Written Testimony of Helen Davis Chaitman

March 10, 2011

My name is Helen Davis Chaitman. I am a partner with the law firm of Becker & Poliakoff LLP in New York City. I represent approximately 500 people who lost their life savings in Bernard L. Madoff Investment Securities, LLC. I myself lost my retirement savings in Madoff.

My clients were victimized by the inexplicable failure of the SEC to shut Madoff down, despite seven investigations of Madoff over a 16-year period.

My clients have been further victimized by the inexplicable failure of the SEC to enforce the Securities Investor Protection Act against the Securities Investor Protection Corporation. SIPC has violated the law and the SEC has allowed it to do so. It is not simply my opinion that SIPC has violated the law. Congressman Scott Garrett has stated his view that SIPC and its trustee, Irving Picard, have violated the law in the Madoff case. Both Ileana Ros-Lehtinen and Peter King have co-sponsored Mr. Garrett's bill, H.R. 757, which will remedy the terrible injustice that the SEC has caused.

The SEC is charged under SIPA with the obligation to go into court and seek an order compelling SIPC to comply with the law. Yet it has failed to do so in the Madoff case. Perhaps the reason for its failure is the conflict of interest of its general counsel, David I. Becker. I leave that conclusion to you, but I want to give you certain facts that may assist in your deliberations.

Bernard L. Madoff confessed on December 11, 2008 and the SEC then filed a liquidation proceeding against his investment firm. It quickly became apparent that SIPC was going to reneg on its statutory obligation to insure each investor's account up to $500,000 based on the investor's last statement. This insurance money was absolutely crucial to thousands of Madoff investors who had invested their savings in Madoff and were left destitute at a time in their lives when they were most fragile because they could no longer work.

On April 2, 2009, I sent a letter to Mary Schapiro explaining that SIPC and Mr. Picard were taking the unlawful position that investors are not entitled to claims in a SIPA liquidation based upon their last statements (as required by SIPA). See Exhibit A hereto. In order to save itself approximately $1 billion, SIPC was taking the position for the first time in its history that Madoff investors' accounts are only insured for their "net investment" over a period of up to 50 years. This deviation from the law allowed SIPC to avoid paying half of the Madoff investors any SIPC insurance. This half happened to be the most elderly and neediest of all the Madoff investors. This deviation also greatly reduced the amount of insurance SIPC would pay to those investors who had a positive net investment.

I explained in my letter to Ms. Schapiro that the SEC has the obligation to enforce SIPA in situations where SIPC is violating the law. After all, SIPC is an insurance entity established by Congress whose members are the SEC-regulated broker/dealers. Investors are the insureds under the SIPA statutory scheme. It is natural that SIPC, like any insurance company, would seek to deny insurance to investors who are entitled to it. Under the statutory scheme, it is the SEC that is responsible to protect investors and enforce the law against SIPC. SIPC's wrongful denial of insurance to investors had been brought to the attention of the SEC in previous liquidations. So this was nothing new.

Instead of protecting Madoff investors and assuring continued confidence in our capital markets, the SEC endorsed SIPC's plan to cheat Madoff customers of their promised insurance, further victimizing them. I explained the law to Ms. Schapiro and asked her to intercede.

In my letter, I raised another issue of vital importance to Madoff victims: Irving Picard, the SIPC trustee, announced in February 2009 that he was going to sue innocent investors for money they withdrew from their accounts on the theory that they were only entitled to keep their net investment over a period of 40-50 years. Mr. Picard's lawsuits have been given the name "clawback" suits. In my April 2, 2009 letter, I asked Ms. Schapiro to propose an amendment to the Bankruptcy Code to clarify existing law so that innocent investors who relied upon the SEC to police the securities markets would not be forced to litigate clawback suits brought by Mr. Picard seeking to force investors to pay back money they withdrew from their Madoff accounts in the honest and legitimate belief that the money was theirs.

The clawback issue was inextricably inter-twined with the issue of how a customer's claim was calculated because the Trustee had announced his intention to "claw back" withdrawals in excess of each investor's net investment. Many Madoff investors were third generation investors. Their grandparents had established their accounts in the 1960's and 1970's. Of course, the money had appreciated and, even if the only withdrawals from the accounts were to pay taxes on the reported appreciation, these investors would have taken out, over three generations, far more than they had invested. But it is grossly inequitable and inconsistent with the law to permit a SIPC trustee to claw back from innocent investors who invested through an SEC-regulated broker/dealer.

Ms. Schapiro had Thomas McGowan of the SEC respond to my letter on April 23, 2009. He invited me to meet with him in Washington, which I did. At the meeting, I explained, again, the position of my clients and asked Mr. McGowan what authority there was to support SIPC's position in this case. He cited to me a 1926 decision of the United States Supreme Court in a case involving a preference claim -- a claim to recover payments received within 120 days of a bankruptcy -- that was decided 44 years before SIPA was enacted and 52 years before the present Bankruptcy Code was enacted. In short, the SEC had no authority for its support of SIPC's unlawful position.

On May 1, 2009, counsel for numerous other investors sent a letter to David Becker, again laying out the legal authority compelling SIPC to insure each account up to $500,000 based on the customer's last statement and urging the SEC to fulfill its statutory obligation to enforce the law against SIPC. See Exhibit B.

On July 14, 2009, Ms. Schapiro testified before the Subcommittee on Capital Markets, Insurance and Government-Sponsored Enterprises. In response to a question from Congressman Ackerman as to when and how much the Madoff victims would be compensated by SIPC, Ms. Schapiro stated:

> I am committed to working as aggressively as we possibly can with SIPC to take the most expansive possible view of how to repay these claims and to do it in as quick a fashion as they possibly can.

7/14/09 Tr. at 18.

The Madoff liquidation was seven months old when Ms. Schapiro made that statement and, by that time, only a handful of investors had received SIPC insurance and only for the net investment over the life of their accounts, going back generations. Thus, up to that point in time, it is difficult to imagine what Ms. Schapiro was referring to when she spoke of her commitment to work as aggressively as possible with SIPC to repay claims as quickly as possible.

Unfortunately, after Ms. Schapiro's testimony, the SEC took precisely the opposite position from her purported commitment. Although SIPA requires SIPC to "promptly" replace securities up to $500,000 of investors whose brokers never purchased the securities shown on their statements, something SIPC has boasted can be done in 60 days, in the Madoff case there are still investors with valid claims who have not been paid their SIPC insurance 28 months after the liquidation was filed.

Moreover, the SEC has supported SIPC in taking the position that investors are only entitled to SIPC insurance if -- over the life of the account spanning as much as 50 years -- the investor, his parents, and grandparents, invested more money in Madoff than they withdrew. This position means that no customer can rely on his account statement. It is simply astonishing that the agency charged with protecting customers would take the position that federally-mandated statements are of no legal significance despite the fact that they are the only evidence any investor has of what he owns.

As an American citizen, I cannot explain the SEC's utter failure to enforce a law that was specifically enacted to protect investors. Nor can I explain the SEC's protection of SIPC in the face of its violation of the law.

We live in an era where investors cannot purchase certificated securities. The only proof any investor has of what he owns is the statement he receives from his broker. If investors cannot rely upon their statements, they cannot safely invest in the stock

market. I would have thought that assuring safe investments would be the primary purpose of the SEC.

I am not here to opine on whether Mr. Becker's patent conflict of interest influenced the grossly inappropriate behavior of the SEC in the Madoff case or the incorrect testimony of Ms. Schapiro on July 14, 2009. On the one hand, one could admire Mr. Becker for advocating a position that was adverse to his own personal interests. Clearly, by endorsing SIPC's illegal "cash in/cash out" methodology, Mr. Becker was increasing the chances of his being sued by Mr. Picard. On the other hand, Mr. Becker apparently considered that he had little risk of a clawback suit and I am certain that Mr. Picard would not have sued Mr. Becker if he had realized he was suing the SEC General Counsel. Indeed, Mr. Harbeck issued a statement recently admitting that Mr. Picard did not know he had sued this David I. Becker.

Moreover, the SEC, under Mr. Becker's watch, has advocated a "constant dollar" adjustment to the net investment calculation to mitigate the harshness of SIPC's position. Just as there is no basis in law for SIPC's position, there is no basis in law for the SEC's "constant dollar" proposal. And of course that proposal, if adopted, would certainly have benefited Mr. Becker by reducing his clawback exposure.

In any event, the reason people are not permitted to participate in policy decisions when they have a personal interest is to avoid their judgment being clouded. Clearly, in this case, I can say with confidence that Mr. Becker's judgment was clouded. He advocated a position which, as Congressman Garrett has stated, is a flat violation of the law.

But I do want to impress upon you the devastation that the SEC's position has caused to thousands of Madoff investors. It is impossible to explain to Madoff investors who were victimized by the SEC's failure to shut Madoff down in 1992 how the SEC could victimize them again by depriving them of the $500,000 in SIPC insurance which the law guarantees them, based upon their last statements.

There is one way that Congress can rectify the damage that the SEC's unlawful conduct has caused and that is to quickly enact Congressman Garrett's H.R. 757. Every Madoff investor is entitled to this relief. Every American who invests in the stock market is entitled to this relief. I ask that you provide it.

EXHIBIT A

PHILLIPS NIZER LLP

666 Fifth Avenue
New York, NY 10103-0084
212.977.9700
Fax 212.262.5152

600 Old Country Road
Garden City, NY 11530-2011
516.229.9400
Fax 516.228.9612

Court Plaza North
25 Main Street
Hackensack, NJ 07601-7015
201.487.3700
Fax 201.646.1764

www.phillipsnizer.com

Helen Davis Chaitman*
212.841.1320
201.646.1664
hchaitman@phillipsnizer.com
*Admitted in New York and New Jersey

April 2, 2009

Commissioner Mary Schapiro
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Dear Commissioner Schapiro:

I write on behalf of approximately 350 investors in Bernard L. Madoff Investment Securities, Inc. ("Madoff"). The revelation of the $64.8 billion Madoff Ponzi scheme has done more to damage the world's view of the American securities markets – and the SEC – than any other event in history. We are living in a time when our government's failure to regulate the unmitigated greed of Wall Street has caused a global economic collapse.

As a result of the SEC's stamp of approval on Madoff in 1992 and thereafter, tens of thousands of innocent Americans have lost their lives' savings. The world is now waiting to see if the American government deals responsibly with the victims of this disaster. The victims are waiting as well. To date, the SEC and Congress have not responded at all, while the Securities Investor Protection Corporation ("SIPC") has grossly misconstrued the Securities Investor Protection Act ("SIPA") for the economic benefit of Wall Street and to the extreme detriment of investors.

I personally lost all of my savings in Madoff. The firm was recommended to me by a friend in 2004 who showed me his brokerage statements which indicated that Madoff went into the market five-six times a year and purchased a portfolio of Fortune 100 company stocks; held the stocks for about a month and then sold them and put the funds in US Treasury securities. Madoff protected against market volatility by buying

put and call options. The strategy looked safe and conservative. I told my friend the only risk was that Madoff was a fraud. My friend laughed and said that Madoff had an impeccable reputation in the industry, had been Chairman of the NASDAQ, and that firms who were jealous of his trading strategy had reported him to the SEC who had investigated Madoff on several occasions and found him to be absolutely honest. Naively, I thought there could be no better recommendation.

Whether the SEC's placement of a stamp of approval on Madoff from 1992 on, despite repeated clear indicia of gross impropriety, was the result of utter incompetence or of something worse, the SEC must accept responsibility for the massive losses to innocent people of their lives' savings and assure that SIPC acts consistently with SIPA to fulfill investors' "legitimate expectations" that the balances shown on their brokerage statements belonged to them. In this letter, I ask that the SEC take the following actions:

1. The SEC should immediately intercede to require SIPC to fulfill its statutory obligations to promptly pay all customer claims and to allow those claims at the amounts required by SIPA, *i.e.*, inclusive of "fictitious" income since customers had a legitimate expectation that the securities listed on their customer statements belonged to them. Four months after Madoff's confession, SIPC, to my knowledge, has paid only 15 claims. This is a national disgrace.

2. The SEC should support a cost-of-living increase in SIPC insurance (fixed in 1978 at $500,000) to $1.6 million. This increased coverage should be available to Madoff victims. Wall Street must be forced to police itself. If broker-dealers had to pay the victims of Ponzi schemes, they would not sit by quietly and allow them to continue with impunity. There were a number of Wall Street firms that announced, shortly after December 11, 2008, that they were never fooled by Madoff. Yet, in the almost 30 years of Madoff's illegal operations, they never came forward. If they had to foot the bill for the disaster, they would police their own industry.

3. The SEC should propose an amendment to the Bankruptcy Code to prohibit "claw back" (preference and fraudulent conveyance) litigation against innocent

customers of an SEC-regulated broker-dealer. These customers, and the financial institutions that finance them, have a right to rely upon the balances shown on their brokerage statements. To permit innocent victims to have money "clawed back" after having already lost their lives' savings is double victimization.

The SEC has an obligation to assure that SIPC fulfills its statutory obligations to Madoff investors

The detailed, comprehensive reports delivered to the SEC by Harry Markopolos, which accurately laid out Madoff's scheme, are well known to you, I am sure. However, long before Harry Markopolos wrote to the SEC, the SEC had closed down one of Madoff's early feeder funds. On November 17, 1992, the SEC had charged Frank J. Avellino and Michael S. Bienes with operating an unregistered investment company that managed $441 million. Their business was closed down because they didn't register the promissory notes they gave their investors as securities. The SEC's complaint charged that the money collected from investors was turned over to an un-named broker-dealer who managed the accounts at his own discretion, purportedly putting the investments into listed stocks.

According to a December 1, 1992 article in the Wall Street Journal ("WSJ"), "[n]one of the officials involved in the case would disclose the name of the broker-dealer whose trading apparently produced results good enough to draw in such a large sum of money." However, again according to the WSJ, Martin Kuperberg, SEC Senior Associate Regional Administrator in NY, "said that the returns appeared to have been generated legitimately. **"Right now, there's nothing to indicate fraud,"** he said. See Exh. 1. Any reader of this statement would reasonably have assumed that Kuperberg would not issue such a statement unless the SEC had investigated the un-named broker-dealer.