Congress of the United States
Washington, DC 20515

April 12, 2011

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

Mr. Robert W. Cook
Director, Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Mr. Mark D. Cahn
General Counsel, Office of the General Counsel
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Mr. Carlo V. di Florio
Director, Office of Compliance Inspections and Examinations
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Schapiro, Mr. Cook, Mr. Cahn, and Mr. di Florio,

As Members of the House Financial Services Committee, we are writing in reference to the Office of Inspector General's audit report on the "SEC's Oversight of the Securities Investor Protection Corporation's Activities," released on March 30, 2011. As you know, the audit found that "the SEC does not inspect SIPC's activities in any systematic fashion," and that the Commission has no definite plans to inspect the Corporation in the near future.

The lack of oversight suggested by the audit's findings is cause for serious concern. We would like to express our support for the twelve recommendations made by the Office of the Inspector General to enhance the Security and Exchange Commission's monitoring of SIPC's activities. This audit is long overdue and reveals important areas for improvement, and is particularly timely in light of the heightened interest in SIPC's actions with the high profile liquidations of Bernard L. Madoff Investment Securities, LLC and Lehman Brothers, Inc.

Since SIPC's inception in 1970, the SEC has conducted a full inspection on only three occasions – that's less than once every decade. At a time when SIPC is handling the largest liquidations it its history, the need for increased oversight is even more evident.

It is particularly apparent that there has not been proper SEC oversight of the fees SIPC pays to independent court-appointed trustees. The audit found that "the SEC does not perform a review of trustee fees on a systematic basis," and that "reviews are particularly necessary" because there are "few, if any, limits on the fees that may be awarded." The OIG's report indicates that the SIPC Fund could become insolvent due to the excessive fees that are currently being paid to the trustee firms and contractors in the Madoff and Lehman cases. In the Madoff case alone, the cost of the trustee's firm, accountants and consultants is expected to reach $1.1

PRINTED ON RECYCLED PAPER

billion in the next few years. Additional payments could result in SIPC being forced to draw down on their $2.5 billion emergency line of credit and would also result in the necessity of higher fee assessments on brokerage firms, the costs of which would ultimately be paid by investors.

For the reasons stated above we are especially supportive of Recommendation 7 in the OIG's report, which calls for the SEC to conduct additional oversight of "the reasonableness of trustee fees and encourage SIPC to negotiate with outside court-appointed trustees more vigorously to obtain a reduction in fees greater than 10 percent." It is troubling that SIPC denied the OIG access to information on fee negotiations with the trustees for the Madoff and Lehman liquidations. According to the OIG's review, "the hourly rate for trustees assigned to the Madoff case ranged from $698 to $742." It has also been reported that the trustee for the Madoff case has retained public relations advisors and other consultants whose role in aiding defrauded investors is questionable at best. When the magnitude of the professional fee payments could deplete the SIPC Fund to a dangerously insufficient level, transparency must be a top priority. As Members of Congress whose constituencies have been disproportionately affected by the Madoff ponzi scheme, we are concerned that the trustee may be driven by profit rather than the goal of ensuring that the defrauded investors are made whole.

We respectfully request that the SEC promptly meet the OIG's request for a "written corrective action plan that is designed to address the recommendations" within forty-five days.

We would also like to request the following:

1. A response specifically outlining how the SEC plans to move forward on the SIPC fee issue with respect to the OIG's recommendations (Recommendations 7, 8 and 9). and an explanation as to why no action was taken in light of previous recommendations to reform the SIPC fee structure (2003 SEC inspection[1] and the 2009 special counsel report[2]).

2. As detailed in the OIG's report, there are several factors that could strain the SIPC Fund to the point of insolvency and force SIPC to request their $2.5 billion emergency line of credit with the U.S. Department of the Treasury. If the SIPC Fund is deemed insufficient to fund payments to defrauded investors, does the SEC have an actionable plan in effect today to ensure SIPC solvency? If so, please provide the details of that plan.

---

[1] The last time the SEC inspected SIPC in 2003, the resulting support stated that "the SEC staff found indications of excessive trustee and counsel fees in some liquidations and is concerned about fees charged by certain trustees and their counsel for work related to the Staff's inspection of SIPC." SEC, Inspection Report of Securities Investor Protection Corporation, April 30, 2003, p. 1.

[2] In August 2009, a special counsel in the SEC's Trading and Markets Division conducted a study to identify possible changes to modernize SIPC. The study discussed how administrative expenses could potentially be reduced at the discretion of bankruptcy judges. The study stated that "there may be public interest in considering whether the requirement under the Bankruptcy Code that bankruptcy judges determine the reasonableness of fees paid to trustee and attorneys should be extended to SIPC cases." Catherine McGuire, Memorandum Re: SIPA, August 28, 2009.

We appreciate your willingness to take our concerns into consideration and look forward to a prompt and timely response.

Sincerely,

PETER T. KING
Member of Congress

GARY L. ACKERMAN
Member of Congress