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SECURITIES AND EXCHANGE COMMISSION
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August 30, 2016

Securities Investor Protection Corporation: Order Approving a Proposed Bylaw Change Relating to SIPC Fund Assessments on SIPC Members

On May 2, 2016, the Securities Investors Protection Corporation ("SIPC") filed with the Securities and Exchange Commission ("Commission") a proposed bylaw change pursuant to section 3(e)(1) of the Securities Investor Protection Act of 1970 ("SIPA")[1] relating to assessments on SIPC member broker-dealers.[2] On May 27, 2016, SIPC consented to a 60-day extension of time before the proposed bylaw change takes effect pursuant to section 3(e)(1) of SIPA.[3] Pursuant to section 3(e)(1)(B) of SIPA, the Commission found that the proposed bylaw change involved a matter of such significant public interest that public comment should be obtained.[4] This meant that the Commission could require the proposed bylaw change to be treated under the procedures in section 3(e)(2) of SIPA applicable to a proposed SIPC rule change.[5] Consequently, pursuant to section 3(e)(2)(A) of SIPA,[6] notice requesting comment on

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1 15 U.S.C. 78ccc(e)(1).

2 See letter dated May 2, 2016from Josephine Wang, Secretary, SIPC, to Brent J. Fields, Secretary, Commission.

3 15 U.S.C. 78ccc(e)(1). This section provides that a proposed bylaw change shall take effect thirty days after the date of the filing of a copy thereof with the Commission, or upon such later date as SIPC may designate or such earlier date as the Commission may determine unless: (1) the Commission, by notice to SIPC setting forth the reasons therefor, disapproves such proposed bylaw change as being contrary to the public interest or contrary to the purposes of SIPA; or (2) the Commission finds that such proposed bylaw change involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying SIPC in writing of such finding, require that the procedures set forth in section 3(e)(2) of SIPA be followed with respect to such proposed bylaw change, in the same manner as if such proposed bylaw change were a proposed SIPC rule change.

4 15 U.S.C. 78ccc(e)(1)(B).

5 See 15 U.S.C. 78ccc(e)(1)(B); 15 U.S.C. 78ccc(e)(2).

6 15 U.S.C. 78ccc(e)(2)(A).

the proposed bylaw change was published in the Federal Register on June 20, 2016.[7] The Commission received one comment regarding the proposal.[8] This order approves the proposed bylaw change under section 3(e)(2) of SIPA.[9]

I. Description of the Proposed Bylaw Change

A. Background

SIPA requires SIPC, by bylaw, to impose assessments upon its member broker-dealers as, after consultation with self-regulatory organizations, SIPC may deem necessary and appropriate to establish and maintain a broker-dealer liquidation fund administered by SIPC (the "SIPC Fund") from which all expenditures by SIPC are to be made, including funds used to facilitate the liquidation of broker-dealers.[10] Pursuant to this authority, SIPC collects annual assessments from its members.[11] The amount of the annual assessment is prescribed by SIPA and the SIPC bylaws and is a percentage of the member broker-dealer's net operating revenues from its securities business.[12]

Article 6 of the SIPC bylaws ("Article 6") currently provides for an assessment rate of ¼ of one percent until the SIPC Fund reaches $2.5 billion and SIPC determines that the Fund will

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7 See Securities Investor Protection Corporation; Notice of Filing of Proposed Bylaw Amendment Relating to Assessment of SIPC Members, Release No. SIPA-177 (June 15, 2016), 81 FR 39986 (June 20, 2016).

8 See e-mail dated June 17, 2016 from Jay Lanstein, Chief Executive Officer, Cantella & Co., Inc., available at https://www.sec.gov/comments/sipc-2016-02/sipc201602-1.htm.

9 See 15 U.S.C. 78ccc(e)(2).

10 15 U.S.C. 78ddd. SIPC stated that it solicited the views of self-regulatory organizations regarding the proposed bylaw change. See e-mail dated July 22, 2016 from Josephine Wang, Secretary, SIPC, to Brent J. Fields, Secretary, Commission.

11 15 U.S.C. 78ddd(d)(2)(C).

12 See 15 U.S.C. 78ddd(d); Bylaws of the Securities Investor Protection Corporation, Article 6, available at http://www.sipc.org/about-sipc/statute-and-rules/bylaws. Net operating revenues from the securities business are gross revenues from the securities business, as defined in section 16(9) of SIPA, 15 U.S.C. 78lll(9), less total interest and dividend expense, but not exceeding total interest and dividend income. See Article 6; SIPC Form SIPC-6, available at http://www.sipc.org/Content/media/filing-forms/SIPC-6-20130830.PDF.

remain at or above $2.5 billion for at least six months. Once that determination is made, the assessment rate falls to the minimum assessment permitted under SIPA, which is 0.02 percent.[13] Article 6 also provides that the assessment rate is ¼ of one percent if it is reasonably likely that the balance of the Fund will fall below $2.5 billion and remain at less than $2.5 billion for six months or more.

SIPC represented in its proposed bylaw change filing that it continues to examine whether the Fund "target balance" of $2.5 billion is adequate for SIPC to carry out its mission of customer protection, and that it wished to ensure that at a minimum, and to the extent possible, the Fund does not fall below $2.5 billion. SIPC indicated that it believed it was prudent to consider not only the size of the Fund over a six-month period, but also SIPC's actual expenditures and its projected expenditures from the Fund over a longer term. In addition, SIPC stated that the size of the Fund is more likely to stay at or above the target balance if there is a more gradual reduction in assessment rates before the minimum assessment rate is imposed. Finally, SIPC stated that such measures would make less likely sudden changes in the assessment rate while giving SIPC members some relief in the amount of the assessment that they owe.

B. The Proposed Amendments

With these considerations in mind, SIPC proposed to modify Article 6 in two respects. First, SIPC proposed to impose an intermediary assessment rate that would apply when the balance of the SIPC Fund is expected to be $2.5 billion for at least six months but SIPC's unrestricted net assets – a measure of net assets that takes into account the anticipated cost of ongoing customer protection proceedings – are less than $2.5 billion, as reflected in its most

[13] 15 U.S.C. 78ddd(c)(2).

recent audited Statement of Financial Position.[14] Secondly, SIPC proposed to lengthen the time period with respect to when a change in assessments becomes effective after notice of the change is published.

1. Imposition of An Intermediary Assessment Rate

When large SIPA liquidation proceedings are pending that require sizeable advances by SIPC, the SIPC Fund could remain at or above the $2.5 billion target level for six months, but then fall significantly below that amount as additional advances are made. Under Article 6, once the Fund reaches the $2.5 billion target level and is projected to remain at or above that amount for six months or more, SIPC could change the assessment rate from ¼ of one percent to 0.02 percent. On the other hand, because projected expenditures in pending proceedings could reasonably cause the balance of the SIPC Fund to be less than $2.5 billion for six months or more, SIPC alternatively could require that the assessment rate remain at ¼ of one percent. SIPC proposed to amend Article 6 to provide clarity as to what actions it might take when the Fund reaches the $2.5 billion target level, to maintain the SIPC Fund at or above the target balance of $2.5 billion, and to offer some relief in the amount of the assessment that member broker-dealers must pay while reducing the likelihood of sudden changes in the rates.

Under the proposed bylaw change, when the SIPC Fund reaches $2.5 billion and is projected to be at $2.5 billion for six months or more, SIPC would consider the balance of its unrestricted net assets, as reflected in its most recent audited Statement of Financial Position.[15] Specifically, SIPC could impose an annual assessment rate of 0.15 percent of a member's net

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[14] See, e.g., SIPC, 2015 Annual Report at 20, available at http://www.sipc.org/Content/media/annual-reports/2015-annual-report.pdf (audited statement of financial position reporting unrestricted net assets of $1,622,910,520).

[15] Among other items included in the calculation of unrestricted net assets is a provision for trustees' estimated costs to complete ongoing customer protection proceedings. See, e.g., SIPC, 2015 Annual Report at 20.

operating revenues from the securities business if: (1) the amount of the SIPC Fund were at $2.5 billion or more; (2) SIPC determined that the Fund will remain at or above $2.5 billion for at least six months; but (3) SIPC's unrestricted net assets were less than $2.5 billion, as reflected in its most recent audited Statement of Financial Condition.

2. Amendment of the Effective Date of a Change in the Assessment

SIPC also proposed to amend Article 6 with respect to when a change in assessments becomes effective. Currently, Article 6 provides that a change in assessments is to occur on the first day of the month following the date on which SIPC announces a change in the assessment and continue until SIPC provides otherwise ("Notice Provision"). Under current practice, the SIPC Board of Directors in the ordinary course determines the rate of assessment at its September meeting. The Board's determination is announced shortly thereafter, and is made effective the first day of the following month.

SIPC proposed to amend the Notice Provision in order to give its member broker-dealers earlier notice of the assessment rate for the following year. Under the proposal, an assessment rate would be effective on the first day of the year following the date on which SIPC announces its determination. Consequently, under the current practice where the assessment is determined at a September meeting of the Board, an assessment rate would be effective on January 1 of the new year. However, the proposal recognizes that there may be emergency situations when the need for an assessment rate to become effective is more immediate. In that case, the assessment rate would be effective on the date announced by SIPC provided that the exigency of the circumstances so warrants.

II. Comments Received

The Commission received one comment regarding the proposal.[16] The commenter stated that the SIPC assessment rate "should be lowered as soon as the SIPC fund reaches its target balance, rather than waiting potentially a full year." The commenter also stated that the proposed reductions in the assessment rate should be further reduced and that unless there is "another major crisis" the flat fee assessment should be reinstated. The commenter further stated that since under the proposal SIPC can immediately raise assessments when warranted and SIPC can borrow from the Treasury if necessary, extracting "unnecessary fees" presents a financial burden to customers of firms that pass the assessments to their customers.

On July 22, 2016, SIPC filed with the Commission a response to the comment.[17] With regard to the comment that the assessment rate should be lowered as soon as the SIPC Fund reaches its target balance, SIPC stated that it believes that lowering the assessment rate gradually "balances the financial interests of its members with the need for robust reserves that are vital to SIPC's mission." In addition, SIPC stated that "with a gradual reduction in rates, the Fund is more likely to stay above the current target balance." With regard to the comment that assessments should be further reduced and that SIPC extracts "unnecessary fees," SIPC stated that "in 20 of its 45 years of operation, most recently from 1996 to March 2009, assessments were the minimum allowed by statute, ranging from $25 to $150 annually." SIPC further stated that "even since the financial crisis of 2008, SIPC has assessed its members at only a fraction of the maximum percentage legally permissible." SIPC also stated that "relating its assessment

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16 See e-mail dated June 17, 2016 from Jay Lanstein, Chief Executive Officer, Cantella & Co., Inc., available at https://www.sec.gov/comments/sipc-2016-02/sipc201602-1.htm.

17 See e-mail dated July 22, 2016 from Josephine Wang, Secretary, SIPC, to Brent J. Fields, Secretary, Commission.

needs to its net assets instead of to the balance of the SIPC Fund, offers a more realistic and accurate starting point for measuring potential future needs." Accordingly, SIPC stated that it "believes it prudent to consider booked liabilities in addition to the size of the Fund in determining the appropriate assessment rate." With regard to the comment that SIPC should reinstate a flat fee assessment, SIPC stated that "absent legislative change, SIPC may no longer assess a 'flat fee' minimum as suggested by the comment" because "SIPA section 78ddd(d)(1)(C) was amended in 2010 to provide for a minimum assessment no greater than 0.02 percent of the gross revenues from the securities business of SIPC members."

III. Commission Findings

Section 3(e)(2)(D) of SIPA provides that the Commission shall approve a proposed rule change if it finds that the proposed rule change is in the public interest and is consistent with the purposes of SIPA.[18] The Commission finds, pursuant to section 3(e)(2)(D) of SIPA, that the proposed bylaw change is in the public interest and consistent with the purposes of SIPA.[19]

The SIPC Fund, which is built from assessments on its members and the interest earned on the Fund, is used for the protection of customers of members liquidated under SIPA to maintain investor confidence in the securities markets.[20] In order to reduce the likelihood that the SIPC Fund does not fall below the $2.5 billion target, the Commission believes that, in setting the assessment rate, it is appropriate to consider not only the size of the Fund over a six-month period, but SIPC's actual expenditures and its projected expenditures from the Fund over

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[18] 15 U.S.C. 78ccc(e)(2)(D).

[19] 15 U.S.C. 78ccc(e)(2)(D).

[20] See, e.g., Securities Investor Protection Corporation; Notice of Filing of Proposed Bylaw Amendment Relating to Assessment of SIPC Members, Release No. SIPA-177 (June 15, 2016), 81 FR 39986, 39988 (June 20, 2016).

a longer term. In addition, the Commission believes that the size of the Fund is more likely to remain at or above the target level if there is a more gradual reduction in rates before the minimum assessment rate is imposed. Finally, the Commission believes that the proposed bylaw change would give SIPC members appropriate relief in the amount of assessment that they owe while maintaining the assessment rate at a level that is designed to keep the fund at the target level. Further, the Commission notes that the Fund plays a critical role in protecting customers of failed broker-dealer.

In addition, the Commission believes that the proposed amendment to the Notice Provision will provide SIPC member broker-dealers with earlier notice of the assessment rate for the following year but also allow for more prompt changes to the assessment level when merited in certain emergency situations.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 3(e)(2) of SIPA, that the proposed bylaw change is approved.[21]

By the Commission.

Dated: August 30, 2016.

Brent J. Fields
Secretary

[21] 15 U.S.C. 78ccc(e)(2).

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