeah. And, the other thing is the hardship program. I've got a 16-year-old niece, she's 17 now, but the trustee is suing her. I mean, she has no money. I think her claim is, again, we don't have the records, but I kind of reconstructed some things I think maybe her exposure as a subsequent transferee would be about \$30,000.00. Which she's been represented for six months by an attorney, she's still getting direct mail from the trustee and the trustee's law firm. You can't stop it. Every time it comes, she's in tears. She wants to give them her car. She had filled out an application for the hardship program in December, but you know, I

mean, there's nothing. There's no response from the hardship program.

And, obviously she qualifies. She doesn't have any money. She has a car. And, her exposure I think would be about \$30,000.00. Again, we don't have the records, the trustee does.

I'm also concerned with the makeup of the Task Force, if you forgive me. You know, the mandate was it was supposed to be 50 percent investors, and I know we've got two lawyers, Mr. Caruso, for serving on the Task Force, but it really is discouraging that we don't have actual people, actual investors on the Task Force. I think the mandate was to have 50 percent. I think that's about it. Thank you.

*Woman:* The next speaker is Joe Castalano.

*Joe Castalano:* Gentlemen, good afternoon. My name's Joe Castalano. My, not a pet peeve, but I wanted to see if the government would raise the insurances you're protected to a higher amount. That is, everybody here goes to cash a check, and you see on the corner FDIC. You're insured up to \$250,000.00. I'd like to see it go up to \$500,000.00 or even \$1 million. There's a reason for that. There's a hapless senator in the area who said something regarding finances. I forgot what he said, but he was talking about IndyMac. And, I recall that very well. It sticks in my craw pretty well.

People got scared and made a run for the money. The bank went belly-up. Then, the television interviewer was interviewing people that were in line trying to get their money. Interviewed one person in particular. She said she had \$350,000.00, and she's only insured for \$250,000.00. What happens to the rest of the money? I've ran that question by bank managers over in New Jersey where I live. And, they couldn't provide the answer, except for, "If you have that kind of money, put \$250,000.00 there, \$250,000.00 there." That's not really conducive. I mean, you as the public and private citizens, you want your money to be safe.

Otherwise you're gonna do like they did in the 30s, after the Wall Street collapse, in a sock underneath a rock in the backyard. The banks have to make people feel safe, that their investments are there without the worry that things are gonna flip over. That was the reason for it, I think. So, basically, I came to this meeting over here because it helps me besides writing to my Congressman, which they probably have to legislate on that. And, make people safe, feel safe about their investment. Not investment, but their

savings. Otherwise, they're gonna – where else can you put money over, say \$400,000.00 unless you're purchasing real estate or purchasing municipal bonds with a decent yield, that type of thing. The banks don't have any money to lend out.

That means businesses can't hire people, and you're gonna have the economic situation you got now. And, that's the basic crux of my problem. To have legislature or somebody influential in power to raise the threshold to half a million or a million, because people are gonna make that kind of money. There was a time when I was perfectly happy making 10 grand a year. Not the case anymore. It was a happy time, when gasoline was, what 30 cents a gallon? And, everybody remembers that, I think. Food, you know, the guy who delivers the food, he's not gonna absorb it. You're gonna absorb it. You can see the prices of whatever you buy go up.

I remember my first new car. It was a big Pontiac Catalina. That thing was a big salon on wheels. I paid \$3,500.00. A car like that today would be about \$50,000.00. You know, I mean, the economy, the inflation is something that's hard to put your thumb on it. But, people are making that much money today. You know, the median income is \$75,000.00. And, if they're economical tightwads like I am, you could sock away quite a bit. And, then live on a lot less. But, the point is, you have to feel safe where you're putting your money, unless you have investments elsewhere. And, that's the crux of my dilemma. Thank you, gentlemen.

*Various Task Force  
Members:*  
Thank you.

*Woman:* Next speaker is Norma Hill.

*Norma Hill:* Ladies and gentlemen, members of the forum. I have come here today to listen and better educate myself, and other investors on the purpose of SIPC. Over the past two and a half years, I have had many discussions with several brokers and financial advisors. And, much to my consternation, I have found that very few of them have more than a cursory knowledge of what SIPC is all about. They, like the people that they advise in making financial decisions, like good, sound information.

Most of them, like us, believe it is an insurance that protects you against situations such as Bernard Madoff. It would seem to me that an educational program should be put into place for the

industry. In fact, during my research, I found very few avenues of background of how SIPA came into being. Investors have been accused of not doing due-diligence. I find this quite extraordinary, when the professionals are so lacking in information. I would hope that this was put into effect for the benefit of investors, and not only solely for the convenience of Wall Street.

Congress passed the Securities Investor Protection Act, SIPA in 1970, to assure that the legitimate expectations of investors were honored. The cornerstone of SIPA was the creation of SIPC to fund insurance for the customers' net equity. Defined to mean, the amount their brokers owed the customer. Until the Madoff case, SIPC paid insurance based upon the customer's most recent brokerage statement, including, obviously, all appreciation in the customer's account over however many years the customer had an account with the broker.

In 1970, Senator Edmund S. Muskie proclaimed in urging the prompt enactment of SIPA, "After this bill is enacted, no American will lose his savings through a brokerage firm bankruptcy." This is not happening in the case of the 85 percent of the Madoff victims. When SIPA was enacted and brokers were able to buy securities in street name, American investors has nothing but the statement from their broker to rely on for the balance, or the value of their accounts. Every trade confirmation that is sent to every investor of a SIPC member, falsely assures them that their life savings are protected up to \$500,000.00 by the SIPC.

The American investor now knows that SIPC's promise of protection is not what Congress intended it to be. Instead, Irving Picard has created new keywords, like net winner, net loser, and has redefined the Congressional intent of the meaning of net equity. All in an effort to save SIPC money. An SEC-OIG report from 2000 gave the following background of the Securities Investments Protection Act, SIPA, "The Securities Investment Protection Act of 1970 15 U.S.C. 78aaa *et seq.* as amended, 'The Act,' was created to protect customers from losses resulting from broker, dealer failure, thereby promoting investors' confidence in the securities market. As interpreted, the Act protects customers, whose securities were misappropriated, never purchased, or stolen."

SIPA defines net equity as the value of cash or securities in a customer's account, as of the filing date, less any money owed to the firm by the customer, plus any indebtedness the customer has paid back. Irving Picard defines it differently, without the proper

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Congressional approval to change the SIPC statute. In a letter dated May 1, 2009, Klein and Wexler wrote to SEC Chairperson Mary Shapiro, and said, "It is imperative that the victims of the Madoff Ponzi scheme are provided clear information, and are compensated to the full extent of the law." They continue to say, "Josephine Wang, the General Counsel of SIPC, has indicated that if investors believed that they own securities in the investment statements they were provided by Madoff, then SIPC has an obligation to buy securities to make the investor whole."

However, Irving H. Picard, the trustee appointed by the Bankruptcy Court of the Southern District of New York to oversee the liquidation of the Bernard Madoff Investment Securities LLC, has described a different obligation owed by SIPC to the victims of the Madoff fraud. We believe the victims of the Madoff Ponzi scheme should be compensated to the maximum extent by the SIPC. The amount of compensation provided by SIPC to Madoff victims, should be based on the final statement of the securities received by customers in November 2008 up to the amount of \$500,000.00 per account. *[Clears throat]* Congressman Scott Garrett recently introduced legislation to protect Madoff investors. Garrett said, "Customers of registered brokers regulated by the SEC are legally entitled to rely on their customer statement as evidence of what their broker owes them."

This does not change when a broker engages in fraud. Indeed, it is there to protect customers in the event of fraud. Congresswoman Ileana Ross Layton also realizes the need to pay customers based on their last statement. She created the Ponzi Victims Bill of Rights. She said that Americans have the right to rely upon the statements they received from SEC regulated broker dealers. Congress, the legislative body that created SIPC, is speaking out on behalf of the victims, and, against the non-statutory actions of Irving Picard. We implore this Task Force to listen. In the *New Times Service, Inc.*, SIPA defines net equity as "the amount that the broker would have owed a customer had it liquidated all the customer's holdings on the date SIPC filed for a protective decree, less any outstanding debt the customer owed to the broker."

In a *New York Times Dealbook* article, Steven Harbeck and Irving Picard state that they want to be fair and equitable in the treatment of Madoff investors. However, Congress did not intend for SIPC and its trustees to decide what is fair and equitable. Nowhere in SIPA does it state that a trustee for an insolvent broker dealer should exercise his own judgment as to what is fair and equitable in paying customers SIPC insurance. SIPC's president Steve

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Harbeck assured the *New Times* bankruptcy court that customers would receive securities up to \$500,000.00, including the appreciation in their account. As Mr. Harbeck explained, "If customers are led to believe that real existing securities had been purchased for their accounts, then those customers are entitled to get the full value of their securities position as of the filing date, even if the securities have never been purchased."

The manner in which Mr. Irving Picard is handling net equity from Madoff victims is totally inconsistent with SIPC's 40 year history, with the original Congressional intent, and with the current members of Congress. Because of his refusal to comply with SIPA's mandate that he promptly satisfy customer's claims based on the statutory balances, the trustee has decided that he needs a vast team of forensic accountants to pour through the decades of records to determine each customer's net investment before SIPC pays any amount to a customer.

Clearly this is inconsistent with the statutory scheme and the legislative intent. Customer's security positions are readily ascertainable from November 30, 2008 statements. In conclusion, if the trustee is allowed to arbitrarily modify the intent of the SIPA, then I am concerned for all investors, because there will be more fraudulent brokers, and more investors who lose their savings without the protection promised by SIPC, these investors are left to hang in the wind. Congressman Garrett said it best, "If the current law is not followed, no customer can ever have confidence in his or her dealings with a broker."

This is contrary to the policy goal of encouraging investment, which is critical to the economic renewal and growth that our country needs. Thank you.

*Woman:* The next speaker is Ron Stein.

*Ron Stein:* Thank you for giving me the opportunity to speak before the SIPC Modernization Task Force today. My name is Ron Stein, I am both a financial professional and the president of NIAP, the Network for Investor Action and Protection. NIAP is a not-for-profit organization of more than 1,200 members that seeks to enhance protections for all investors, especially advocating for real reform of SIPC. While the very few minutes available today only allow me to address a few points, the most fundamental question from SIPC's perspective must be this, "What can be done to best protect investors, especially small ones and enhance investor

confidence in the financial markets consistent with Congress' original intent?"

Today marks the first Modernization Task Force Forum since last September. While we are pleased that additional forum is being included, we are deeply concerned that the process to date has lacked the adequate transparency, objectivity, and representation necessary to improve investor confidence. It serves under SIPC, the organization it ostensibly seeks to modernize. It lacks sufficient input from consumer groups. And, despite the talent here today, it is populated significantly by SIPC and industry insiders. As a result, the recommendations of this group will be met by skepticism from the onset, most unfortunately.

Turning now to SIPC itself, SIPC purports to be the first line of defense when a brokerage firm fails. And, we wholeheartedly endorse this objective. Unfortunately, this is not the perception or the reality. The current industry-oriented composition of the SIPC board, the extraordinary lack of transparency of SIPC, the long record of underfunding, the history of sparing no expense in denying claims, lead many NIAP members to feel that SIPC is not honoring its Congressional mandate. The people I talk to every day believe that SIPC instead acts to limit its exposure, and that it has put its own solvency, and minimization of fees charged to the broker/dealer community, ahead of investor protection. And, financial professionals with whom I regularly speak feel that SIPC has reneged on its promise of protection, and put yet another black mark on an industry that is struggling so hard to rebuild investor confidence.

Clearly for SIPC, the Securities Investor Protection Corporation, to be viewed plausibly going forward it must radically change its defenses and insular culture and finally view its decisions, first and foremost, through the lens of investor protection. Most importantly, the most valid recommendations by this group for the future will mean little if SIPC is not pressed to honor its commitments in the present. As long as SIPC continues to change the rules midstream, to reduce or deny protections altogether for a majority of Madoff customers or worse, from its clawback of the innocent to suit its purposes, little that this group puts forward, however well intentioned, will be seen as valid.

Now, please allow me just to take another minute to mention some of the few – some of the several reforms we're gonna propose. I also would like to point out that numerous members of NIAP have declined attending today because of fear of retribution by the

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Trustee. Let me get to some of the recommendations very quickly. First, to enhance confidence in the markets and eliminate confusion, SIPC should conform its policy with that of FINRA, that net equity for the non-complicit is based on what is reflected on statements. Never should innocent victims or investors be subject to avoidance actions by a trustee, and underwriting and risk management by FINRA, the SEC, and yes, if necessary, SIPC should be improved to ferret out fraudsters and minimize risk to the fund.

Second, SIPC should increase protection levels from \$500,000.00 to \$1.5 million for cash and securities, or to a level that recognizes the 30 years of inflation since its dollar limits were set in 1978. Third, SIPC should increase its fund to accommodate insolvencies of much larger impact, multiple insolvencies. The financial crisis has taught us that SIPC must be prepared to pay victims advances well in excess of the current funding limits.

Fourth, SIPC should seek to dramatically increase its transparency of its operations, increase investment consumer members on its board and staff, encourage the SEC or other agency oversight, and be required to testify before Congress on an annual or frequent basis. Accountability is of paramount importance. Fifth, SIPC should not be considered strictly as a standalone entity. But, as part of a broader, investor protection apparatus, that includes the SEC and FINRA, and works closely and collaboratively with its partners. Sixth, SIPC should embrace a more objective method of trustee appointments.

Finally, investor education should be seen as a top priority, and, substantially expanded to help minimize further victimization of innocent investors. We at NIAP look forward to engaging with SIPC in a more meaningful conversation about the future of the agency, and how to best protect the investing public. These are but a few of the suggested changes NIAP will be putting forth, and I want to thank you for the opportunity to speak before you today.

*Woman:* The next speaker is Leah Larson.

*Leah Larson:* Good afternoon. And, thank you for inviting us here to speak with you today. I'm a Madoff victim whose claim was denied, because I didn't have a separate account. I had monies that were transferred directly to Bernard Madoff. I have bank check receipts to prove that the money was given to him. I never took any money out. I deposited money in 2007 and 2008. But, I've been found not to qualify for any money of any sort, because my money went

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into my brother's account, which is something that Madoff encouraged, and the money that I put in was credited to him under the net winner, net loser scheme.

When Madoff first confessed, my brother called SIPC the next day. And, he was told by a SIPC lawyer that we didn't have to worry, that we would receive whatever was due us based on our last account statement. So we had heard that SIPC was very difficult about paying people, but we had thought that we'd been told that we didn't have to worry. At the same time, Josephine Wang gave an interview with a journalist and told him the same thing. So, we were shocked when on January 6, suddenly Steven Harbeck was testifying that none of this applied, that this was going to be a totally different scheme for payment or nonpayment.

Now, one thing I'd like to say, SIPC, we were told, had an incredible record of denying claims. They're only paying about 19 percent of the Madoff victims. That figure is not, doesn't only have to do with Madoff victims, this is their tendency, this is their record. They consistently, they pay a very few, small number of people the entire amount, and then deny everybody else. Essentially, they're the worst kind of insurance company that one could imagine. And, the way that they do it, is they claim that because SIPA is a remedial statute it has to be narrowly construed. So, they go into court, and with each case they find some way to deny people money.

In our case they're claiming that there were multiple transactions; therefore, it's not the same as what occurred in the *New Times* case. Now, I was somebody who went and looked at the *New Times* case, right after the testimony with regard to the sudden new way of figuring to what people are entitled to. And, what I found is that in that case, the Second Circuit found that ratified the fact that people who had fictitious investments in real securities were entitled to everything that was on their account statement. And, that it was only the people who had fictitious investments in fictitious securities who didn't receive it. So, I called up SIPC. And, I got lucky. I spoke to Mr. Harbeck. Because, it's a very small organization, and when I said I wanted to discuss the *New Times* case, I was told everybody else was in court, and I spoke to him directly.

And, he said to me, "Well, that was about cash in, cash out. That was about the difference between cash and securities." And, I said, "No no, that's not the part of the case that interests me. The part of the case that interests me is all the people who didn't have to

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appeal because they got everything.” And, Mr. Harbeck said to me, that that was because, in case there were no withdrawals. Now, the *New Times* case involved the 17 year Ponzi scheme on the part of a broker.

And, it had a lot of retirees investing in it. And, I found it difficult to believe that nobody in all those years ever did any withdrawals. So, I went to court. And, I went out to Suffolk County, and I actually requisitioned the actual file in the *New Times* case to see what happened. It turned out that the only records there were, were regards to people who did object. And, some of those people did make withdrawals. The other thing that I found was a statement that everybody has been using. That Mr. Harbeck made before the bankruptcy courts explaining how the SIPC case was different from a regular bankruptcy case, because the particular bankruptcy judge wasn't used to a SIPC case. And, he specifically said, that the people would get their securities even if the money was stolen.

We have transcripts that say that. I provided it to people. So, SIPC suddenly decides that because they don't wanna pay people, they're entitled to change the law, it's disgusting. But, it's something that they've been doing for years. It's not an accident that for 19 years, SIPC only assessed all of big firms and small firms \$150.00 a year to provide their insurance. It's because they're so good at denying claims. They go into court and they lie about the law, essentially. And, that's why we need independently named trustees. People who are not beholden to SIPC, who will actually do what they're supposed to do under the law, and protect people rather than trying to keep the assessments to their members at a minimum.

It's disgusting that Goldman Sachs paid \$150.00 a year to say that every one of their clients had up to \$500,000.00 worth of insurance. And, the way that this has been accomplished has been by distorting and cheating the law. And, I know that, because the next thing that I did, is I started looking through Irving Picard's old cases and requisitioning other files. And, what I found was time after time, they used misrepresentation of the law to get the results that they wanted. You know, it's like if somebody doesn't start protecting people who have given up their life to have stock certificates for the convenience of Wall Street so that they can make billions of dollars more, so that they can trade more easily, which is what the whole purpose behind SIPA was, then there's no reason for people to invest, if SIPC is going to continue to get

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away with its disgusting behavior as noted by Gretchen Morgenson in a *New York Times* article in 2001.

And, nothing has changed. And, as long as SIPC controls the purse strings, they're going to be doing people in. Whether it has to do with fraudulent, unauthorized transaction, whether it has to do with Ponzi schemes, and there are plenty of Ponzi schemes all the time, there's no justification for them having such a miserable record. And, one of the things that also has to happen is that the minimum assessment with regards to Wall Street ought to be raised considerably. For them to be allowed to charge only \$150.00 a year is disgusting. It is disgusting that Irving Picard, has been able to say, "Oh, we couldn't give people the securities that would roil the market." The truth is, there are billions of stocks that are traded every single month, and for him to start going into court and saying they couldn't give people their securities, is a lie. And, it's disgusting that this kind of behavior has been tolerated and glossed over by the people who are, whether it's the SEC, or whatever, it's disgusting. And, there's no reason for anybody to feel that any of their investments are safe under the present circumstances. And, that's all I have to say.

*Woman:* Is there anyone else in the audience who would like to speak? We're going to take a 15 minute break, we'll reconvene at 2:00. If you would like to speak, please see the registration desk outside. Thank you.

*Sharon Bowen:* Those of you who are here, present, would like to have another shot at speaking? Give everyone about 30 more seconds or so. Okay, welcome everyone. Thanks from coming back from the break. As you know, we had allowed a lot more time for today, and it appears that all of our signed-up speakers have already spoken. So, we decided to open the floor up. If there's anyone in the room who'd like to speak, who hasn't, or if there are former speakers who'd like to add more, we'd be welcome to hearing additional comments. You're not forced to, but if you'd like to. We'll just give people a few minutes.

Looks like we opened the floor. Okay, I just want to thank you all so much, again, for taking the time to come today. It was really important for us to hear you, and hear your voice, we will definitely report back to the full Task Force, your concerns, your suggestions, in its entirety. And, as we've mentioned, the transcript will also be available on the website within a few days. So, thank you so much again. And, obviously the website is still

open for comments throughout the period, so it's not just today, but going forward as well. Thank you so much again.

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