SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA-174; File No. SIPC-2016-01]

Securities Investor Protection Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Notice of the determination of the Board of Directors of the Securities Investor Protection Corporation ("SIPC") regarding the standard maximum cash advance amount, beginning January 1, 2017.

SUMMARY: Pursuant to Section 3(e)(2) of the Securities Investor Protection Act of 1970 ("SIPA"),[1] notice is hereby given that the Board of Directors of SIPC (the "Board") filed with the Securities and Exchange Commission ("Commission") on February 17, 2016 notification that the Board has determined, beginning January 1, 2017, and for the five year period immediately thereafter, that the standard maximum cash advance amount available to satisfy customer claims for cash in a SIPA liquidation proceeding will remain at $250,000. The Commission is publishing this notice to solicit comments on Board's determination from interested parties.

DATES: Comments are to be received on or before [insert date 15 days from publication in the Federal Register].

ADDRESSES: 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

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[1] 15 U.S.C. 78ccc(e)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SIPC-2016-01 on the subject line.

Paper comments:

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

All comments should refer to File Number SIPC-2016-01. 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 this Notice that are filed with the Commission, and all written communications relating to the Notice 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. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551-5525; Thomas K. McGowan, Associate Director, at (202) 551-5521; Randall W. Roy, Deputy Associate Director, at (202) 551-5522; Timothy C. Fox, Branch Chief, at (202) 551-5687; or Rose Russo Wells, Senior Counsel, at (202) 551-5527; Office of Financial Responsibility, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

I. SIPC'S STATEMENT OF THE PURPOSE OF AND STATUORY BASIS OF THE DETERMINATION OF THE BOARD OF DIRECTORS OF SIPC NOT TO ADJUST THE STANDARD MAXIMUM CASH ADVANCE AMOUNT FOR INFLATION

In its filing with the Commission, SIPC included statements concerning the purpose of and statutory basis of the SIPC Board's determination. The text of these statements may be examined at the places specified above, and appear in the text, below.

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"Under the Securities Investor Protection Act, 15 U. S. C. Section 78aaa *et seq*. ("SIPA"), the Board of SIPC must decide, every five years beginning no earlier and no later than January 1, 2011, whether to adjust for inflation the standard maximum amount that SIPC can advance to satisfy customer claims for cash under SIPA. *See* SIPA § 78fff-3(e)(1).[2] The Board considered the question at its Meeting on June 18, 2015, and on July 16, 2015, after further deliberation, the Board reached its determination. The Board's determination is subject to the approval of the Commission as provided under SIPA Section 78ccc(e)(2).[3] If approved, any adjustment to the standard cash maximum advance would take effect on January 1, 2017. *See* SIPA 78fff-3(e)(4). Under SIPA Section 78fff-3(e)(3)(A), the SEC is required to publish in the Federal Register notice of the maximum amount.

Per our notice to the Commission by letter dated August 18, 2015, this will re-affirm to the Commission that effective January 1, 2017, and for the five years immediately thereafter, the Board has determined that the maximum amount of the advance to satisfy a claim for cash will remain at the current level of $250,000 per customer.

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2 For convenience, references herein to provisions of SIPA shall be to the United States Code, and shall omit "15 U.S.C."

3 SIPA Section 78ccc(e)(2) establishes procedures governing proposed changes to SIPC's rules.

Consideration of the Statutory Criteria

In deciding whether to adjust the maximum cash advance amount, the Board is to consider the following criteria under SIPA Section 78fff-3(e)(5):

(A) the overall state of the fund and the economic conditions affecting members of SIPC;

(B) the potential problems affecting members of SIPC; and

(C) such other factors as the Board of Directors of SIPC may determine appropriate.

In furtherance of the Board's consideration of the above factors, the SIPC staff solicited and received comments and/or data from the staffs of FINRA, SIFMA, the SEC, and the FDIC. The data related to member firms' aggregate leverage, liquidity, and default risk, and to aggregate customer free credit balances. The information was presented to the Board by the SIPC staff, as part of an analysis by the staff of the state of the SIPC Fund and its projected growth. The staff's analysis focused on SIPC's historical experience and examined 1) SIPC advances in past and present liquidation proceedings; 2) amounts generated from assessments on member broker-dealers; and 3) projected returns on SIPC investments. The analysis also considered a 2013 study by consultants engaged by SIPC to examine the potential impact on the SIPC Fund of an increase in the cash advance limit to $500,000. The conclusions reached by the staff in their analysis were corroborated by the data received from the aforementioned authorities and by the 2013 consultants' study, namely, that the SIPC Fund is positioned to remain on a steady growth path for the foreseeable future, barring any unforeseen catastrophic event.

The Board also reviewed the number of claims for cash exceeding the limit of protection in past and present liquidation proceedings. This data suggests that an inflation adjustment may not be necessary to further SIPC's purposes, but that if an inflation adjustment is made, its impact on the SIPC Fund may not be significant.

Of the more than 625,000 allowed claims in completed or substantially completed liquidation proceedings as of December 31, 2014, the unsatisfied portion of cash claims amounted to $25 million. More than half of that amount related to only three claims that were submitted when the limit of protection for cash claims was less than the current $250,000. In the six SIPA proceedings initiated since 2010, SIPC has advanced, net, funds for only one cash claim in excess of $250,000.

The Board also noted that customer credit balances at brokerage firms had decreased at the end of 2013 and 2014, and that due to broker-dealers' offer of overnight "sweep" programs, customer free credit balances were being moved to bank accounts, with the protection of such accounts thereby transferred to the FDIC.

With regard to FDIC deposit insurance, increases to the limit of protection for cash claims under SIPA historically have been in lockstep with increases in FDIC deposit insurance under the Federal Deposit Insurance Act, 12 U.S.C. § 1821 *et seq.* ("FDIA").[4] In 2008, and

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[4] The below compares the limits of protection for cash under SIPA and the FDIA:

SIPA: $20,000 (Pub. L. No. 91-598, § 6(f)(1)(A), 84 Stat. 1636, 1651 (1970))
FDIA: $20,000 (Pub. L. No. 91-151, §7, 83 Stat. 371, 375 (1969))

SIPA: $40,000 (Pub. L. No. 95-283, § 9, 92 Stat. 249, 265 (1978))
FDIA: $40,000 (Pub. L. No. 93-495, § 102(a), 88 Stat. 1500, 1502 (1974))

SIPA: $100,000 (Pub. L. No. 96-433, § 1, 94 Stat. 1855 (1980))
FDIA: $100,000 (Pub. L. No. 96-221, § 308, 94 Stat. 132, 147 (1980))

SIPA: $250,000 (Pub. L. No. 111-203, § 929H, 124 Stat. 1376, 1865 (2010))
FDIA: $250,000 ((temporary until 12/31/2009) Pub L No. 110-343, § 136, 122 Stat. 3765, 3799 (2008); (permanent) Pub. L. No. 111-203, § 335, 124 Stat. 1376, 1540 (2010)).

again, in 2010, parity with deposit insurance was the primary reason for SIPC's request to Congress to increase the SIPA limit of protection for cash claims. FDIC coverage is currently $250,000. While the Federal Deposit Insurance Act includes similar language to SIPA related to adjusting for inflation, the adjustment is based upon a $100,000 coverage level, and the FDIC has not increased coverage under the inflation provision.[5]

The Board expressed concern that a unilateral increase to the SIPA limit could have unintended consequences, particularly in light of the issue not having been widely studied or discussed. For example, increasing the SIPA limit above the deposit insurance limit could incentivize the movement of funds to brokerage accounts as a savings vehicle, an outcome not consistent with the intent of SIPA.

Finally, the Board considered the amount by which the limit of protection for allowed cash claims would change if adjusted for inflation. Under SIPA Section 78fff-3(e)(1)(B), if the Board determines that an adjustment is appropriate, then $250,000 is to be multiplied by

> [t]he ratio of the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding the year in which this subsection was enacted.

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5 12 U.S.C. section 1821(a)(1)(F)(i)(I). *See* Deposit Insurance Regulations; Permanent Increase in Standard Coverage Amount; Advertisement of Membership; International Banking; Foreign Banks, 75 Fed. Reg. 49363 n.6 (Aug. 13, 2010).

15 U.S.C. section 78fff-3(e)(1)(B).[6] Although the amount of the inflation adjustment need only be considered if the Board determines to adjust the $250,000 for inflation, *see* SIPA Section 78fff-3(e)(1), that determination would be meaningless if the adjustment resulted in no change. This was the case on January 1, 2011, when application of the formula would have increased the limit to the adjusted amount of $254,449.52.[7] However, under SIPA Section 78fff-3(e)(2), because the adjusted amount must be rounded down to the nearest $10,000 if it is not a multiple of $10,000, the limit would have remained at $250,000. Even if it had determined to do so, the Board could not have adjusted the amount.

<u>Conclusion</u>

A present-day application of the formula would increase the limit by $20,000.[8] The Board weighed the relevant factors against a potential adjustment of $20,000. The Board

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6 Under SIPA Sections 78fff-3(d) and 78fff-3(e)(1), the Board was required to adjust the maximum cash advance, if at all, *afte*r December 31, 2010, *but no later than* January 1, 2011, and then, could do so every 5 years thereafter. Thus, the five-year period after January 1, 2011, would occur in 2016. Under SIPA Section 78fff-3(e)(4), any adjustment to the amount of the cash advance would take effect on January 1 of the year immediately after the year in which the adjustment was made.

7 The calculation would be as follows: $250,000 multiplied by 1.017798 – the ratio of 111.112 (the annual value of the Price Index published by the Department of Commerce for 2010, the calendar year preceding the year in which the determination was to be made), to 109.169 (the published annual value of such index for 2009, the calendar year preceding the year in which the subsection was enacted) – equals $254,449.52.

8 The $20,000 is arrived at as follows: $250,000 multiplied by 1.08763 which is the ratio of 108.763 (the annual value of the Price Index published by the Department of Commerce for calendar year 2014), to 100.000 (the published annual value of the index for 2009, the calendar year preceding the year in which subsection 78fff-3(e)(1)(B) was enacted) which equals $271,907.50. Rounded down to $270,000, the adjusted limit reflects an increase of $20,000 from the $250,000 limit. Because the determination is to be made for the calendar year 2016, the annual value of the Price Index to be used is for the "calendar year preceding the year in which such determination is made," namely, the year 2015. However, the 2015 annual value was not available until after the end of the

concluded that, on balance, in light of the unprecedented break with the FDIC limit that would result, with possibly harmful consequences, and the absence of evidence that an appreciable number of investors would be benefitted, an adjustment to the limit of protection for cash claims was not appropriate. Accordingly, the Board determined that the standard maximum cash advance amount should remain at $250,000 per customer."

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II. DATE OF EFFECTIVENESS AND TIMING FOR COMMISSION ACTION

Within thirty-five days of the date of publication of this notice of the SIPC Board's determination in the Federal Register, or within such longer period (i) 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 (ii) as to which SIPC consents, the Commission shall:

(A) By order approve such determination or

(B) Institute proceedings to determine whether such determination should be disapproved.

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year. This calculation therefore was conditioned on the assumption of no unexpected dramatic rise in inflation in calendar year 2015. *See* http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&904=2009&903=64&906=a&905=2015&910=x&911=0.

III. NOTICE OF THE DETERMINATION OF THE SIPC BOARD NOT TO ADJUST THE STANDARD MAXIMUM CASH ADVANCE AMOUNT FOR INFLATION

Effective January 1, 2016, the Board of Directors of the Securities Investor Protection Corporation determined that an inflation adjustment to the standard maximum cash advance amount, as defined in section 9(d) of the Securities Investor Protection Act, 15 U.S.C. 78fff-3(d), would not be appropriate for the five-year period beginning on January 1, 2017. Accordingly, the Board determined that the standard maximum cash advance amount should remain at $250,000 per customer, effective January 1, 2017 and for the five years immediately thereafter.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Dated: February 22, 2016.

Robert W. Errett
Deputy Secretary

9 17 CFR 200.30-3(f)(3).