

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

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Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA-184; File No. SIPC-2021-01]

### 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

March 25, 2021.

#### I. Background

On January 5, 2021, 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”),<sup>1</sup> 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, 2022, 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 2, 2021.<sup>2</sup> 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, 2022, and for the five-year period immediately thereafter.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)<sup>3</sup> amended SIPA to

raise the “standard maximum cash advance amount” from \$100,000 to \$250,000 per customer.<sup>4</sup> The amendments to SIPA 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 liquidation proceeding is appropriate.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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 SIPA is required to determine whether an inflation adjustment is appropriate.<sup>8</sup>

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

As described above, SIPC filed with the Commission 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, 2022, and for the five-year period immediately thereafter. In its filing, SIPC stated that applying the formula prescribed by SIPA in this

<sup>4</sup> 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.

<sup>5</sup> 15 U.S.C. 78fff-3(e)(1). In 2016, the Board determined to maintain the standard maximum cash advance amount at \$250,000, which was approved by the Commission. *See Securities Investor Protection Corporation*, Release No. SIPA-174 (Feb. 22, 2016), 81 FR 9561 (Feb. 25, 2016) and *Securities Investor Protection Corporation*, Release No. SIPA-176 (March 30, 2016), 81 FR 19250 (April 4, 2016).

<sup>6</sup> 15 U.S.C. 78fff-3(e)(4).

<sup>7</sup> *See* 15 U.S.C. 78ccc(e)(2); 15 U.S.C. 78fff-3(e)(1).

<sup>8</sup> 15 U.S.C. 78fff-3(e)(3)(A).

instance would have increased the standard maximum cash advance amount by \$40,000 and that the SIPC Board weighed the factors it considered in making its determination against an increase of that amount. For the reasons discussed below, the SIPC Board determined not to make the inflation adjustment.

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.<sup>9</sup> In its filing, SIPC stated that the SIPC Board considered the projected growth of the SIPC Fund,<sup>10</sup> including the target amount for the SIPC Fund of \$5 billion, the assessment rate imposed on SIPC members, and the potential impact of an inflation adjustment on the SIPC Fund. According to the filing, the Board also considered SIPC’s experience with respect to: (1) SIPC advances in past and present; (2) amounts generated from assessments on member broker-dealers; and (3) projected returns on SIPC investments. According to the filing, based on these factors, the SIPC Board concluded that the SIPC fund is positioned to remain on a steady growth path for the foreseeable future, barring any unforeseen catastrophic event, and that any increase in the cash limit of SIPA protection would not appreciably benefit customers.

The filing states that the SIPC Board also considered the relationship between the amount of the SIPC standard maximum cash advance amount and the standard maximum amount of protection afforded by the FDIC to customers of a failed bank, noting both the current equivalency between SIPA’s maximum cash advance amount and the “standard maximum deposit insurance amount” that fixes the limit on bank deposit insurance under the Federal Deposit Insurance Act (both at \$250,000), and that increases to the limit of protection for cash claims under SIPA historically have moved in lockstep with increases in FDIC deposit insurance. According to the filing, the SIPC Board concluded that an inflation adjustment to the SIPA maximum cash advance amount without a corresponding adjustment to the FDIC standard maximum deposit insurance amount would result in an

<sup>9</sup> 15 U.S.C. 78fff-3(e)(5).

<sup>10</sup> SIPC is required to establish and administer a broker-dealer liquidation fund (the “SIPC Fund”) from which all expenditures by SIPC are to be made, including funds used to facilitate the liquidation of broker-dealers. *See* 15 U.S.C. 78ddd.

<sup>6</sup> 17 CFR 200.30-3(a)(31).

<sup>1</sup> 15 U.S.C. 78fff-3(e)(1) and 15 U.S.C. 78ccc(e)(2)(A), respectively.

<sup>2</sup> *See Securities Investor Protection Corporation*, Release No. SIPA-183 (Jan. 27, 2021), 86 FR 7900 (Feb. 2, 2021) (File No. SIPC-2021-01). The notice sets 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, which was attached to a letter from SIPC to the Commission, dated January 5, 2021.

<sup>3</sup> Public Law 111-203, 124 Stat. 1376 (July 21, 2010).

unprecedented divergence between the two.

Further, the filing avers that the SIPC Board also considered that, of the more than 770,000 allowed claims in completed or substantially completed liquidation proceedings as of year-end 2019, the unsatisfied portion of cash claims amounted to \$25 million. More than half of that amount involved only three claims. In the seven SIPA proceedings initiated since 2010, only one cash claim remains unsatisfied.

Finally, the filing notes that the SIPC Board also considered that customer free credit balances at brokerage firms have not increased over the last five years in line with inflation, as firms have increasingly utilized sweep programs<sup>11</sup> to move customer free credit balances from broker-dealers to banks. The filing also states that the SIPC Board considered views of the staffs of the Commission, the FDIC, and the Financial Industry Regulatory Authority, as reported to the SIPC staff and as further reported by the SIPC staff to the SIPC Board.

According to the filing, after considering these factors, the SIPC Board concluded that, on balance, an adjustment to the standard maximum cash advance amount was not appropriate, and determined that the standard maximum cash advance amount should remain at \$250,000 per customer.

### 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.<sup>12</sup> 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

<sup>11</sup> A "sweep program" is a service provided by a broker-dealer where it offers to its customer the option to automatically transfer free credit balances of cash in the securities account of the customer to either a money market fund product as described in Rule 2a-7 under the Investment Company Act of 1940 or an account at a bank whose deposits are insured by the FDIC. See 17 CFR 240.15c3-3(a)(17).

<sup>12</sup> 15 U.S.C. 78ccc(e)(2)(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.<sup>13</sup> 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.<sup>14</sup>

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, 2022, 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, which keeps it aligned with the maximum amount of insurance provided by the FDIC, is in the public interest and consistent with the purposes of SIPA. Specifically, 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 accounts from bank accounts. Providing a higher level of SIPA coverage for cash deposits of broker-dealer customers could incentivize customers to deposit cash at broker-dealers for the purpose of holding cash at the broker-dealer, as opposed to depositing the cash there for an investment purpose. This practice could raise questions about whether such deposits would be covered under SIPA, which provides "customer" status to those cash depositors who have made the deposit with a SIPC member broker-dealer for the purpose of purchasing securities.<sup>15</sup> By maintaining the standard maximum cash advance amount at \$250,000 and in line with the maximum FDIC insurance amount, the Commission believes that the incentive for a customer to use the broker-dealer account for the purpose of holding cash, as opposed to for the purpose of purchasing securities, will be less likely to arise, thereby minimizing the instances of such deposits not being covered under SIPA, which the Commission believes is in the public interest and consistent with the purposes of SIPA.

In addition, the Commission believes that the SIPC Board's consideration of its historical experience with advances and assessments and of the potential

<sup>13</sup> 15 U.S.C. 78ccc(e)(2)(D).

<sup>14</sup> See 15 U.S.C. 78fff-3(e)(1).

<sup>15</sup> See 15 U.S.C. 78lll(2)(B)(i) (Defining "customer" under SIPA).

effect of any inflation adjustment on the SIPC Fund was a reasonable method for the SIPC Board to project potential future obligations owed to customers with claims for cash recognized under SIPA when the SIPC Board considered whether to raise the standard maximum cash advance amount. The Commission believes that this approach does not materially affect the customers of SIPC members and should minimize the potential for unnecessary increases to assessments on members and therefore is consistent with the public interest and consistent with the purposes of SIPA. Specifically, the Commission believes that maintaining the standard maximum cash advance amount at \$250,000 is consistent with the public interest and with the purposes of SIPA 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 not increased in recent years.

*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, 2022, and for the five-year period immediately thereafter, be and hereby is approved.

### IV. Notice of the Standard Maximum Cash Advance Amount

Section 9(e)(3)(A) of 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.<sup>16</sup> 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, 2022, and for the five-year period immediately thereafter.

By the Commission.

**J. Matthew DeLesDernier,**

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<sup>16</sup> 15 U.S.C. 78fff-3(e)(3)(A).