No Thanks, America

In the old days, we used to think it safer to invest in American companies as opposed to companies listed on the stock exchanges of countries such as Russia and China and India because, in America, we have an infrastructure of securities laws that are enforced by the Securities Exchange Commission (the "SEC"). Those days are gone.

The world now knows America as a country where statutes and regulations are not enforced to the extent they inhibit the private accumulation of massive wealth. The world now knows that the SEC's stamp of approval is Eve's golden apple – tempting us to the disastrous theft of our lives' savings. But for the SEC's repeated stamp of approval bestowed upon Bernard Madoff, despite several purported investigations into the detailed (and accurate) allegations that Madoff was operating a massive Ponzi scheme, $64.8 billion of people's life savings would not have been lost. Yet, the SEC accepts no responsibility.

If we have any hope of renewing worldwide investment in America, the SEC must accept responsibility for its utter incompetence in failing, over a period of more than 20 years, to ever require Madoff to produce documentary evidence of his securities trades. And the SEC must accept responsibility for the fact that, in 1992, it allowed one of its senior officials, without any basis in fact, to make a public statement to the effect that the SEC found "nothing to indicate fraud" in Madoff's operation.

Further, the government must assure that the SEC exercises its plenary jurisdiction over the Securities Investor Protection Corporation ("SIPC") so that SIPC does not cheat the victims of the SEC's incompetence of their statutory rights under the Securities Investor Protection Act ("SIPA"). We have had enough of Wall Street enriching itself at the expense of Main Street.

Now, with the SEC's blessing, Wall Street is cheating the Madoff victims in three ways. First, although the law requires SIPC to "promptly" pay SIPC insurance up to $500,000 to investors whose securities are stolen, the SIPC trustee has, after more than four months, allegedly paid only 15 claims despite the fact that many Madoff investors have been left virtually destitute. And the SEC has sat silently on the sidelines, allowing this to happen.

Second, SIPC is statutorily required to pay insurance up to $500,000 based on the investor's last brokerage statement, even if the broker never purchased the securities. Yet, the SIPC trustee in the Madoff case has announced his intention to pay SIPC insurance only on the amounts investors actually invested with Madoff, less any withdrawals they may have made over the decades of their investment, ignoring investors' statutory right to years of profits, profits on which those investors have already paid years of taxes. And the SEC is sitting silently on the sidelines, allowing this to happen.

Third, the SIPC trustee has gone even further, announcing his intention to ignore the "legitimate expectations" of Madoff's customers as defined under SIPA, to sue them to recover funds they may have withdrawn from Madoff to pay their taxes on those investments or to support themselves and their families, or for other legitimate purposes. And the SEC has been sitting silently on the sidelines allowing this to happen.

And why are SIPC and the SEC doing this? So that SIPC members, the securities brokers and dealers who enriched themselves during the Wall Street boom years and decimated the global economy, can minimize the amounts they have to pay for SIPC insurance. Up until this year, Goldman Sachs, for example, paid $150 a year for the privilege of printing on every trade confirmation that the customer's account is insured by $500,000 of SIPC insurance. That is not a typo: $150 a year in total.

Our President told us on January 20, 2009 that:

> What is required of us now is a new era of responsibility – a recognition on the part of every American, that we have duties to ourselves, our nation, and the world, duties that we do not grudgingly accept but rather seize gladly, firm in the knowledge that there is nothing so satisfying to the spirit, so defining of our character than giving our all to a difficult task.

If the SEC and SIPC don't think Mr. Obama's remarks are applicable to them, then the SEC and SIPC are inviting all Americans and all foreign investors to say "No thanks, America. We'll put our money elsewhere."

By Helen Davis Chaitman

Ms. Chaitman is a partner of Phillips Nizer LLP and a Madoff investor who is actively involved in the representation of the interests of other Madoff investors.