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**Testimony Before the
United States House of Representatives Committee on Financial Services
Subcommittee on Capital Markets, Insurance and Government-Sponsored Enterprises**

“The Securities Investor Protection Corporation: Past, Present & Future”

Wednesday, March 7, 2012

By

Steven B. Caruso

Maddox Hargett & Caruso, P.C.

Chairman Garrett, Ranking Member Waters and members of the Subcommittee:

I am Steven B. Caruso, the resident partner in the New York City office of Maddox Hargett & Caruso, P.C., a law firm whose practice is almost exclusively devoted to the representation of public investors in connection with their disputes with the securities industry. I am a past President and a past member of the Board of Directors of the Public Investors Arbitration Bar Association (“PIABA”), which is the largest national association of attorneys whose individual law practices focus on the representation and protection of public investors in securities arbitration proceedings, and I am also the current Chairman of the National Arbitration and Mediation Committee (“NAMC”) of the Financial Industry Regulatory Authority, Inc. (“FINRA”), which is the advisory group that provides recommendations on the rules, regulations and procedures governing securities arbitrations, mediations and dispute resolution activities.

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In June of 2010, I was asked to serve as one of the twelve (12) members of the SIPC Modernization Task Force ("SIPC Task Force"), a group which consisted of investor advocates, representatives of the securities industry, government regulators and academia, from across the nation, as well as one international member.

The stated mission of the SIPC Task Force was to undertake a comprehensive review of both the Securities Investor Protection Act ("SIPA") and the Securities Investors Protection Corporation's ("SIPC") operations and policies, and to propose reforms to the Board of Directors of SIPC and other interested parties, with respect to statutory amendments and other operational and/or procedural refinements, as may be appropriate, given the passage of time since the original enactment of SIPA, changes that we have all experienced in the securities industry and judicial precedents and/or interpretations thereof.

I am honored to be able to have the opportunity to share with you my thoughts and perspectives on the SIPA and SIPC, from the point of view of both my professional experiences as an investor advocate and, of equal importance, as a member of the SIPC Task Force.

Historical Overview of SIPA & SIPC

When the United States Congress enacted SIPA in 1970, and created the SIPC, its stated purpose was to promote investor confidence in the nation's securities markets through the extension of certain protections against certain losses to customers resulting from the financial difficulties and/or failures of their broker-dealer firms.

SIPC is a nonprofit membership corporation whose members are, with certain limited statutory exceptions, all persons registered as brokers or dealers under Section 15(b) of the Securities Exchange Act of 1934 and all persons who are members of a national securities exchange. As of December 31, 2010, it is reported that there were 4,773 members of SIPC.

Since the inception of SIPC in 1970 through the end of 2010, it has been reported that SIPC had commenced 322 customer protection proceedings, in accordance with the requirements that are set forth in SIPA, and, during that same period of time, it is estimated that SIPC distributed cash and securities to an estimated 739,000 customers of those failed brokerage firms in the approximate aggregate amount of \$109.3 billion.

The monetary resources that are required to protect and reimburse customers of failed broker-dealers are derived from three (3) primary sources – the assets in the possession of the trustee for the estate of the failed broker-dealer, assessments that are collected from SIPC members and interest that is earned on SIPC’s investment in United States government securities (collectively the “SIPC Fund”). As a supplement to the SIPC Fund, the United States Securities & Exchange Commission (“SEC”) has the authority to lend SIPC up to \$1 billion which it, in turn, would borrow directly from the United States Treasury.

The SIPC Modernization Task Force

I believe that the objective of the SIPC Task Force was clear and unequivocal – to modernize SIPA and SIPC so as to ensure that its role in the protection of investors and the promotion of investor confidence in the nation’s securities markets remains viable.

Beginning at the inaugural meeting of the SIPC Task Force in June of 2010 and continuing thereafter at a number of subsequent meetings and through numerous telephone conferences, the members of the SIPC Task Force discussed and debated a number of issues that were applicable to our mission statement and objective.

Among the topics that were reviewed by the SIPC Task Force were SIPC’s corporate governance, adequacy of existing SIPC protection, the ongoing viability of the SIPC Fund, inherent limitations on investor protection, investor education, the misnomer of what has commonly been referred to as excess SIPC “insurance” and the relationship of all of these initiatives in the context of the international arena.

It is notable that, in connection with the efforts that were undertaken by the SIPC Task Force, an interactive website was established (www.SIPCModernization.org) through which the general public was given the opportunity to provide comments and recommendations to SIPC and each of the members of the SIPC Task Force. It is also notable that, in the course of the review that was undertaken by the SIPC Task Force, several public forums were held through which investors and other interested parties were given the opportunity to provide comments, thoughts and suggestions on the process that was undertaken.

In February of 2012, the SIPC Task Force presented its findings, conclusions and proposals for reform in a written report that was submitted to the SIPC Board of Directors (“SIPC Task Force Report”), for their consideration, and a complete copy of our report was made publicly available on both SIPC’s website and the dedicated website of the SIPC Task Force.

Focus on Specific SIPC Task Force Topics

In my role, as a member of the SIPC Task Force, and based on my own personal experience with SIPA and SIPC, as an attorney who has provided representation to numerous investors in SIPC proceedings, it is my personal belief that there are a number of recommendations, that are included within the SIPC Task Force Report, which should be immediately adopted by SIPC's Board of Directors and remain a focus of the oversight responsibilities of the members of this Subcommittee.

These recommendations include, but are not necessarily limited to, the following:

1. First and foremost is the SIPC Task Force recommendation that the limitation on the maximum amount of protection that is provided by SIPC in a SIPA proceeding, which is currently \$500,000 per customer, should be increased to \$1.3 million and that, moving forward, the level of protection should be indexed to the rate of inflation.

The rationale of the SIPC Task Force, with respect to this recommendation, was predicated on a number of factors which included, for example, that \$1.3 million would represent the current indexed value of what \$500,000 in 1980 would be worth today; that the \$1.3 million level of protection would be sufficient to protect more than 90% of all retail customer accounts; and that this increased level of protection would more adequately reflect the economic realities of the securities industry today and the amount of investable assets that investors entrust to their financial advisors.

2. The second SIPC Task Force recommendation is the recommendation that would eliminate the current distinction in the SIPA level of protection between "claims for cash" and "claims for securities."

The rationale of the SIPC Task Force, with respect to this recommendation, was predicated on a number of factors which included, for example, that the distinction is arbitrary and has, in the past, led to the disparate treatment of customers in SIPA proceedings; it has generated an atmosphere of confusion on behalf of the investing public who simply do not understand the distinction between the nature of the protections that are provided by SIPC when their broker-dealer firms encounter financial difficulties and/or fail; and it is a distinction that is no longer grounded in reality given the way that cash and securities are held at broker-dealers.

3. The third SIPC Task Force recommendation that I would like to highlight is the recommendation that would require amendments to SIPA so as to provide pass-through

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SIPC protection to individual investor participants in defined benefit pension plans, defined contribution plans and deferred profit sharing plans.

The rationale of the SIPC Task Force, with respect to this recommendation, was predicated on a number of factors which included, for example, that there are an estimated 40 million participants who have their assets invested in privately sponsored pension plans who, under the current SIPA limitations, are exposed to catastrophic losses in the event that their broker-dealers should fail; and that these investments typically represent the retirement accounts and life savings of many indirect investors who do not have a choice as to where their assets are held.

4. And the fourth SIPC Task Force recommendation that I would like to mention in my comments today is the recommendation that would impose a minimum fee assessment of at least \$1,000 on every SIPC broker-dealer member.

The rationale of the SIPC Task Force, with respect to this recommendation, was predicated on a number of factors which included, for example, a recognition of the fact that prior SIPC member assessment levels – which were historically \$150 per year – were unjustifiable from an economic perspective; the amendments that were incorporated within the Dodd-Frank Act had the unintended consequence of reducing SIPC member assessment levels to amounts that were even lower than \$150 per year or, in some instances, those assessments were eliminated in their entirety; and the continuing concerns as to the economic viability of the SIPC Fund itself given the potential adverse ramifications that could be associated with recent liquidations – and the potential future liquidations – of major broker-dealers.

Conclusion

Thank you for providing me with the opportunity, as a member of the SIPC Task Force, to share with you my thoughts and perspectives on both SIPA and SIPC.

I would be happy to entertain any questions that the members of the Subcommittee may have.

