

# SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 300

[Release No. SIPA-173; File No. SIPC-2015-01]

### Securities Investor Protection Corporation

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities Investor Protection Corporation (“SIPC”) filed proposed rules with the Securities and Exchange Commission (“Commission”). SIPC proposes to adopt the SIPC Series 600 Rules, entitled “Rules Relating to Supplemental Report of SIPC Membership,” in accordance with paragraph (e)(4) of Rule 17a-5 under the Securities Exchange Act of 1934 (“Exchange Act”). The Commission is publishing the proposed rules for public comment.

Because SIPC rules have the force and effect as if promulgated by the Commission, those rules are published in Title 17 of the Code of Federal Regulations.

**DATES:** Comments are to be received on or before November 25, 2015.

**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

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SIPC-2015-01 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-2015-01. 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 rule change that are filed with the Commission, and all written communications relating to the proposed rule 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. 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; 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.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 3(e)(2)(A) of the Securities Investor Protection Act of 1970 ("SIPA"),<sup>1</sup> notice is hereby given that SIPC filed with the Commission on April 17, 2015, proposed rules, and subsequently filed amendments to the

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<sup>1</sup> 15 U.S.C. 78ccc(e)(2)(A).

proposed rules on June 23, 2015, July 24, 2015, and September 29, 2015 as described in Item I below, which item has been substantially prepared by SIPC. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

**I. SIPC'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULES**

In its filing with the Commission, SIPC included statements concerning the purpose of and basis for the proposed rules. The text of these statements may be examined at the places specified above.

Pursuant to 15 U.S.C. 78ddd(c), and SIPC Bylaws, broker-dealers that are SIPC members pay assessments into the SIPC Fund. As long as the assessment is a percentage of revenue, each member must file with SIPC a Form SIPC-6 (General Assessment Payment Form) and a Form SIPC-7 (General Assessment Reconciliation Form) which show the member's calculation of the assessment.<sup>2</sup> If the broker-dealer is exempt from having to pay an assessment, it files a Form SIPC-3, which is a certification by the broker-dealer that it is excluded from SIPC membership under 15 U.S.C. 78ccc(a)(2)(A).

In 1972, as a result of significant discrepancies between the assessment information reported to SIPC and information supplied in reports filed with the Commission on which the calculation of the assessment was based, the Commission amended its broker-dealer reporting rule, Rule 17a-5,<sup>3</sup> to require every member of a national securities exchange and every broker-dealer subject to the reporting requirements of Rule 17a-5 to file a supplemental report.<sup>4</sup> The

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<sup>2</sup> Form SIPC-6 reflects the assessment calculation for the first half of the fiscal year. Form SIPC-7 is submitted at the end of the member's fiscal year and provides for a deduction of the amount paid with the Form SIPC-6.

<sup>3</sup> 17 CFR 240.17a-5.

<sup>4</sup> See Report of Securities Investor Protection Corporation Assessments, Exchange Act Release No. 9766 (Sep. 15, 1972), 37 FR 18909 (Sep. 16, 1972).

supplemental report must include forms showing a detailed calculation of the member's SIPC assessment payments or the broker-dealer's exclusion from membership, and be accompanied by a report of the independent public accountant of the broker-dealer. The independent public accountant must be engaged to perform certain procedures specified in Rule 17a-5.<sup>5</sup>

The annual reports that broker-dealers file with the Commission under paragraph (d) of Rule 17a-5 contain detailed information regarding the financial condition of the broker-dealer. On July 30, 2013, the Commission, among other things, made significant amendments to Rule 17a-5 ("the 2013 amendments").<sup>6</sup> Effective December 31, 2013, the Commission's amendments to paragraph (d)(6) of Rule 17a-5 require that a copy of the annual reports also be provided to SIPC if the broker-dealer is a member of SIPC.<sup>7</sup> In addition, effective June 1, 2014, the Commission's amendments to paragraph (e)(4) of Rule 17a-5 provide that the broker-dealer must file with SIPC a report on the SIPC annual general assessment reconciliation or exclusion from membership forms that contains such information and is in such format as determined by SIPC by rule and approved by the Commission.<sup>8</sup> The Commission determined that because Forms SIPC-3 and SIPC-7 are used solely by SIPC for purposes of levying its assessments, SIPC should prescribe by rule the form of the report. Under the amendments to paragraph (e)(4), broker-dealers are required to file the SIPC supplemental reports using the existing formats for the reports until the earlier of the Commission approving a rule adopted by SIPC or two years from the effective date of the amendment and if, after two years, no such rule has been approved,

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<sup>5</sup> The items that must be included in the report and the procedures to be performed by the accountant are listed in paragraphs (e)(4)(ii)(A), (B), and (C) of Rule 17a-5.

<sup>6</sup> See Broker-Dealer Reports, Exchange Act Release No. 70073 (Jul. 30, 2013), 78 FR 51910 (Aug. 21, 2013) ("Broker-Dealer Reports").

<sup>7</sup> See Broker-Dealer Reports, 78 FR 51990.

<sup>8</sup> See Broker-Dealer Reports, 78 FR 51926-7, 51991. Under 15 U.S.C. 78ccc(e)(2)(A), to be final, rules proposed by SIPC must be approved by the Commission.

broker-dealers would no longer be required to file the reports.<sup>9</sup> The proposed rule change would add SIPC Rule 600 (“Rule 600”), entitled “Rules Relating to Supplemental Report of SIPC Membership.”<sup>10</sup> The purpose of the proposed rule is to prescribe the information that must be included in, and the format of, a broker-dealer’s supplemental report to SIPC.

In a letter to SIPC dated January 9, 1989, Commission staff advised that it would not recommend action by the Commission if a SIPC member reporting \$500,000 or less in total revenue did not file the supplemental report.<sup>11</sup> The proposed SIPC rules incorporate this relief by providing that a SIPC member broker-dealer is exempt from filing the supplemental report if the broker-dealer reports \$500,000 or less in total revenue in its “annual audited statement of income” filed with the Commission. The proposed rules also provide that the independent public accountant must be independent in accordance with the provisions of 17 CFR 240.2-01 and that the accountant must be engaged to perform the enumerated agreed-upon procedures in accordance with standards of the Public Company Accounting Oversight Board. Finally, under paragraph (e) of Rule 17a-5, a broker-dealer’s annual reports must be prepared and filed in accordance with certain enumerated requirements. Paragraph (e)(4) of Rule 17a-5 requires the broker-dealer to file the supplemental report, and paragraph (e)(5) of Rule 17a-5 requires that a broker-dealer’s annual reports be filed not more than 60 calendar days after the fiscal year end of the broker-dealer. Accordingly, the proposed rules provide that a broker-dealer must file the supplemental report within 60 days after the end of its fiscal year. In other respects, the proposed rules largely mirror the text of paragraphs (e)(4)(ii)(A), (B), and (C) of Rule 17a-5.

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<sup>9</sup> See Broker-Dealer Reports, 78 FR 51927, 51991.

<sup>10</sup> 17 CFR 300.600.

<sup>11</sup> See Letter dated January 9, 1989 from Michael A. Macchiaroli, SEC, to Theodore H. Focht, President and General Counsel, SIPC (SEC No-Action Letter 1989 WL 245631).

## **II. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION**

Within thirty-five days of the date of publication of this notice 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 proposed rule change or

(B) Institute proceedings to determine whether such proposed rule change should be disapproved.

To allow public access to SIPC's rules, SIPC rules that are approved by the Commission are published under Part 300 of 17 CFR Chapter II.

## **III. STATUTORY AUTHORITY**

Pursuant to SIPA, 15 U.S.C. 78aaa *et. seq.*, and particularly, section 3(e) (15 U.S.C. 78ccc(e)), SIPC proposes to adopt 300.600 of Title 17 of the Code of Federal Regulations.

### **List of Subjects in 17 CFR Part 300**

Brokers, Securities.

### **Text of the Amendments**

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## **PART 300 – RULES OF THE SECURITIES INVESTOR PROTECTION**

### **CORPORATION**

1. The authority citation for part 300 continues to read as follows:

**Authority:** 15 U.S.C. 78ccc.

2. Section 300.600 is added as follows:

## Series 600 Rules

### §300.600 Rules relating to supplemental report on SIPC membership.

(a)(i) **Who must file the supplemental report.** Except as provided in paragraph (a)(ii) of this section, a broker or dealer must file with SIPC, within 60 days after the end of its fiscal year, a supplemental report on the status of its membership in SIPC (commonly referred to as the “Independent Accountants’ Report on Applying Agreed-Upon Procedures”) if a rule of the Securities and Exchange Commission (SEC) requires the broker or dealer to file audited financial statements annually.

(ii) If the broker or dealer is a member of SIPC, the broker or dealer is not required to file the supplemental report for any year in which it reports \$500,000 or less in total revenues in its annual audited statement of income filed with the SEC.

(b) **Requirements of the supplemental report.** The supplemental report must cover the SIPC Annual General Assessment Reconciliation Form (Form SIPC-7) or the Certification of Exclusion From Membership Form (Form SIPC-3) for each year for which an SEC Rule requires audited financial statements to be filed. The supplemental report must include the following:

(i) A copy of the form filed or a schedule of assessment payments showing any overpayments applied and overpayments carried forward, including payment dates, amounts, and name of SIPC collection agent to whom mailed; or

(ii) If exclusion from membership was claimed, a statement that the broker or dealer qualified for exclusion from membership under the Securities Investor Protection Act of 1970, as amended, and the date the Form SIPC-3 was filed with SIPC; and

(iii) An independent public accountant’s report. The independent public accountant, who must be independent in accordance with the provisions of 17 CFR § 240.210.2-01, must be

engaged to perform the following agreed-upon procedures in accordance with standards of the Public Company Accounting Oversight Board (PCAOB):

- (A) Compare assessment payments made in accordance with the General Assessment Payment Form (Form SIPC-6) and applied to the General Assessment calculation on the Form SIPC-7 with respective cash disbursements record entries;
- (B) For all or any portion of a fiscal year, compare amounts reflected in the audited financial statements required by SEC Rule with amounts reported in the Form SIPC-7;
- (C) Compare adjustments reported in the Form SIPC-7 with supporting schedules and working papers supporting the adjustments;
- (D) Verify the arithmetical accuracy of the calculations reflected in the Form SIPC-7 and in the schedules and working papers supporting any adjustments; and
- (E) Compare the amount of any overpayment applied with the Form SIPC-7 on which it was computed; or
- (F) If exclusion from membership is claimed, compare the income or loss reported in the audited financial statements required by SEC Rule with the Form SIPC-3.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Dated: October 28, 2015

Robert W. Errett  
Deputy Secretary

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<sup>12</sup> 17 CFR 200.30-3(f)(3).