

SECURITIES AND EXCHANGE COMMISSION  
(Release No. SIPA-170; File No. SIPC-2010-01)

January 10, 2011

Securities Investor Protection Corporation; Order Approving a Proposed Bylaw Change Relating to SIPC Fund Assessments on SIPC Members

On October 8, 2010, the Securities Investor Protection Corporation (“SIPC”) filed with the Securities and Exchange Commission (“Commission”) a proposed bylaw change pursuant to Section 3(e)(1) of the Securities Investor Protection Act of 1970 (“SIPA”), 15 U.S.C. 78ccc(e)(1). Notice of the proposed bylaw change was published in the Federal Register on December 6, 2010.<sup>1</sup> The Commission received no comment letters on the proposed bylaw change. This order approves the proposed bylaw change.

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. When the SIPC Fund is at its targeted level, SIPC collects a minimum assessment as provided 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>2</sup> Under Article 6 of the SIPC bylaws, SIPC must assess its members a

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<sup>1</sup> See Release No. SIPA-169 (November 30, 2010), 75 FR 75711 (December 6, 2010).

<sup>2</sup> The Dodd-Frank Act, Section 929V.

minimum amount (\$150) unless certain conditions apply. Because in some cases an assessment of \$150 would exceed 0.02 percent of a member's gross revenues, the SIPC Assessments 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, rather than \$150. Second, SIPC has proposed deleting Section 1(a)(3) of Article 6, which states 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>3</sup> Using a minimum assessment of 0.02 percent of net operating revenues would not cause

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<sup>3</sup> 15 U.S.C. 78ddd(c)(2) and 78lll(9).

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.

## II. Commission Findings

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. Once the Commission finds that the proposed bylaw change involves a matter of such significant public interest that public comment should be obtained, 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. Prior to approving a proposed bylaw change that has been noticed for public comment the Commission must make a finding that the change is in the public interest and is consistent with the purposes of SIPA.<sup>4</sup>

The Commission finds, pursuant to Section 3(e)(2)(D) of SIPA, that the proposed bylaw change is in the public interest and consistent with SIPA. First, the proposed bylaw change is a necessary consequence of Dodd-Frank. Second, utilizing net operating revenues instead of gross revenues is consistent with industry practice, SIPA, and the SIPC bylaws.

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

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 3(e)(2)(B) of SIPA, that the proposed bylaw changes (File No. SIPC-2010-01) are approved.

By the Commission.

Elizabeth M. Murphy  
Secretary