SECURITIES AND EXCHANGE COMMISSION
(Release No. SIPA-176; File No. SIPC-2016-01)

March 30, 2016

Securities Investor Protection Corporation; Order Approving the Determination of the Board of Directors of the Securities Investor Protection Corporation not to Adjust for Inflation the Standard Maximum Cash Advance Amount and Notice of the Standard Maximum Cash Advance Amount

I. Background

On February 17, 2016, the Securities Investor Protection Corporation ("SIPC") filed with the Securities and Exchange Commission ("Commission"), under sections 9(e)(1) and 3(e)(2)(A) of the Securities Investor Protection Act of 1970 ("SIPA"),[1] notification that SIPC's Board of Directors (the "SIPC Board") had determined that the standard maximum cash advance amount available to satisfy customer claims for cash in a SIPA liquidation proceeding would remain at $250,000 beginning January 1, 2017 and for the five-year period immediately thereafter. The Commission published for comment notice of the SIPC Board's determination in the Federal Register on February 25, 2016.[2] The Commission did not receive any comments. The Commission today is approving, by order, the SIPC Board's determination. The Commission is also publishing notice that the standard maximum cash advance amount will remain $250,000 beginning January 1, 2017 and for the five-year period immediately thereafter.

1 See 15 U.S.C. 78fff-3(e)(1) and 15 U.S.C. 78ccc(e)(2)(A), respectively.

2 See Securities Investor Protection Corporation, Release No. SIPA-174 (Feb. 22, 2016), 81 FR 9561 (Feb. 25, 2016). The notice set forth SIPC's statement of the purpose and statutory basis of the determination of the SIPC Board not to adjust the standard maximum cash advance amount for inflation (the "February 17, 2016 SIPC Statement of Purpose"), which was attached to a letter from SIPC to the Commission, dated February 17, 2016.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")[3] amended SIPA to raise the "standard maximum cash advance amount" from $100,000 to $250,000 per customer.[4] This aligned that amount with the maximum insurance amount provided by the Federal Deposit Insurance Corporation ("FDIC") to customers of a failed bank. The Dodd-Frank Act also amended SIPA to require the SIPC Board of Directors to determine, no later than January 1, 2011, and every five years thereafter, whether an inflation adjustment to the standard maximum cash advance amount available to satisfy customer claims in a SIPA liquation proceeding is appropriate.[5] Any adjustment to the standard maximum cash advance amount takes effect on January 1 of the year immediately succeeding the calendar year in which the adjustment is made.[6] The SIPC Board's determination on whether to make an adjustment is subject to Commission approval as provided under section 3(e)(2) of SIPA.[7] The Commission must publish notice of the standard maximum cash advance amount in the Federal Register no later than April 5 of any calendar year in which SIPC is required to determine whether an inflation adjustment is appropriate.[8]

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[3] Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

[4] In a liquidation of a broker-dealer performed under SIPA, a fund of customer property is established for priority distribution to customers ahead of all other creditors. Each customer is entitled to a pro rata share of the customer property to the extent of the customer's net equity in the customer's account. If the amount of customer property is insufficient to satisfy a customer's net equity claim, SIPC advances money to satisfy the claim up to $500,000 per customer, of which up to $250,000 (i.e., the standard maximum cash advance amount) can be used to satisfy a claim for cash. See 15 U.S.C. 78fff-3.

[5] 15 U.S.C. 78fff-3(e)(1). For reasons discussed in the February 17, 2016 SIPC Statement of Purpose, SIPC did not make such a determination on January 1, 2011. See Securities Investor Protection Corporation, 81 FR 9561.

[6] 15 U.S.C. 78fff-3(e)(4).

[7] See 15 U.S.C. 78ccc(e)(2); 15 U.S.C. 78fff-3(e)(1).

[8] 15 U.S.C. 78fff-3(e)(3)(A).

II. Determination of the SIPC Board Not to Adjust the Standard Maximum Cash Advance Amount

SIPC filed with the Commission on February 17, 2016 notification that the SIPC Board had determined not to raise the standard maximum cash advance amount above $250,000, and thereby maintain it at that level beginning January 1, 2017 and for the five-year period immediately thereafter.[9] In its February 17 filing, SIPC stated that applying the formula prescribed by SIPA in this instance would have increased the standard maximum cash advance amount by $20,000 and that the SIPC Board weighed the factors it considered in making its determination against an increase of that amount. However, for the reasons discussed below, the SIPC Board determined not to make the inflation adjustment.

SIPC described the factors the SIPC Board considered in making the determination to maintain the standard maximum cash advance amount at $250,000, including factors that it was required to consider under SIPA.[10] In particular, the SIPC Board considered data and a related SIPC staff analysis examining broker-dealers' aggregate leverage, liquidity, default risk, and the aggregate number of customer free credit balances. The analysis concluded that the SIPC fund is positioned to remain on a steady growth path for the foreseeable future, barring any unforeseen catastrophic event.

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[9] See February 17, 2016 SIPC Statement of Purpose. As stated above, any adjustment to the standard maximum cash advance amount takes effect on January 1 of the year immediately succeeding the calendar year in which such an adjustment is made. See 15 U.S.C. 78fff-3(e)(4). Therefore, the SIPC Board's determination to maintain the standard maximum cash advance amount at $250,000 takes effect on January 1, 2017.

[10] The SIPC Board is required to consider the following criteria under SIPA: (1) the overall state of the fund and the economic conditions affecting members of SIPC; (2) the potential problems affecting members of SIPC; and (3) such other factors as the SIPC Board may determine appropriate. See 15 U.S.C. 78fff-3(e)(5).

The SIPC Board also considered that, 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, the year the standard maximum cash advance amount was raised, SIPC has advanced funds for only one customer cash claim where the claim (but not the advance) exceeded $250,000.

The SIPC Board also considered 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.

Further, the SIPC Board considered the relationship between the amount of the SIPC standard maximum cash advance amount and the maximum amount of protection afforded by the FDIC to customers of a failed bank. Increases to the limit of protection for cash claims under SIPA historically have moved in lockstep with increases in FDIC deposit insurance. The SIPC Board considered that FDIC deposit insurance is currently $250,000.. The SIPC Board 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 benefited, an adjustment to the limit of protection for cash claims in a SIPA liquidation proceeding would not be appropriate.[11]

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[11] See Securities Investor Protection Corporation, Release No. SIPA-174 (Feb. 22, 2016), 81 FR 9561 (Feb. 25, 2016).

III. Discussion and Commission Order

Section 3(e)(2)(A) of SIPA provides that the SIPC Board must file with the Commission any proposed amendment to a SIPC Rule.[12] 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. Further, section 3(e)(2)(D) of SIPA provides that the Commission shall approve a proposed rule change if it finds that the proposed rule change is in the public interest and is consistent with the purposes of SIPA.[13] The SIPC Board's determination to not adjust the standard maximum cash advance amount is subject to the approval of the Commission as provided under section 3(e)(2) of SIPA.[14]

The Commission finds, pursuant to section 3(e)(2)(D) of SIPA, that the determination of the SIPC Board not to adjust for inflation the standard maximum cash advance amount of $250,000 beginning January 1, 2017 and for the five-year period immediately thereafter is in the public interest and consistent with the purposes of SIPA. The Commission believes that maintaining the amount at $250,000 at this time to keep it aligned with the maximum amount of insurance provided by the FDIC is appropriate. For example, there could be unintended consequences resulting from raising the amount to a level that is higher than the maximum FDIC insurance amount, such as incentivizing investors to move additional funds to their brokerage

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12 15 U.S.C. 78ccc(e)(2)(A).

13 15 U.S.C. 78ccc(e)(2)(D).

14 15 U.S.C. 78fff-3(e)(1).

accounts from bank accounts. Moreover, the Commission believes that maintaining the standard maximum cash advance amount at $250,000 is consistent with the public interest in light of the statistics considered by the SIPC Board that indicated that customer claims for cash have been historically satisfied in full and the trend that customer credit balances at broker-dealers have been decreasing in recent years.[15]

IT IS THEREFORE ORDERED, pursuant to section 3(e)(2) of SIPA, that the determination by the SIPC Board that the standard maximum cash advance amount will remain at $250,000 beginning January 1, 2017, and for the five-year period immediately thereafter, be and hereby is approved.

IV. Notice of the Standard Maximum Cash Advance Amount

SIPA requires that the Commission publish the standard maximum cash advance amount in the Federal Register no later than April 5 of any calendar year in which SIPC is required to determine whether an inflation adjustment is appropriate.[16] Accordingly, pursuant to section 9(e)(3)(A) of SIPA, the Commission is hereby providing notice that the standard maximum cash advance amount is $250,000 beginning January 1, 2017 and for the five-year period immediately thereafter.

By the Commission.

Brent J. Fields
Secretary

15 See February 17, 2016 SIPC Statement of Purpose.

16 15 U.S.C. 78fff-3(e)(3)(A).