

**UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934
Release No. 34-98117 / August 11, 2023**

**ORDER EXTENDING THE EFFECTIVE DATE OF THE FORM BDW OF
MONMOUTH CAPITAL MANAGEMENT LLC**

Monmouth Capital Management LLC (“Monmouth” or the “firm”) is a registered broker-dealer and is a member of the Securities Investor Protection Corporation (“SIPC”). However, on June 15, 2023, Monmouth filed a Form BDW (Uniform Request for Broker-Dealer Withdrawal) with the Commission seeking to withdraw its registration as a broker or dealer.¹ Pursuant to Rule 15b6-1 of the Securities Exchange Act of 1934 (the “Exchange Act”),² a notice of withdrawal from registration filed by a broker-dealer on Form BDW shall become effective on the 60th day after filing with the Commission, or within such longer period of time that the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors.³ Under the Securities Investor Protection Act of 1970 (“SIPA”),⁴ SIPC’s authority to initiate a SIPA proceeding to protect the customers of a broker-dealer is limited to broker-dealers that are members of SIPC or were members of SIPC within 180 days of the initiation of the liquidation proceeding.⁵ A broker-dealer ceases to be a member of SIPC when its registration as a broker-dealer is terminated (i.e., on the effective date of its Form BDW).⁶

The Commission is assessing whether Monmouth engaged in conduct that would provide the basis for a referral to SIPC to initiate a liquidation proceeding of Monmouth under SIPA to protect customers of Monmouth to the extent permitted under SIPA.⁷ In particular, according to the Financial Industry Regulatory Authority, Inc. (“FINRA”), FINRA has expelled Monmouth for churning and excessively trading customer accounts in violation of Regulation Best Interest

¹ 17 C.F.R. § 249.501a.

² 17 C.F.R. § 240.15b6-1.

³ 17 C.F.R. § 240.15b6-1(b).

⁴ 15 U.S.C. § 78aa et seq.

⁵ See 15 U.S.C. § 78eee(a)(3).

⁶ See 15 U.S.C. § 78ccc(a)(2)(A).

⁷ See 15 U.S.C. § 78eee(a)(1) (providing that if the Commission or any self-regulatory organization is aware of facts which lead it to believe that any broker-dealer subject to its regulation is in or is approaching financial difficulty, it shall immediately notify SIPC, and, if such notification is by a self-regulatory organization, the Commission). The protections under SIPA include the ability to advance up to \$500,000 (of which up to \$250,000 can be used to satisfy the cash portion of a claim) to a customer of a failed broker-dealer to satisfy the customer’s claim against the failed broker-dealer for securities and cash if the customer’s claim is the type of claim that is covered by SIPA. See 15 U.S.C. § 78fff-3.

(Reg BI),⁸ failing to supervise its representatives, and providing false and misleading disclosures to retail customers on its client relationship summary (Form CRS). According to FINRA, between August 2020 and February 2023, Monmouth, acting through six registered representatives, excessively traded 110 accounts, 42 of which were also churned, causing customers to incur approximately \$3.9 million in commissions and trading costs and to suffer substantial losses, in violation of the Care Obligation of Reg BI and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.⁹

While SIPA generally does not protect customers from losses arising from excessive trading, churning, or fraud, in certain circumstances, it protects customers whose cash or securities at a failed broker-dealer have been unlawfully converted, including through unauthorized trading.¹⁰ And courts have held that unauthorized trading in certain circumstances can be the basis to provide customers with the protections afforded by SIPA.¹¹ Determining whether conduct involving unauthorized trading supports the initiation of a SIPA proceeding involves analyzing the particular facts and circumstances of a given customer's interactions with the failed broker-dealer. The Commission is analyzing the facts underlying FINRA's action and will consider any additional information it may discover to determine whether there is a basis to make a referral to SIPC.

If the Commission makes a referral to SIPC, SIPC staff will need time to evaluate the referral and determine whether to initiate a liquidation proceeding under SIPA. The Commission also may need time to evaluate SIPC's decision and take any appropriate actions.¹² Therefore, the Commission finds that it is necessary or appropriate in the public interest and for the protection of investors to extend the time before which Monmouth's Form BDW becomes effective (currently August 14, 2023) by one year, and consequently delay by one year the

⁸ 17 C.F.R. § 240.15l-1.

⁹ See FINRA, FINRA Expels Monmouth Capital Management (July 7, 2023), available at <https://www.finra.org/media-center/newsreleases/2023/finra-expels-monmouth-capital-management>.

¹⁰ See generally SEC v. SIPC, 758 F.3d 357, 362-3 (D.C. Cir. July 18, 2014) (“SIPA ... aims to protect securities investors against losses resulting from the failure of an insolvent or otherwise failed broker-dealer to properly perform its role as the custodian of customer cash and securities. [SIPA] generally affords no protection against other types of losses, such as those stemming from a decline in investment value. That is so even if a broker fraudulently induced the losing investment in the first place.”) (citations and quotations omitted). The definition of “customer property” in SIPA includes, in pertinent part, cash and securities at any time received, acquired, or held by or for the account of a broker-dealer from or for the securities accounts of a customer, and the proceeds of any such property transferred by the broker-dealer, including property unlawfully converted. See 15 U.S.C. 78lll(4) (emphasis added). See also, In re: John Dawson & Assocs., Inc., 271 B.R. 561, 662-63 (Bankr. N.D. Ill. 2001) (“claims of unauthorized trading may constitute a customer claim under SIPA because ‘customer property’ includes the proceeds of any such property transferred by the debtor, including property unlawfully converted.”) (citations and quotations omitted).

¹¹ See, e.g., In re Adler Coleman Clearing Corp., 198 B.R. 70, 75 (Bankr. S.D.N.Y. 1996) (“Unauthorized trading losses may constitute a customer claim under SIPA only if it was conducted by [the broker-dealer] because, by definition, ‘customer property’ includes ‘the proceeds of any such property transferred by the [broker-dealer], including property unlawfully converted.’”) (citing 15 U.S.C. § 78lll(4)).

¹² SIPC v. Barbour, 421 U.S. 412 (1975).

effectiveness of the firm's withdrawal from registration as a broker-dealer (to August 14, 2024). While this extra time will not delay any actions the Commission and its staff will take to protect the customers of Monmouth to the extent such actions are permitted under SIPA, it will both extend SIPC's timeframe to consider any potential referral from the Commission and provide an extra buffer of time to help ensure that all such actions can be taken and any legal remedies available to the Commission can be pursued.¹³

Accordingly,

IT IS ORDERED, pursuant to Rule 15b6-1(b) of the Exchange Act, that the effective date of Monmouth's Form BDW hereby is extended to August 14, 2024.

By the Commission.

Vanessa A. Countryman,
Secretary

¹³

Id.