



SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA-180; File No. SIPC-2019-01]

Securities Investor Protection Corporation; Notice of Filing of Proposed Bylaw Change, as Revised by Amendment No. 1, Relating to SIPC Board Compensation

January 16, 2020.

Pursuant to Section 3(e)(1) of the Securities Investor Protection Act of 1970 (“SIPA”),¹ on October 7, 2019 the Securities Investor Protection Corporation (“SIPC”) filed with the Securities and Exchange Commission (“Commission”) a proposed bylaw change relating to the SIPC Board of Directors’ (“Board”) compensation. On October 24, 2019, SIPC consented to a 90-day extension of time before the proposed bylaw amendments would take effect pursuant to section 3(e)(1) of SIPA. On November 19, 2019, SIPC filed a revised version of the proposed bylaw change, which replaced and superseded the original proposed bylaw change in its entirety. Pursuant to section 3(e)(1)(B) of SIPA, the Commission finds that the proposed bylaw change, as revised by Amendment No. 1, involves a matter of such significant public interest that public comment should be obtained.² Therefore, pursuant to section 3(e)(2)(A) of SIPA, the Commission is publishing this notice to solicit comment from interested persons on the proposed bylaw change, as revised by Amendment No. 1.³

In its filing with the Commission, SIPC included statements concerning the purpose of and statutory basis for the proposed bylaw change, as revised by Amendment No. 1, as described below, which description has been substantially prepared by SIPC.

¹ 15 U.S.C. 78ccc(e)(1).

² 15 U.S.C. 78ccc(e)(1)(B).

³ 15 U.S.C. 78ccc(e)(2)(A).

I. SIPC's Statement of the Purpose of, and Statutory Basis for, Proposed SIPC Bylaw Change Relating to SIPC Board Compensation

Pursuant to Section 3(e)(1) of SIPA, SIPC hereby submits for filing with the Commission a proposed amendment to Article 2, Section 6, of the SIPC Bylaws. Article 2, Section 6, of the Bylaws relates to the honoraria paid to non-Governmental members of the SIPC Board.

As amended, Article 2, Section 6, would: 1) change the Board Chairperson's yearly honorarium from \$15,000 to \$28,000; 2) change the Directors' yearly honorarium from \$6,250 to \$12,000; 3) while the position of Chairperson remains vacant, authorize the Board Vice Chairperson who serves as acting Chairperson for a continuous twelve month period, to receive an honorarium of \$28,000; 4) while the positions of Chairperson and Vice Chairperson remain vacant, authorize any Director, to whom the SIPC Board delegates authority to perform certain functions of the Chairperson, to receive an honorarium of \$28,000 provided that the Director performs those functions for a continuous twelve month period; and 5) provide for a re-evaluation of Board honoraria every ten (10) years under a formula tied to the Senior Executive Service pay scale.

The proposed bylaw amendment was approved by the SIPC Board. Under SIPA section 78ccc(e)(1), unless it is disapproved by the Commission or the Commission determines that the matter is of such significant public interest as to warrant public comment, the amendment will take effect thirty (30) days after a copy is filed with the Commission. The Board has provided that, if approved by the Commission, the proposed amendment would not be implemented until six (6) months from the date of Commission approval or non-disapproval. Section IV below provides the text of the proposed changes to Article 2, Section 6, of the Bylaws.

Background:

The SIPC Board consists of seven members. Five of SIPC's Directors are appointed by

the President of the United States and confirmed by the Senate. Of the five Directors, three are associated with, and representative of, the securities industry (“Securities Directors”), and two are from outside of the industry. The Directors from outside of the securities industry serve as Chairman and Vice Chairman of SIPC. In addition, one SIPC Director is an officer or employee of the Department of the Treasury and one Director is an officer or employee of the Federal Reserve Board. SIPA § 78ccc(c)(1) - (3).

Under SIPA Section 78ccc(c)(5), all matters relating to Director compensation are as provided in the SIPC Bylaws. Since 1994, when the position of Chairperson ceased to be a full-time position, the honoraria awarded to the Directors have been as follows:

Bylaw Date	Bylaw	Chairman	Vice Chairman	Industry Directors
1994	Art. 2, §6	\$1,000/meeting \$500/day for official business + expenses	\$500/meeting \$500/day for official business + expenses	Expenses only
2006	Art. 2, §6	\$15,000 honorarium + expenses	\$6,250 honorarium + expenses	\$6,250 honorarium + expenses

Because the Government Directors are ineligible, the recipients of the honoraria are limited to the Directors from the private sector. The honoraria are paid from the SIPC Fund, 15 U.S.C. section 78ddd(a)(1), and no taxpayer monies are used.

The amounts of the Director honoraria have been the same for more than 10 years. For the reasons discussed below, the Board has determined that it is appropriate that the proposed changes to Article 2, Section 6, of the Bylaws be made.

General Statement of Basis and Purpose of Proposed Changes:

Enhanced Responsibilities and Risk:

The SIPC Board sets the direction and policies for the Corporation. Since the 2008 financial crisis, SIPC’s responsibilities have grown, and greater demands have been placed upon the time, commitment, and energy, of the Directors.

The Directors oversee a Fund which currently stands at more than \$3.3 billion. The size of the Fund is modest compared to the amounts of customer assets at risk in SIPA liquidations over the last several years. These have included MF Global Inc., involving the largest commodities brokerage liquidation in history; Lehman Brothers Inc., with \$106 billion owed to more than 111,000 customers; and Bernard L. Madoff Investment Securities LLC, with over \$20 billion of customer assets owed. Each of these liquidations contained or contains complex and significant legal or operational hurdles for their resolution. Today, such large cases cannot be viewed as isolated events or SIPC's involvement in them as incidental. For example, in a too-big-to-fail situation, Congress has given SIPC an important role. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, SIPC serves as trustee in the orderly liquidation of a covered broker-dealer. *See* 12 U.S.C. § 5385(a)(1).

Given the breadth of SIPC's mission, whether the Fund is sufficient to satisfy SIPA's goal of customer protection is one of the most important issues that Directors face. The potential exposure arising from the liquidation of large firms alone highlights the importance of the Board's decision-making.

The sizeable amounts at stake in recent cases also create more risk for the Directors including the risk that Directors may be sued for tactical reasons, however frivolous such suits may be. For example, in the Madoff case, the SIPC Board and its President were sued in a multi-million dollar complaint brought by Madoff investors. *Canavan v. Harbeck*, Case No. 2:10-cv-00954-FSH-PS (D.N.J.). Although the Directors are shielded from liability for their good faith actions or omissions under SIPA Section 78kkk(c), the burden of having to defend against a law suit, the uncertainty of the outcome of litigation, the demands on a Director's time, and the reputational risk to the Director, remain.

Today, more accountability is asked of corporate directors. At SIPC, the Directors not only oversee the administration of the quasi-public SIPC Fund, but also of the SIPC Employees' Savings Plan, and the SIPC Employees' Retirement Plan. As a result of their role in these and other matters, the Board must carefully oversee Management and the policies and procedures Management has put in place.

Time Commitment:

SIPC Directors willingly devote their time to SIPC, often at the expense of other important commitments, and potential compensation, outside of their SIPC responsibilities. The time, even for some Directors to travel to SIPC, can be burdensome since under SIPA section 78ccc(c)(2)(C)(i), the Securities Directors cannot be from the same geographical area of the United States. SIPC Directors travel from their home base to Washington, D.C., to attend regular Board, as well as Committee, Meetings. There are three committees at SIPC on which the Directors serve: one for investments, another for compensation, and a third, for audit and budget. See Article 3, Section 1, of the SIPC Bylaws. In addition to their attendance and participation at Meetings, the Directors regularly meet in Executive Session to discuss matters of importance to SIPC business.

Attracting and Retaining Qualified Directors:

In order for the SIPC program to be successful, it must have a Board that is engaged, resourceful, and willing to devote the time and energy to the program and to be committed to it. While it is an honor to be appointed as a Director, there should be some recognition of the contributions made by these individuals. Measured against the demands placed upon the Directors and the responsibilities and risks they are expected to assume, the changes proposed by the Board are modest.

Basis for the Amounts Proposed:

In considering a possible Bylaw change, the Board, through its Government Directors, commissioned Korn/Ferry International (“Korn/Ferry”), a leading global management and executive consulting firm, to provide recommendations with respect to compensation for SIPC Board members, including the Chair and Vice Chair. In undertaking the engagement, Korn/Ferry constructed a peer group of 23 organizations comparable to SIPC and analyzed their Director compensation. The peer group included non-profit groups, regulatory advocacy organizations, as well as federally funded ones.

Based upon its analysis, Korn/Ferry concluded that entities similar to SIPC in purpose and responsibilities typically provide some compensation to their Directors. Specifically, with respect to SIPC, Korn/Ferry recommended that:

- 1) Director compensation consist of an annual retainer paid quarterly and ranging between \$30,000 and \$50,000;
- 2) The Vice Chair receive an additional amount of \$3,000 to \$5,000 per year; and
- 3) The Chair receive an additional \$10,000 to \$15,000 per year.

Korn/Ferry Director Compensation Analysis, dated May 31, 2019, at 10.

Independently, the Government Directors formulated a separate approach to the matter. Under their analysis, they reasoned that because the non-Government Directors are Presidential appointees confirmed by the Senate who render a public service, it would be appropriate to measure the amount of a Director honorarium against the pay of a Senior Executive Service (“SES”) Government employee. The maximum amount under the SES pay scale currently is \$189,600. Based upon an average of 16 days of service per year comprised of six days of meetings, five days for preparation, and five days for ad hoc work, the Directors concluded that

the non-Government Directors should receive an honorarium of \$12,000 per year which would continue to be paid in quarterly installments. Applying the current ratio of Chair versus non-Chair honoraria, the non-Government Directors calculated the honorarium of the Chair at \$28,000. The Board also calculated that an adjustment for inflation since the honoraria were last set in 2006 would have resulted in an honorarium of more than \$19,000 for the Chair.

The Board adopted the recommendations of the non-Government Directors, and agreed with their proposal that the amount of the honoraria be reviewed every ten years, and adjusted according to the above methodology. The Directors also agreed that the requested amendment, if approved, would take effect six months from the date of approval or non-disapproval by the Commission.

II. Need for Public Comment

Section 3(e)(1) of SIPA provides that the Board of Directors of SIPC must file a copy of any proposed bylaw change with the Commission, accompanied by a concise general statement of the basis and purpose of the proposed bylaw change.⁴ The proposed bylaw change will become effective thirty days after the date of filing 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 for such action, disapproves the proposed bylaw change as being contrary to the public interest or contrary to the purposes of SIPA; or (2) the Commission finds that the 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 for SIPC proposed rule

⁴ 15 U.S.C. 78ccc(e)(1).

changes in section 3(e)(2) of SIPA be followed with respect to the proposed bylaw change.⁵

Compensation paid to members of the financial service industry and paid to officials serving the public interest has become a topic of public interest in recent years. Therefore, the Commission finds, pursuant to section 3(e)(1)(B) of SIPA,⁶ that the proposed bylaw changes involve a matter of such significant public interest that public comment should be obtained and is requiring that the procedures applicable to SIPC proposed rule changes in section 3(e)(2) of SIPA⁷ be followed. As required by section 3(e)(1)(B) of SIPA,⁸ the Commission has notified SIPC of this finding in writing.

III. Date of Effectiveness of the Proposed Bylaw Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register*, or within such longer period (A) as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (B) as to which SIPC consents, the Commission shall: (i) by order approve such proposed bylaw change; or (ii) institute proceedings to determine whether such proposed bylaw change should be disapproved.⁹

IV. Text of Proposed Bylaw Change

The text of the proposed bylaw change, as revised by Amendment No. 1, is provided below. Proposed new language is in italics; proposed deletions are in brackets.

ARTICLE 2

⁵ 15 U.S.C. 78ccc(e)(1).

⁶ 15 U.S.C. 78ccc(e)(1)(B).

⁷ 15 U.S.C. 78ccc(e)(2).

⁸ 15 U.S.C. 78ccc(e)(1)(B).

⁹ 15 U.S.C. 78ccc(e)(2)(B).

BOARD OF DIRECTORS

Section 6. Honorarium and Reimbursement of Expenses

The Chairman of the Corporation shall receive a yearly honorarium of \$[15,000]28,000. The Chairman also shall be reimbursed for expenses incurred in connection with official business of the Corporation. The Vice Chairman shall receive a yearly honorarium of \$[6,250]12,000, *except that, if the position of Chairman is vacant and the Vice Chairman serves as acting Chairman for a continuous twelve-month period, then the Vice Chairman shall receive a yearly honorarium of \$28,000 for such period, calculated on a ratable basis for any partial period of such service in excess of the first twelve-month period.* The Vice Chairman also shall be reimbursed for expenses incurred in connection with official business of the Corporation. The three Directors selected from the securities industry ("*Securities Directors*") each shall receive a yearly honorarium of \$[6,250]12,000, *except that, if the positions of Chairman and Vice Chairman are vacant and, during such vacancy and pursuant to a delegation of authority from the Board, one of the Securities Directors performs certain functions of the Chairman for a continuous twelve-month period, then that Securities Director shall receive a yearly honorarium of \$28,000 for such period, calculated on a ratable basis for any partial period of such service in excess of the first twelve-month period.* The [three]Securities Directors [selected from the securities industry] also shall be reimbursed for expenses incurred in connection with official business of the Corporation. [The yearly honoraria shall be paid in quarterly installments as of November 21, 2006.]The remaining two Directors shall receive no honoraria from the Corporation and shall not be reimbursed by the Corporation for their official business expenses.

The honoraria described herein shall be paid in quarterly installments beginning on May 6, 2020. At ten year intervals thereafter, without further amendment of these Bylaws, the Board

shall have authority to evaluate and adjust the amounts of the honoraria provided herein. In adjusting the amount of the honoraria, the Board shall give due consideration to the number of days of service rendered by such member of the Board, and the maximum pay of a Senior Executive Service Government employee.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SIPC-2019-01 on the subject line.

Paper comments:

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All comments should refer to File Number SIPC-2019-01. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed bylaw change that is filed with the Commission, and all written communications relating to the proposed bylaw change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549,

on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Commission. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SIPC-2019-01, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,
Assistant Secretary.

¹⁰ 17 CFR 200.30-3(f)(2)(i); 17 CFR 200.30-3(f)(3).

