

§ 301.300c

filing date, as well as any subsequent closeouts. This form shall accompany the form described in § 300.300a.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 300-B, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 301.300c Form 300-C, for report of all fails to receive.

This form shall be filed as required by § 300.303 of this chapter with the trustee in a proceeding under section 5 of the Act by a broker-dealer who executed transactions out of which arose open contractual commitments, as defined by § 300.300(c) of this chapter, with the debtor in the proceeding. The form shall be used to report all the fails to receive, as defined by § 300.300(a) of this chapter, that were open on the filing date, as well as any subsequent closeouts. This form shall accompany the form described in § 300.300a.

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PART 302—ORDERLY LIQUIDATION OF COVERED BROKERS OR DEALERS

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AUTHORITY: 12 U.S.C. 5385(h).

SOURCE: 85 FR 53668, Oct. 30, 2020, unless otherwise noted.

§ 302.100 Definitions.

For purposes of §§ 302.100 through 302.107, the following terms shall have the following meanings:

(a) *Appointment date*. The term *appointment date* means the date of the appointment of the Corporation as receiver for a covered financial company

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that is a covered broker or dealer. This date shall constitute the *filing date* as that term is used in SIPA.

(b) *Bridge broker or dealer*. The term *bridge broker or dealer* means a new financial company organized by the Corporation in accordance with 12 U.S.C. 5390(h) for the purpose of resolving a covered broker or dealer.

(c) *Commission*. The term *Commission* means the Securities and Exchange Commission.

(d) *Covered broker or dealer*. The term *covered broker or dealer* means a covered financial company that is a qualified broker or dealer.

(e) *Customer*. The term *customer* of a covered broker or dealer shall have the same meaning as in 15 U.S.C. 7811(2) *provided that* the references therein to *debtor* shall mean the covered broker or dealer.

(f) *Customer name securities*. The term *customer name securities* shall have the same meaning as in 15 U.S.C. 7811(3) *provided that* the references therein to *debtor* shall mean the covered broker or dealer and the references therein to *filing date* shall mean the appointment date.

(g) *Customer property*. The term *customer property* shall have the same meaning as in 15 U.S.C. 7811(4) *provided that* the references therein to *debtor* shall mean the covered broker or dealer.

(h) *Net equity*. The term *net equity* shall have the same meaning as in 15 U.S.C. 7811(11) *provided that* the references therein to *debtor* shall mean the covered broker or dealer and the references therein to *filing date* shall mean the appointment date.

(i) *Qualified broker or dealer*. The term *qualified broker or dealer* means a broker or dealer that (A) is registered with the Commission under Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)); and (B) is a member of SIPC.

(j) *SIPA*. The term *SIPA* means the Securities Investor Protection Act of 1970, 15 U.S.C. 78aaa–111.

(k) *SIPC*. The term *SIPC* means the Securities Investor Protection Corporation.

(l) *Corporation*. The term *Corporation* means the Federal Deposit Insurance Corporation.

(m) *Dodd-Frank Act*. The term *Dodd-Frank Act* means the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376, enacted July 21, 2010.

§ 302.101 Appointment of receiver and trustee for covered broker or dealer.

Upon the appointment of the Corporation as receiver for a covered broker or dealer, the Corporation shall appoint SIPC to act as trustee for the covered broker or dealer.

§ 302.102 Notice and application for protective decree for covered broker or dealer.

(a) SIPC and the Corporation, upon consultation with the Commission, shall jointly determine the terms of a notice and application for a protective decree that will be filed promptly with the Federal district court for the district within which the principal place of business of the covered broker or dealer is located; *provided that* if a case or proceeding under SIPA with respect to such covered broker or dealer is then pending, then such notice and application for a protective decree will be filed promptly with the Federal district court in which such case or proceeding under SIPA is pending. If such notice and application for a protective decree is filed on a date other than the appointment date, such filing shall be deemed to have occurred on the appointment date for the purposes of §§ 302.100 through 302.107.

(b) A notice and application for a protective decree may, among other things, provide for notice—

(1) Of the appointment of the Corporation as receiver and the appointment of SIPC as trustee for the covered broker or dealer; and

(2) That the provisions of Title II of the Dodd-Frank Act and any regulations promulgated thereunder may apply, including without limitation the following:

(i) Any existing case or proceeding with respect to a covered broker or dealer under the Bankruptcy Code or SIPA shall be dismissed effective as of the appointment date and no such case or proceeding may be commenced with respect to a covered broker or dealer at

any time while the Corporation is receiver for such covered broker or dealer;

(ii) The revesting of assets in a covered broker or dealer to the extent that they have vested in any entity other than the covered broker or dealer as a result of any case or proceeding commenced with respect to the covered broker or dealer under the Bankruptcy Code, SIPA, or any similar provision of State liquidation or insolvency law applicable to the covered broker or dealer; *provided that* any such revesting shall not apply to assets held by the covered broker or dealer, including customer property, transferred prior to the appointment date pursuant to an order entered by the bankruptcy court presiding over the case or proceeding with respect to the covered broker or dealer;

(iii) The request of the Corporation as receiver for a stay in any judicial action or proceeding (other than actions dismissed in accordance with paragraph (b)(i) of this section) in which the covered broker or dealer is or becomes a party for a period of up to 90 days from the appointment date;

(iv) Except as provided in paragraph (b)(v) of this section with respect to qualified financial contracts, no person may exercise any right or power to terminate, accelerate or declare a default under any contract to which the covered broker or dealer is a party (and no provision in any such contract providing for such default, termination or acceleration shall be enforceable), or to obtain possession of or exercise control over any property of the covered broker or dealer or affect any contractual rights of the covered broker or dealer without the consent of the Corporation as receiver of the covered broker or dealer upon consultation with SIPC during the 90-day period beginning from the appointment date; and

(v) The exercise of rights and the performance of obligations by parties to qualified financial contracts with the covered broker or dealer may be affected, stayed, or delayed pursuant to the provisions of Title II of the Dodd-Frank Act (including 12 U.S.C. 5390(c)) and the regulations promulgated thereunder.

§ 302.103 Bridge broker or dealer.

(a) The Corporation, as receiver for one or more covered brokers or dealers or in anticipation of being appointed receiver for one or more covered broker or dealers, may organize one or more bridge brokers or dealers with respect to a covered broker or dealer.

(b) If the Corporation establishes one or more bridge brokers or dealers with respect to a covered broker or dealer, then, subject to paragraph (d) of this section, the Corporation as receiver for such covered broker or dealer shall transfer all customer accounts and all associated customer name securities and customer property to such bridge brokers or dealers unless the Corporation determines, after consultation with the Commission and SIPC, that:

(1) The customer accounts, customer name securities, and customer property are likely to be promptly transferred to one or more qualified brokers or dealers such that the use of a bridge broker or dealer would not facilitate such transfer to one or more qualified brokers or dealers; or

(2) The transfer of such customer accounts to a bridge broker or dealer would materially interfere with the ability of the Corporation to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.

(c) The Corporation, as receiver for such covered broker or dealer, also may transfer any other assets and liabilities of the covered broker or dealer (including non-customer accounts and any associated property and any assets and liabilities associated with any trust or custody business) to such bridge brokers or dealers as the Corporation may, in its discretion, determine to be appropriate in accordance with, and subject to the requirements of, 12 U.S.C. 5390(h), including 12 U.S.C. 5390(h)(1) and 5390(h)(5), and any regulations promulgated thereunder.

(d) In connection with customer accounts transferred to the bridge broker or dealer pursuant to paragraph (b) of this section, claims for net equity shall not be transferred but shall remain with the covered broker or dealer. Customer property transferred from the covered broker or dealer, along with advances from SIPC, shall be allocated

to customer accounts at the bridge broker or dealer in accordance with § 302.104(a)(3). Such allocations initially may be based upon estimates, and such estimates may be based upon the books and records of the covered broker or dealer or any other information deemed relevant in the discretion of the Corporation, as receiver, in consultation with SIPC, as trustee. Such estimates may be adjusted from time to time as additional information becomes available. With respect to each account transferred to the bridge broker or dealer pursuant to paragraph (b) or (c) of this section, the bridge broker or dealer shall undertake the obligations of a broker or dealer only with respect to property transferred to and held by the bridge broker or dealer, and allocated to the account as provided in § 302.104(a)(3), including any customer property and any advances from SIPC. The bridge broker or dealer shall have no obligations with respect to any customer property or other property that is not transferred from the covered broker or dealer to the bridge broker or dealer. The transfer of customer property to such an account shall have no effect on calculation of the amount of the affected account holder's net equity, but the value, as of the appointment date, of the customer property and advances from SIPC so transferred shall be deemed to satisfy any such claim, in whole or in part.

(e) The transfer of assets or liabilities held by a covered broker or dealer, including customer accounts and all associated customer name securities and customer property, assets and liabilities held by a covered broker or dealer for any non-customer creditor, and assets and liabilities associated with any trust or custody business, to a bridge broker or dealer, shall be effective without any consent, authorization, or approval of any person or entity, including but not limited to, any customer, contract party, governmental authority, or court.

(f) Any succession to or assumption by a bridge broker or dealer of rights, powers, authorities, or privileges of a

covered broker or dealer shall be effective without any consent, authorization, or approval of any person or entity, including but not limited to, any customer, contract party, governmental authority, or court, and any such bridge broker or dealer shall upon its organization by the Corporation immediately and by operation of law—

(1) Be established and deemed registered with the Commission under the Securities Exchange Act of 1934;

(2) Be deemed to be a member of SIPC; and

(3) Succeed to any and all registrations and memberships of the covered broker or dealer with or in any self-regulatory organizations.

(g) Except as provided in paragraph (f) of this section, the bridge broker or dealer shall be subject to applicable Federal securities laws and all requirements with respect to being a member of a self-regulatory organization and shall operate in accordance with all such laws and requirements and in accordance with its articles of association; provided, however, that the Commission may, in its discretion, exempt the bridge broker or dealer from any such requirements if the Commission deems such exemption to be necessary or appropriate in the public interest or for the protection of investors.

(h) At the end of the term of existence of a bridge broker or dealer, any proceeds that remain after payment of all administrative expenses of such bridge broker or dealer and all other claims against such bridge broker or dealer shall be distributed to the receiver for the related covered broker or dealer.

§ 302.104 Claims of customers and other creditors of a covered broker or dealer.

(a) *Trustee's role.* (1) SIPC, as trustee for a covered broker or dealer, shall determine customer status, claims for net equity, claims for customer name securities, and whether property of the covered broker or dealer qualifies as customer property. SIPC, as trustee for a covered broker or dealer, shall make claims determinations in accordance with SIPA and with paragraph (a)(3) of this section, but such determinations, and any claims related thereto, shall

be governed by the procedures set forth in paragraph (b) of this section.

(2) SIPC shall make advances in accordance with, and subject to the limitations imposed by, 15 U.S.C. 78fff-3. Where appropriate, SIPC shall make such advances by delivering cash or securities to the customer accounts established at the bridge broker or dealer.

(3) Customer property held by a covered broker or dealer shall be allocated as follows:

(i) First, to SIPC in repayment of advances made by SIPC pursuant to 12 U.S.C. 5385(f) and 15 U.S.C. 78fff-3(c)(1), to the extent such advances effected the release of securities which then were apportioned to customer property pursuant to 15 U.S.C. 78fff(d);

(ii) Second, to customers of such covered broker or dealer, or in the case that customer accounts are transferred to a bridge broker or dealer, then to such customer accounts at a bridge broker or dealer, who shall share ratably in such customer property on the basis and to the extent of their respective net equities;

(iii) Third, to SIPC as subrogee for the claims of customers; and

(iv) Fourth, to SIPC in repayment of advances made by SIPC pursuant to 15 U.S.C. 78fff-3(c)(2).

(4) The determinations and advances made by SIPC as trustee for a covered broker or dealer under §§ 302.100 through 302.107 shall be made in a manner consistent with SIPC's customary practices under SIPA. The allocation of customer property, advances from SIPC, and delivery of customer name securities to each customer or to its customer account at a bridge broker or dealer, in partial or complete satisfaction of such customer's net equity claims as of the close of business on the appointment date, shall be in a manner, including form and timing, and in an amount at least as beneficial to such customer as would have been the case had the covered broker or dealer been liquidated under SIPA. Any claims related to determinations made by SIPC as trustee for a covered broker or dealer shall be governed by the procedures set forth in paragraph (b) of this section.

(b) *Receiver's role.* Any claim shall be determined in accordance with the procedures set forth in 12 U.S.C. 5390(a)(2)–(5) and the regulations promulgated by the Corporation thereunder, provided however, that—

(1) *Notice requirements.* The notice of the appointment of the Corporation as receiver for a covered broker or dealer shall also include notice of the appointment of SIPC as trustee. The Corporation as receiver shall coordinate with SIPC as trustee to post the notice on SIPC's public website in addition to the publication procedures set forth in 12 CFR 380.33.

(2) *Procedures for filing a claim.* The Corporation as receiver shall consult with SIPC, as trustee, regarding a claim form and filing instructions with respect to claims against the Corporation as receiver for a covered broker or dealer, and such information shall be provided on SIPC's public website in addition to the Corporation's public website. Any such claim form shall contain a provision permitting a claimant to claim status as a customer of the broker or dealer, if applicable.

(3) *Claims bar date.* The Corporation as receiver shall establish a claims bar date in accordance with 12 U.S.C. 5390(a)(2)(B)(i) and any regulations promulgated thereunder by which date creditors of a covered broker or dealer, including all customers of the covered broker or dealer, shall present their claims, together with proof. The claims bar date for a covered broker or dealer shall be the date following the expiration of the six-month period beginning on the date a notice to creditors to file their claims is first published in accordance with 12 U.S.C. 5390(a)(2)(B)(i) and any regulations promulgated thereunder. Any claim filed after the claims bar date shall be disallowed, and such disallowance shall be final, as provided by 12 U.S.C. 5390(a)(3)(C)(i) and any regulations promulgated thereunder, except that a claim filed after the claims bar date shall be considered by the receiver as provided by 12 U.S.C. 5390(a)(3)(C)(ii) and any regulations promulgated thereunder. In accordance with section 8(a)(3) of SIPA, 15 U.S.C. 78fff-2(a)(3), any claim for net equity filed more than sixty days after the date the notice to creditors to file

claims is first published need not be paid or satisfied in whole or in part out of customer property and, to the extent such claim is paid by funds advanced by SIPC, it shall be satisfied in cash or securities, or both, as SIPC, as trustee, determines is most economical to the receivership estate.

(c) *Decision period.* The Corporation as receiver of a covered broker or dealer shall notify a claimant whether it allows or disallows the claim, or any portion of a claim or any claim of a security, preference, set-off, or priority, within the 180-day period set forth in 12 U.S.C. 5390(a)(3)(A) and any regulations promulgated thereunder (as such 180-day period may be extended by written agreement as provided therein) or within the 90-day period set forth in 12 U.S.C. 5390(a)(5)(B) and any regulations promulgated thereunder, whichever is applicable. In accordance with paragraph (a) of this section, the Corporation, as receiver, shall issue the notice required by this paragraph (c), which shall utilize the determination made by SIPC, as trustee, in a manner consistent with SIPC's customary practices in a liquidation under SIPA, with respect to any claim for net equity or customer name securities. The process established herein for the determination, within the 180-day period set forth in 12 U.S.C. 5390(a)(3)(A) and any regulations promulgated thereunder (as such 180-day period may be extended by written agreement as provided therein), of claims by customers of a covered broker or dealer for customer property or customer name securities shall constitute the exclusive process for the determination of such claims, and any procedure for expedited relief established pursuant to 12 U.S.C. 5390(a)(5) and any regulations promulgated thereunder shall be inapplicable to such claims.

(d) *Judicial review.* The claimant may seek a judicial determination of any claim disallowed, in whole or in part, by the Corporation as receiver, including any claim disallowed based upon any determination(s) of SIPC as trustee made pursuant to § 302.104(a), by the appropriate district or territorial court of the United States in accordance

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with 12 U.S.C. 5390(a)(4) or (5), whichever is applicable, and any regulations promulgated thereunder.

§ 302.105 Priorities for unsecured claims against a covered broker or dealer.

Allowed claims not satisfied pursuant to § 302.103(d), including allowed claims for net equity to the extent not satisfied after final allocation of customer property in accordance with § 302.104(a)(3), shall be paid in accordance with the order of priority set forth in 12 CFR 380.21 subject to the following adjustments:

(a) Administrative expenses of SIPC incurred in performing its responsibilities as trustee for a covered broker or dealer shall be included as administrative expenses of the receiver as defined in 12 CFR 380.22 and shall be paid *pro rata* with such expenses in accordance with 12 CFR 380.21(c).

(b) Amounts paid by the Corporation to customers or SIPC shall be included as amounts owed to the United States as defined in 12 CFR 380.23 and shall be paid *pro rata* with such amounts in accordance with 12 CFR 380.21(c).

(c) Amounts advanced by SIPC for the purpose of satisfying customer claims for net equity shall be paid following the payment of all amounts owed to the United States pursuant to 12 CFR 380.21(a)(3) but prior to the payment of any other class or priority of claims described in 12 CFR 380.21(a)(4) through (11).

§ 302.106 Administrative expenses of SIPC.

(a) In carrying out its responsibilities, SIPC, as trustee for a covered

broker or dealer, may utilize the services of third parties, including private attorneys, accountants, consultants, advisors, outside experts, and other third party professionals. SIPC shall have an allowed claim for administrative expenses for any amounts paid by SIPC for such services to the extent that such services are available in the private sector, and utilization of such services is practicable, efficient, and cost effective. The term *administrative expenses of SIPC* includes the costs and expenses of such attorneys, accountants, consultants, advisors, outside experts, and other third party professionals, and other expenses that would be allowable to a third party trustee under 15 U.S.C. 78eee(b)(5)(A), including the costs and expenses of SIPC employees that would be allowable pursuant to 15 U.S.C. 78fff(e).

(b) The term *administrative expenses of SIPC* shall not include advances from SIPC to satisfy customer claims for net equity.

§ 302.107 Qualified Financial Contracts.

The rights and obligations of any party to a qualified financial contract to which a covered broker or dealer is a party shall be governed exclusively by 12 U.S.C. 5390, including the limitations and restrictions contained in 12 U.S.C. 5390(c)(10)(B), and any regulations promulgated thereunder.

PARTS 303–399 [RESERVED]