

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-10451; 34-82455; IA-4842; IC-32963]

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Annual Inflation Adjustment of Civil Monetary Penalties

SUMMARY: The Securities and Exchange Commission (the “Commission”) is publishing this notice pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the “2015 Act”). This Act requires all agencies to annually adjust for inflation the civil monetary penalties that can be imposed under the statutes administered by the agency and publish the adjusted amounts in the Federal Register. This notice sets forth the annual inflation adjustment of the maximum amount of civil monetary penalties (“CMPs”) administered by the Commission under the Securities Act of 1933, the Securities Exchange Act of 1934 (the “Exchange Act”), the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002. These amounts are effective beginning on January 15, 2018, and will apply to all penalties imposed after that date for violations of the aforementioned statutes that occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: James A. Cappoli, Assistant General Counsel, Office of the General Counsel, at (202) 551-7923, or Stephen M. Ng, Senior Special Counsel, Office of the General Counsel, at (202) 551-7957.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

This notice is being published pursuant to the 2015 Act,¹ which amended the Federal

¹ Pub. L. 114-74 Sec. 701, 129 Stat. 599-601 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.

Civil Penalties Inflation Adjustment Act of 1990 (the “Inflation Adjustment Act”).² The Inflation Adjustment Act previously had been amended by the Debt Collection Improvement Act of 1996 (the “DCIA”)³ to require that each federal agency adopt regulations at least once every four years that adjust for inflation the CMPs that can be imposed under the statutes administered by the agency. Pursuant to this requirement, the Commission previously adopted regulations in 1996, 2001, 2005, 2009, and 2013 to adjust the maximum amount of the CMPs that could be imposed under the statutes the Commission administers.⁴

The 2015 Act replaces the inflation adjustment formula prescribed in the DCIA with a new formula for calculating the inflation-adjusted amount of CMPs. The 2015 Act requires that agencies use this new formula to re-calculate the inflation-adjusted amounts of the penalties they administer on an annual basis and publish these new amounts in the Federal Register by January 15 of each year.⁵ The Commission previously published the first annual adjustment required by the 2015 Act on January 6, 2017 (the “2017 Adjustment”).⁶ As part of the 2017 Adjustment, the Commission promulgated 17 CFR 201.1001(a) and Table I to Subsection 1001, which lists the penalty amounts for all violations that occurred on or before November 2, 2015. For violations occurring after November 2, 2015, Subsection 1001(b) provides that the applicable penalty

² Pub. L. 101-410, 104 Stat. 890-892 (1990), codified at 28 U.S.C. 2461 note.

³ Pub. L. 104-134, Title III, § 31001(s)(1), 110 Stat. 1321-373 (1996), codified at 28 U.S.C. 2461 note.

⁴ See Release Nos. 33-7361, 34-37912, IA-1596, IC-22310, dated November 1, 1996 (effective December 9, 1996), previously found at 17 CFR 201.1001 and Table I to Subpart E of Part 201; Release Nos. 33-7946, 34-43897, IA-1921, IC-24846, dated January 31, 2001 (effective February 2, 2001), previously found at 17 CFR 201.1002 and Table II to Subpart E of Part 201; Release Nos. 33-8530, 34-51136, IA-2348, IC-26748, dated February 9, 2005 (effective February 14, 2005), previously found at 17 CFR 201.1003 and Table III to Subpart E of Part 201; Release Nos. 33-9009, 34-59449, IA-2845, IC-28635, dated February 25, 2009 (effective March 3, 2009), previously found at 17 CFR 201.1004 and Table IV to Subpart E of Part 201; and Release Nos. 33-9387, 34-68994, IA-3557, IC-30408, dated February 27, 2013 (effective March 5, 2013), previously found at 17 CFR 201.1005 and Table V to Subpart E of Part 201. The penalty amounts contained in these releases have now been consolidated into Table I to 17 CFR 201.1001.

⁵ 28 U.S.C. 2461 note Sec. 4.

⁶ Release Nos. 33-10276; 34-79749; IA-4599; IC-32414 (effective Jan. 18, 2017).

amounts will be adjusted annually based on the formula set forth in the 2015 Act. Subsection 1001(b) further provides that these adjusted amounts will be published in the Federal Register and on the Commission's website.

A CMP is defined in relevant part as any penalty, fine, or other sanction that: (1) is for a specific amount, or has a maximum amount, as provided by federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by a federal court pursuant to federal law.⁷ This definition applies to the monetary penalty provisions contained in four statutes administered by the Commission: the Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act. In addition, the Sarbanes-Oxley Act of 2002 provides the Public Company Accounting Oversight Board (the "PCAOB") authority to levy civil monetary penalties in its disciplinary proceedings pursuant to 15 U.S.C. 7215(c)(4)(D).⁸ The definition of a CMP in the Inflation Adjustment Act encompasses such civil monetary penalties.⁹

II. ADJUSTING THE COMMISSION'S PENALTY AMOUNTS FOR INFLATION

This notice sets forth the annual inflation adjustment required by the 2015 Act for all CMPs under the Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act, and certain civil monetary penalties under the Sarbanes-Oxley Act.

Pursuant to the 2015 Act, the penalty amounts in the 2017 Adjustment are adjusted for inflation by increasing them by the percentage change between the Consumer Price Index for all

⁷ 28 U.S.C. 2461 note Sec. 3(2).

⁸ 15 U.S.C. 7215(c)(4)(D).

⁹ The Commission may by order affirm, modify, remand, or set aside sanctions, including civil monetary penalties, imposed by the PCAOB. See Section 107(c) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7217. The Commission may enforce such orders in federal district court pursuant to Section 21(e) of the Exchange Act. As a result, penalties assessed by the PCAOB in its disciplinary proceedings are penalties "enforced" by the Commission for purposes of the Inflation Adjustment Act. See Adjustments to Civil Monetary Penalty Amounts, Release No. 33-8530 (Feb. 4, 2005) [70 FR 7606 (Feb. 14, 2005)].

Urban Consumers (“CPI-U”) for October 2016 and the October 2017 CPI-U.¹⁰ OMB has provided its calculation of this multiplier (the “CPI-U Multiplier”) to agencies.¹¹ The new penalty amounts are determined by multiplying the current penalty amounts by the CPI-U Multiplier and then rounding to the nearest dollar.

For example, the CMP for certain insider trading violations by controlling persons under Exchange Act Section 21A(a)(3)¹² was readjusted for inflation as part of the 2017 Adjustment to \$2,011,061. To determine the new CMP under this provision, the Commission multiplies this amount by the CPI-U Multiplier of 1.02041, and rounds to the nearest dollar. Thus, the new CMP for Exchange Act Section 21A(a)(3) is \$2,052,107.

Below is the Commission’s calculation of the new penalty amounts for the penalties it administers:

U.S. Code citation	Civil monetary penalty description	2017 Adjustment Penalty Amounts	CPI-U Multiplier	2018 Adjusted Penalty Amounts
15 U.S.C. 77h-1(g) (Securities Act Sec. 8A(g))	For natural person	\$8,289	1.02041	\$8,458
	For any other person	82,893	1.02041	84,585
	For natural person / fraud	82,893	1.02041	84,585
	For any other person / fraud	414,466	1.02041	422,925
	For natural person / fraud / substantial losses or risk of losses to others or gains to self	165,787	1.02041	169,171
	For any other person / fraud / substantial losses or risk of losses to others or gain to self	801,299	1.02041	817,654
15 U.S.C. 77t(d)	For natural person	9,054	1.02041	9,239

¹⁰ 28 U.S.C. 2461 note Sec. 5.

¹¹ Office of Management and Budget, Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (December 15, 2017), available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf>. This multiplier represents the percentage increase between the October 2016 CPI-U and the October 2017 CPI-U, plus 1.

¹² 15 U.S.C. 78u-1(a)(3).

(Securities Act Sec. 20(d))	For any other person	90,535	1.02041	92,383
	For natural person / fraud	90,535	1.02041	92,383
	For any other person / fraud	452,677	1.02041	461,916
	For natural person / fraud / substantial losses or risk of losses to others	181,071	1.02041	184,767
	For any other person / fraud / substantial losses or risk of losses to others	905,353	1.02041	923,831
15 U.S.C. 78u(d)(3) (Exchange Act Sec. 21(d)(3))	For natural person	9,054	1.02041	9,239
	For any other person	90,535	1.02041	92,383
	For natural person / fraud	90,535	1.02041	92,383
	For any other person / fraud	452,677	1.02041	461,916
	For natural person / fraud / substantial losses or risk of losses to others or gains to self	181,071	1.02041	184,767
	For any other person / fraud / substantial losses or risk of losses to others or gain to self	905,353	1.02041	923,831
15 U.S.C. 78u-1(a)(3) (Exchange Act Sec. 21A(a)(3))	Insider Trading – controlling person	2,011,061	1.02041	2,052,107
15 U.S.C. 78u-2 (Exchange Act Sec. 21B)	For natural person	9,054	1.02041	9,239
	For any other person	90,535	1.02041	92,383
	For natural person / fraud	90,535	1.02041	92,383
	For any other person / fraud	452,677	1.02041	461,916
	For natural person / fraud / substantial losses or risk of losses to others	181,071	1.02041	184,767
	For any other person / fraud / substantial losses or risk of losses to others	905,353	1.02041	923,831
15 U.S.C. 78ff(b) (Exchange Act Sec. 32(b))	Exchange Act / failure to file information documents, reports	534	1.02041	545
15 U.S.C. 78ff(c)(1)(B) (Exchange Act Sec. 32(c)(1)(B))	Foreign Corrupt Practices – any issuer	20,111	1.02041	20,521
15 U.S.C. 78ff(c)(2)(B) (Exchange Act Sec. 32(c)(2)(B))	Foreign Corrupt Practices – any agent or stockholder acting on behalf of issuer	20,111	1.02041	20,521
15 U.S.C. 80a-9(d)	For natural person	9,054	1.02041	9,239

(Investment Company Act Sec. 9(d))	For any other person	90,535	1.02041	92,383
	For natural person / fraud	90,535	1.02041	92,383
	For any other person / fraud	452,677	1.02041	461,916
	For natural person / fraud / substantial losses or risk of losses to others or gains to self	181,071	1.02041	184,767
	For any other person / fraud / substantial losses or risk of losses to others or gain to self	905,353	1.02041	923,831
15 U.S.C. 80a-41(e) (Investment Company Act Sec. 42(e))	For natural person	9,054	1.02041	9,239
	For any other person	90,535	1.02041	92,383
	For natural person / fraud	90,535	1.02041	92,383
	For any other person / fraud	452,677	1.02041	461,916
	For natural person / fraud / substantial losses or risk of losses to others	181,071	1.02041	184,767
	For any other person / fraud / substantial losses or risk of losses to others	905,353	1.02041	923,831
15 U.S.C. 80b-3(i) (Investment Advisers Act Sec. 203(i))	For natural person	9,054	1.02041	9,239
	For any other person	90,535	1.02041	92,383
	For natural person / fraud	90,535	1.02041	92,383
	For any other person / fraud	452,677	1.02041	461,916
	For natural person / fraud / substantial losses or risk of losses to others or gains to self	181,071	1.02041	184,767
	For any other person / fraud / substantial losses or risk of losses to others or gain to self	905,353	1.02041	923,831
15 U.S.C. 80b-9(e) (Investment Advisers Act Sec. 209(e))	For natural person	9,054	1.02041	9,239
	For any other person	90,535	1.02041	92,383
	For natural person / fraud	90,535	1.02041	92,383
	For any other person / fraud	452,677	1.02041	461,916
	For natural person / fraud / substantial losses or risk of losses to others	181,071	1.02041	184,767
	For any other person / fraud / substantial losses or risk of losses to others	905,353	1.02041	923,831
15 U.S.C. 7215(c)(4)(D)(i) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(i))	For natural person	133,331	1.02041	136,052
	For any other person	2,666,624	1.02041	2,721,050

15 U.S.C. 7215(c)(4)(D)(ii) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(ii))	For natural person	999,984	1.02041	1,020,394
	For any other person	19,999,678	1.02041	20,407,871

Pursuant to the 2015 Act and 17 CFR 201.1001, the adjusted penalty amounts in this notice (and all penalty adjustments performed pursuant to the 2015 Act) apply to penalties imposed after the date the adjustment is effective for violations that occurred after November 2, 2015, the 2015 Act’s enactment date. These penalty amounts supersede the amounts in the 2017 Adjustment.¹³ For violations that occurred on or before November 2, 2015, the penalty amounts in Table I to 17 CFR 201.1001 continue to apply.¹⁴

By the Commission.

Brent J. Fields
Secretary

January 8, 2018

¹³ The penalty amounts in this notice are being published in the Federal Register and will not be added to the Code of Federal Regulations in accordance with the 2015 Act and 17 CFR 201.1001(b). See 28 U.S.C. 2461 note Sec. 4(a)(2); 17 CFR 201.1001(b). In addition to being published in the Federal Register, the penalty amounts in this notice will be made available on the Commission’s website at <https://www.sec.gov/enforce/civil-penalties-inflation-adjustments.htm>, as detailed in 17 CFR 201.1001(b). This website also lists the penalty amounts for violations that occurred on or before November 2, 2015.

¹⁴ 17 CFR 201.1001(a).