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TO: SIPC Board of Directors

FROM: Ira D. Hammerman
General Counsel

DATE: August 17, 2011

RE: The Limits of SIPC Protection

Executive Summary

On June 15, 2011, the Securities and Exchange Commission ("SEC") released an Analysis of Securities Investor Protection Act Coverage for Stanford Group Company (the "SEC Analysis"). The SEC Analysis concluded that investors who purchased certificates of deposit ("CDs") issued by Stanford International Bank, Ltd. ("SIBL") through the Stanford Group Company ("SGC") have protected "customer" claims under the Securities Investor Protection Act ("SIPA")[1] for their net investment in the SIBL CDs.

After careful review, the Securities Industry and Financial Markets Association ("SIFMA")[2] has concluded that the SEC Analysis should be rejected for two independent reasons. First, the SEC Analysis erroneously concludes that purchasers of SIBL CDs were "customers" of SGC, the only Stanford entity that is a member of the Securities Investor Protection Corporation ("SIPC"), even though their funds may never have been transferred to a SGC account. Second, the SEC Analysis's attempted invocation of the "net investment" method to measure the claims of investors who purchased SIBL CDs is unsupported by law or policy. Crucially, unlike the situation in the cases relied upon in the SEC Analysis, including the liquidation of Bernard L. Madoff Investment Securities LLC, the purchasers of SIBL CDs actually purchased the very security they sought to acquire. Accordingly, valuing the claims of purchasers of SIBL CDs on a "net investment" basis would result in an unprecedented expansion of SIPA protection to ordinary investment losses. The SEC Analysis is thus fundamentally inconsistent with SIPA's narrow mandate and, if followed, its proposed unprecedented expansion of SIPA protection will result in increased assessments being levied against SIPC's members and may eventually threaten the solvency of the SIPC.

Background

On February 17, 2009, the United States District Court for the Northern District of Texas appointed a receiver (the "Receiver") for all assets and records of SIBL, SGC, R. Allen Stanford ("Stanford"), and various other entities owned and/or controlled by Stanford

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[1] 15 U.S.C. §§ 78aaa to 78*lll*.

[2] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers of all sizes. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

(collectively, the "Stanford Entities") in response to a complaint by the SEC alleging that Stanford had engineered a massive Ponzi scheme (such complaint, as amended, the "SEC Complaint"). The Receiver's report and subsequent court filings confirm the allegations contained in the SEC Complaint.

According to allegations contained in the SEC Complaint and described in the Receiver's report (which are assumed to be true for the purposes of this analysis) investors worldwide were induced to purchase over $7.2 billion of CDs issued by SIBL, an offshore bank located in Antigua, which is neither a SEC-registered broker dealer nor a member of SIPC. The SIBL CDs were marketed with the promise of higher rates than those paid on CDs issued by U.S. commercial banks and with fraudulent assertions about SIBL's safety and soundness and consistent double-digit returns on SIBL's investment portfolio. Contrary to those representations, the stated growth, composition and performance of SIBL's investment portfolio was fabricated to conceal the fact that billions of dollars deposited by CD investors had been transferred to Stanford or his designees, and Stanford had bribed the CEO of SIBL's regulator to abdicate the regulator's oversight over SIBL. As in a typical Ponzi scheme, SIBL made interest and redemption payments on the SIBL CDs with the proceeds of sales of additional CDs. The scheme collapsed at the beginning of 2009, when the continuing CD sales could no longer cover the purported redemption and interest payments and normal operating expenses.

As alleged in the SEC Complaint and described in the Receiver's report, SGC, a SEC-registered broker-dealer and member of SIPC, was the exclusive U.S. marketer of the SIBL CDs. Additionally, slightly less than half of the SIBL CDs sold in 2007 and 2008 were sold by financial advisers located in the United States, including financial advisers working for SGC.[3]

Typically, investors purchased the SIBL CDs by transferring funds to SIBL's accounts. Once the funds were deposited in SIBL's accounts, they were disbursed among many other SIBL entities (including SGC) as needed, and ultimately for Stanford's personal benefit, without regard to legitimate business needs. Throughout, SIBL, SGC and other Stanford Entities were operated in an interconnected fashion, as a single fraudulent enterprise without regard to corporate separateness.

Analysis

If implemented, the approach advocated in the SEC Analysis would lead to an unprecedented expansion of protections offered by SIPA. SIPA is a narrowly crafted statute designed to accomplish a narrow goal; its sole purpose is to protect customers against the loss of their cash and securities which are in the custody of a broker-dealer that becomes insolvent.[4] To

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[3] On April 20, 2009, the United States District Court for the Northern District of Texas appointed an examiner (the "Examiner") to provide the court with information regarding the interests of investors. The Examiner, reporting information provided by the Receiver to the Congressional Budget Office, provided an estimate that a total of 7,814 customers of SGC hold $3.5 billion in SIBL CDs. Examiner, Examiner's Statement Regarding Efforts to Obtain SIPC Coverage 1 (Jan. 7, 2011), *available at* http://www.lpf-law.com/UserFiles/File/2011/ExaminerStatement%20reSIPC%20Final%20010711%20doc.pdf [hereinafter Examiner's Statement].

[4] Securities Investor Protection: Hearings on H.R. 13308, H.R. 17585, H.R. 18081, H.R. 18109, and H.R. 18458 Before the Subcomm. on Commerce and Finance of the H. Comm. on Interstate and Foreign Commerce, 91st Cong., 2d Sess. 149-150 (1970) (statement of SEC Chairman Hamer Budge).

accomplish that purpose, SIPA gives preferential status to the "net equity" claims of "customers" in a liquidation of a broker-dealer (the "debtor") by (i) requiring the "customer property" held by the debtor to be used, *pro rata*, to satisfy customers' net equity claims and (ii) providing for advances from SIPC of up to $500,000 on each customer's net equity claim.[5] SIPA does not, and never has been intended to, "comprehensively protect investors from the risk that some deals will go bad or that some securities issuers will behave dishonestly."[6]

Consistent with its limited purpose, in pertinent part, SIPA defines as a "customer" only an investor who has:

> a claim on account of <u>securities received, acquired, or held</u> by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer [and] any person <u>who has deposited cash with the debtor for the purpose of purchasing securities</u>; … and any person who has a claim against the debtor arising out of sales or conversions of such securities.[7]

"Net equity" is defined in relevant part as:

> the dollar amount of the account or accounts of a customer, to be determined by—
>
> > (A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date[8] … all securities positions of such customer (other than customer name securities reclaimed by such customer)…; minus
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> > (B) any indebtedness of such customer to the debtor on the filing date; plus
> >
> > (C) any payment by such customer of such indebtedness to the debtor which is made with the approval of the trustee and within such period as the trustee may determine....[9]

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5 15 U.S.C. §§ 78fff-2(c), 78fff-3.

6 <u>SEC. v. Pepperdine Univ. (In re Brentwood Sec., Inc.)</u>, 925 F.2d 325, 327 (9th Cir. 1991).

7 15 U.S.C. § 78*lll*(2) (emphasis supplied); <u>see also</u> <u>Stafford v. Giddens (In re New Times Sec. Serv., Inc.)</u>, 463 F.3d 125, 127 (2d Cir. 2006) ("Judicial interpretation of 'customer' status support a <u>narrow</u> interpretation of the SIPA's provisions.") (emphasis supplied); <u>In re Stalvey & Assocs., Inc.</u>, 750 F.2d 464, 472 (5th Cir. 1985).

8 If SGC were to be liquidated under SIPA, the "filing date" would be the date the SEC filed the complaint that resulted in the appointment of the Receiver for SGC's property – February 16, 2009 (the "Filing Date"). <u>See</u> 15 U.S.C. § 78*lll*(7)(B) ("if the debtor is the subject of a proceeding pending in any court … in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which [an application for a protective decree under SIPA] was filed, the term "filing date" means the date on which such proceeding was commenced").

9 15 U.S.C. § 78*lll*(11).

In light of the clarity of these definitions it is not surprising that it is now well-settled law that (1) only persons who have entrusted their funds or securities to the custody of the broker-dealer debtor are "customers" and (2) their net equity claims are limited to claims for cash or securities held in their securities accounts at the debtor.[10]

I. "Customer" Status of Investors in SIBL CDs

As an initial matter, investors purchasing SIBL CDs do not appear to satisfy SIPA's stringent requirements for being a customer of SGC. As alleged in the SEC Complaint, investors seeking to purchase SIBL CDs did not transfer their cash (which was to be used for the purchase of SIBL CDs) to SGC, the only Stanford entity which is a member of SIPC and whose customers could be said to qualify as "customers" under SIPA. Rather, the funds intended for the purchase of SIBL CDs were deposited directly into SIBL accounts, not SGC accounts. Accordingly, investors who purchased SIBL CDs fail to satisfy SIPA's unambiguous test for customer status, which requires that an investor entrust securities to the debtor (*i.e.* SGC) or deposit cash with the debtor for the purpose of purchasing securities.

There is, however, a line of cases extending the general rule that only investors who entrust their funds or securities to a broker-dealer are treated as "customers" in the liquidation of that broker-dealer under SIPA. In Old Naples Securities, the Eleventh Circuit held that investors who intended to purchase securities through a broker-dealer but whose funds were diverted by an associated person of the broker-dealer and never received by the broker-dealer are deemed to be customers of that broker dealer.[11] As the Court explained:

> If an investor intended to have the brokerage purchase securities on her behalf and reasonably followed the broker's instructions regarding payment, she can be considered a "customer" under SIPA if the brokerage or its agents then misappropriate the funds.[12]

In that case, the Eleventh Circuit considered whether individuals who sought to purchase securities from Old Naples Securities, the SIPC member, but who wrote checks at the direction of an associated person of Old Naples Securities to an affiliate of Old Naples Securities (rather than to Old Naples Securities itself) and whose funds were thus never deposited with Old Naples Securities (although much of the proceeds of the fraud executed by the principal of Old Naples Securities was used to pay the expenses of Old Naples Securities), nevertheless qualified as "customers" of Old Naples Securities. Finding that these investors expected to be dealing with Old Naples Securities and "had no reason to know they were not dealing with [it]," the Eleventh

[10] See, e.g., Brentwood Sec., 925 F.2d at 327 ("An investor is entitled to compensation from SIPC only if he has entrusted cash or securities to a broker-dealer who becomes insolvent; if an investor has not so entrusted cash or securities, he is not a customer and therefore not entitled to recover from the SIPC trust fund."); see also SIPC v. Bernard L. Madoff Inv. Sec. LLC, ___ B.R. ___, 2011 WL 2546211 (Bankr. S.D.N.Y. June 28, 2011).

[11] Focht v. Heeber (In re Old Naples Sec. Inc.), 223 F.3d 1296, 1303 (11th Cir. 2000).

[12] Old Naples Sec., 223 F.3d at 1303 (citing Brentwood Sec., 925 F.2d at 329-30; First Sec. Co. of Chicago, 507 F.2d 417, 421-22 (7th Cir. 1974); In re Waddell Jenmar Sec., Inc., 126 B.R. 935, 938 (Bankr. E.D.N.C. 1991)).

Circuit concluded that investors qualified as "customers" of Old Naples Securities under SIPA.[13] Similarly, in Primeline Securities,[14] the Tenth Circuit held that investors whose checks for the purchase of debentures were written to third-party companies as directed by an associated person of Primeline Securities nevertheless had customer claims in the liquidation of Primeline Securities because the investors "reasonably thought [the associated person] was acting as an agent of Primeline when [the associated person] directed them to make out their checks to one of his third-party companies."[15]

Determining whether investors with SGC accounts who purchased SIBL CDs should be treated as having entrusted their funds or securities to SGC under the principle applied in Old Naples Securities and Primeline Securities requires an intense factual inquiry. Some facts could potentially support the application of the reasoning relied on in Old Naples Securities and Primeline Securities. For instance, some investors could have believed their SIBL CDs were carried in their SGC accounts based on the fact that the CDs appeared on a "consolidated statement" with the legend "Stanford Group Company – Member NASD/SIPC" on each page. Still other investors could also have believed they were depositing the funds with SGC because SGC and SIBL were frequently referred to simply as "Stanford" (and some of the checks were in fact made out to "Stanford" rather than to SIBL). Relying on these facts, the SEC Analysis concluded that "the totality of facts and circumstances" supports treating the investors with accounts at SGC who purchased SIBL CDs as having deposited funds with SGC for the purchase of the SIBL CDs. Since CDs are "securities" for purposes of SIPA,[16] this amounts to concluding that these investors are customers of SGC.

However, there are also facts that provide strong arguments against extending the Old Naples Securities precedent to the SIBL CD investors. Most significantly, unlike the customers in Old Naples Securities and Primeline Securities, investors in SIBL CDs sent their funds directly to the issuer of the securities they intended to purchase. Since "[i]nvestors who invest directly in a company, bypassing the brokerage altogether, are not protected by SIPA even if their broker first suggested the investment,"[17] this fact alone provides a strong basis for

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[13] 223 F.3d at 1303.

[14] Ahammed v. SIPC (In re Primeline Sec. Corp.), 295 F.3d 1100 (10th Cir. 2002). See also Brentwood Securities, 925 F.2d at 329 (customer claim by an investor who made out a check for the purchase of IBM shares to Brentwood Securities' president and sole shareholder allowed by the trustee).

[15] 295 F.3d at 1107-09.

[16] 15 U.S.C. § 78*lll*(14) ("The term 'Security' means any … certificate of deposit ….").

[17] Old Naples Sec., 223 F.3d at 1303 (citing Brentwood Sec., 925 F.3d at 328-29). See also Primeline Sec., 295 F.3d at 1107. The fact that the investors in SIBL CDs are not customers under SIPA and, therefore, not entitled to SIPC protection does not preclude their ability to seek recovery through other means, including by bringing litigation against the various Stanford Entities and those that aided and abetted their fraud and breach of fiduciary duties. Cf. SIPC v. Stratton Oakmont, Inc., 229 B.R. 273, 279-80 (Bankr. S.D.N.Y. 1999), *aff'd* 239 B.R. 698 (S.D.N.Y. 1999), *aff'd* 210 F.3d 420 (2d Cir. 2000); SEC v. S.J. Salmon & Co., 375 F. Supp. 867, 871 (S.D.N.Y. 1974) ("[Claimant] could bring a fraud claim as a general creditor which, if allowed, would be satisfied out of [the broker-dealer's] general estate.")

concluding that the investors should not be treated as customers of SGC with respect to their investments in the SIBL CDs.[18]

II. Any Customer Claims Are Limited to the Value of The SIBL CDs

Even if investors who purchased SIBL CDs through SGC are assumed to be customers of SGC, their protected "net equity" claims are limited to the value of the SIBL CDs they purchased. These investors transferred funds to SIBL for the purchase of SIBL CDs, and SIBL CDs were in fact purchased with those funds. If the investors are assumed to be customers of SGC with respect to this investment, and therefore their funds are deemed to have been transferred to SGC for the purchase of SIBL CDs in their respective SGC customer accounts, a straightforward application of the definition of "net equity" in a liquidation of SGC under SIPA would result in the investors having net equity claims for the value of the SIBL CDs as of the Filing Date.[19] Furthermore, since SIPA generally requires a trustee in a SIPA liquidation to satisfy customer net equity claims based on securities by delivering those securities to the customer,[20] these investors should expect to receive SIBL CDs in satisfaction of their net equity claims. Accordingly, under a straightforward application of SIPA's definition of "net equity" the customer claims of all or nearly all of the SIBL CD investors have already been satisfied in full, because they are already recognized as holders of SIBL CDs. Any remaining investors that purchased SIBL CDs through SGC but are not yet recognized as holders of SIBL CDs could, at most, have a customer claim for the value of the SIBL CDs on the Filing Date.[21] Since the SIBL CDs had very little value on the Filing Date (and have very little value now) investors would receive little or no benefit from treatment as customers in a liquidation of SGC under SIPA if the definition of "net equity" is applied in a straightforward fashion.

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18 Irrespective of whether SIPC ultimately decides concerning the customer status of investors who were sold SIBL CDs by SGC, there is no doubt whatsoever that investors who purchased such CDs through Stanford Entities other than SGC, the only Stanford Entity that was a member of SIPC, could not be entitled to customer protections under SIPA. The Examiner reported, based upon information provided by the Receiver to the Congressional Budget Office, that an estimated 13,260 U.S. and foreign investors, holding $3.7 billion in SIBL CDs, had no relationship with SGC. Examiner's Statement, supra note 3, at 1.

19 See supra note 9 and accompanying text.

20 15 U.S.C. § 78fff-2(b) to (d).

21 Specifically, any customer claims of investors in SIBL CDs who are already recognized as the holders of SIBL CDs by the Receiver would already have been satisfied in full (by virtue of their ownership of SIBL CDs), and these investors would not be entitled to any additional recovery as customers, although they might also have fraud claims as general creditors against SGC, see supra note 17. On the other hand, investors in SIBL CDs who are not recognized as the holders of SIBL CDs would, if treated as customers of SGC, have net equity claims in a SIPA liquidation for the value of their SIBL CDs on the Filing Date. To satisfy these claims, the Trustee would cause these investors to become recognized holders of SIBL CDs (either by reconciling records with SIBL's receivers, or by purchasing SIBL CDs for the investors "to the extent [SIBL CDs] can be purchased in a fair and orderly market," 15 U.S.C. § 78fff-2(d), or by distributing to them cash in respect of the value of their SIBL CDs on the Filing Date. Id. §§ 78fff-2(b), (c), 78fff-3. Customer claims are entitled to a *pro rata* share of the "customer property," plus up to $500,000 of advances from SIPC; customers whose net equity claims are not fully satisfied from the distribution of customer property and the payment of SIPC advances have general estate (or "creditor" claims) for the remainder. Id. § 78fff-2(c)(1).

The SEC Analysis, however, rejects a straightforward application of the definition of "net equity." It proposes to ignore the purchase of the SIBL CDs and, instead, give each investor who purchased SIBL CDs through SGC a net equity claims equal to the difference between the amount invested in SIBL CDs and the amount received in payments on SIBL CDs.

The SEC Analysis bases this proposal on the use of a similar "net investment" measure for net equity claims in prior Ponzi scheme cases, including most recently in the case of the Madoff Ponzi scheme.[22] In those cases, customers intended for securities to be purchased for their accounts but such securities were not actually purchased. In some cases, purchases of fictitious securities were reported to the customers;[23] in other cases, fictional purchases of real securities were reported to the customers;[24] and in still other cases, the securities to be purchased were only identified by general type (and were not actually purchased for the customers' accounts).[25] The rationale for applying the "net investment" measure of net equity in these cases is that the broker-dealer accepted the customer's cash but failed to execute the trade the customer intended to accomplish or that was reported to the customer. By contrast, here – unlike the situation in C.J. Wright, Old Naples Securities and Madoff – customers acquired the securities they intended to purchase, but the security turned out to be essentially worthless. The risk that customers will purchase worthless securities, the value of which has been misrepresented by their issuer and/or a broker who recommends the purchase, is not a risk against which SIPC insures. This is true even if the fraudulent securities are issued or deemed to be issued by the broker-dealer.

Applying the net investment measure to the investors in the SIBL CDs is unprecedented and would stretch the net investment measure well beyond its current bounds. Never before has the net investment measure been applied when the investors' funds were actually used to purchase the very securities they intended to purchase. Here, unlike the investors in C.J. Wright, Old Naples Securities and Madoff, the investors were able to procure the exact debt security they sought to purchase. Accordingly, the loss suffered by the purchasers of SIBL CDs is an investment loss. The remedy for this loss is not within the scope of SIPA; rather, it is through more traditional securities fraud and breach of fiduciary duties claims against Stanford and those who aided and abetted his fraud and breach of fiduciary duties. Indeed, investment losses such as those suffered by investors in SIBL CDs are clearly beyond the scope

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22 See, e.g., SIPC v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff Inv. Sec. LLC), 424. B.R. 122, 141-42 (Bankr. S.D.N.Y. 2010).

23 See, e.g., In re New Times Sec. Servs., Inc., 371 F.3d 68, 71 (non-existent money market funds); Primeline Sec., 295 F.3d at 1109 (customers attempted to purchase debentures and received fraudulent debenture certificates).

24 See Madoff, 424 B.R. at141-42.

25 See, e.g., Old Naples Sec., 223 F.3d at 1304-05 (customers intended that "the funds be used for the purchase of discount bonds of some sort" but the bonds were not specified); SIPC v. C.J. Wright & Co. (In re C.J. Wright & Co.), 162 B.R. 597, 607 (Bankr. M.D. Fla. 1993) (each claimant understood that "debtor would purchase CDs for claimant's account" but the CDs were not specified).

of protection afforded by SIPA (and have been clearly beyond the scope ever since SIPA was introduced to Congress).[26]

The SEC Analysis does not identify a single case – because none exists – where "net investment" treatment was provided to investors who sought to, and did, purchase the securities issued by the entity perpetrating the fraud. Accordingly, the unprecedented attempt in the SEC Analysis to expand "net investment" treatment to investors who sought, and did, purchase securities in an entity engaged in the fraud should be rejected.

III. The SEC Analysis's Expansion of SIPA Would Contravene Public Policy

Finally, the unprecedentedly broad interpretation of SIPA advocated in the SEC Analysis contravenes public policy. The protections provided by SIPA are intentionally limited. SIPA protects only against losses due to the failure of a broker-dealer in its capacity as custodian of investor funds and securities. By contrast, where the investors suffer losses because the investments they purchase are fraudulent, they are not protected by SIPA, even if their broker-dealer induced their investment in the fraud and profited from doing so.[27] The reason for this is twofold: first, quite simply, there is simply too much fraud for which broker-dealers might be held liable for SIPC to be able to protect all investors. As stated on SIPC's website:

> "Insurance" for investment fraud does not exist in the U.S. The Federal Trade Commission, Federal Bureau of Investigation, state securities regulators and other experts have estimated that investment fraud in the U.S. ranges from $10 [to] $40 billion a year. In the case of microcap stock fraud, the toll on investors has been estimated as $1-3 billion annually.
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> With a reserve of slightly more than $1 billion, SIPC could not keep its doors open for long if its purpose was to compensate all victims in the event of loss due to investment fraud.[28]

Second, a scheme to insure all broker-dealer-issued or recommended securities would necessarily require an entirely different regulatory scheme than the one that currently exists. For example, to avoid unfair subsidies among broker-dealers, such a scheme would almost certainly require more rigorous capital and entry-level rules for broker-dealers and would provide SIPC with some input concerning which entities would qualify for such insurance.

SIPC's protection is intentionally limited – like the protection provided by any insurance scheme – because to expand the protection beyond its designed limits is to threaten the very existence of the scheme as created by Congress. The SEC Analysis's expansive reading of SIPA

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[26] See, e.g., S. 2348—Introduction of the Federal Broker-Dealer Insurance Corporation Act, 115 Cong. Rec. 15,165, 15,165 (June 9, 1969) (statement of Senator Edmund Muskie) ("The bill would not in any way protect investors against investment losses.").

[27] See S.J. Salmon & Co., 375 F. Supp. at 870-71 (finding that a claimant's customer claim under SIPA was for the securities he purchased, even if it were assumed that the purchase was fraudulently induced).

[28] SIPC, *Why We Are NOT the FDIC*, http://sipc.org/who/notfdic.cfm (last visited Aug, 6, 2011).

will result in SIPC substantially increasing the mandatory assessments on SIPC member institutions[29] in order to replenish its fund and to ensure that it can continue to make distributions in furtherance of its statutory purpose, and may potentially result in the eventual insolvency of SIPC. Today, when SIPC is already under a historic level of stress from the liquidation of Lehman Brothers Inc. and Bernard L. Madoff Investment Securities LLC and when broker-dealers operate under the stresses of a time of economic recovery, is the worst possible time to ignore the limits set by Congress when SIPA was passed and SIPC was created.

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[29] Currently, SIPC members pay an assessment of one-quarter of 1 percent of their net operating revenues from their securities business. See Press Release, SIPC, SIPC To Reinstitute Assessments Of Member Firms' Operating Revenues (Mar. 2, 2009), http://www.sipc.org/media/release02Mar09.cfm. The adoption by SIPC of the broad reading of SIPA proposed in the SEC Analysis would likely result in the assessment being more than doubled to one-half of 1 percent of the SIPC members' gross revenues from their securities business, thereby imposing a substantial new burden on SIPC members. See 15 U.S.C. § 78ddd(d)(1)(A) (requiring such an increase "whenever the balance of the fund (exclusive of confirmed lines of credit) is below $100,000,000 (or such other amount as the Commission may determine in the public interest)" and at certain other times).