

May 19, 1976

Edward H. Fleischman, Esq.
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5 Hanover Square
New York, New York 10004

Re: Proposed Amendments
to SIPC Act

Dear Ed:

I have reviewed the draft letter dated 4/19/76, sent to you by letter dated 5/7/76, from Bill Golub, concerning the Securities Investor Protection Act Amendments (the "Amendments"). I am in general agreement with the views expressed in the draft letter. I would add certain comments to the letter as set forth below.

Section 3(b)(4)(A) of the Amendments would give the Securities Investor Protection Corporation ("SIPC") the power to define terms in variance with the Securities Exchange Act of 1934 ("Exchange Act"). Although I believe that SIPC should have some rule making authority to define terms, I do not believe it should be able to define terms in variance with the Exchange Act. Such a power is likely to result in needless confusion.

Since SIPC is not an agency of the federal government I believe it is improper for it to have the power, accorded in Section 4(c)(3) of the Amendments, to impose penalty charges.

An exception should be provided in Section 5(b)(2) for rights of set off between the debtor and other brokers or dealers. An important purpose of the statutory scheme is to prevent a domino collapse in the securities industry resulting from a broker-dealer bankruptcy. A stay of stock loan transactions could have adverse effects upon the net capital ratios required of broker-dealers under the Exchange Act and therefore precipitate the liquidation of broker-dealers with whom the debtor had securities loans.

I agree with the ideas in the draft letter concerning allowances, relative to Section 5(b)(6)(D). I would also argue that traditional Bankruptcy Act standards for allowances based upon the amount of assets marshaled and disbursed are not meaningful because the primary purpose of a SIPC liquidation is to return property to customers, and such property is owned by such customers, and only held rather than owned by the debtor. Accordingly, most of the property which is marshaled and disbursed by the trustee is not an asset of the debtor's estate.

Sincerely,

Roberta S. Karmel

cc: William W. Colub
Donald M. Feuerstein
Howard T. Sprow