

Congress of the United States
Washington, DC 20510

March 4, 2011

Mr. David Becker
6919 Heatherhill Road
Bethesda, MD 20817

Dear Mr. Becker,

Thank you for taking the time to meet with staff members of the House Committee on Oversight and Government Reform (“Oversight”) and Senate Committee on the Judiciary (“Judiciary”) on Friday, February 25. As you know, in any Ponzi scheme investors who withdraw their money early profit at the expense of investors who are left holding the bag when the scheme is exposed. In the Madoff Ponzi scheme, the size of those losses was immense. Both early and late investors may be innocent victims. However, the fact remains that those who got out early benefited from a criminal enterprise.

In your staff interview, you claimed not to have known until last week, when you received notice of a clawback suit filed by Irving Picard, the trustee in charge of seized Madoff assets (“Picard”), whether the Madoff investment account that you inherited from your mother had realized a gain or a loss.¹ Despite considerable press attention to the steady, predictable gains that Madoff investors universally enjoyed until the scheme collapsed, you said you did not seek to determine whether the inherited account had either a gain or a loss.²

You also indicated that you disclosed your inherited Madoff account to Chairman Mary Schapiro and the SEC ethics office. Yet, neither you, Chairman Schapiro, nor the ethics officer properly appreciated your potential conflict of interest on issues related to Picard’s attempts to claw back gains from early investors to repay later investors.³ Moreover, you did not disclose the account to Madoff victim groups with whom you met.⁴ You also said that you participated in the SEC’s decision to take a position different from Picard’s on the method of valuing Madoff accounts. You said you “wanted to participate because it was an important matter.”⁵

Given the anger that victims justifiably felt for the SEC’s failure to catch Madoff sooner, it is difficult to understand how you and other SEC officials would not realize the

¹ Staff interview, Feb. 25, 2011.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

strong appearance of impropriety created by your participation in Madoff matters after receiving proceeds from a Madoff account.

So, while we appreciate the time you took to answer questions from staff, we would appreciate written answers to the following questions as well:

1. Why do you believe you best served the SEC by failing to disclose to victims you dealt with that you had received proceeds from a Madoff account?
2. Do you believe that if you had disclosed the account that you could have been as effective in representing the SEC?
3. How can the SEC restore faith in its impartiality now that your undisclosed conflict has become public?
4. You indicated during your interview that because you believed your interest was small and indirect, disclosure or recusal from Madoff matters was unnecessary. Why should the SEC only require recusal or disclosure when an employee's financial dealings with SEC targets are large and direct?
5. Since the gain in the Madoff account you inherited may have been as much as \$1.5 million, why do you believe that Madoff victims should consider that interest small and indirect?
6. As a private attorney you represented a senior SEC official, Paul Berger, during the Senate Finance and Judiciary Committee's investigation of the SEC's handling of accusations of insider trading involving Pequot Capital.⁶ Berger failed to recuse himself from the Pequot investigation and continued to work on the matter for months after he began to discuss joining Debevoise & Plimpton—the firm that represented Morgan Stanley in that matter.⁷ When first questioned by Judiciary Committee staff, Mr. Berger failed to disclose that contact.⁸ The Committees concluded that “even if he had no duty, the mere appearance of impropriety warranted a recusal if only on prudential grounds.”⁹ In light of your experience representing Mr. Berger, did you consider a prudential recusal from Madoff-related matters? If not, why not?
7. After you became aware of Madoff's fraud, you had strong reason to believe that you may have benefitted financially. Yet, unlike many other holders of Madoff accounts or recipients of their proceeds, you did not inform the trustee. Why did you choose not to contact the trustee?

⁶ S. Finance Comm. The Firing of an SEC Attorney and the Investigation of Pequot Capital Management, S. Comm. Print 110-28 (2007).

⁷ *Id.* at 85-87.

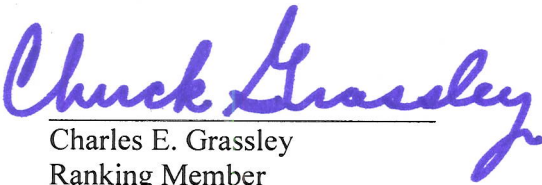
⁸ *Id.*

⁹ *Id.* at 87.

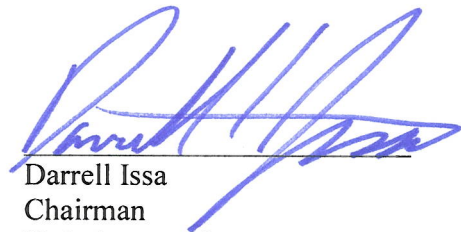
8. If the trustee had not filed a lawsuit against you, when would you have alerted him to the fact that you benefited from a Madoff account? Why did you wait to be sued?
9. Do you believe that the SEC's policies governing its employees' potential clawback liability effectively protect the agency from the appearance of impropriety? Why or why not?
10. If an SEC employee is faced with a similar situation in the future, how do you believe it should be handled?

We would appreciate a response within two weeks of March 4th. Should you have any questions or require an extension, please do not hesitate to contact Chris Lucas for the Committee on the Judiciary at (202) 224-5225 or Hudson Hollister for the Committee on Oversight and Government Reform at (202) 225-5051.

Sincerely,



Charles E. Grassley
Ranking Member
U. S. Senate
Committee on the Judiciary



Darrell Issa
Chairman
U. S. House of Representatives
Committee on Oversight and
Government Reform