

have no adverse tax consequences to Contract Owners and will in no way alter the tax benefits to Contract Owners.

#### Applicants' Legal Analysis:

1. Section 26(c) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(c) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs or other charges will not be incurred due to unapproved substitutions of securities.

2. The proposed Substitution of shares held by the AUL Account, as described above, may be deemed to involve a substitution of securities within the meaning of Section 26(c) of the 1940 Act. The Applicants therefore request an order from the Commission pursuant to Section 26(c) approving the proposed Substitution.

3. The investment objective and primary risks of the Substituted Portfolio are the same as that of the Removed Portfolio and the investment strategies of the two are nearly identical; thus, Contract Owners will have reasonable continuity in investment expectations. Accordingly, the Substituted Portfolio is an appropriate investment vehicle for those Contract Owners who have Contract values allocated to the Removed Portfolio. Further, the Substituted Portfolio has lower expenses and better historical performance than that of the Removed Portfolio.

4. In connection with assets held under the Contracts affected by the Substitution, Applicants will not receive for three (3) years from the date of substitution any direct or indirect benefits from the Substituted Portfolio, its advisors or underwriters (or their affiliates) at a rate higher than that which they had received from the Removed Portfolio, its advisors or underwriters (or their affiliates) including but without limitation, 12b-1, shareholder service, administration or other service fees, revenue sharing or other arrangements.

5. Applicants represent and warrant that the Substitution and the selection of the Substituted Portfolio were not motivated by any financial consideration paid or to be paid to AUL or its affiliates by the Substituted Portfolio, its advisors or underwriters or their respective affiliates.

6. The Substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against because the Contract Owner will continue to have the same type of investment choice, with better potential returns and lower expenses and will not otherwise have any incentive to redeem their shares or terminate their Contracts.

7. The purposes, terms and conditions of the proposed Substitution are consistent with the protection of investors, and the principles and purposes of Section 26(c), and do not entail any of the abuses that Section 26(c) is designed to prevent.

(a) The Substituted Portfolio has better historical performance than the Removed Portfolio.

(b) The current total annual operating expenses and management fee of the Substituted Portfolio are lower than those of the Removed Portfolio.

(c) The Substituted Portfolio is an appropriate portfolio to move Contract Owners' values currently allocated to the Removed Portfolio because the portfolios have the same objectives and risks and very similar strategies.

(d) All costs of the Substitution, including any allocated brokerage costs, will be borne by Applicants and will not be borne by Contract Owners. No charges will be assessed to effect the Substitution.

(e) The Substitution will be at the net asset value of the respective portfolio shares without the imposition of any transfer or similar charge and with no change in the amount of any Contract Owners' Contract values.

(f) The Substitution will not cause the fees and charges under the Contracts currently being paid by the Contract Owners to be greater after the Substitution than before the Substitution and will result in Contract Owners Contract values being moved to a portfolio with lower current total annual operating expenses.

(g) Notice of the proposed Substitution will be mailed to all Contract Owners at least 30 days prior to the Substitution. All Contract Owners will have an opportunity at any time after receipt of the notice of the Substitution and for 30 days after the Substitution to transfer Contract account value affected by the Substitution to other available subaccounts without the imposition of any transfer charge or

limitation and without being counted as one of the Contract Owner's free transfers in a contract year.

(h) Within five business days after the Substitution, Applicants will send to their affected Contract Owners a written confirmation that the Substitution has occurred.

(i) The Substitution will, in no way, alter the terms of the Contracts or the obligations of Applicants under them.

(j) The Substitution will have no adverse tax consequences to Contract Owners and will, in no way, alter the tax benefits to Contract Owners.

#### Conclusion

Applicants assert that, for the reasons summarized above, the Commission should grant the requested order approving the Proposed Substitution.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA-169; File No. SIPC-2010-01]

### Securities Investor Protection Corporation; Notice of Filing of a Proposed Bylaw Change Relating to SIPC Fund Assessments on SIPC Members

November 30, 2010.

Pursuant to Section 3(e)(1) of the Securities Investor Protection Act of 1970 ("SIPA"), 15 U.S.C. 78ccc(e)(1), notice is hereby given that on October 8, 2010, the Securities Investor Protection Corporation ("SIPC") filed with the Securities and Exchange Commission ("Commission") a proposed bylaw change. The Commission is publishing this notice to solicit comments on the proposed bylaw change from interested persons.

#### I. Description of Proposed Bylaw Change

Section 4(c)(2) of SIPA requires SIPC to impose assessments upon its member broker-dealers deemed necessary and appropriate to establish and maintain a broker-dealer liquidation fund administered by SIPC (the "SIPC Fund") and to repay any borrowings by SIPC used to liquidate a broker-dealer. Pursuant to this authority, SIPC collects an annual assessment from its members. The amount of the annual assessment is prescribed by SIPA and the SIPC

bylaws. For example, if SIPC has an outstanding loan from the Commission, SIPA provides that SIPC assess its member broker-dealers 1/2 of 1% of the gross revenues from their securities business.<sup>1</sup> In addition, if the SIPC Fund aggregates or is likely to aggregate less than \$2.5 billion for six months or more, SIPC must raise each member's assessment to 1/2 of 1% of net operating revenues.<sup>2</sup> When the SIPC Fund is at its targeted level, SIPC collects a minimum assessment as provided for in SIPA. The current target level for the SIPC Fund is \$2.5 billion.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") amended SIPA to change the minimum assessment from an amount not to exceed \$150 to an amount not to exceed 0.02 percent of the gross revenues from the securities business of the SIPC member.<sup>3</sup> Under Article 6 of the SIPC bylaws, SIPC must assess its members a minimum amount (\$150) unless certain conditions apply. Because in some cases an assessment of \$150 would exceed 0.02 percent of the gross revenues, the SIPC Assessment bylaw must be amended to be consistent with the Dodd-Frank Act. First, SIPC has proposed to amend Article 6, Section 1(a)(1)(B) of the SIPC bylaws by replacing "\$150" with the term "0.02 percent of the net operating revenues from the securities business." This amendment clarifies that the minimum assessment for members, once the SIPC Fund reaches its target, is 0.02 percent of a member's net operating revenues, not \$150. Second, SIPC has proposed deleting Section 1(a)(3) of Article 6, which stated that \$150 was the minimum assessment a SIPC member would be required to pay in any calendar year. These amendments were approved by SIPC's Board of Directors on September 16, 2010.

As indicated above, SIPC's bylaw changes refer to "net operating revenues" instead of "gross revenues." Since 1991, when assessing on a percentage basis (*i.e.*, not a flat \$150 minimum assessment), SIPC has based the assessment amount on a percentage of net operating revenues, not gross revenues, from the securities business. In 1991, a SIPC Task Force study found that securities firms no longer structured their business on a gross revenue basis but instead used a net operating revenue basis, which excludes interest expense and dividend expense in accounting for revenue. SIPC bases its assessment on the net revenues

associated with that business, which it believes is consistent with SIPA. Basing the assessment on net operating revenues as opposed to gross revenues will decrease the amount of the assessment in most situations. However, under SIPA, SIPC may adjust the basis for collecting assessments and the amount of assessments as long as the assessments are within the parameters prescribed in SIPA.<sup>4</sup> Using a minimum assessment of 0.02 percent of net operating revenues would not cause the amount of the assessment to exceed the maximum amount permitted for the minimum assessment under Section 4(d)(1)(C) of SIPA, as amended by the Dodd-Frank Act.

In 1991, when SIPC changed its assessment methodology from gross revenues to net operating revenues, the Commission published notice of the proposed change and requested comment.<sup>5</sup> The comments received were in support of the proposed change, which made the assessments more consistent with how industry revenues are calculated.<sup>6</sup>

## II. Need for Public Comment

Section 3(e)(1) of SIPA provides that SIPC must file with the Commission a copy of proposed bylaw changes. That section further provides that bylaw changes shall take effect 30 days after filing, unless the Commission either: (i) disapproves the change as contrary to the public interest or the purposes of SIPA, or (ii) finds that the change involves a matter of such significant public interest that public comment should be obtained. Thus, under Section 3(e)(1) of SIPA, a proposed bylaw change does not have to be noticed for public comment. However, under Section 3(e)(1)(B) of SIPA, the Commission can find that "such proposed change involves a matter of such significant public interest that public comment should be obtained," in which case, the Commission may, after notifying SIPC in writing of such finding, require that the proposed bylaw change be considered by the same procedures as a proposed rule change including, among other things, publication in the **Federal Register** and opportunity for public comment.

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 minimum assessment methodology, the Commission finds, pursuant to Section 3(e)(1)(B) of SIPA, 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 proposed SIPC rule changes in Section 3(e)(2) of SIPA 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: (i) As the Commission may designate up to 90 days of 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 will: (A) By order approve such proposed bylaw change, or (B) Institute proceedings to determine whether the proposed bylaw change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted 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-2010-01 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SIPC-2010-01. This file number should be included on the subject line if e-mail is used. 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 Web site (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent

<sup>1</sup> 15 U.S.C. 78ddd(d)(1)(A)(ii).

<sup>2</sup> SIPC Bylaws, Article 6, Section (a)(1)(C)(i).

<sup>3</sup> The Dodd-Frank Act, Section 929V.

<sup>4</sup> 15 U.S.C. 78ddd(c)(2) and 78lll(9).

<sup>5</sup> Securities Investor Protection Corporation; Notice of Proposed Bylaw Change Relating to SIPC Fund Assessments on SIPC Members, Rel. No. SIPA-156, 56 FR 51952 (Oct. 16, 1991).

<sup>6</sup> Securities Investor Protection Corporation; Order Approving Proposed Bylaw Change Relating to SIPC Fund Assessments on SIPC Members, Rel. No. SIPA-157, 56 FR 60145 (Nov. 27, 1991).

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 Web site 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 a.m. and 3 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 publicly available. All submissions should refer to File Number SIPC-2010-01 and should be submitted on or before December 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-30434 Filed 12-3-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, December 9, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, December 9, 2010 will be:

institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: December 1, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010-30530 Filed 12-1-10; 4:15 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, December 8, 2010 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemption 5 U.S.C. 552b(c)(10) and 17 CFR 200.402(a)(10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the item listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, December 8, 2010 will be:

An adjudicatory matter

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: December 1, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010-30628 Filed 12-2-10; 4:15 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63386; File No. SR-CBOE-2010-102]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Penny Pilot Program

November 29, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 24, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules relating to the Penny Pilot Program. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>7</sup> 17 CFR 200.30-3(f)(2)(i).