

Corrected to conform to the Federal Register version

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 300

Release No. SIPA-175; File No. SIPC-2015-01

Securities Investor Protection Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is approving a proposed rule change filed by the Securities Investor Protection Corporation (“SIPC”). The rule change adds SIPC Rule 600, entitled “Rules Relating to Supplemental Report of SIPC Membership.” 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, where the rule change will be reflected.

DATE: Effective [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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; 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: The Commission is approving a proposed rule change filed by SIPC, adding SIPC Rule 600, 17 CFR 300.600.

I. Background

On April 17, 2015, SIPC filed a proposed rule change with the Commission under section 3(e)(2)(A) of the Securities Investor Protection Act of 1970 (“SIPA”),¹ and subsequently filed amendments to the proposed rule change on June 23, 2015, July 24, 2015, and September 29, 2015. The proposed rule change would add SIPC Rule 600 (“Rule 600”), entitled “Rules Relating to Supplemental Report of SIPC Membership.” Notice requesting comment on the proposed rule change, as amended, was published in the Federal Register on November 4, 2015.² The Commission received one comment on the proposal.³ The Commission is approving the proposed rule change under section 3(e)(2) of SIPA.⁴

II. Proposed Rule Change

Pursuant to SIPA and SIPC Bylaws, broker-dealers that are SIPC members pay semi-annual assessments to SIPC at the mid-point and at the end of their fiscal year.⁵ The assessment payments are the main source of funding for the SIPC Fund. The amount of the assessment a broker-dealer must pay is based on the firm’s revenues from its securities business.⁶

Consequently, in relation to the payment of the assessments, a broker-dealer must file with SIPC

¹ 15 U.S.C. 78ccc(e)(2)(A).

² See Securities Investor Protection Corporation, Release No. SIPA-173 (Oct. 28, 2015), 80 FR 68286 (Nov. 4, 2015).

³ See e-mail from Paul W. Lameo to Michael A. Macchiaroli dated December 22, 2015. The comment requested clarification regarding a number of technical questions concerning the process for filing reports with SIPC. SIPC intends to issue Frequently Asked Questions to respond to those and other technical questions.

⁴ Under SIPA, to be final, rules proposed by SIPC must be approved by the Commission. See 15 U.S.C. 78ccc(e)(2).

⁵ See 15 U.S.C. 78ddd(c); SIPC Bylaws, Article 6.

⁶ See 15 U.S.C. 78ddd(c) and (d).

a Form SIPC-6 (General Assessment Payment Form) with the mid-year assessment and a Form SIPC-7 (General Assessment Reconciliation Form) with the year-end assessment. These forms show the broker-dealer's calculation of the assessment amount based on its revenues from its securities business.⁷

Broker-dealers that limit their business to certain specified activities or conduct their business outside of the United States are exempt from being members of SIPC.⁸ Consequently, these broker-dealers do not pay a SIPC assessment. However, they must file a Form SIPC-3, which is a certification by the broker-dealer that it is excluded from SIPC membership under SIPA.

In 1972, as a result of significant discrepancies between the assessment information reported to SIPC on the Forms SIPC-6 and SIPC-7 and information supplied in reports filed with the Commission on which the calculation of the assessment was based, the Commission amended Rule 17a-5⁹ (the broker-dealer reporting rule).¹⁰ As amended, the rule generally requires broker-dealers to file with the Commission a SIPC supplemental report.¹¹ The SIPC supplemental report includes a schedule of assessment payments or a statement that the broker-dealer qualified for exclusion from membership in SIPC. The SIPC supplemental report also must include a report of an independent public accountant, who must be engaged to perform

⁷ Form SIPC-7 provides that the broker-dealer may deduct from the end of fiscal year assessment the amount paid mid-year with the filing of the Form SIPC-6.

⁸ See 15 U.S.C. 78ccc(a)(2)(A).

⁹ 17 CFR 240.17a-5.

¹⁰ See Report of Securities Investor Protection Corporation Assessments, Exchange Act Release No. 9766 (Sep. 15, 1972), 37 FR 18909 (Sep. 16, 1972).

¹¹ See 17 CFR 240.17a-5(e)(4).

certain procedures specified in Rule 17a-5 with respect to the information provided in the report.¹²

On July 30, 2013, the Commission amended Rule 17a-5.¹³ As part of this rulemaking, the Commission determined that because Forms SIPC-3, SIPC-6, and SIPC-7 are used solely by SIPC for purposes of levying its assessments, the SIPC supplemental report should be filed only with SIPC. The Commission also determined that SIPC should prescribe the form and content of the SIPC supplemental report. Accordingly, the Commission amended paragraph (e)(4) of Rule 17a-5 to provide that a broker-dealer must file a SIPC supplemental report with SIPC that contains such information and is in such format as determined by SIPC by rule and approved by the Commission.¹⁴

The rule change approved by the Commission adds SIPC Rule 600, entitled “Rules Relating to Supplemental Report of SIPC Membership.”¹⁵ The purpose of Rule 600 is to replace the requirements currently in Rule 17a-5 prescribing the information that must be included in, and the format of, the SIPC supplemental report.¹⁶ The requirements of Rule 600 are modeled

¹² 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.

¹³ See Broker-Dealer Reports, Exchange Act Release No. 70073 (Jul. 30, 2013), 78 FR 51910 (Aug. 21, 2013) (“Broker-Dealer Reports”).

¹⁴ See Broker-Dealer Reports, 78 FR 51926-7, 51991, 17 CFR 240.17a-5(e)(4)(i) .
¹⁵ 17 CFR 300.600.

¹⁶ See 17 CFR 240.17a-5(e)(4)(ii). Rule 17a-5 provides that broker-dealers are required to file the SIPC supplemental reports pursuant to the requirements in paragraph (e)(4)(ii) of the rule until the earlier of the Commission approving a rule adopted by SIPC or two years from the effective date of the amendment (that is, by June 14, 2016). See 17 CFR 240.17a-5(e)(4)(ii). Consequently, if, after two years from the effective date no such SIPC rule has been approved, broker-dealers would no longer be required to file the reports.

on the requirements of Rule 17a-5.¹⁷ For example, Rule 600 requires that the SIPC supplemental report include, among other things, a copy of the Form SIPC-7 filed or a schedule of assessment payments showing any overpayments applied and overpayments carried forward, including payment dates and amounts; or, if exclusion from membership was claimed, a statement that the broker-dealer qualified for exclusion from membership under SIPA and the date the Form SIPC-3 was filed with SIPC.¹⁸ Further, Rule 600 requires that the SIPC supplemental report include a report of an independent public accountant who is engaged to perform the following agreed-upon procedures:

- Compare assessment payments made in accordance with Form SIPC-6 and applied to the general assessment calculation on Form SIPC-7 with respective cash disbursements record entries;
- For all or any portion of a fiscal year, compare amounts reflected in the audited financial statements required by Commission rule with amounts reported in Form SIPC-7;
- Compare adjustments reported in Form SIPC-7 with supporting schedules and working papers supporting the adjustments;
- Verify the arithmetical accuracy of the calculations reflected in Form SIPC-7 and in the schedules and working papers supporting any adjustments; and
- Compare the amount of any overpayment applied with the Form SIPC-7 on which it was computed; or
- If exclusion from membership is claimed, compare the income or loss reported in the audited financial statements required by Commission rule with Form SIPC-3.¹⁹

¹⁷ Compare Rule 600, with 17 CFR 240.17a-5(e)(4)(ii).

¹⁸ Compare Rule 600(b)(i) and (ii), with 17 CFR 240.17a-5(e)(4)(ii).

¹⁹ Compare Rule 600(b)(iii), with 17 CFR 240.17a-5(e)(4)(ii). Consistent with requirements in Rule 17a-5 regarding the independent public accountant that is engaged to prepare reports covering the annual reports of a broker-dealer, Rule 600 provides that the independent public accountant who is engaged to perform the enumerated agreed-upon procedures must be independent in accordance with the provisions of 17 CFR 210.2-01 and that the accountant must be engaged to perform the enumerated agreed-

Rule 600 also incorporates prior 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.²⁰

Finally, Rule 600 provides that a broker-dealer must file the supplemental report within 60 days after the end of its fiscal year.

III. Discussion and Commission Action

Section 3(e)(2)(A) of SIPA provides that the SIPC Board of Directors must file with the Commission any proposed amendment to a SIPC Rule.²¹ Section 3(e)(2)(B) of SIPA provides that within thirty-five days of the date of publication of the notice of filing of a proposed rule change in the Federal Register, or within such longer period (1) 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 (2) 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.²² Further, section 3(e)(2)(D) of SIPA provides that the Commission shall approve a proposed rule change if it finds

upon procedures in accordance with standards of the Public Company Accounting Oversight Board. See Rule 600(b)(iii); 17 CFR 240.17a-5(f)(1) and (g).

²⁰ See Rule 600(a)(ii).

²¹ 15 U.S.C. 78ccc(e)(2)(A).

²² 15 U.S.C. 78ccc(e)(2)(B). SIPC has agreed to two 60-day extensions; consequently, the Commission must act no later than April 7, 2016. See e-mails from Hemant Sharma, Associate General Counsel, SIPC, to Randall W. Roy, Deputy Associate Director, Commission, dated December 3, 2015 and February 1, 2016.

that the proposed rule change is in the public interest and is consistent with the purposes of SIPA.²³

The Commission finds, pursuant to section 3(e)(2)(D) of SIPA, that the proposed rule change is in the public interest and consistent with the purposes of SIPA. First, as noted above, paragraph (e)(4) of Rule 17a-5 provides 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. SIPC uses broker-dealers' SIPC supplemental reports to evaluate whether broker-dealers calculate their SIPC assessments correctly. These assessments are the main source of funding for the SIPC Fund. The Commission determined that because Forms SIPC-3, SIPC-6, and SIPC-7 are used solely by SIPC for purposes of levying its assessments, SIPC should prescribe by rule the form and content of the SIPC supplemental report. Rule 600 prescribes the form and content of the report, in accordance with paragraph (e)(4) of Rule 17a-5. Second, Rule 600 is modelled on existing requirements in Rule 17a-5 prescribing the information that must be included in, and the format of, the SIPC supplemental report. Accordingly, the Commission finds that Rule 600 is in the public interest and is consistent with the purposes of SIPA.

IT IS THEREFORE ORDERED BY THE COMMISSION, pursuant to section 3(e)(2) of SIPA, that the above-mentioned proposed rule change is approved. In accordance with section 3(e)(2) of SIPA, the approved rule change shall be given the force and effect as if promulgated by the Commission.

²³ 15 U.S.C. 78ccc(e)(2)(D).

IV. Statutory Authority

Pursuant to SIPA, 15 U.S.C. 78aaa et. seq., and particularly, section 3(e) (15 U.S.C. 78ccc(e)), SIPC is adding section 300.600 of Title 17 of the Code of Federal Regulations in the manner set forth below.

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 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. Add an undesignated center heading and § 300.600 to read as follows:

RULES RELATING TO SUPPLEMENTAL REPORT ON SIPC MEMBERSHIP

§300.600 Rules relating to supplemental report on SIPC membership.

(a)(1) Who must file the supplemental report. Except as provided in paragraph (a)(2) 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.

(2) 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:

(1) 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

(2) 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

(3) An independent public accountant's report. The independent public accountant, who must be independent in accordance with the provisions of 17 CFR 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):

(i) 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;

(ii) For all or any portion of a fiscal year, compare amounts reflected in the audited financial statements required by an SEC rule with amounts reported in the Form SIPC-7;

(iii) Compare adjustments reported in the Form SIPC-7 with supporting schedules and working papers supporting the adjustments;

(iv) Verify the arithmetical accuracy of the calculations reflected in the Form SIPC-7 and in the schedules and working papers supporting any adjustments; and

(v) Compare the amount of any overpayment applied with the Form SIPC-7 on which it was computed; or

(vi) If exclusion from membership is claimed, compare the income or loss reported in the audited financial statements required by an SEC rule with the Form SIPC-3.

By the Commission.

Dated: March 14, 2016

Robert W. Errett
Deputy Secretary