

## SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA-182; File No. SIPC-2019-02]

### Securities Investor Protection Corporation; Order Approving Proposed Bylaw Change Relating to SIPC Member Assessments

June 9, 2020.

Pursuant to Section 3(e)(1) of the Securities Investor Protection Act of 1970 (“SIPA”),<sup>1</sup> the Securities Investor Protection Corporation (“SIPC”) filed with the Securities and Exchange Commission (“Commission”) on November 19, 2019 proposed bylaw changes relating to annual assessments on its broker-dealer members. On December 10, 2019, SIPC consented to a 90-day extension of time before the proposed bylaw changes would take effect pursuant to Section 3(e)(1) of SIPA.<sup>2</sup> Pursuant to Section 3(e)(1)(B) of SIPA, the Commission found that the proposed bylaw changes involved a matter of such significant public interest that public comment should be obtained.<sup>3</sup> Consequently, pursuant to Section 3(e)(2)(A) of SIPA,<sup>4</sup> a notice soliciting comment on the proposed bylaw changes was published in the *Federal Register* on January 30, 2020.<sup>5</sup> On February 24, 2020, SIPC consented to an extension until May 14, 2020, and on April 1, 2020, SIPC consented to an additional extension until June 15, 2020, for the Commission to approve or institute proceedings to determine whether the proposed bylaw change should be disapproved.<sup>6</sup> The Commission received no comments regarding the proposed bylaw changes. For the reasons described below, the Commission finds that the proposed bylaw changes are in the public interest and consistent with the purposes of SIPA.<sup>7</sup> Therefore, this order approves the proposed bylaw changes under Section 3(e)(2) of SIPA.<sup>8</sup>

### I. Description of the Proposed Bylaw Changes

#### A. Member Assessment Rate

SIPC administers a fund (“SIPC Fund”) that is financed through

assessments on SIPC’s broker-dealer members and interest on U.S. government securities held in the fund. The SIPC Fund is used to make advances (subject to limits) to trustees administering SIPA liquidations of failed broker-dealer members to cover customer claims for securities or cash that cannot be satisfied by customer property of the firm recovered by the trustee.<sup>9</sup> The SIPC Fund also is used to pay the administrative expenses of a SIPA liquidation when the general estate of the failed broker-dealer member is insufficient to cover the expenses. Additionally, the SIPC Fund is used to finance the day-to-day operations of SIPC.

Under Article 6 of SIPC’s Bylaws, the annual assessment rate is a percent of each broker-dealer member’s gross or net operating revenues from the securities business.<sup>10</sup> Several variables relating to the balance and projected balance of the SIPC Fund and the balance of SIPC’s unrestricted net assets determine whether the assessment rate is a percent of *gross* or *net* operating revenues and the amount of the percent multiplier (*i.e.*, 0.50%, 0.15%, or 0.02% of gross or net revenues). For example, the current assessment rate is 0.15% of net operating revenues from the SIPC member’s securities business for each calendar year or part thereof (“net operating revenue”). This assessment rate applies when SIPC determines that the SIPC Fund balance is \$2.5 billion or more, will remain at or above \$2.5 billion or more for at least six months, and SIPC’s unrestricted net assets are *less* than \$2.5 billion.<sup>11</sup> This rate will drop to 0.02% of net operating revenues if SIPC determines that the SIPC Fund balance is \$2.5 billion or more, will remain at or above \$2.5 billion or more for at least six months,

and SIPC’s unrestricted net assets are equal to or greater than \$2.5 billion.<sup>12</sup>

SIPC proposed to amend its bylaws so that an assessment rate of 0.15% of a broker-dealer member’s net operating revenues will remain in effect until SIPC’s unrestricted net assets reach and are reasonably likely to remain above \$5 billion, unless SIPC determines that its unrestricted net assets are less than \$2.5 billion, in which case, the assessment rate would rise to 0.25% of a broker-dealer member’s net operating revenues. In the event that SIPC reasonably anticipates that its unrestricted net assets have reached and are reasonably likely to remain above \$5 billion, SIPC would commission a study to consider the adequacy of the SIPC Fund, and would do so every four years thereafter. After consideration of the study, and after consultation with the Commission and self-regulatory organizations (“SROs”), SIPC could increase or decrease the assessment rate by up to 25%.

SIPC stated that the proposed bylaw change will accomplish a few things: (1) Provide a larger cushion for unknown contingencies; (2) reduce the potential volatility of member assessments during periods of economic downturn or individual member crisis; and (3) promote sound financial management in light of SIPC’s statutory mission.<sup>13</sup> Moreover, SIPC noted that the proposed bylaw changes should have a limited impact on member firms. SIPC estimated that approximately two-thirds of the total difference in annual assessments resulting from the proposal would be paid by only 30 broker-dealer members and this would, on average, equal approximately 0.091% of their total revenue.

#### B. Collection Agent

Section 13(a) of SIPA provides that each SRO shall act as collection agent for SIPC to collect the assessments payable by broker-dealer members for which the SRO is the examining authority.<sup>14</sup> However, SIPC cites other sections of SIPA as supporting its authority to collect assessments directly.<sup>15</sup> According to SIPC, broker-

<sup>9</sup> See 15 U.S.C. 78fff-3(a). Currently, the limits of protection are \$500,000 per customer except that claims for cash are limited to \$250,000 per customer.

<sup>10</sup> Section 16(9) of SIPA defines “gross revenues from the securities business” to mean the sum of a number of revenue items, including certain commissions on securities transactions, charges for executing or clearing securities transactions for other broker-dealers, net realized gain from principal transactions in securities in trading accounts, net profits from the management of or participation in the underwriting or distribution of securities, and interest earned on customers’ securities accounts. See 15 U.S.C. 78lll(9). Article 6, section 1(g) of the SIPC Bylaws defines “net operating revenues from the securities business” as gross revenues from the securities business less interest and dividend expenses.

<sup>11</sup> See Article 6, section 1(a)(1)(B) of the SIPC Bylaws. SIPC’s unrestricted net assets are SIPC’s total assets (including the SIPC Fund) less liabilities, which include estimated costs to complete ongoing SIPA liquidations.

<sup>12</sup> See Article 6, section 1(a)(1)(C) of the SIPC Bylaws.

<sup>13</sup> SIPC’s full rationale for why the assessment rate should be adjusted in this manner is set forth in its narrative accompanying the proposed bylaw changes. See *Notice*, 85 FR at 5519-5523.

<sup>14</sup> See 15 U.S.C. 78iii(a).

<sup>15</sup> See, e.g., 15 U.S.C. 78ddd(c)(1) (“Each member of SIPC shall pay to SIPC, or the collection agent for SIPC . . . an initial assessment”) (emphasis added); 15 U.S.C. 78ccc(b)(8) (SIPC has the power “to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the

<sup>1</sup> 15 U.S.C. 78ccc(e)(1).

<sup>2</sup> See *id.*

<sup>3</sup> See 15 U.S.C. 78ccc(e)(1)(B).

<sup>4</sup> See 15 U.S.C. 78ccc(e)(2)(A).

<sup>5</sup> See Securities Investor Protection Corporation; Notice of Filing of Proposed Bylaw Changes Relating to SIPC Member Assessments; Correction, Release No. SIPA-179A (Jan. 24, 2020), 85 FR 5519 (Jan. 30, 2020) (“Notice”).

<sup>6</sup> See 15 U.S.C. 78ccc(e)(2)(B).

<sup>7</sup> See 15 U.S.C. 78ccc(e)(2)(D).

<sup>8</sup> See 15 U.S.C. 78ccc(e)(2).

dealer members have paid their assessments directly to SIPC for more than 20 years. In keeping with current practice, SIPC proposes a bylaw change to remove references to broker-dealer members paying assessments to collection agents.<sup>16</sup>

### C. Elimination of Grace Period for Past-Due Payments

Currently, the SIPC Bylaws provide that if a broker-dealer member's assessment payment has not been received within 15 days of the due date (the grace period), the stated interest rate for late payments applies to unpaid amounts. In January 2019, SIPC developed an internet payment portal, whereby members can pay SIPC directly online. SIPC also is working on the development of a portal through which, among other things, members can file assessment forms. SIPC stated that the creation of a mechanism for members to make immediate payment obviates the need for a grace period. SIPC proposed to amend the SIPC Bylaws to eliminate the 15 day grace period before interest begins accruing on past-due payments.<sup>17</sup>

## II. Comments Received

The Commission received no comments regarding the proposal.

## III. Commission Findings

Section 3(e) of SIPA sets forth the procedures for addressing proposed SIPC rules and bylaws.<sup>18</sup> Pursuant to Section 3(e)(1)(B) of SIPA, the Commission found that the proposed bylaw changes involved a matter of such significant public interest that public comment should be obtained and required that the procedures applicable to SIPC proposed rule changes in section 3(e)(2) of SIPA be followed.<sup>19</sup> Section 3(e)(2) of SIPA sets forth the procedures for proposed rules and provides that the Commission shall approve a proposed rule change if it finds the change is in the public interest and is consistent with the purposes of SIPA. As discussed below, the Commission finds, pursuant to Section 3(e)(2)(D) of SIPA, that the proposed bylaw change is in the public interest

conduct of its business and the exercise of all other rights and powers granted to SIPC by this chapter").

<sup>16</sup> See Article 6, sections 1(c)–(e) of the SIPC Bylaws. Under the proposed bylaw change, section 1(c) would be deleted and sections 1(d) and 1(e) are re-designated sections 1(c) and 1(d), respectively.

<sup>17</sup> See Article 6, section 1(e) of the SIPC Bylaws. Under the proposed bylaw change, section 1(e) is re-designated section 1(d).

<sup>18</sup> See 15 U.S.C. 78ccc(e).

<sup>19</sup> See Notice, 85 FR 5519.

and consistent with the purposes of SIPA.<sup>20</sup>

### A. Member Assessments

As described in further detail above, SIPC proposed to continue to charge its members an assessment rate of 0.15% of a member's net operating revenues from the securities business until SIPC's unrestricted net assets reach \$5 billion (instead of \$2.5 billion, as the SIPC Bylaws currently provide). Moreover, once the SIPC Fund reaches \$5 billion, the proposal would enable SIPC to adjust the member assessment rate up or down by as much as 25% every four years following the completion of a study on the topic and after consulting with the Commission and with SROs.

The SIPC Fund, which is built from assessments on its members and the interest earned on the SIPC Fund, is used for the protection of customers of members liquidated under SIPA to maintain investor confidence in the securities markets.<sup>21</sup> The proposed bylaw change provides a larger cushion in the SIPC Fund for unknown contingencies and to promote sound financial management of the SIPC Fund in light of SIPC's statutory mission. The proposed bylaw change also reduces the potential volatility of member assessments during periods of economic downturn or individual member crisis, which should facilitate SIPC members' ability to plan for future payments of SIPC assessments. Moreover, SIPC's new limited authority to adjust the assessment rate, after a study and consultation with the Commission and the SROs, gives SIPC appropriate discretion to keep the SIPC Fund appropriately sized, while preserving oversight over the SIPC Board's activity.

### B. Collection Agent

The SIPC Bylaws currently include references to the practice of SROs collecting assessments on behalf of SIPC as agents. These Bylaw sections relate to the provisions in SIPA establishing the authority of SROs to serve as collection agents on behalf of SIPC.<sup>22</sup> However, other provisions of SIPA suggest that SIPC can collect assessments directly from members<sup>23</sup> and grant broad

<sup>20</sup> See 15 U.S.C. 78ccc(e)(2)(D).

<sup>21</sup> See, e.g., *Securities Investor Protection Corporation; Order Approving a Proposed Bylaw Change Relating to SIPC Fund Assessments on SIPC Members*, Release No. SIPA-178 (Aug. 30, 2016), 81 FR 61263, 61264 (Sept. 6, 2016).

<sup>22</sup> See 15 U.S.C. 78iii(a) ("[e]ach self-regulatory organization shall act as collection agent for SIPC . . .").

<sup>23</sup> See 15 U.S.C. 78ddd(f) (referencing future assessments pledged by SIPC that are ". . . thereafter received by SIPC, or any collection agent for SIPC . . .").

reservations of power to SIPC.<sup>24</sup> In addition, for over 20 years, SIPC has collected its member assessments directly rather than by using an SRO to serve as collection agent. Therefore, SIPC proposed bylaw changes to conform to current practice and to remove references that assumed SROs continued to act as collection agents on behalf of SIPC.

The Commission believes that SIPC's proposed bylaw change will clarify to SIPC members and to the public that it collects member assessments directly rather than through an SRO. In finding that this proposed bylaw change is consistent with the public interest, the Commission notes that SIPC has developed an enhanced means to pay assessments through an internet portal and is continuing to develop an electronic means for members to file their assessment forms.

### C. Elimination of Grace Period for Past-Due Payments

SIPC also proposed to eliminate the 15 day grace period before interest begins accruing on past-due assessment payments. As described above, SIPC has recently developed an online payment portal, which should reduce the ambiguity about the date payment is received by SIPC if it is transmitted on a timely basis, thereby obviating the need for a grace period.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 3(e)(2) of SIPA, that the proposed bylaw change (SIPA 2019–02) is approved.<sup>25</sup>

By the Commission.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–12733 Filed 6–11–20; 8:45 am]

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<sup>24</sup> See 15 U.S.C. 78ccc(b) (granting SIPC the power, among other things, to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things as may be necessary or incidental to the conduct of its business).

<sup>25</sup> See 15 U.S.C. 78ccc(e)(2).