

SECURITIES AND EXCHANGE COMMISSION
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June 15, 2016

Securities Investor Protection Corporation; Notice of Filing of Proposed Bylaw Amendments Relating to Assessment of SIPC Members

Pursuant to section 3(e)(1) of the Securities Investor Protection Act of 1970 (“SIPA”),¹ on May 2, 2016 the Securities Investor Protection Corporation (“SIPC”) filed with the Securities and Exchange Commission (“Commission”) proposed bylaw amendments relating to assessments on SIPC member broker-dealers. On May 27, 2016, SIPC consented to a 60-day extension of time before the proposed bylaw amendments take effect pursuant to section 3(e)(1) of SIPA.² Pursuant to section 3(e)(1)(B) of SIPA, the Commission finds that this proposed bylaw change involves a matter of such significant public interest that public comment should be obtained.³ Therefore, pursuant to section 3(e)(2)(A) of SIPA,⁴ the Commission is publishing this notice to solicit comments on the proposed bylaw change from interested persons.

In its filing with the Commission, SIPC included statements concerning the purpose of and statutory basis for the proposed bylaw amendments 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).

³ 15 U.S.C. 78ccc(e)(1)(B).

⁴ 15 U.S.C. 78ccc(e)(2)(A).

I. SIPC’s Statement of the Purpose of, and Statutory Basis for, Proposed SIPC Bylaw Amendments Relating to Assessment of SIPC Members

Overview:

Pursuant to Section 3(e)(1) of SIPA, SIPC submits this statement of the purpose of, and statutory basis for, proposed amendments to the SIPC Assessments Bylaw.⁵ Among other things, the Assessments Bylaw, at Article 6 of the SIPC Bylaws (“Article 6”), currently provides for an assessment rate of ¼ of one percent of each member’s net operating revenues from the securities business until the SIPC Fund reaches \$2.5 billion and SIPC determines that the Fund will remain at or above \$2.5 billion for at least six months. Once that determination is made, the assessment rate falls to a “minimum assessment” of 0.02 percent of the member’s net operating revenues from the securities business.

Notwithstanding the foregoing, Article 6 also provides that the assessment rate is ¼ of one percent of annual net operating revenues 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. Under the Bylaws, then, it is possible for the rate to change, in relatively short order, from ¼ of one percent to a minimum assessment, and back to ¼ of one percent.

SIPC continues to examine whether the Fund “target balance” of \$2.5 billion is adequate for SIPC to carry out its mission of customer protection. Whether or not \$2.5 billion is sufficient, in furtherance of its mission, SIPC wishes to ensure that at a minimum and to the extent possible, the Fund does not fall below \$2.5 billion. Accordingly, in setting the assessment rate, SIPC deems it prudent 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 a longer term. In addition, the size of the Fund is more likely to stay at or above the target balance if there is a

⁵ 15 U.S.C. 78ccc(e)(1).

more gradual progression in rates, before the minimum assessment rate is imposed. Finally, 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.

With these considerations in mind, SIPC proposes to modify the Assessments Bylaw in two respects: one, 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, as reflected in its most recent audited Statement of Financial Position, are less than \$2.5 billion; and two, to amend the date on which any change in assessments becomes effective.

Statement of Purpose and Statutory Basis:

Background:

Section 4(a)(1) of SIPA authorizes SIPC to establish a "SIPC Fund" ("the SIPC Fund" or "Fund") from which all expenditures by SIPC are to be made.⁶ Examples of SIPC expenditures include advances to trustees to satisfy customer claims, and to pay administrative expenses in SIPA proceedings where the general estate is insufficient. The SIPC Fund also supports the day-to-day operations of SIPC.

All SIPC members pay an assessment into the SIPC Fund.⁷ After consultation by SIPC with self-regulatory organizations, the assessment is in the amount that SIPC deems "necessary and appropriate," to establish and maintain the SIPC Fund and to repay any borrowings by SIPC. Currently, the rate stands at ¼ of one percent per year of SIPC members' net operating revenues derived from the securities business.⁸ The rate is to remain at ¼ of one percent until the balance

⁶ 15 U.S.C. 78ddd(a)(1).

⁷ 15 U.S.C. 78ddd(c)(2).

⁸ Article 6, § 1(a)(1)(A).

of the SIPC Fund, as defined in section 4(a)(2) of SIPA,⁹ excluding SIPC confirmed lines of credit, reaches a target balance of \$2.5 billion, and SIPC determines that the Fund will remain at \$2.5 billion for at least six months.¹⁰ If that determination is made, the rate falls to a “minimum assessment” which is 0.02 percent of each member’s annual net operating revenues from the securities business.¹¹

Article 6, however, also provides that if SIPC determines that the SIPC Fund is, or is reasonably likely to be, less than \$2.5 billion and will likely remain at less than \$2.5 billion for six months or more, exclusive of confirmed lines of credit, then the assessment rate is to be ¼ of one percent of the member’s annual net operating revenue.¹²

The Proposed Amendments:

A. Imposition of An Intermediary Assessment Rate

Where large SIPA liquidation proceedings are pending that require sizeable advances by SIPC, the SIPC Fund may be at \$2.5 billion for six months, but then fall significantly below that amount as additional advances are made. Under Article 6, Section 1(a)(1)(A), once the Fund reaches \$2.5 billion and is projected to remain at or above that amount for six months or more,

⁹ 15 U.S.C. 78ddd(a)(2)

¹⁰ Article 6, § 1(a)(1)(B)

¹¹ Id.

¹² Article 6, § 1(a)(1)(C)(i). If the amount is less than \$150 million, the assessment is in an amount to be determined by SIPC, but cannot be less than ¼ of one percent of the member’s annual gross revenues from the securities business. Article 6, § 1(a)(1)(C)(ii). If the Fund is less than \$100 million, then the amount of the assessment also is determined by SIPC but, each year, it cannot be less than ½ of one percent of each member’s annual gross revenues from the securities business. Article 6, § 1(a)(1)(C)(iii); 15 U.S.C. 78ddd(d)(1)(A) and (B). In no event may the assessment rate be more than ½ of one percent annually of the member’s gross revenues from the securities business, unless SIPC determines that a higher rate, but not one that is higher than one (1) percent of gross revenues, will not have a material adverse effect on the financial condition of SIPC members or their customers. Article 6, § 1(a)(1)(C)(iv); 15 U.S.C. 78ddd(c)(3)(B).

SIPC could change the assessment rate from ¼ of one percent, to 0.02 percent, of net operating revenues from the securities business. 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, but more than \$150 million, for six months or more, SIPC alternatively could require that the assessment rate remain at ¼ of one percent.¹³ This situation is problematic not only for SIPC, but for its members. SIPC members might reasonably expect to pay a minimum assessment once the Fund reaches \$2.5 billion, but even if they do, they could be subject to a sudden increase in the assessment as the rate returns to ¼ of one percent.

To provide clarity in this situation and to maintain the SIPC Fund at or above the target balance, and to offer some relief in the assessment that members must pay while reducing the likelihood of sudden changes in the rates, SIPC proposes to amend Article 6 as follows.

First, when the SIPC Fund reaches \$2.5 billion and is projected to be at \$2.5 billion for six months or more, SIPC will consider the balance of its unrestricted net assets, as reflected in its most recent audited Statement of Financial Position. Among other items, included within the calculation of unrestricted net assets is provision for trustees' estimated costs to complete ongoing customer protection proceedings.¹⁴ Thus, in setting the assessment rate, SIPC will consider not only the balance of the SIPC Fund, but projected long-term liabilities.

Second, SIPC will impose an annual assessment rate of 0.15 percent of a member's net operating revenues from the securities business¹⁵ if (A) the amount of the SIPC Fund is at \$2.5

¹³ Article 6, § 1(a)(1)(C)(i).

¹⁴ See, e.g., 2015 SIPC Annual Report at 20 (<http://www.sipc.org/Content/media/annual-reports/2015-annual-report.pdf>).

¹⁵ 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. 7811(9), less total interest and dividend expense, but not exceeding total interest and dividend income. See Article 6, § 1(g). See also <http://www.sipc.org/Content/media/filing-forms/SIPC-6-20130830.PDF>.

billion or more; (B) SIPC has determined that the Fund will remain at or above \$2.5 billion for at least six months; but (C) SIPC's unrestricted net assets, as reflected in its most recent audited Statement of Financial Condition, are less than \$2.5 billion. This measure establishes an intermediary assessment rate of 0.15 percent between the ¼ of one percent assessment imposed on SIPC members and the minimum assessment, and provides for a more gradual progression toward the imposition of a minimum assessment.

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

In addition to the foregoing, SIPC proposes to amend Article 6 with respect to when a change in assessments becomes effective. Currently, Article 6, Section 1(a)(1), 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"). In the ordinary course and to give as much notice to members as possible, the SIPC Board of Directors determines the rate of assessment at its September Meeting. The Board's determination is announced shortly thereafter but is not made effective until the first day of the following year. See, e.g., <http://www.sipc.org/for-members/assessment-rate>. SIPC last announced an assessment rate change (from a minimum assessment to the current ¼ of one percent) on March 2, 2009, to take effect on April 1, 2009. The assessment rate has continued unchanged since then.

In order to give its members as much notice as possible of the assessment rate for the following year, SIPC has determined to amend the Notice Provision. An assessment rate will be effective on the first day of the year following the date on which SIPC announces its determination, consistent with SIPC's practice that the determination of the rate normally will occur in September. There may be emergency situations, however, when the need for an

assessment rate to become effective is more immediate. In that case, the assessment rate will be effective on the date announced by SIPC provided that the exigency of the circumstances so warrants.

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.¹⁶ 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: (A) 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 (B) 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 proposed SIPC rule changes in section 3(e)(2) of SIPA be followed with respect to the proposed bylaw change.¹⁷ 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. In light of this fact and that the bylaw change provides for a new assessment methodology, the Commission finds, pursuant to section 3(e)(1)(B) of SIPA,¹⁸ that the proposed bylaw change involves a matter of such significant public interest that public comment should be obtained and that the procedures applicable to

¹⁶ 15 U.S.C. 78ccc(e)(1).

¹⁷ 15 U.S.C. 78ccc(e)(1).

¹⁸ 15 U.S.C. 78ccc(e)(1)(B).

proposed SIPC proposed rule changes in section 3(e)(2) of SIPA¹⁹ should be followed. As required by section 3(e)(1)(B) of SIPA, 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 rule change; or (ii) Institute proceedings to determine whether such proposed rule change should be disapproved.²⁰

IV. Text of Proposed Bylaw Change

The text of the proposed bylaw change is provided below. Proposed new language is in italics; proposed deletions are in brackets.

ARTICLE 6

ASSESSMENTS

Section 1. General.

(a) Amount of Assessment.

(1) The amount of each member's assessment for the member's fiscal year shall [either be (a) the minimum amount or (b)] *be* the product of the assessment rate established by SIPC for that fiscal year and either the member's gross or net revenues from the securities business, as follows:

(A) The assessment rate shall be one-fourth (1/4) of one (1) percent per annum of net operating

¹⁹ 15 U.S.C. 78ccc(e)(2).

²⁰ 15 U.S.C. 78ccc(e)(2)(B).

revenues from the *member's* securities business [until] *for each calendar year or part thereof unless* SIPC determines that the balance of the SIPC Fund, as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit, (i) has aggregated a [target] balance of \$2.5 billion, and (ii) will remain at or above \$2.5 billion for six months or more.

(B) *Notwithstanding the provisions of Section 1(a)(1)(A) herein*, if SIPC determines that the balance of the SIPC Fund, as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit, (i) has aggregated \$2.5 billion, and (ii) will remain at or above \$2.5 billion for six months or more, *but SIPC's unrestricted net assets, as reflected in SIPC's most recent audited Statement of Financial Position, are less than \$2.5 billion, the assessment rate shall be 0.15 percent per annum of net operating revenues from the member's securities business for each calendar year or part thereof.*

(C) *If SIPC determines that the balance of the SIPC Fund, as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit, has aggregated \$2.5 billion or more, and will remain at or above \$2.5 billion for six months or more, and SIPC's unrestricted net assets, as reflected in SIPC's most recent audited Statement of Financial Position, are at or above \$2.5 billion,* members shall pay a minimum assessment, which shall be 0.02 percent of the net operating revenues from the securities business for each calendar year or part thereof.

[C](D) *Anything to the contrary herein notwithstanding*, if at any time SIPC determines that the balance of the SIPC Fund, as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit, aggregates or is reasonably likely to aggregate:

(i) less than [the target balance of] \$2.5 billion and will likely remain less than \$2.5 billion for a period of six (6) months or more – the amount of each member's assessment shall be at an assessment rate of one-fourth (1/4) of one (1) percent per annum of net operating revenue.

(ii) less than \$150,000,000 – the amount of each member’s assessment shall be at an amount to be determined by SIPC, but in no case shall the amount of each member’s assessment be less than an assessment rate of one-fourth ($\frac{1}{4}$) of one (1) percent per annum of such member’s gross revenues from the securities business.

(iii) less than \$100,000,000 – the amount of each member’s assessment shall be at an amount to be determined by SIPC, but in no case shall the amount of each member’s assessment be less than an assessment rate of one-half ($\frac{1}{2}$) of one (1) percent per annum of such member’s gross revenues from the securities business.

(iv) The amount of each member’s assessment shall not exceed one-half ($\frac{1}{2}$) of one (1) percent per annum of such member’s gross revenues from the securities business, unless SIPC determines that a rate in excess of one-half ($\frac{1}{2}$) of one (1) percent during any twelve (12) month period will not have a material adverse effect on the financial condition of its members or their customers. No assessment made pursuant to this Section 1(a)(1) shall require payments during any such period that exceed in the aggregate one (1) percent of any member’s gross revenues from the securities business for such period.

(2) Any change in assessments made in accordance with [the above] *Section 1(a)(1) herein* shall commence on the first day of the [month] *year* following the date on which SIPC announces its determination, *or on such other date if the exigency of the circumstances so warrants in SIPC’s determination*, and continue until such time as SIPC provides otherwise.

(3) Commencing on the first day of the month following the date on which SIPC borrows moneys pursuant to Section 4(f) or Section 4(g) of the Act, and continuing while any such borrowing is outstanding and until such further time as SIPC provides otherwise, the amount of each member’s assessment shall be at an assessment rate of not less than one-half ($\frac{1}{2}$) of one (1)

percent per annum of such member's gross revenues from the securities business.

(b) Payments. Assessments shall be payable at such times and in such manner as may be determined by SIPC's Vice President - Finance with the approval of the Chairman.

(c) Collection of General Assessments. Each member of the Corporation who is a member of a self-regulatory organization shall pay assessments to its collection agent. In the case of members who are not members of any self-regulatory organization, assessments shall be paid directly to the Corporation.

(d) Report by Collection Agents. Within 45 days after each due date, each self-regulatory organization which is the collection agent shall submit a written report to the Corporation as to any entity for whom it acts as collection agent whose filing or assessment payment has not been received.

(e) Interest on Assessments. If all or any part of an assessment payable under Section 4 of the Act has not been received by the collection agent within 15 days after the due date thereof, the member shall pay, in addition to the amount of the assessment, interest at the rate of 20% per annum on the unpaid portion of the assessment for each day it has been overdue. If any broker or dealer has incorrectly filed a claim for exclusion from membership in the Corporation, such broker or dealer shall pay, in addition to assessments due, interest at the rate of 20% per annum on the unpaid assessment for each day it has not been paid since the date on which it should have been paid.

(f) Gross Revenues. The term "gross revenues from the securities business" includes the revenues in the definition of gross revenues from the securities business set forth in the applicable sections of the Act.

(g) Net Operating Revenues. The term "net operating revenues from the securities business"

means gross revenues from the securities business less interest and dividend expenses, and includes those clarifications as are set forth in the SIPC assessment forms and instructions.

Section 2. Overpayments.

If the final annual reconciliation filed by a terminated member reflects an assessment overpayment carried forward that exceeds \$150.00, SIPC may refund such excess to the member upon receipt of the member's written request therefor and after the member's SIPC collection agent has confirmed to SIPC that all of the member's SIPC assessment form filings and payments and reports required by SEC Rule 17a-5 covering periods through the termination date have been reviewed and accepted.

Section 3. Interpretation of Terms.

For purposes of this Article:

- (a) The term "securities in trading accounts" shall mean securities held for sale in the ordinary course of business and not identified as having been held for investment.
- (b) The term "securities in investment accounts" shall mean securities that are clearly identified as having been acquired for investment in accordance with provisions of the Internal Revenue Code applicable to dealers in securities.
- (c) The term "fees and other income from such other categories of the securities business" shall mean all revenue related either directly or indirectly to the securities business except revenue included in Section 16(9)(A)-(K) and revenue specifically excepted in Section 4(c)(3)(C).

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-2016-02 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-2016-02. 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 are 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. 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.

All submissions should refer to File Number SIPC-2016-02, 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.²¹

Brent J. Fields
Secretary

²¹ 17 CFR 200.30-3(f)(2)(i) & 200.30-3(f)(3).