Statement

of

Stephen P. Harbeck, President and Chief Executive Officer

Securities Investor Protection Corporation

Before the

Capital Markets and Government Sponsored Enterprises Subcommittee

of the

House Financial Services Committee

March 7, 2012

Chairman Garrett, Ranking Member Waters, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the important work of the Securities Investor Protection Corporation ("SIPC"). My name is Stephen Harbeck, and I am the President and CEO of SIPC. I am pleased to appear before you today with Ms. Sharon Bowen, the Acting Chair of SIPC, who will address the recommendations of the SIPC Modernization Task Force.

Since the collapse of the Lehman Brothers entities in the fall of 2008, SIPC has been at the center of the subsequent financial crisis. I would like to provide an overview of SIPC's role in the major events that have arisen from 2008 through the present day.

I.

Ongoing SIPA Liquidation Proceedings of Note.

A. Lehman Brothers Inc.

The Chapter 11 proceeding for Lehman Brothers Holdings Inc. ("LBHI"), and the Securities Investor Protection Act ("SIPA") liquidation of its subsidiary broker-dealer, Lehman Brothers Inc. ("LBI"), is the largest bankruptcy, of any kind, in history. SIPC is extremely proud of its role in protecting investors in that unprecedented case.

Distributions to Customers in the LBI Liquidation

On September 19, 2008, within hours of his appointment by the United States District Court for the Southern District of New York, the Trustee, James W. Giddens, applied for and received permission from the United States Bankruptcy Court for the Southern District of New York to transfer customer accounts to a solvent brokerage firm. The hearing in the Bankruptcy Court that afternoon, which extended into the early morning of the following day, was described in the American Bankruptcy Institute Journal as the most important bankruptcy hearing in history.[1] Over the vigorous opposition of some creditors, the Trustee, supported in court by SIPC, sought and obtained authority to transfer the accounts to Barclays Bank and Ridge Clearing. As a result, control of approximately **110,000 customer accounts** at LBI, containing approximately **$92.3 billion** in assets, was returned to customers, fully satisfying their claims, within days after the start of the SIPA proceeding. The Trustee and SIPC overcame substantial logistical problems to effect that transfer, and that achievement was critical to maintaining

[1] S. Lubben, The Sale of the Century and Its Impact on Asset Securitization: Lehman Brothers, American Bankruptcy Institute Journal, December/January 2009 ("Lubben"). Id., fn 4.

customer confidence in not only the American securities markets, but also the securities markets across the globe during the 2008 financial crisis.[2]

The satisfaction of claims in LBI addressed SIPC's primary mission...the protection of small investors... virtually immediately, and none of the related entities were nearly as complex as LBI.[3] Every investor with an account and a valid claim of less than $500,000 in assets owed in connection with the account has been fully satisfied.

Other Accomplishments in the LBI Liquidation

Some other significant facts and major achievements in the LBI case include:

- The magnitude and complexity of the LBI liquidation is apparent from the fact that the size of the estate marshaled and administered by the Trustee exceeds $117 billion.

- The Trustee has defended against, and pursued, high stakes litigation in the liquidation proceeding and he has done, and is doing, so successfully. As just a couple of examples -- the Trustee prevailed in his recovery against Barclays Bank of $2.3 billion in a dispute over margin assets seized by Barclays. That matter continues to be litigated on appeal. Likewise, the Trustee recovered $757.4 million cash, and $106 million in physical securities, in settlement of a dispute with JP Morgan Chase. Moreover, the Trustee has prevailed in other

---

[2] Lubben noted as follows, fn 4: "See proffered testimony of Barry W. Ridings at Transcript, p. 146 – ("Any failure to consummate [the Barclays's sale] may potentially cause a major shock to the financial system") and the remarks of Judge Peck, Transcript at 171 ("in unrebutted testimony [Mr. Ridings] indicated through proffer that the markets, in effect, would tank [if the sale was not approved].")

[3] In enacting SIPA, Congress intended to protect the small investor. SIPC v. Morgan, Kennedy & Co., 533 F. 2d 1314, 1321 (2d Cir. 1976); McKenny v. McGraw (In re Bell & Beckwith), 104 B.R. 842, 855 (Bankr. N.D. Ohio 1989), affd, 937 F.2d 1104 (6th Cir.1991) (Congress was primarily concerned with protecting small investors).

litigation matters involving complex securities issues such as the proper valuation of short positions or the determination of tri-party set-off rights.

- The claims that remain for resolution by the Trustee are neither small nor easily resolved. Remaining claims involving the LBI U. K. firm, LBI's parent company, and numerous hedge funds will involve a dispute over approximately $42 billion.

Approval of the Chapter 11 Plan for LBHI

On December 6, 2011, the United States Bankruptcy Court for the Southern District of New York approved a liquidating Chapter 11 plan for LBHI. In doing so, Judge James Peck said that the case represented the most "overwhelming outpouring of creditor consensus in the history of insolvency law. What a difference three years makes." The packed courtroom applauded after Judge Peck's remarks.[4]

Judge Peck, who presided over the Lehman case, took a moment at the confirmation hearing to offer his views on the challenges in restructuring debts of this magnitude and complexity:

> My world changed when the Lehman cases were assigned to me and so did yours. For me, it has been a once in a lifetime experience. To have worked across the bench from so many outstanding professionals in promoting conflict resolution and helping to bring these truly extraordinary one-of-a-kind cases to this culminating substantive moment, superlatives abound. And we have heard them all and probably used them all. This is the biggest, the most incredibly complex, the most impossibly challenging international bankruptcy that ever was.
>
> But the greatest superlative of all is reserved for today. This largest ever unplanned bankruptcy that started in chaos, accelerated the financial crisis and eroded confidence in the global financial system also has yielded the most overwhelming outpouring of creditor consensus in the history of insolvency

[4] Lehman Closes a Chapter: As $65 Billion Bankruptcy Plan is Approved, Cheers and Tears Color Courtroom"
http://online.wsj.com/article/SB10001424052970204770404577082451546013514.html

> law. What a difference three years can make. Never before have divergent holders of 450 billion dollars in claims recognized the benefits of pragmatic compromise and come together as one in support of a single Chapter 11 plan. This is a monumental achievement in our field, awe-inspiring, really, that, to me, represents the highest and best use of Chapter 11 in the public interest.
>
> For myself, I'm extremely proud to have presided over this transparent, fair and the remarkably successful process that stands out as perhaps the finest example of the flexibility, power and utility of the United States bankruptcy system. Our system is not perfect. But together we have shown the world that it can work very well indeed. Lehman may once have been a too-big-to-fail systemically significant global financial institution. But it was not too big to resolve in Chapter 11.
>
> I congratulate each and every professional in every single law firm and advisory firm here and in foreign jurisdictions that contributed in ways recognized and unrecognized, large and small, to this historic confirmation of Lehman's plan. You should all feel great pride in what has been accomplished.[5]

SIPC concurs with Judge Peck's remarks and will continue to move the case to conclusion.

Litigation success in the United Kingdom

I am pleased to report that last week, the Supreme Court, the highest appellate court in the United Kingdom, has ruled in a way that greatly assists the customers of LBI, the United States SIPC member. The Court held that cash sent by customers to LBIE, a British entity, is deemed to be segregated for customers immediately upon receipt by LBIE, rather than at the point where LBIE actually placed the funds in a segregated account. Thus, if funds found their way to a "house" account, these funds will be deemed segregated. (This is the rule in cases under SIPA as well.)

---

[5] Weil Bankruptcy Blog: - http://business-finance-restructuring.weil.com/chapter-11-plans/confirmed/#axzz1l4PJ5URO

This result in this Lehman matter also has very positive ramifications for the American customers of MF Global.

B. Bernard L. Madoff Investment Securities LLC

While Lehman Brothers is the largest bankruptcy of any kind in history, the Madoff case, initiated three months later in December 2008, is the largest Ponzi Scheme in history. The Madoff case presented a completely different set of challenges.

Claims Determination and Satisfaction

The first major challenge for SIPC and Irving Picard, the Trustee in the Madoff case, was to determine who was eligible to share in "customer property" and advances from SIPC in this massive fraud. While the scope and duration of the Madoff fraud was unprecedented, SIPC had dealt with similar, albeit smaller Ponzi Schemes, in the past. SIPC and the Trustee took the same positions taken by SIPC and other trustees in prior SIPA cases involving fictitious pricing, and used a "net investment" methodology. This is also consistent with how virtually all other Ponzi Scheme claims are calculated. Persons who withdrew more than they deposited were thus ineligible to share in "customer property" or SIPC advances. The position taken by SIPC and the Trustee was affirmed by the United States Bankruptcy Court, and the United States Court of Appeals for the Second Circuit, and the latter Court refused to review the decision en banc. The matter is now the subject of three petitions for certiorari to the United States Supreme Court.

In other claims related matters, the Bankruptcy Court and the United States District Court upheld the Trustee's Determinations concerning persons who invested in hedge funds which, in turn, invested with Madoff. The Courts held that each of the hedge funds was a customer but the limited partners who owned the respective hedge funds were not entitled to "customer" status. That matter is on appeal to the Second Circuit.

Asset Recovery

The Trustee and his counsel have made enormous progress in recovering assets for ultimate distribution to the most impaired class of creditors, to wit, those claimants who have not recovered all of their original investments with Madoff. The Trustee's website summarizes the more than $9 billion in such recoveries to date, and that summary is attached as Exhibit A. This represents approximately half of the amount originally invested by claimants with Madoff.

This is an extraordinary result. The tools available to the Trustee under SIPA and the Bankruptcy Code made these recoveries possible.

Certain hedge funds had valid claims against the Madoff estate, but were required to return the proceeds of preferential and fraudulent transfers before sharing in any distribution. In entering into settlement agreements in these situations, the terms of the settlement agreements typically specify (at the insistence of the trustee and SIPC) that the proceeds of any subsequent distributions to the hedge funds flow directly to investors, without management receiving any of the money. Because SIPC knows this issue to be of concern to many members of the Subcommittee, a more detailed discussion of this issue is attached as Exhibit B.

C. MF Global Inc.

SIPC was called upon to initiate the liquidation of MF Global on virtually no notice. Unlike bank failures, brokerage firm failures typically take place with very little advance warning. The initiation of the liquidation for MF Global is very instructive. It provides insight into how SIPC responds immediately in a crisis situation.

On Monday morning, October 31, 2011 at 5:20 a.m., I received a telephone call from a representative of the SEC's Division of Trading and Markets who was then in New York. The purpose of the call was to inform SIPC that a SIPA proceeding was necessary for MF Global. This was the first notice to SIPC that such action was required to protect investors. I immediately

telephoned SIPC's Chairman, Orlan Johnson, and sent the Chairman an email, indicating the need to start the case. The Chairman is authorized by SIPC's Bylaws to approve the initiation of a proceeding. I also telephoned other officers and senior members of the SIPC staff, who convened at SIPC's office at about 7:00 a.m. SIPC's legal staff drafted pleadings to begin the liquidation. SIPC received a formal written notification from the SEC that a liquidation proceeding was appropriate under 15 U.S.C. section 78eee(a)(1) via email from an SEC official at 7:29 a.m., stating the basis for commencing the case.

While four members of the SIPC staff flew to New York, the relevant personnel at SIPC made simultaneous inquiries to a number of professionals as to whether those persons, and the law firms with which they were associated, were presently engaged in the MF Global matter. This was done so as not to designate a person or firm with an irreconcilable conflict of interest which would have prevented their serving under the "disinterestedness" test. Approximately ten possible trustees and counsel having the requisite bankruptcy experience, skill and resources, were considered. Some were not called because it was public knowledge that those professionals were indeed involved in the MF Global case. Approximately five persons were contacted. Of the five, only two law firms were eligible to serve; three had conflicts. Of the two remaining law firms, one had never served in a previous SIPA case. MF Global presented the unprecedented situation of a large brokerage failure that did not only have a securities, but a multi-billion dollar commodities, business. Because this matter would not be the appropriate case for a firm with no prior experience, SIPC then determined that James W. Giddens, perhaps the most experienced individual in dealing with SIPA cases, having served as counsel or trustee in such cases since the early 1970s, was best suited for this complex case. After discussions with Mr. Giddens to assure SIPC that he and his firm had sufficient available resources and that they were disinterested,

SIPC designated him as Trustee, with Hughes, Hubbard & Reed as his counsel. All of those decisions had to be made within hours; SIPC filed its legal papers in New York, obtained a court order in New York, and Mr. Giddens took control of the MF Global premises the afternoon of October 31.

SIPA places the responsibility for choosing a Trustee and counsel on SIPC. In the MF Global case, the wisdom of this statutory provision made it possible to have a fiduciary in place less than 12 hours after SIPC was notified of the necessity to protect investors. Further, I am pleased to report that the Trustee transferred over $1.5 billion in investor assets in the MF Global case within one week. Choosing a veteran Trustee made this possible.

Presently, the Trustee has distributed 72% of assets to 27,217 commodities account holders, and 60% plus up to $500,000 to 300 securities account claimants in the case. The trustee's most recent status update of the case, dated February 6, 2011, is attached as Exhibit C.

D. **Stanford Group Company**

SIPC declined to initiate a liquidation proceeding for the Stanford Group Company because the SEC had not demonstrated that any investors left assets at the SIPC member brokerage firm. The investors voluntarily purchased certificates of deposit issued by the Stanford International Bank in Antigua. In the words of the SEC those certificates of deposit paid "excessive and perhaps impossible" rates of return. Each investor, under SIPA, either (a) has his or her certificate or (b) is entitled to the delivery of that certificate or its value, namely, the value of a CD issued by a bank under the control of liquidators in Antigua.

Let me be very clear: in the forty year history of SIPA, SIPC has never been interpreted to permit SIPC to refund the purchase price of a bad investment. This is true even when the investment was induced by the fraud of a SIPC member firm. If there is to be a change in the

law, Congress should change the law only after rigorous debate about the wisdom and implications of such a policy. The SEC should not usurp legislative authority and expand the role of SIPC far beyond Congressional intent or the plain words of SIPA.

If SIPC is to be revised to afford the protections of the SIPA statute to allow SIPC to pay claims based upon the rescission of fraudulent transactions, this is a task for Congress, after deliberation on the significant consequences of such a change.

II.

SIPC and the Dodd-Frank Act

The Dodd Frank Act made a number of changes to SIPA. First, the Act made changes to the minimum assessment charged to SIPC members. Ms. Bowen's testimony on the Task Force Report will mention a potential new amendment which should prevent an unintended result, to wit, that some SIPC members now pay no assessment.

Second, SIPC's credit line with the Treasury was increased from $1 billion to $2.5 billion.

Third, SIPC now protects cash up to $250,000 in each customer's account.

Fourth, the Dodd-Frank Act criminalized certain misrepresentations about SIPC membership, and increased criminal fines for misconduct.

Since the enactment of the Dodd-Frank statutory regime, there has been no instance where SIPC has been called upon to step in with respect to a financial conglomerate that would be wound down under that statute. While the Act authorized the FDIC to liquidate systemically significant financial firms, including those with broker-dealer subsidiaries, Congress set up the regime to be used sparingly. The fact that the Dodd-Frank statutory program was not brought to bear on the MF Global situation is a case in point. According to the filings in the Chapter 11

proceeding of MF Global' s parent company, the overall bankruptcy is the eighth largest bankruptcy in history, measured by assets. Yet the wind down of the business, and the satisfaction of claims, is proceeding under the Bankruptcy Code and SIPA, as Congress intended.

III.

H.R. 757

SIPC does not support H.R. 757. While SIPC is aware of the significant financial distress wrought by Madoff and that the intent of the bill is to provide for a more equitable distribution under SIPA, the provisions of the bill would actually:

(a) Result in a less equitable distribution,

(b) Have the unintended consequence of rewarding, encouraging, and perpetuating Ponzi Schemes,

(c) Allow a fraudulent actor to establish the distribution criteria in the subsequent liquidation proceeding.

(d) Pledge the assets of SIPC, and, indeed, the American taxpayer, to guarantee the fictional profits invented by fraudulent actors.

An analysis illustrating the inequality of distribution under the proposed legislation is attached as Exhibit D.

The bill would reverse long standing judicial precedents which are specifically designed to enforce equitable distributions. SIPC urges the Committee not to disturb the existing statutory scheme. By limiting the ability of a trustee to use preference and fraudulent transfer provisions of the Bankruptcy Code, the distribution to claimants is less equitable, by any objective standard. Further, the bill would reverse some of the salutary results achieved in the Madoff case, in that it would apply to ongoing cases. Such a result would cause chaos in the case, literally changing the law mid-stream.

H.R. 757 also removes SIPC's authority to designate a trustee and counsel in a SIPA case.

SIPC and trustees, in the words of the Second Circuit Court of Appeals, both vindicate important public interests. It would indeed be odd if trustees and SIPC disagreed often. That said, no one can make the remotest claim that SIPC chooses anyone other than extremely qualified fiduciaries. I submit that the track record of trustees in the courts demonstrates that trustees uphold the SIPA statute as Congress wrote it. That is the criteria upon which trustees should be judged.

It is true that SIPC has returned to proven experts when it is appropriate to do so. But SIPC does not choose from a "SIPC alumni" list. Out of 324 customer protection proceedings, only 2 former employees have served a total of 4 times as a trustee or counsel in a SIPA case. There is no revolving door.

IV.

H.R. 1987

SIPC does not support H.R. 1987. To the extent that bill seeks to limit the use of bankruptcy avoidance powers in a SIPA case, this bill presents the same problems as H.R. 757.

H.R. 1987 also changes SIPA by making a very broad category of individuals "customers" of a defunct brokerage firm, even where those individuals had no relationship whatsoever with the brokerage. Thus, individual limited partners in a hedge fund would be individual "customers" of a brokerage firm if the hedge fund itself held an account. This is at odds with the basic concepts of corporate ownership (that is, the hedge fund, not the partners, owns the account). To the extent H.R. 1987 would change this concept in ongoing liquidation

proceedings, it would also reverse judicial opinions in the Madoff case, and reverse other precedents dating to 1976.

As Ms. Bowen indicates in her testimony, the SIPC Modernization Task Force considered this issue and proposed that only a very narrow subset of "indirect" investors be covered in future cases. Of course, the potential costs of such a legislative change requires further study.

The bill also makes a significant change in how "customer" accounts are evaluated by introducing an "inflation adjustment" concept which does not appear in SIPA as currently enacted. This would have the effect – demonstrable in the Madoff case – of increasing the return to claimants who have already received all of their own investment proceeds at the direct expense of persons who have not received less than they invested. SIPC does not support that result. A Ponzi Scheme is a "zero sum" situation. While well intended, this provision damages those who have lost the most.

V.

H.R. 4002

The bill appears specifically designed to deal with the Stanford Ponzi Scheme, discussed above.

For the following reasons, SIPC does not support the bill.

At the outset, let us stipulate that the victims of the Stanford Antigua Bank fraud are truly victims. Nevertheless, existing law does not protect them, and H.R. 4002 cannot be reconciled with the basic policy of the existing law. It is important to understand that his approach would fundamentally change the nature of SIPC.

The bill proceeds from a premise that radically alters the fundamental protection available under the Securities Investor Protection Act (SIPA).

As we discussed infra, the reason SIPC has declined to start a proceeding in the Stanford case stems from the essential nature of the dispute. SIPC protects the "custody" function brokerage firms perform. This means that customers are protected against the loss of the cash and securities held for them by their broker-dealer when the broker-dealer fails financially. In Stanford, after literally years of factual investigation, the SEC has not produced a single customer who left assets in the custody of the SIPC member brokerage at Stanford. Indeed the SEC's then General Counsel specifically concluded that SIPA protection did not extend to the Certificate of Deposit (CD) purchasers in the Stanford case.

The persons who bought CDs in Stanford purchased CDs issued by a bank chartered under Antiguan law for which two liquidators have been appointed. The CDs have declined in value. Fraud was involved. But SIPA does not permit SIPC to repay the original purchase price to other investors who purchase fraudulent investments in Enron, or any other security, including the CDs here at issue. SIPA does not permit SIPC to rescind transactions that result in losses. The investors have their CDs. The CDs have a value, but that value depends upon what the Stanford Antigua Bank liquidators can distribute to them. The risk of loss never leaves an investor just as the prospect of profit never leaves the investor.

Other facts bear out the Stanford CD purchasers' ineligibility for protection. In buying the CDs, the investors were required to open accounts at the Antiguan Bank, not at the brokerage. Moreover, in making the purchase, each investor was required to sign a subscription agreement/investor questionnaire in which the investor acknowledged having received a Disclosure Statement. More than once, the Disclosure Statement cautions the CD purchaser that the CDs are not protected by SIPC.

The only time SIPC would decline to initiate a customer protection proceeding is where SIPC has concluded that there is no investor who fits within the "customer" definition. That is what is apparent here. The reason the SEC did not immediately refer this matter to SIPC in 2009 is because the SEC knew then that there were no "customers" that fit within the SIPA statute. Indeed, there is only one instance in 42 years where SIPC has declined to start such a proceeding, to wit, the matter involving the Stanford Financial Group. Thus, although the bill refers to "customers" of a debtor firm, there are no such persons, as that term is statutorily defined in SIPA,

The bill presents SIPC with the worst of both worlds.

Payment of a settlement is typically designed to terminate legal proceedings, or the prospect of legal proceedings. Here, the bill contemplates that SIPC would proffer certain payments to persons SIPC believes are not eligible for SIPA's protections... and still proceed with a lawsuit. To extend a realistic hypothetical: If SIPC wins the lawsuit initiated by the SEC, that would mean that the persons who had received funds were not customers entitled to receive anything. The bill literally provides for payments....and the prospect of more payments, not the end of the proceeding.

There is a clear inconsistency in the amounts mentioned in the bill and SIPA protection.

Assuming solely for purposes of argument that it made sense for SIPC to name any "settlement proffer" to claimants, section 2(c)(3)(A) of the bill makes reference to a possible limit of $500,000 for such proffer, but section 2(c)(6) treats the CD claimants as claimants for cash. The limit of protection for cash claims is $250,000.

Unless and until Congress clearly assigns SIPC the task of paying fraud claims, both the bill, and the SEC's legal position, run counter to clearly established Congressional policy.

Consider the following hypothetical dialogue:

Salesman: My brokerage firm offers Certificates of Deposit issued by an offshore Bank in Antigua. The Bank pays extraordinarily high rates of return on CDs.

Investor: That sounds suspicious to me. What if this is a fraudulent investment that is discovered after I receive the CD?

Salesman: Not a problem. SIPC will pay you up to $500,000 in such an instance. That is more than the FDIC offers!

Under the SEC's legal position in SEC v. SIPC, and under the bill, the Salesman's last statement would be true. While the Stanford victims are sympathetic, this is a fundamental departure from existing law. The consequences for persons who buy legitimate investments, and the potential costs of rescinding all such fraudulent investments made through SIPC members firms have not been considered. Indeed, federal taxpayer funds are implicated because SIPC has a line of credit with the Treasury, through the SEC. Thus, taxpayer funds could be used to restore the purchase price of a bad investment. That is a very big departure from protecting the "custody," or "safekeeping" function performed by brokerage firms, as the law provides for today. Moreover, persons who invest in fraudulent investments would be better off than those who make legitimate investments. They bear no market risk, profit from the fraud until it is uncovered, and once the fraud is uncovered, they get their money back from SIPC.

VI.

The Adequacy of the SIPC Fund

The SIPC Fund currently stands at $1.4 billion. Under SIPC's Bylaws, most recently updated in 2009, the "Target Balance" for the SIPC Fund is $2.5 billion. Absent a decision by the SIPC Board to change the rate, SIPC will continue to assess its members ¼ of 1% of each

member's net operating revenue until the Target Balance is reached between 2016 and 2017. This issue is always under review by the SIPC Board.

SIPC has sufficient funding to handle any foreseeable call on its resources under SIPA as currently constituted. I caution that if SIPC's mission is expanded by legislation to refund the purchase price of fraudulent securities transactions, judicial expansion of SIPC's clearly defined limitations, or otherwise, neither the SIPC Fund nor the Treasury line of credit will be adequate.

Conclusion.

In conclusion, the period from 2008 to 2012 has been unlike any prior experience in SIPC's history. I believe SIPC has responded effectively to the challenges presented. That is not to say that, as we look to the future, the SIPA program cannot be refined or improved.

I would be pleased to answer any questions you may have about SIPC's work.

Exhibit A

The Madoff Recovery Initiative

SUBSTANTIVELY CONSOLIDATED SIPA LIQUIDATION OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC & BERNARD L. MADOFF

RECOVERY STATUS TO DATE

RECOVERIES AND SETTLEMENT AGREEMENTS
$9.067 Billion

AMOUNT UNAVAILABLE DUE TO APPEALS AND RESERVES
$6.444 Billion

AMOUNT IN CUSTOMER FUND
$2.297 Billion

AMOUNT DISTRIBUTED FROM CUSTOMER FUND
$325.7 Million

SIPC COMMITMENT
$798.4 Million

All amounts approximate

RECOVERIES TO DATE

As of February 15, 2012 and in the 38 months since his appointment, the SIPA Trustee has recovered or entered into agreements to recover more than $9 billion, representing approximately 52 percent of the approximately $17.3 billion in principal estimated to have been lost in the Ponzi scheme by BLMIS customers who filed claims. These recoveries exceed prior restitution efforts related to Ponzi schemes both in terms of dollar value and percentage of stolen funds recovered.

Significant Recoveries to Date

IRS
On December 21, 2011, a $326 million settlement with the United States of America, on behalf of the Internal Revenue Service, was approved by the United States Bankruptcy Court for the Southern District of New York. The SIPA Trustee determined that BLMIS falsely debited the accounts of 145 foreign accountholders for alleged income tax withholding and paid to the IRS such withheld amounts related to alleged dividends. However, because no securities were purchased on which the alleged dividends were paid, no taxes should have been withheld.

Mount Capital Fund
On October 4, 2011, the United States Bankruptcy Court for the Southern District of New York approved a settlement with Mount Capital Fund, a BLMIS Feeder Fund, which is in liquidation in the British Virgin Islands, which returned $43.5 million to the Customer Fund.

Tremont Group
On July 28, 2011, the SIPA Trustee announced a settlement with Tremont Group Holdings Inc. and related entities under the terms of which the Defendants will deliver cash payments into escrow totaling more than $1 billion, which will ultimately be placed into the Customer Fund and distributed, pro rata, to BLMIS customers with allowed claims. On September 22, 2011, the agreement was approved by the United States Bankruptcy Court for the Southern District of New York, but the settlement is currently under appeal.

Greenwich Funds
On May 18, 2011, a settlement agreement was announced with Greenwich Sentry L.P. and Greenwich Sentry Partners, L.P. (combined, the "Greenwich Funds"), domestic BLMIS feeder funds operated by the Fairfield Greenwich Group ("FGG") that were 100 percent invested in BLMIS. Terms of the settlement, which was structured very similarly to the settlement with the Fairfield Funds, included a reduction in the Greenwich Fund customer claims which will ultimately benefit BLMIS customers with approved claims. Under the agreement, the Greenwich Funds also agreed to assign all of their claims against FGG management companies, officers and partners to the Trustee and to the entry of judgment for the full amount of the Trustee's claims, approximately $212 million. The settlement was approved on June 21, 2011 by the United States Bankruptcy Court for the Southern District of New York.

Fairfield Funds
On May 9, 2011, a settlement agreement was announced with the Joint Liquidators of Fairfield Sentry Limited, Fairfield Sigma Limited and Fairfield Lambda Limited (collectively, the "Fairfield Funds"). Terms of the settlement include an immediate and permanent reduction – of nearly $1 billion – in the total amount of claims against the BLMIS Customer Fund by the Fairfield Funds, which would effectively increase future payments to customers with allowed claims. In addition, the settlement agreement aligned the interests of the SIPA Trustee and his counsel with the Joint Liquidators of Fairfield Sentry, strengthening both parties' abilities to pursue and recover billions of dollars in additional claims against the owners and management of the Fairfield Funds, as well as hundreds of subsequent transferees of stolen customer property. The United States Bankruptcy Court for the Southern District of New York approved this settlement agreement on June 7, 2011.

Hadassah
On March 10, 2011, the United States Bankruptcy Court for the Southern District of New York approved a settlement between the SIPA Trustee and Hadassah in the amount of $45 million.

Union Bancaire Privée
On January 6, 2011, the United States Bankruptcy Court for the Southern District of New York approved a pre-litigation settlement between the SIPA Trustee and Union Bancaire Privée that resulted in the recovery of $470 million.

Carl J. Shapiro, et al.
On December 21, 2010, the United States Bankruptcy Court for the Southern District of New York approved a pre-litigation settlement between the SIPA Trustee and Carl J. Shapiro, Robert Jaffe and related entities in the amount of $550 million. As part of the agreement, the Shapiros also forfeited $75 million to the U.S. government.

Estate of Jeffry Picower
On December 17, 2010, the SIPA Trustee and the U.S. Government announced a groundbreaking $7.2 billion recovery agreement with the estate of Jeffry Picower; $5 billion of the settlement to go to the SIPA Trustee for equitable distribution to BLMIS customers with allowed claims and $2.2 billion forfeited to the U.S. government.

On January 13, 2011, the United States Bankruptcy Court for the Southern District of New York approved this settlement, but the settlement is currently under appeal by third parties. The government forfeiture order also is being appealed.

Norman F. Levy, et al.
On February 18, 2010, the United States Bankruptcy Court for the Southern District of New York approved a pre-litigation settlement between the SIPA Trustee and the estate of Norman F. Levy. This settlement resulted in the return of $220 million (the "Norman Levy Settlement"). Certain customers moved to set aside the Court's Order approving the Norman Levy settlement. The Bankruptcy Court denied the motion, and the claimants filed an appeal in United States District Court on April 11, 2011. On February 16, 2012, the District Court upheld the Bankruptcy Court's earlier ruling approving the SIPA Trustee's settlement with the Levy family.

Optimal
On June 16, 2009, the United States Bankruptcy Court for the Southern District of New York approved a pre-litigation settlement between the SIPA Trustee and Optimal Strategic U.S. Equity Ltd. and Optimal Arbitrage Ltd. This settlement resulted in the recovery of more than $235 million.

Total Recoveries by Interim Report Periods
Amounts shown do not include Court-approved settlements under appeal or not yet collected

SIXTH INTERIM REPORT | FIFTH INTERIM REPORT | FOURTH INTERIM REPORT | THIRD INTERIM REPORT | SECOND INTERIM REPORT | FIRST INTERIM REPORT

SIXTH INTERIM REPORT
Period ended **September 30, 2011**
Total received **$2.7 billion**

DESCRIPTION	AMOUNT
Transfers from Debtor's Estate – Securities	$291,203,371.40
Transfer from Debtor's Estate – BNY account	$336,660,934.06
Transfers from Debtor's Estate – Chase account	$235,156,309.36
Transfers from Debtor's Estate – Other	$4,036,145.08
Interest and Dividends	$1,713,881.88
Closeout Proceeds – Broker Dealers	$37,273,877.23
Closeout Proceeds – NSCC	$21,783,082.40
Closeout Proceeds – DTCC	$17,304,329.91
Sports Tickets	$89,690.80
Bank Dept Participation	$4,755,690.63
DTCC Shares	$204,170.51
Market Making Business	$1,389,423.16
Abtech	$495,000.00
Administrative Subtenant Rent Revenue	$517,390.79
Adjusting Administrative Subtenant Rent Revenue	($517,390.79)
Refunds – BLM Air Charter	$752,963.00
Refunds – Deposits	$9,841.45
Refunds – Dues/Subscriptions	$177,247.15
Refunds – Car Registrations	$157.00
Refunds – Vendors	$61,567.20
Refunds – Transit Cards	$793.61
Refunds – Insurance/Workers Comp	$402,859.56
Refunds – Political Contributions	$144,500.00
Refunds – Other	$50.84
Recoveries – Customer Avoidances	$139,209,034.46
Recoveries – Pre-Litigation Settlements	$1,521,631,048.00
Recoveries – Litigation Settlements	$40,609,297.32
Recoveries – Donation Settlements	$500,000.00
Recoveries – Vendor Preferences	$804,850.39
Recoveries – Employees	$10,674.74
Recoveries – Taxing Authorities	$12,777.56

Recoveries – Class Actions	$380,488.99
Recoveries – NASDAQ	$308,948.49
Recoveries – NYSE	$183,683.79
Recoveries – Transaction Fees	$96,816.23
Recoveries – Other	$296,298.73
Miscellaneous	$0.36
Earnings on Trustee's Investments	$15,239,625.47
Interest on Trustee's Savings Accounts	$473,893.50

Exhibit B

SECURITIES INVESTOR PROTECTION CORPORATION
805 FIFTEENTH STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005-2215
(202) 371-8300 FAX (202) 371-6728
WWW.SIPC.ORG

September 30, 2011

The Honorable Ed Perlmutter
Congress of the United States
1221 Longworth House Office Building
Washington, D.C. 20515

The Honorable Gary Ackerman
Congress of the United States
2111 Rayburn House Office Building
Washington, D.C. 20515

RE: Bernard L. Madoff Investment Securities LLC ("BLMIS");
Settlement Agreement Between Trustee and Tremont Group Holdings Inc., et al.

Dear Congressmen Perlmutter and Ackerman:

This is in response to your letter of September 26, 2011 to Chairman Shapiro and me regarding the settlement ("Settlement") between Irving H. Picard, Trustee for the liquidation of BLMIS under the Securities Investor Protection Act ("SIPA") and Tremont Group Holdings, Inc., ("Tremont") and a large number of other related defendants. You raised questions about the SIPA Trustee's Settlement with Tremont, including how the proceeds of the Settlement will get into the hands of the Tremont investors who in the BLMIS liquidation proceeding are indirect investors with BLMIS. You also requested comment on prospective amendments to SIPA regarding this topic.

This response will address your questions regarding the Tremont Settlement. I will defer on your requests for comment on prospective amendments to SIPA, as the SIPC Modernization Task Force has these particular issues under its review and will present its report to the SIPC Board later this year.

I am pleased to respond to your questions on the SIPA Trustee's Settlement with Tremont. First, the SIPA Trustee included a provision in the Tremont Settlement Agreement (at SIPC's suggestion) whereby Tremont Management agreed not to receive any money. That provision stated that the "Tremont Defendants covenant that they will cause all payments received from the Trustee in respect of the Total Allowed Claims Amount to be fairly and equitably allocated among Broad Market Fund, Portfolio Limited, Rye Insurance, and their respective partners and/or investors." As a result, all of the funds received by Tremont through any BLMIS customer fund distribution made by the SIPA Trustee will be available to the investors of the various settling Tremont funds. The SIPA Trustee had also included the same provision in the Fairfield Sentry and Greenwich Sentry settlements that were approved by the Bankruptcy Court.

Second, all of the funds received by Tremont through any BLMIS customer fund distribution by the SIPA Trustee is being placed in the Tremont Investor class action settlement fund to be distributed to the Tremont investors under a plan to be determined by U.S. District Judge Griesa in the Southern District of New York. At the hearing on the Tremont settlement before Bankruptcy Judge Lifland on September 22, 2011, the investors class counsel spoke in favor of the Settlement and made clear that there are conflicts among the Tremont investors as to the allocation of the class action settlement fund but that District Judge Griesa will determine how to resolve those conflicts after all the Tremont investors have had the opportunity to be heard in that court. In Fairfield Sentry and Greenwich Sentry, the funds are in liquidation or Chapter 11 and the allocation of funds received by each through any BLMIS customer fund distribution by the SIPA Trustee will be directed by the court overseeing the liquidation or Chapter 11 proceeding.

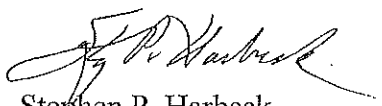
Third, as shown by the foregoing, the Trustee and SIPC are keenly aware of the importance of getting funds into the hands of so-called "indirect investors." But ultimately, the SIPA Trustee cannot control contractual relationships among parties which are not BLMIS customers.

Fourth, at the September 22 hearing on the Settlement, Bankruptcy Judge Lifland noted that the SIPA Trustee had acted to protect the indirect investors by preventing any payments from being used by management and further by requiring Tremont to allocate fairly and equitably any customer funds distributed by the SIPA Trustee among the investors in Tremont. Bankruptcy Judge Lifland also made it clear that the internal Tremont distribution process was an issue squarely before District Judge Griesa to be decided in the Tremont class action.

Fifth, the SIPA Trustee and SIPC are committed that, whenever possible, a similar equitable distribution process will be in force for all settlements with other feeder funds.

Finally, as I testified before the Subcommittee on Capital Markets, avoidance actions under the Bankruptcy Code and the Securities Investor Protection Act are designed to permit the most equitable distribution possible under the circumstances where a Ponzi Scheme has victimized investors. The results in the Madoff case to date demonstrate the wisdom of those legislative provisions.

Respectfully,



Stephen P. Harbeck
President and CEO

SPH/rec

cc: Chairman Shapiro

Exhibit C

Status Update from the Office of James W. Giddens, Trustee for the Liquidation of MF Global Inc., Concerning the Trustee's Investigation

Media Contact: Kent Jarrell, 202-230-1833

February 6, 2012 – New York, New York – James W. Giddens, the Trustee for the liquidation of MF Global Inc., today filed a preliminary report on the progress of his investigation into the failure of the broker-dealer with the United States Bankruptcy Court for the Southern District of New York, the Honorable Martin Glenn, presiding. The Trustee's investigation has preliminarily determined that MF Global Inc. had a shortfall in commodities customer segregated funds beginning on Wednesday, October 26, 2011, and that the shortfall continued to grow in size until the bankruptcy filing on Monday, October 31, 2011.

The Trustee's investigators have now traced a majority of the cash transactions, totaling more than $105 billion, made in and out of MF Global Inc. in the last week before bankruptcy and are completing the process of tracing the remaining transactions. MF Global also executed securities transactions totaling more than $100 billion during its final week of operations. These included liquidation of customer securities, proprietary positions and other items. The securities included complex instruments, such as off-balance sheet repurchase transactions involving sovereign debt securities and derivative structures.

"For three months our investigative team has worked to understand what happened during the final days of MF Global when cash and related securities movements were not always accurately and promptly recorded due to the chaotic situation and the complexity of the transactions," Giddens said. "With these preliminary investigative conclusions in hand, we will analyze where the property wired out of bank accounts established to hold segregated and secured property ultimately ended up. We will then determine whether there is a sound and legal basis for recoveries against third parties that will help make customers whole. These will be very complex legal and factual determinations, which we will make consistent with our duty as the advocate for the former customers of MF Global Inc."

The investigation to date has found that transactions regularly moved between accounts and that funds believed to be in excess of segregation requirements in the commodities segregated accounts were used to fund other daily activities of MF Global. In the past, such transfers were in amounts of less than $50 million, but as liquidity demands increased and could not be met from internal sources, much larger amounts were used, apparently with the assumption that funds would be restored by the end of the day. By Wednesday, October 26, as the result of increasing demands for funds or collateral throughout MF Global, funds did not return as anticipated. As these withdrawals occurred, a lack of intraday accounting visibility existed, caused in part by the volume of transactions being executed, and the 4(d) U.S.

segregated commodity customer account appears to have reached a deficit condition on Wednesday, October 26 that continued through to MF Global's bankruptcy.

The Trustee has identified most of the parties that were the immediate recipients of transfers from MF Global Inc. during the final days and weeks of operation. These transfers were largely effected through the clearing banks acting on behalf of MF Global Inc. The ultimate recipients of these transfers included banks, exchanges and clearing houses, MF Global Inc. affiliates, counterparties, and customers of the futures commission merchant and the broker-dealer.

The number of transactions executed by MF Global during the last week prior to the bankruptcy escalated to unprecedented volumes. The rush to meet funding needs for collateral, margin and customer liquidations led to billions of dollars in securities sales, draws on credit facilities, and a web of inter-company loans across affiliates, some foreign. The company's computer systems and employees had difficulty keeping up with the unprecedented volume of transactions. A number of transactions were recorded erroneously or not at all. So called "fail" transactions – where either the buyer or seller fails to deliver the cash or the security, respectively – were five times the normal volume during the firm's final week.

The investigation has revealed that a confluence of factors contributed to the deterioration of MF Global's liquidity position. The exposure to European sovereign debt, coupled with the announcement of disappointing quarterly results, triggered credit downgrades by Moody's, Fitch and S&P. This escalation in credit risk mandated substantial margin calls and increased demands from counterparties and exchanges for collateral. As an example, the additional margin paid to support only the sovereign debt positions exceeded $200 million during the final week of operations. This was a significant drain on available cash and securities. The sovereign debt investments undertaken on a repo to maturity basis allowed some immediate gains to be booked, but these were purely paper profits generating negligible cash while the underlying transactions resulted in calls for substantial additional margin.

The heightened risk and apparent loss of confidence drove customers to close their accounts and withdraw funds, resulting in even greater demands on a relatively limited amount of available cash. The Trustee's investigation has revealed that, while personnel may not have been immediately aware of it, MF Global Inc. experienced a shortfall in 4(d) customer funds beginning during the day on Wednesday, October 26. The MF Global parent company struggled to continue to operate and even to sell the business, but MF Global Inc. appears to have remained in a shortfall of commodity customer segregated funds virtually continuously until its parent filed for Chapter 11 protection on Monday, October 31 and the Securities Investor Protection Act (SIPA) proceeding was commenced against MF Global Inc. later that afternoon.

The Trustee's investigators, including the legal and forensic accounting teams, have conducted over 50 witness interviews, preserved secure access to thousands of boxes of hard copy documents, imaged over 800 computer drives, and are maintaining over 100 terabytes of data.

To understand where the money went during October 2011, the analysis conducted by the Trustee's professionals has included 840 cash transactions in excess of $10 million that total $327 billion, and an ongoing analysis of related securities transactions involving a value of over $100 billion. These large cash transactions alone span 47 bank accounts across eight financial institutions. An additional 20,000 cash transfers that total $9 billion involve transfers of less than $10 million.

The Trustee's investigation is continuing to correlate cash transfers to relevant movements of securities used as collateral or loaned to counterparties. To that end, the Trustee is now working with various third parties to further define these securities transactions and obtain more complete information about the extent and basis for transfers to select parties. The Trustee continues to investigate the complex factual and legal questions to determine how best to pursue possible recoveries and the extent to which applicable law would support claims against particular recipients of funds, affiliates, and possibly to other parties, including employees of MF Global.

The Trustee's investigation will continue, in coordination with the regulatory and law enforcement investigations that are being conducted by the Department of Justice, the CFTC, and the SEC on an ongoing basis. The Trustee will seek to release additional information related to his investigation in the future, but cannot prematurely release information that might compromise the integrity of those investigations or the Trustee's own efforts to recover funds for customers and the estate.

CLAIMS PROCESS AND ACCOUNT TRANSFERS

The Trustee's staff is continuing its analysis of customer claims after the claims filing period for commodities customers closed on January 31, 2012.

Once a claim is reviewed by the Trustee's staff on as expedited a basis as possible, a determination letter will be issued to the claimant. These determination letters are being issued on a rolling basis. The determination letter will acknowledge the claim and provide a determination as to whether the claim has been allowed, denied, reclassified, or is subject to further reconciliation or information requests.

The Trustee is eager to make additional distributions to former MF Global Inc. customers as soon as possible. However, the Trustee is required by law to hold an appropriate reserve of

funds until disputed claims are resolved either through negotiation or by the Court. At this time, the Trustee anticipates significant disputed claims against the MF Global Inc. estate by MF Global Holdings Ltd., MF Global UK Limited, and other entities. The Trustee will move to attempt to resolve these claims as quickly as possible, but it is uncertain how long resolution will take. Therefore, it is not known at this time when the Trustee will be legally able to make additional distributions.

The Trustee has already distributed nearly $4 billion to former MF Global Inc. retail commodities customers with US futures positions via three bulk transfers:

- Within days of the bankruptcy, the Trustee received court approval for the transfer of 10,000 commodities customer accounts with three million open positions, along with approximately $1.5 billion in collateral associated with those positions at the time of the bankruptcy. These open positions had a notional value of $100 billion. It is estimated that 40% of all commodity futures exchange activity in United States markets came from MF Global Inc. trades and a serious disruption in markets was avoided by the transfer.
- A transfer of 60% of the cash attributable to approximately 15,000 customer commodity accounts with cash only in the accounts, totaling approximately $500 million, was completed in November.
- And in December and January a third transfer occurred that moved approximately $2 billion to restore 72% of US segregated customer property to all former MF Global Inc. retail commodities customers with US futures positions.

In addition, the Trustee has received Court approval to sell and transfer approximately 318 active retail securities accounts, which is substantially all of the securities accounts at MF Global Inc. Nearly all securities customers have received 60% or more of their account value and already 194 of former MF Global Inc. securities customers have received the entirety of their account balances because of a Securities Investor Protection Corporation guarantee.

The information in this statement does not apply to any other MF Global entity, including separate insolvency proceedings involving the parent company, MF Global Holdings Ltd.

Exhibit D

EQUITABLE TREATMENT OF INVESTORS: AN ANALYSIS

Prepared for the House Financial Services Committee
Capital Markets Subcommittee

Stephen P. Harbeck
President and CEO

The Securities Investor Protection Corporation

March 7, 2012

SIPC

The Facts

DATE	INVESTOR A	INVESTOR B	INVESTOR C
01/01/10	Deposits $2 Million	Deposits $2 Million	Deposits $2 Million
01/01/12	Receives Statement $4 Million	Receives Statement $4 Million	Receives Statement $4 Million
02/01/12	Withdraws $3 Million	Withdraws Nothing	Withdraws Nothing
03/01/12	Receives Statement $1 Million	Receives Statement $4 Million	Receives Statement $4 Million

04/01/12 Ponzi Scheme Exposed and Investors Are Innocent of Knowledge
Broker's Assets and Other Customer Property Completely Dissipated on Filing Date

SIPC

WHAT DOES EACH CLAIMANT RECEIVE?

Hypothetical 1: Assume total of $6 million deposited and nothing available to distribute.

Results Under the Equitable Treatment of Investors Act

	Investor A	Investor B	Investor C
Amount Withdrawn Pre Liquidation	$3,000,000	-0-	-0-
Amount Received From SIPC Advance	$ 500,000	$500,000	$500,000
Total Amount Received Based on $2 Million Deposit	$3,500,000	$500,000	$500,000

SIPC

Hypothetical 1: Assume total of $6 million deposited and nothing available to distribute.

Results Under Current Law

	Investor A	Investor B	Investor C
Customer's Net Equity After $3 Million Withdrawal by "A" Is Avoided	$2,000,000	$2,000,000	$2,000,000
Customer Property Distributed After Avoidance of Transfer to"A"	$1,000,000	$1,000,000	$1,000,000
Amount Received From SIPC Advance	$ 500,000	$ 500,000	$ 500,000
Total Amount Received Based on $2 Million Deposit	$1,500,000	$1,500,000	$1,500,000

COST TO SIPC

- Identical in Each Instance
- Which is More Equitable?
- The Avoidance Powers Are Exactly What Makes the Distribution Equitable

SIPC

Hypothetical 2: Assume Subsequent Recovery From Wrongdoer of $1,000,000

Results Under the Equitable Treatment of Investors Act

	Investor A	Investor B	Investor C
Customer's Net Equity Based on Last Statement	$1,000,000	$4,000,000	$4,000,000
Amount Withdrawn Pre-Liquidation	$3,000,000	-0-	-0-
From SIPC	$500,000	$500,000	$500,000
From Wrongdoer	$111,111	$444,444	$444,444
TOTAL AMOUNT RECEIVED BASED ON $2 MILLION DEPOSIT	$3,611,111	$944,444	$944,444

SIPC

Hypothetical 2: Assume Subsequent Recovery From Wrongdoer of $1,000,000

Results Under Current Law

	Investor A	Investor B	Investor C
Customer's Net Equity After "A's" $3 Million Withdrawal is Avoided	$2,000,000	$2,000,000	$2,000,000
Customer Property Distributed After Avoidance of Transfer To "A"	$1,000,000	$1,000,000	$1,000,000
From SIPC	$500,000	$500,000	$500,000
From Wrongdoer	$333,333	$333,333	$333,333
TOTAL AMOUNT RECEIVED BASED ON $2 MILLION DEPOSIT	$1,833,333	$1,833,333	$1,833,333

SECURITIES INVESTOR PROTECTION CORPORATION

805 – 15th ST NW, SUITE 800
WASHINGTON, DC 20005-2215
(202) 371-8300
www.sipc.org