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S.E.C. Chairwoman Under Fire Over Ethics Issues

By LOUISE STORY and GRETCHEN MORGENSON

The [Securities and Exchange Commission](#) took a beating two years ago for failing to detect [Bernard L. Madoff's](#) multibillion-dollar [Ponzi scheme](#) during the decades that he ran it.

Now, its chairwoman is coming under Congressional fire for hiring as the S.E.C.'s general counsel someone with a Madoff financial interest — David M. Becker, who participated in matters involving how the scheme's victims would be compensated.

The revelations about Mr. Becker's role have raised fresh questions about ethical standards and practices at the agency, where [Mary L. Schapiro](#) was brought in as chairwoman two years ago with a mandate to strengthen its enforcement unit. Ms. Schapiro will appear before Congress on Thursday to discuss the matter. Questions about Mr. Becker arose last month after [Irving H. Picard](#), the trustee overseeing the Madoff case, sued him and two of his brothers to recover \$1.5 million of the \$2 million they had inherited in 2004 from a Madoff investment by their late mother. Mr. Becker's financial ties to Madoff had not been publicly disclosed until that suit.

Mr. Becker said that he advised Ms. Schapiro and the chief ethics officer of his financial interest in a Madoff investment account, "either shortly before or after" joining the agency in February 2009.

Last Friday, H. David Kotz, the agency's inspector general, announced that he would investigate the potential conflicts in Mr. Becker's role as a Madoff recipient who was also the S.E.C.'s general counsel and senior policy director involved in decisions relating to the Ponzi scheme. Ms. Schapiro requested the review, a commission spokesman said.

Lawmakers have also asked Ms. Schapiro for details of her discussions with Mr. Becker about his Madoff account when she hired him in 2009. Ms. Schapiro missed a deadline on Monday for those responses. An S.E.C. spokesman said Ms. Schapiro declined to comment on Tuesday.

"One of the things the S.E.C. does is hold companies to a very high standard with regards to transparency and disclosure," said Representative Randy Neugebauer, Republican of Texas, who is one of four Republican lawmakers asking Ms. Schapiro about her dealings with Mr. Becker and his disclosures. "We think it's important that the same integrity exists within the S.E.C., ensuring that people working there do not have conflicts of interest and that there is a process to vet those issues and make sure they are taken care of in a way that gives confidence."

Perhaps the most significant Madoff matter involving Mr. Becker is a proposed reversal of the agency's recommendation on how to compensate victims of the scheme, according to two people briefed on the S.E.C.'s discussions who asked not to be identified because they were not authorized to discuss the matter. While the agency had agreed on a deal that would return to investors only the money they had put into their Madoff accounts, Mr. Becker argued that the commission should change its stance to allow victims to keep some of the gains their investments had generated, since the investment would have grown somewhat over time even in a low-interest account. The Becker family would benefit from this approach.

Mr. Becker did not return a call for comment.

In correspondence with lawmakers late last month, Mr. Becker also said that he alerted the ethics office about his family's Madoff investment again that May after he received a letter from a number of law firms representing Madoff victims asking that the commission change its proposed compensation

formula. Among the issues are whether Madoff investors who withdrew money before the fraud was exposed must return some of their proceeds — and if so, how much — to other investors.

“I recognized that it was conceivable that this issue could affect my financial interests because the issue could affect the trustee’s decision to bring clawback actions against persons like me,” Mr. Becker wrote in response to lawmakers. The ethics officer approved his participation, he said. That officer reported directly to Mr. Becker and spent only 25 minutes reviewing the matter, according to Congressional staff members briefed on the discussions who requested anonymity because they also were not authorized to discuss the matter publicly.

Congressional investigators want to know if Mr. Becker and Ms. Schapiro took all the necessary steps outlined in government ethics rules. Under the United States code, for example, Ms. Schapiro may have been required to make a written determination that Mr. Becker’s financial interest was not substantial enough to affect his job performance. A spokesman for the S.E.C. said that such a waiver would not be required unless Mr. Becker had been found to have a substantial financial conflict.

Congress also asked Ms. Schapiro whether she discussed Mr. Becker’s Madoff account with other staff members or commissioners and if she took up the matter with officials in the federal government’s Office of Government Ethics, or the commission’s ethics counsel.

“As the government official responsible for appointing Mr. Becker to his position in 2009, what steps did you take to manage the appearance of or actual conflict of interest presented by Mr. Becker’s financial interest in the Securities Investor Protection Corporation’ liquidation?” asked a March 1 letter signed by four Republican members of the House Financial Services Committee. They are Spencer Bacchus of Alabama, Jeb Hensarling of Texas, Scott Garrett of New Jersey and Mr. Neugebauer.

In any Ponzi scheme, there are victims who withdraw money before the fraud is exposed. There are many such Madoff investors and determining how much they may keep is being sorted out in two places. Some investors are fighting in court to be entitled to the amount of money on their final Madoff

statements, though they have been unsuccessful so far. Another battle involves how much customers can be compensated by the Madoff trustee and the Securities Investor Protection Corporation, a government entity that helps recover money for customers of failed brokerage firms. The S.E.C. oversees SIPC; neither matter has been decided.

Mr. Becker's late mother, Dorothy, invested \$500,000 with Mr. Madoff's company; when she died in 2004, her three sons transferred the money into a new account at the firm. The next year, the investment was worth \$2.04 million and they withdrew it. Mr. Picard said that the family should be allowed to keep the original \$500,000 investment but return \$1.54 million — all of the gain — to compensate other victims.

If the S.E.C. gets its way, Mr. Becker and his brothers would be allowed to keep more than that to compensate them for the time the money was invested with Mr. Madoff. How much more is unknown because details of the commission's proposal have not been disclosed.

Both SIPC and Mr. Picard, the trustee for the Madoff estate, have proposed that the customers who withdrew funds before the fraud was uncovered should be allowed to keep only as much money as they put in. Initially, the full commission agreed and approved that approach in early 2009, according to the two people briefed on the discussions.

Mr. Becker joined the commission in February that year. By spring, he began meeting with lawyers for Madoff customers seeking a different formula. They wanted to let longer-term investors keep more money than those who had money with Mr. Madoff for shorter periods. Mr. Becker apparently dismissed arguments that investors were entitled to the amounts Mr. Madoff had listed on their final statements.

In the summer of 2009, Mr. Becker did reverse the commission's earlier decision, however. His legal staff came up with a new proposal to reflect the length of time the money was invested, and the commissioners approved it at the end of the year. Some at the agency who worked with SIPC expressed dissent about the change, according to the people briefed on the deliberations.

Stephen P. Harbeck, the chief executive of SIPC, confirmed that his investor protection unit and the S.E.C. had initially agreed that victims should be able to keep only the money they had originally put into the Madoff firm. "Then they refined their opinion," he said on Monday, referring to the S.E.C. He said that he did not know who had pushed for the change.

The S.E.C.'s definition, Mr. Harbeck said, would benefit anyone who withdrew more money from their Madoff accounts than they had put in. Mr. Becker's family would be among them.

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