



# Rep. Garrett to SEC: Wait on 'Net Equity' in Madoff Liquidation

Questions of conflict of interest arise regarding former SEC general counsel's role in Madoff decision

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Rep. Scott Garrett, R-N.J., chairman of the House Financial Services Capital Markets Subcommittee, told Securities and Exchange Commission Chairman Mary Schapiro in a letter on Monday to wait on final action in reconsidering the SEC's position on "[net equity](#)" in the Bernie Madoff case until after the Government Accountability Office publishes its report evaluating the actions of the Securities Investor Protection Corp. and its trustee.

Garrett requested that the GAO conduct a review of some of the issues engendered by SIPC and its trustee's handling of the Madoff fraud. While the Madoff SIPC liquidation is "unprecedented in its size and complexity," Garrett said, "Congress nonetheless established rules and processes to be followed and observed in these unfortunate situations—rules and processes designed to re-establish order, expedite liquidations, protect innocent victims and strengthen confidence in our financial markets.

The net equity issue was raised in the SEC's inspector general, H. David Kotz's, recent [report](#) regarding conflicts of interest in the Madoff case, specifically as they relate to former SEC general counsel David Becker. Kotz said in his report that Becker "participated personally and substantially" in particular matters in which he had a personal financial interest because his mother's estate included an account managed by Madoff.

Kotz went on to say in the report that after extensive investigation, his office found that "Becker played a significant and leading role in the determination of what recommendation the [SEC] staff would make to the Commission regarding the position the SEC would advocate as to the determination of a customer's net equity in the Madoff Liquidation."

Kotz said in his report: Under the Securities Investor Protection Act of 1970 (SIPA), where SIPC has initiated the liquidation of a brokerage firm, net equity is the amount that a customer can claim to recover in the liquidation proceeding. "The method for determining the Madoff customer's net equity was, therefore, critical to determining the amount the Trustee would pay to customers in the Madoff Liquidation," Kotz said.

Garrett told Schapiro in his Oct. 3 letter that the information and analysis from the GAO will aid the subcommittee in determining if SIPC and its Trustee have met their statutory roles and responsibilities, as well as benefit the subcommittee as it reviews and considers H.R. 757, The Equitable Treatment of Investors Act, which would reaffirm and clarify key protections for ordinary investors that were put in place when Congress passed and amended the Securities Investor Protection Act.

Garrett said the GAO report will also benefit the commission "as it re-evaluates several of the

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important policy questions resulting from the Madoff fraud.”

“I recommend that the Commission delay reconsideration of these matters until the GAO has completed its work and the Commission subsequently reviews it,” Garrett told Schapiro.

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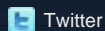
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