

SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA-183; File No. SIPC-2021-01]

Securities Investor Protection Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Notice of the determination of the Board of Directors of the Securities Investor Protection Corporation (“SIPC”) regarding the standard maximum cash advance amount, beginning January 1, 2022.

SUMMARY: Pursuant to Section 3(e)(2) of the Securities Investor Protection Act of 1970 (“SIPA”),¹ notice is hereby given that the Board of Directors of SIPC (the “Board”) filed with the Securities and Exchange Commission (“Commission”) on January 5, 2021, notification that the Board has determined, beginning January 1, 2022, and for the five year period immediately thereafter, that the standard maximum cash advance amount available to satisfy customer claims for cash in a SIPA liquidation proceeding will remain at \$250,000. The Commission is publishing this notice to solicit comments on Board’s determination from interested parties.

DATES: Comments are to be received on or before [INSERT DATE 15 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written data, views, and arguments concerning the foregoing by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or

¹ 15 U.S.C. 78ccc(e)(2).

- Send an email to rule-comments@sec.gov. Please include File Number SIPC-2021-01 on the subject line.

Paper comments:

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All comments should refer to File Number SIPC-2021-01. This file numbers should be included on the subject line if email 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 website (<http://www.sec.gov/rules/other.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to this Notice that are filed with the Commission, and all written communications relating to the Notice 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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551-5525; Thomas K. McGowan, Associate Director, at (202) 551-5521; Randall W. Roy, Deputy Associate Director, at (202) 551-5522; Raymond A. Lombardo, at (202) 551-5755; Timothy C. Fox, Branch Chief, at (202) 551-5687; or A.J. Jacob, Special Counsel, at (202) 551-

5583; Office of Financial Responsibility, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-7010.

I. SIPC’S STATEMENT OF THE PURPOSE OF AND STATUORY BASIS OF THE DETERMINATION OF THE BOARD OF DIRECTORS OF SIPC NOT TO ADJUST THE STANDARD MAXIMUM CASH ADVANCE AMOUNT FOR INFLATION

In its filing with the Commission, SIPC included statements concerning the purpose of and statutory basis of the SIPC Board’s determination. The text of these statements may be examined at the places specified above, and appear in the text, below.

* * * * *

“Pursuant to section 9(e)(1) of the Securities Investor Protection Act (“SIPA”), 15 U.S.C. 78fff-3(e)(1),² the Board of Directors (“Board”) of the Securities Investor Protection Corporation (“SIPC”) must determine, “[n]ot later than January 1, 2011, and every five years thereafter, and subject to the approval of the Commission,” whether to adjust for inflation the standard maximum cash advance amount that SIPC can advance to satisfy customer claims for cash under SIPA §78fff-3(a)(1). The Board considered the issue at its Meeting on September 9, 2020, and again at its Meeting on November 12, 2020. Among other things, and as more fully set forth below, the Board considered the criteria set forth in SIPA §78fff-3(e)(5), and the views of the staffs of the Commission, the FDIC, and FINRA.

The Board has determined that the maximum cash advance amount should remain at the current level of \$250,000 per customer. Pursuant to SIPA §78fff-3(e)(4), and subject to the

² For convenience, references herein to provisions of SIPA shall be to the United States Code, and shall omit “15 U.S.C.”

approval of the Commission as provided under SIPA §§78ccc(e)(2) and 78fff-3(e)(1),³ the Board’s determination will become effective January 1, 2022. Further, pursuant to SIPA §78fff-3(e)(3)(A), the Commission “shall publish in the Federal Register the standard maximum cash advance amount” not later than April 5, 2021.

Consideration of the Statutory Criteria

A. Amount of Potential Adjustment

Were the Board to have determined that the maximum cash advance amount should be adjusted, the formula for calculation of such adjustment would entail multiplying \$250,000 by:

[t]he ratio of the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding the year 2010.

SIPA §78fff-3(e)(1)(B).

A present-day application of the formula would increase the limit by \$40,000, to a total of \$290,000.⁴

³ SIPA §78fff-3(e)(1) provides that approval by the Commission be obtained “as provided under section 78ccc(e)(2)” of SIPA. SIPA §78ccc(e)(2) establishes procedures governing proposed changes to SIPC’s rules.

⁴ Pursuant to SIPA §78fff-3(e), the \$40,000 amount was determined as follows: \$250,000 multiplied by 1.1675 [the ratio of 108.763 (the annual value of the Price Index published by the Department of Commerce for calendar year 2019), to 94.094 (the published annual value of the index for 2009)], which equals \$291,875. Pursuant to SIPA §78fff-3(e)(2), this amount is to be rounded down to the nearest multiple of \$10,000, *i.e.*, \$290,000. However, because the determination is to be made for the calendar year 2021, the annual value of the Price Index to be used is for the “calendar year preceding the year in which such determination is made,” namely, the year 2020. The 2020 annual value will not be available until sometime in 2021. Nevertheless, through the month of November 2020, the index increased by approximately 0.9%. Consequently, the index value would have to

B. Inflation Adjustment Considerations

SIPA §78fff-3(e)(5) provides that in deciding whether to adjust the maximum cash advance amount, the Board shall consider the following criteria:

- (A) the overall state of the fund and the economic conditions affecting members of SIPC;
- (B) the potential problems affecting members of SIPC; and
- (C) such other factors as the Board of Directors of SIPC may determine appropriate.

1. The Overall State of the SIPC Fund and Economic Conditions Affecting Members, and Potential Problems Affecting Members of SIPC

The Board reviewed the projected growth of the SIPC Fund, including the target amount for the Fund of \$5 billion, the assessment rate imposed on SIPC members pursuant to SIPC's Assessments bylaw, as amended, and the potential impact of an inflation adjustment on the Fund, and determined that keeping the standard maximum cash advance at \$250,000 did not adversely affect SIPC members. In its review, the Board also considered SIPC's historical experience and examined: (1) SIPC advances in past and present liquidation proceedings; (2) amounts generated from assessments on member broker-dealers; and (3) projected returns on SIPC investments. In addition, the Board considered the views of the staffs of the Commission, the FDIC, and FINRA, as reported to the SIPC staff and as further reported by the SIPC staff to the Board. The Board concluded that the SIPC Fund remains on a steady growth path for the near future, barring any

either increase in December 2020 by approximately 1.9% or decrease by approximately 1.5% for the result to be different from \$290,000, which is extremely unlikely.

unforeseen catastrophic event, and that any increases in the cash limit of SIPA protection would not appreciably benefit customers.

2. *Other Appropriate Factors*

a. *Potential Divergence between FDIC and SIPC Protections*

The Board noted the equivalency - presently \$250,000 - 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 ("FDIA"), 12 U.S.C. §§ 1821 *et seq.* An inflation adjustment to the former without a corresponding adjustment to the latter would result in an unprecedented divergence between the maximum cash advance amount under SIPA and the standard maximum deposit insurance amount under FDIA.

Increases to the limit of protection for cash claims under SIPA historically have been in lockstep with increases in FDIC deposit insurance.⁵ In 2008, and again, in 2010, parity with deposit insurance was the primary reason for SIPC's request to Congress to increase the SIPA limit of protection for cash claims. In 2016, uniformity with FDIC deposit insurance was a primary factor in the Board's determination not to adjust the standard maximum cash advance amount.

⁵ The below compares the limits of protection for cash under SIPA and the FDIA:
SIPA: \$20,000 (Pub. L. No 91-598, § 6(f)(1)(A), 84 Stat. 1636, 1651 (1970))
FDIA: \$20,000 (Pub. L. No. 91-151, §7, 83 Stat. 371, 375 (1969))
SIPA: \$40,000 (Pub. L. No. 95-283, § 9, 92 Stat. 249, 265 (1978))
FDIA: \$40,000 (Pub. L. No. 93-495, § 102(a), 88 Stat. 1500, 1502 (1974))
SIPA: \$100,000 (Pub. L. No. 96-433, § 1, 94 Stat. 1855 (1980))
FDIA: \$100,000 (Pub. L. No. 96-221, § 308, 94 Stat. 132, 147 (1980))
SIPA: \$250,000 (Pub. L. No. 111-203, § 929H, 124 Stat. 1376, 1865 (2010))
FDIA: \$250,000 (temporary until 12/31/2009) Pub. L. No. 110-343, § 136, 122 Stat. 3765, 3799 (2008); (permanent) Pub. L. No. 111-203, § 335, 124 Stat. 1376, 1540 (2010))

b. Historical Claims Experience and Benefit to Customers

The Board also reviewed the number of claims for cash exceeding the limit of protection in past and present liquidation proceedings. This data suggests that the benefit to customers of an inflation adjustment may be limited. 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, when the cash limit was raised to \$250,000, only one cash claim remains unsatisfied.

c. Aggregate Credit Balances and Sweep Programs

It also was brought to the Board's attention that aggregate cash credit balances at member firms have not increased over the last five years in line with inflation. Instead, member firms have increasingly utilized sweep programs to move customer free credit balances from broker- dealers to banks.

Conclusion

The Board weighed all the relevant factors against a potential adjustment of \$40,000, the amount determined by the formula set forth in SIPA §78fff-3(e)(1)(B). The Board concluded that, on balance, in light of the intent to grow the SIPC Fund to reach a target of \$5 billion, the unprecedented break with the FDIC limit that would result, and the absence of evidence that an appreciable number of investors would be benefitted, an adjustment to the limit of protection for cash claims was not appropriate. Accordingly, the Board determined that the standard maximum cash advance amount should remain at \$250,000 per customer.”

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II. DATE OF EFFECTIVENESS AND TIMING FOR COMMISSION ACTION

Within thirty-five days of the date of publication of this notice of the SIPC Board's determination in the Federal Register, or within such longer period (i) 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 (ii) as to which SIPC consents, the Commission shall:

(A) By order approve such determination or

(B) Institute proceedings to determine whether such determination should be disapproved.

III. NOTICE OF THE DETERMINATION OF THE SIPC BOARD NOT TO ADJUST THE STANDARD MAXIMUM CASH ADVANCE AMOUNT FOR INFLATION

On January 1, 2021, pursuant to section 9(e)(1) of the Securities Investor Protection Act, 15 U.S.C. 78fff-3(e)(1), the Board of Directors of the Securities Investor Protection Corporation (the "Board") determined that an inflation adjustment to the standard maximum cash advance amount would not be appropriate. Accordingly, the Board determined that the standard maximum cash advance amount will remain at \$250,000 per customer, effective January 1, 2022.

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

Dated: January 27, 2021.

J. Matthew DesLesDernier
Assistant Secretary

⁶ 17 CFR 200.30-3(f)(3).