NIAP

Network for Investor Action and Protection

TESTIMONY OF RON STEIN, CFP

President, The Network for Investor Action and Protection

Before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises of the Committee on Financial Services

United States House of Representatives

March 7, 2012

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Chairman Garrett, Ranking Member Maxine Waters, Vice Chairman David Schweikert, Members of the Subcommittee, and Fellow Congressional Members:

My name is Ron Stein, President of the non-profit Network for Investor Action and Protection ("NIAP"). I am both a registered investment adviser and Certified Financial Planner and over the years have seen all too often how a fraud such as Madoff's can ruin the lives of thousands of innocent victims.

On behalf of NIAP and myself, I appreciate the opportunity to appear before this Committee and explain why it is essential that Congress enact H.R.757, legislation that reaffirms and restores the vital investor protections that Congress intended for investors under SIPA and that until recently, investors rightfully understood was already provided to them.

Since its formation, NIAP and its membership of over 1200 individual investors have worked diligently to preserve and expand investor protections against the wide array of potential investor frauds any one of which could financially devastate the victims and their families and turn their lives upside down. Our primary constituency and concern is the individual non-institutional investor, the person most in need of assistance. Unlike the large hedge funds and other institutional investment entities, these individual investors are frequently unable to fend for themselves in the wake of a fraud and lack the awareness and tools to obtain relief that is, or at least should be, available to them as investor fraud victims.

Although NIAP was formed in response to the Madoff scandal and the devastation it has caused, our mission and our focus is not limited simply to the Madoff fraud, but enhancing protections for all investors. We have devoted significant time and effort working toward meaningful regulatory reform. The regulators, whether they be governmental agencies such as the SEC or quasi-governmental self-regulatory entities such as SIPC or FINRA are the threshold gatekeepers; unless they do their jobs diligently and vigorously, the likelihood of future wide scale fraud is increased. NIAP is therefore deeply involved with reform efforts and measures designed to enhance proper regulatory functioning. Our work thus includes oversight and investor education to prevent the erosion of existing investor rights by those such as SIPC which should be working vigorously for the victims but all too frequently operate instead in their own self-interest.

It is widely known that the regulatory oversight and investigatory functions failed abysmally in the Madoff fraud, which should have been stopped years ago. But even after it was discovered, during the inordinately lengthy SIPC Liquidation process that has followed, there has been a continuation of the past failures to protect the victims of this massive fraud.

For these and other reasons, we fully support H.R.757. It is a vital reform measure and reaffirmation of core investor protections. It must be enacted to protect the reasonable and legitimate expectations of Madoff victims and as a necessary step toward rebuilding investor confidence in our capital markets, already shaken by the events of recent years.

In considering H.R.757, it cannot be over-emphasized that the Madoff firm – BLMIS – was not an un-regulated, fly-by-night investment firm, offering outrageous returns. It wasa high profile, highly regarded broker-dealer, and SIPC member, led by a scion of Wall Street, theoretically subject to the full range of regulatory scrutiny, and offering, at times, below-market, albeit steady returns. As documented in great detail in the Report of the SEC's Inspector General, however, during the lengthy period that the fraud persisted, the SEC failed, for many years, to identify and stop the massive investor fraud despite repeated opportunities to do so, and despite possessing full authority and the necessary tools to do so.[1] Compounding the SEC's regulatory failures, the SEC Inspector General's report also documents the shocking fact that despite learning information strongly suggesting to them that Madoff was engaged in a fraud, highly regarded financial institutions and insiders chose to keep silent and not report that information or their suspicions to the regulators. In essence, the failed oversight of the SEC, NASD, and the blind eye of other professionals in the field is what fueled the explosive growth of this crime, perhaps more even than the fraudster.

Unfortunately, the failure to inform or protect investors has continued even now, three years even after Madoff was caught. The manner in which the Madoff Liquidation has been mishandled reveals with painful clarity the gross inadequacy of the current SIPC liquidation process and the vital need for reform. Throughout the liquidation process, SIPC and its hand-picked trustee have been allowed to make crucial decisions which favored their own substantial financial interests to the detriment of the Madoff victims, even though the statute -- entitled, ironically for many investors "The Securities Investor Protections Act"-- was specifically enacted to *protect* investors. The core failures arising from SIPC's conflict-based, self-interested decision making could not have continued but for the parallel failure of the SEC to exercise in any meaningful way oversight over SIPC's operations, as mandated by the SIPA statute. Rather than exercising its authority, the SEC has abdicated its responsibility and allowed SIPC and its Trustee free rein to twist and mangle the statute almost beyond recognition. The consequence is that vital investor protections enacted by Congress have been compromised or ignored, in flat defiance of the clearly expressed Congressional intent to the contrary.

It is undisputed, for example, that the majority of Madoff victims will receive none of the monetary relief promised them in the SIPA statute -- not one penny in SIPC advances[2]. Moreover, and in devastating fashion, SIPC and its Trustee have dramatically added to investors'

[1] INVESTIGATION AND FAILURE OF THE SEC TO UNCOVER BERNARD MADOFF'S PONZI SCHEME, OIG Report No. 507. August 31, 2009

[2] According to the Trustee's web site, 2,703 claims were denied entirely and 2,426 claims were at least partially allowed.

financial and emotional distress by bringing almost 1,000 individual clawback lawsuits against victims although each of these defendants, according to the Trustee, are innocent victims with no knowledge of the Madoff fraud. Thus, not only have these innocent victims been deprived of their SIPA benefits but they have now been forced, at considerable cost, to defend themselves against clawback actions in which the Trustee seeks to compel victims to pay SIPC monies legitimately withdrawn from their own Madoff accounts over decades -- money long spent to pay taxes, mortgages, education expenses, and all of their other costs of living incurred over the course of many years. Investors took redemptions in good faith, reasonably believing that they were taking their own funds based on statements that reflected positive account balances. For SIPC and its Trustee now to seek to take those monies from already devastated victims of this fraud is, quite simply, unconscionable – as is the failure of SEC to exercise its oversight powers to prevent it – even though the SEC had been told previously that there would not be clawback against innocent victims.[3]

In the process, the SIPA statute has been a total failure and fraud for these innocent Madoff victims. It has been transformed from a remedial, investor protection statute, into an instrument of investor oppression and harm. Most of these victims are small non-institutional investors who were devastated by the Madoff fraud to begin with. It is morally indefensible that these victims should now also be subjected, to further victimization by SIPC through the misapplication of the SIPA statute.

The historical context makes obvious both Congress' intent and SIPA's meaning. SIPA was enacted in 1970 in the wake of massive insolvencies that had rocked the broker-dealer industry and seriously undermined investor confidence.[i] [ii]At the time, the securities industry operated on the basis of registered physical stock certificates rather than the current book entry-street name system. Each time stock was bought or sold, the seller's shares had to be physically delivered to be cancelled and a new certificate had to be issued by the Company in the name of the buyer, to be physically delivered to that buyer. The back office logjams – often referred to as the "paper crisis" -- were monumental as were the attendant costs and delays, particularly as the number of shares traded exploded throughout the 60's. Stock certificates literally piled up in back offices from floor to ceiling waiting to be transferred. Certificates were frequently lost and theft of securities, and even counterfeit was rampant.[iii] Brokerage firms resorted to all types of devices, including fraudulently "cooking their books" to mask their deteriorating financial condition from the regulators and their customers. [iv] Embezzlements and Ponzi schemes were routinely in the headlines. Chaos was the norm.

It was in that context that Congress sought to reform the system in order to assist the

[3] The SEC's Inspector General's report on the David Becker conflict issue quotes Chairperson Mary Shapiro to the effect that she (and presumably the other SEC commissioners and staff) understood from SIPC and the trustee that no clawback actions would be brought against innocent victims of the Madoff fraud. But even when that proved to be false-when such actions were later brought by the trustee in the name of SIPC- the SEC remained silent and took no action to prevent this obvious wrong from continuing.

industry, while at the same time protecting the investing public and maintaining the integrity of the capital markets. Following extensive hearings through 1969 and 1970, legislation was introduced[v], patterned on the FDIC model to provide necessary structural change and investor protection. Although initially the financial industry stalled the legislation, as broker-dealer insolvencies mounted (including several major firms that threatened the very existence of the NY Stock Exchange), and commission income plummeted with the increased loss of investor confidence, the industry soon reversed course and urged the creation of a federally-based insurance entity that could help stave off financial disaster. Thus SIPA was enacted and SIPC was born. The old system of registered investor possessed stock certificates migrated to the book entry-street name system and in 1975 Congress enacted modifications to the Securities Exchange Act of 1934 and additional changes to SIPA in 1978 to continue to improve protections, and affirm that investors would know that they were protected (up to the statutory limits) if the shares they owned were not available to them from the brokerage firm for whatever reason.

Through the enactment of SIPA, Congress created a multi-legged investor protection regime that dramatically stepped up oversight of broker-dealers and exchanges, and further empowered both NASD (now FINRA) and the SEC. It also mandated that the securities industry form and fund SIPC, a not-for-profit entity, to act as the funding vehicle to insure customer accounts against brokerage firm failure up to the statutory limits (currently $ 500,000).[4] In doing so, Congress looked to the structural protection offered by the banking industry through FDIC, with necessary modifications to accommodate for the industry differences. With the change to a book entry/street name system, securities ownership would be demonstrated by trade confirmations and account statements in the same manner as the banking industry's customers knew what they were owed by their bank account statements and pass books. Under both systems -- FDIC for bank customers and SIPC for brokerage customers -- there were specific dollar protection limits providing customers with clarity and, most critically, the certainty so central to a pillar of the economy. Just as all FDIC bank depositors, whether net savers or those now withdrawing savings for living income, enjoy equal status and FDIC protection, Congress sought to provide similar certainty for all brokerage customers. While bank and brokerage customers could choose to exceed those protected limits, they would do so knowing that those excess balances were at their own risk.[5] But they were never told that even the basic SIPC coverage would be withheld from them by a rogue quasi- governmental agency and its designated Trustee.

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4 Richard Nixon, "STATEMENT ON SIGNING THE SECURITIES INVESTORPROTECTION ACT OF 1970", December 31, 1970.

5 To the banking industry, which during the Great Depression had seen innumerable failures, had even witnessed the Hanover Trust Banking Ponzi theft, FDIC insurance coverage based on the customer's account statement was seen as an essential component of restoring customer faith in the banking system and to encourage investor to feel confident leaving their money on deposit in banks. That same need existed in the Securities system and with the change from registered physical stock certificates to book entry street name, the same need existed for the account statement representations to be given full force and effect. Otherwise, customer confidence could not be restored and our capital markets would have suffered.

While the SEC and industry pressed intensely for the keeping of securities in street name, the public was not in full support. As one study indicated, “the public appears to lack confidence in street name registration as a substitute for the customer named certificate.” [vi] It made sense, therefore, that Congress, the SEC and the industry, given the already dismal public opinion, would do nothing further to undermine investor confidence, or weaken the new protections.

But SIPA’s laudable goals and protections have now, for all practical purposes, been eviscerated by SIPC and its Trustees, as the following undisputed facts from the Madoff liquidation all too clearly demonstrate.

FACT: A majority of the Madoff customers have been denied any SIPC coverage or advances, will receive none in the future, and will not be entitled to participate in the distribution of the SIPC customer property;[6]

FACT: Many investors who have received some SIPC relief under the Trustee’s Net Investment method, have received less in SIPC advances than they should have based on their account statements and the amount of their allowed claim has similarly been improperly reduced.[7]

FACT: According to the Trustee, at least 75% (and perhaps as much as 90%) of the anticipated pool of SIPA customer property will be distributed to institutional entities -- hedge funds and the like -- leaving only a small percentage for the small, non-institutional individual investor, the person who was supposed to be the primary beneficiary of SIPA protection. Included in this group of large institutional customers are some of the very hedge funds and other professionals whom the Trustee says facilitated the rapid expansion of the fraud by virtue of their substantial funding of Madoff’s investment cash and lack of due diligence.[8]

FACT: For more than 40 years, SIPC has aggressively marketed the familiar SIPC Logo to investors and to the industry, to persuade the investing public that their investments are protected even if the brokerage firm should fail or be unable to deliver what should have been in an investor’s account. During this same 40 year period, the industry experienced explosive growth due, in part to the ability of a brokerage firm to advertise its SIPC membership and the fact that their customer accounts would be protected by SIPC as a result of that membership.

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6 See Footnote 2.

7 This occurs because under the Trustee’s methodology, all investors have their allowed claims reduced by the amount of so-called fictitious profits. This results in a reduced allowed SIPC claim which impacts on the size of the SIPC advance and the participation in the distribution of customer property.

8 Included in this group of large institutional customers are some of the very hedge funds and other professionals who the Trustee himself has stated allowed for the rapid expansion of the fraud by virtue of their substantial funding of Madoff’s investment cash flow; See SIPC responses to Rep. Kanjorksi and Rep. Garrett on 9/7/2010 and 1/24/2011 respectively.

Until SIPC's recent arbitrary revision of the statute, the investing public understood that there was only one meaningful exclusion from SIPC coverage: SIPC would not protect against market place loss (i.e. if an investor purchased stock which then declined in value in the marketplace, that loss belonged to the investor, not SIPC and properly so). But other than that, investors were informed of the coverage, and of no other exclusions to that coverage. Theft, embezzlement or other theft fraud (including "Ponzi" theft) were *never* perils exempted from SIPC protection. Critically, the financial services industry, with SIPC's support, including thousands of trained practitioners in my field, repeated these same assurances of SIPC insurance protections to millions of investors for these past forty years. To change the rules now, just when the SIPC coverage is so needed amounts to a bait-and-switch campaign, having deliberately misled the American investing public, and abandoning them during their time of greatest need. Frankly, it should be dealt with as such.

FACT: The Trustee has already received legal fees in the hundreds of millions of dollars and has publicly projected that these legal fees and expenses ultimately exceed **$1 billion**.[9] Ironically, if that same amount of money had instead been allocated to paying SIPC advances to innocent Madoff victims, based on their final account statements, every Madoff victim -- so called net winners and net losers alike -- would have received a full SIPC advance, without diminishing by even one penny the amount of customer property available for distribution to Madoff victims with allowed SIPC claims. Instead, more than three years after the Madoff fraud surfaced, the Liquidation process remains bogged down interminably in complex litigation, and victims remain without their SIPC financial relief, despite the explicit SIPA requirement that relief to victims be paid "promptly".

FACT: Although acknowledging that each victim was factually innocent and unaware of the Madoff fraud, the Trustee has nevertheless brought almost 1000 clawback actions against Madoff victims to recover withdrawals they made years and even decades earlier. They did so from their own Madoff accounts in good faith, with every reason to believe it was their own money. Although couching these clawback actions as necessary to accomplish an equitable result, it is hardly fair or equitable to require people to pay moneys they have long since spent believing -- for good reason -- that they were spending their own money.

FACT: Despite repeated representations to the contrary, under the Trustee's Net Investment Methodology, SIPC will be being reimbursed for all SIPC advances and for all legal fees and expenses before the majority of the Madoff victims receives even first dollar from the Madoff bankruptcy estate.

FACT: The Trustee's Net Investment methodology will save SIPC approximately **one billion dollars**, the additional amount that SIPC would have paid out to victims in SIPC advances under the final account statement method (the historical norm). This financial windfall

[9] As reported in above reports to Kanjorski and Garrett.

for SIPC comes at the direct expense of the innocent Madoff victims.

FACT: Moreover, the Trustee's Net Investment methodology, while saving SIPC nearly $1 billion as stated above, has transferred the cost instead to all US taxpayers. Had SIPC paid the Madoff victims their proper SIPC advances as Congress intended, that would have reduced the amount of the allowable theft loss deduction and would have reduced the tax refunds the IRS would have paid out based on the theft loss. Conversely, when SIPC withheld SIPC advances from these Madoff victims which increased the deductible theft loss, and increased the amount the IRS had to pay in refunds on the allowed theft loss. In other words, under SIPC everyone loses -- except SIPC and the financial services industry -- which get a $1 billion windfall and reduced fees (amounting to a bailout) respectively.

FACT: Although SIPA, by its express terms, requires the registered brokerage industry to fund SIPC at sufficient levels to enable SIPC to pay all required statutory advances and benefits, for many years each brokerage firm paid only $150 dollars per year for the privilege of proclaiming SIPC membership by the firm and protection for the customers, despite the enormous increase in the size (and risk to clients) of brokerage firm failure. This left the SIPC fund woefully underfunded when the Madoff fraud surfaced and led the Chairperson of the SEC Mary Shapiro to acknowledge in her Congressional testimony that the "problem" was that there was just not enough money to provide SIPC relief for all of the Madoff victims as SIPA required.[10] This, however, should not have been a surprise to anyone, least of all the SEC. SIPC's underfunding has been questioned for years by Congress, with no remedial actions taken until the Madoff scandal came to light.

FACT: SIPA expressly requires SIPC to make advances from the SIPC Fund "promptly" to relieve the financial distress of customers while the Trustee seeks to recover customer property from complicit third parties. But in addition to denying any protection, whatsoever, to over half of BLMIS' customers, the actual disbursement of funds to even eligible customers has been delayed more than three years, with no end in sight -- and without any hint that compensatory interest will ever be paid to compensate for the delay.

FACT: The SIPA statute contains a specific definition of Net Equity and further provides it may not be changed by SIPC, reserving that right exclusively to Congress.[11] Despite this Congressional prohibition, SIPC and the Trustee have acted as though they have Carte Blanche to adopt whatever "definition" of Net equity suits their interests. This not only violates the statute but is inherently dangerous. Since SIPC chooses the trustee and SIPC alone decides how much to pay that Trustee, it is hardly surprising that, as in Madoff, a trustee will, consciously or otherwise, choose a definition that benefits and protects the interests of SIPC (and

[10] . The OIG report also reported the Chairman's concern about the ability of the SIPC fund to handle the impact of the Madoff insolvency. Left unexplained by Chairperson Shapiro is how then there was enough money to pay the Trustee and his law firm a projected BILLION DOLLARS in fees and expenses

[11] *See*, 15 U.S.C.§78ccc(b)(4)(A) & 15 U.S.C.§78lll.

the securities industry), relegating the needs of the victims to secondary status. This is a universal problem and what has happened to the Madoff victims here can happen to other victims of future brokerage firm failures and fraud.

<u>FACT</u>: The Congressional history of SIPA confirms that it was intended to provide protection for brokerage customers when their securities “have been lost, improperly hypothecated, misappropriated, never purchased, or even stolen”.[12] However, in its zeal to protect the SIPC fund in the Madoff debacle, SIPC and the Trustee have effectively written this core protection out of the law and, in the process, have defied the will of Congress.

<u>FACT</u>: Despite what will invariably be SIPC’s protestations to the contrary, SIPC has a longstanding history of denying valid customer claims, forcing victims to undertake years of costly and contentious litigation. The SEC, despite statutory responsibility for overseeing SIPC, has essentially allowed SIPC free rein to do as it pleases, without restraint or effective oversight.[vii]

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With these facts as a backdrop, no investor can ever comfortably feel protected by SIPA; they should no longer believe that if their brokerage firm fails, they will at least receive their promised SIPC coverage to partially reduce their loss. If the Madoff liquidation is any indicator, SIPC coverage will effectively be non-existent for most securities fraud victims, a result which is antithetical to fostering investor confidence.

After Madoff, what informed or prudent investor can ever feel safe withdrawing <u>any</u> money from a brokerage account for fear that years, or even decades, later, a future SIPC trustee will sue to take back those funds. How can anyone be expected to invest with any degree of confidence under such circumstances?

And who is most affected by this? Clearly, it is the small non-institutional investor -- the elderly, the retiree, the sick – all of whom need to access their brokerage account profits regularly in order to live and pay their bills. These victims have already lost their life savings to a fraudster. It is unthinkable to subject them to yet another devastating confiscation. [13]

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12 H.R. Rep. 95-746, 95th Cong., 1st Sess. (1977) at 21. *See also*, S.Rep. 95-763, 95th Cong.2d Sess. (1978) Sess.(1978) at 2

13 Imagine if similar procedures were adopted by the banking industry under FDIC? Imagine the uproar if after years of living on interest earned from a bank account, the bank suddenly became insolvent due to the bank president’s Ponzi scheme fraud and instead of receiving FDIC coverage, customers were told they had to repay the bank the interest previously withdrawn. As inconceivable as that sounds, that is precisely the underlying rationale for denying Madoff victims SIPC coverage and for the reprehensible clawback actions brought against these innocent victims.

If SIPC's current self-serving approach is left in place, a further loss of investor confidence will inevitably follow. Responsible financial advisors and brokers will have to explain to their clients that SIPC protection is replete with caveats that will not be known to the investor until their investments may be in jeopardy. They may be informed that SIPC has recently decided that profits may not be protected, that funds withdrawn from an account may reduce SIPC protection, or worse, they may be clawed back. A responsible practitioner may tell their customer what their true account value – their net equity – really is, and that it may be far lower than their account statement values. The public hazard, particularly to those living on income and thereby reducing their potential SIPC protection, is clear and beyond belief.

No one is asking SIPC to provide insurance against a market place decline in a customer's investment. That is an investment risk that is not covered by SIPA, and properly so. Again, it is the primary factor distinguishing SIPA coverage from FDIC coverage; in all other material respects, SIPA was patterned after FDIC coverage and was intended to provide that same degree of comfort and protection against institutional failure, despite recent insistence by SIPC and its supporters to the contrary. But what is needed is the basic SIPC coverage promised to investors for more than forty years.

As applied in Madoff by SIPC and its Trustee, we are left with a statute enacted by Congress to *protect* investors and foster investor confidence accomplishing precisely the opposite result. Coverage is riddled with uncertainty and without any clarity as to what SIPC will, or will not, protect. Further, investors are now faced with the prospects of staggering clawback actions against them, ostensibly under the guise of SIPA itself. This is a perverse and untenable circumstance. It brings into sharp focus the urgent need for Congress promptly to pass H.R.757, to restore SIPA to what Congress intended and to eliminate the ability of SIPC or any future trustee to craft artful techniques to deprive investors of the protections mandated by Congress.

H.R.757 addresses squarely and unambiguously a number of the more glaring deficiencies that have emerged during the process of SIPC's mismanagement of SIPA and the SEC's failure to rein in SIPC's wrongful activities.

- First, it will require SIPC and all future Trustees to determine Net Equity of an innocent non-institutional customer using the customer's final account statement, i.e. on the basis of what the customer reasonably understood and expected he is owed by the brokerage firm. At the same time, it will provide no comfort or protection to any customer who is found to have been complicit with the broker's fraud since those customers will clearly not qualify as "innocent".

- It will also protect an innocent non-institutional customer from the costs, emotional toll and potential financial devastation of clawback actions. Again, H.R.757 will not shelter those who acted with wrongful knowledge of or complicity in the fraud. Again, they will not qualify as "innocent" and will thus fall outside of the safe harbor of H.R.757.

- H.R.757 will impose a more stringent standard for registered professionals relating to what they knew or should reasonably have known and will provide meaningful and practical incentives for them to report perceived fraudulent conduct to the appropriate regulators in order for them to be protected from liability.

- It will eliminate the unseemly practice -- and the obvious conflicts of interest- inherent in allowing SIPC to choose the Trustee and then to determine how much that Trustee can charge for his and his law firm's services. Under H.R. 757, the SEC will create an panel of independent potential trustees and the Court will select the trustee from that panel. Moreover, the Court, not SIPC will determine the trustee's compensation consistent with the manner in which non-SIPC bankruptcy trustees are compensated

- Critically, H.R. 757 will make clear to **all** investors already shaken by the events since 2008, and further frightened by the high-profile failures of major brokerage firms, that account statements will be honored in the event of a brokerage firm failure and will not be ignored at the whim of some future SIPC Trustee based on some amorphous and subjective view of fairness. At this critical juncture, certainty and clarity is needed, now more than ever, if our capital markets are to continue to grow and if investor confidence is to be restored and nurtured.

Passage of H.R.757 will reaffirm the type of protections Congress mandated for victimized brokerage customers when SIPA was enacted. It will end the insanity of allowing clawbacks against innocent victims -- a process that virtually criminalizes the victim and dramatically erodes investor confidence. H.R.757 will also correct some of the more significant deficiencies in the administrative operations of the current SIPA statute, including, most significantly ending the conflict of interest inherent in allowing a quasi-governmental agency to hand-pick its own trustee, a person who has a vested interest in catering to the needs and wishes of the paymaster. It will help restore investor confidence in the securities markets and, hopefully eliminate -- or at least minimize -- the extreme investor cynicism that currently exists. It will provide necessary clarity and certainty in place of the uncertainty and chaos which currently exists. It will reiterate to investors, that Congress intends to stand by its promises of investor protection now, and in the future.

In sum, H.R.757 is desperately needed to restore the protections mandated by Congress to victims of frauds such as Madoff and the desired confidence in our capital markets that our economy needs and requires to grow. We urge the swift passage of H.R.757[14]

[14] Passage of H.R.757 is the beginning not the end of a necessary reform process Further improvements and changes to our investor protection system are needed. My prior testimony submitted to this committee, along with materials submitted to the SIPC Modernization Task Force articulate some of those thoughts. Clearly, protections are needed for other victims of this type of fraud as well, including victims in qualified plans and other indirect investors. But a first step is essential. Future promises will mean nothing, if we don't follow through on the promises already in place.

- ENDNOTES

[i] Joel Seligman, *The Transformation of Wall Street*, Third Edition, p450 +

[ii] Wyett Wells, *Certificates and Computers: The Remaking of Wall Street, 1967-1971; Harvard Business History Review, 2000; p 204+*

[iii] SEC, *Study of Unsafe and Unsound Practices of Brokers and Dealers, Report and Recommendations;* pursuant to SIPA Act of 1970; for Committee on Insterstate and Foreign Commerce, Washington, D.C. 1971; p20, 44, 145-146.

[iv] I.e. Ira Haupt & Co, a mid-sized Wall Street brokerage was closely tied to the Tino DeAngelis "Salad Oil Man" Ponzi theft scheme; Robert Vesco, and his financial scandal and political connects was major news through 1970.

[v] Legislation introduced, S 2348, *The Federal Broker-Dealer Investment Corporation Act*, 1970. This was stalled and subsequently superseded by HR19333, which became the SIPA law.

Joo, Thomas W., *Who Watches the Watchers? The Securities Investor Protection Act, Investor Confidence, and the Subsidization of Failure,* Southern California Law Review, Vol 72:1071, 2000; p1080+

[vi] Sidney Robbins, *The Paper Crisis in the Securities Industry*, Lybrand, Ross, 1969; p6

[vii] Gretchen Morgenson, *Investor Beware; Many Holes Threaten Safety Net for Investors of Failed Brokerages,* NY Times, Sept 25, 2000

481 - Statement on Signing the Securities Investor Protection Act of 1970. *December 30, 1970*

I AM SIGNING today the Securities Investor Protection Act of 1970. This legislation establishes the Securities Investor Protection Corporation (SIPC), a private nonprofit corporation, which will insure the securities and cash left with brokerage firms by investors against loss from financial difficulties or failure of such firms. Protection is provided up to an aggregate of $50,000 per account, with a limit on coverage of cash of $50,000.

In my message on economic policy and productivity on June 17, 1970, I urged the formation of a corporation to afford protection to small investors, backed first by industry payments and then by funds from the U.S. Treasury. The bipartisan efforts of the Congress, the administration, and the industry have now resulted in this legislation--a vitally important advance in the consumer-protection field.

Just as the Federal Deposit Insurance Corporation protects the user of banking services from the danger of bank failure, so will the Securities Investor Protection Corporation protect the user of investment services from the danger of brokerage firm failure.

This act protects the customer, not the broker, since only the customer is paid in the event of firm failure. It does not cover the equity risk that is always present in stock market investment, but it will assure the investor that the solvency of the individual firm with which he deals will not be cause for concern. It protects the small investor, not the large investor, since there is a limit on reimbursable losses. And it assures that the widow, the retired couple, the small investor who have invested their life savings in securities will not suffer loss because of an operating failure in the mechanisms of the marketplace.

Virtually all brokers and dealers in the securities industry will be members of SIPC. These members will provide $75 million from assessments, trust fund transfers, and lines of credit from commercial banks within 120 days. The industry will continue to pay assessments based on a percentage of their gross revenues until the fund reaches $150 million. If, contrary to expectations, this fund at any time should prove inadequate, SIPC may also call upon a $1 billion line of credit from the U.S. Treasury. Any funds provided by the Treasury will be recovered from subsequent assessments.

This legislation contains a specific statutory mandate to the Securities and Exchange Commission to promulgate rules and regulations with respect to the financial responsibility and related practices of brokers and dealers. The SEC is given flexibility in establishing those rules and regulations.

The functioning of the securities industry is a key element in providing the means for continued growth of American business and the economy of this country. Protection for the customer is essential, and has been provided here, as in the mutual fund bill [Public Law 91-547] which I recently signed. The Government and the industry must work together on seeking prompt solutions to the problems of the securities business. While those problems are being defined and resolved, the user of investment services, the small investor, will be protected.
Note: As enacted, the bill (H.R. 19333) is Public Law 91-598 (134 Stat. 1636).

Citation: Richard Nixon: "Statement on Signing the Securities Investor Protection Act of 1970.," December 30, 1970. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=2870.

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name: Ron Stein, CFP	**2. Organization or organizations you are representing:** Network for Investor Action & Protection (NIAP)
3. Business Address and telephone number: [redacted]	
4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify? ☐ Yes ☑ No	**5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?** ☐ Yes ☑ No
6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.	
7. Signature:	

Please attach a copy of this form to your written testimony.