Congress of the United States
Washington, DC 20515

March 21, 2003

The Honorable William Donaldson
Chairman
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20545

Dear Mr. Chairman:

We are concerned that the Securities Investor Protection Corporation (SIPC) may be denying meritorious claims for compensation filed by investors who have suffered losses resulting from unscrupulous trading practices at brokerages that subsequently become insolvent. As you know, Congress vested the Commission with responsibility for oversight of SIPC, which was created as part of the Securities Investor Protection Act (SIPA) of 1970. While SIPC has remedied some of the problems identified in a May 2001 General Accounting Office (GAO) report, questions persist about the degree to which SIPC is fulfilling its vital mission.[1] We therefore appreciate the Commission's timely response to the following questions.

1. Scope of SIPC Protections Provided Investors

SIPC's description of its mission notes that it is investors' "first line of defense in the event of a brokerage firm failure" and is committed to helping individuals whose money, stocks and other securities have been stolen by a broker or put at risk when a brokerage fails.[2] In the past, the Commission determined that SIPC has, on occasion, construed this "line of defense" too narrowly to adequately protect investors. For example, when the Commission's Division of Market Regulation took steps to improve its investor protection efforts, SIPC began covering claims for unauthorized trades by brokers, an action it previously had asserted was outside the scope of SIPA.[3] Despite this extension of coverage, SIPC continues to reject investor claims for compensation under SIPA when brokers fail to execute trades as directed by a customer, the customer suffers losses as the value of the securities subsequently decreases, and the customer's SIPC-member brokerage then becomes insolvent.

(A) Does the Commission consider a broker's failure to execute a sell order as directed by a customer to be an unauthorized trading practice eligible for SIPA coverage, provided that all other relevant requirements have been satisfied (i.e., brokerage is a SIPC member, investor properly submits complaint, brokerage becomes insolvent, etc.)? If yes, has the Commission informed SIPC of this position, and what was SIPC's response? If not, on what basis does the Commission distinguish between an unauthorized trade, which SIPC considers to be eligible for reimbursement under SIPA, and an unauthorized decision by a broker not to execute a trade despite a customer's instructions, which SIPC asserts is beyond the scope of SIPA protection?

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[1] "Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors," GAO-01-653, May 2001.
[2] SIPC Web site (http://www.sipc.org), SIPC brochure.
[3] U.S. Securities and Exchange Commission, Office of Inspector General, "Oversight of Securities Investor Protection Corporation", Audit No. 31, March 31, 2000, p. 8.

(B) Over the past two years, how many SIPC claim determinations has the Commission reviewed in order to ensure that the determinations are consistent with SIPA? How many SIPC claim determinations did the Commission review during the period from January 1999 to January 2001? Of the reviews conducted both from January 1999 to January 2001, and from January 2001 to the present, how many reviews in each of these two periods resulted in the Commission staff opposing trustees' determination of compensation due investors?

(C) Has the Commission obtained from SIPC a statement setting forth in writing the evidence necessary and the standard of proof SIPC uses in initiating and acting on claims in SIPC proceedings, as recommended in the Commission's Inspector General's 2000 report cited above? If yes, please transmit a copy to us as part of your response.

(D) We have been provided information from an individual investor who incurred substantial losses as a result of unauthorized trading practices at a brokerage that subsequently became insolvent. In this particular case, NASD Regulation awarded the investor $190,334.97, but SIPC later determined that the investor was entitled to only approximately 10 percent of the arbitration award - $20,102.00. The investor has contested this determination (see attached documentation). Please inform us as to whether Commission staff has reviewed SIPC's determination in this matter and whether the staff supports that determination.

2. SIPA Legislative History

In passing SIPA, Congress made clear that the legislation's intent is to protect ordinary investors from losses due to unscrupulous conduct by broker-dealers, which are unrecoverable due to the insolvency of the brokerage. During House Floor consideration of SIPA in 1970, Chairman Staggers of the committee of jurisdiction, the Interstate and Foreign Commerce Committee, stated, in pertinent part:

> I would like to emphasize at the outset of this discussion that the proposed legislation is designed to protect customers. The bill is not designed to protect or to save Wall Street or any broker or dealer or any stock exchange, because they go into business with their eyes open. But this is intended to protect the consumers and those who invest.[4]

(A) Since SIPC's creation more than 30 years ago, has the Commission ever sued SIPC or compelled it to compensate an investor, authority granted to it under SIPA?

(B) Over the past two years, how many times has SIPC reduced awards that were mandated as part of arbitration proceedings?

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[4] House Floor consideration of the Securities Investor Protection Act of 1970, Congressional Record, December 1, 1970, p. 39346.

We appreciate the Commission's responses to the questions raised above. If you have any questions, please have a member of your staff contact Mr. Mark Bayer of Representative Markey's staff (202-225-2836), Ms. Lawranne Stewart of the Committee on Financial Services (202-226-1297), or Ms. Consuela Washington of the Committee on Energy and Commerce (202-225-3641).

Sincerely,

Ed Markey

Edward J. Markey
Ranking Member
Subcommittee on
Telecommunications
And the Internet

Barney Frank
Ranking Member
Committee on Financial
Services

John D. Dingell
Ranking Member
Committee on Energy and
Commerce