

SECURITIES AND EXCHANGE COMMISSION
Release No. SIPA-179A; File No. SIPC-2019-02

January 24, 2020

Securities Investor Protection Corporation; Notice of Filing of Proposed Bylaw Changes Relating to SIPC Member Assessments; Correction

Pursuant to Section 3(e)(1) of the Securities Investor Protection Act of 1970 (“SIPA”),¹ on November 19, 2019 the Securities Investor Protection Corporation (“SIPC”) filed with the Securities and Exchange Commission (“Commission”) proposed bylaw changes relating to SIPC member assessments. 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.² Pursuant to section 3(e)(1)(B) of SIPA, the Commission finds that these proposed bylaw changes involve a matter of such significant public interest that public comment should be obtained.³ Therefore, pursuant to section 3(e)(2)(A) of SIPA,⁴ the Commission is publishing this notice to solicit comment from interested persons on the proposed bylaw changes.⁵

¹ 15 U.S.C. 78ccc(e)(1).

² *Id.*

³ 15 U.S.C. 78ccc(e)(1)(B).

⁴ 15 U.S.C. 78ccc(e)(2)(A).

⁵ This notice of SIPC’s filing of proposed bylaw changes relating to SIPC member assessments supersedes the notice originally published in the Federal Register on January 23, 2020. *See* Securities Investor Protection Corporation; Notice of Filing of Proposed Bylaw Changes Relating to SIPC Member Assessments, Release No. SIPA-179 (Jan. 16, 2020), 85 FR 3986 (Jan. 23, 2020). The notice published on January 23, 2020 inadvertently omitted from the “Text of the Proposed Bylaw Change” section deleted text in paragraph (g) of Section 1 of Article 6 of the SIPC bylaws defining “net operating revenues from the securities business.” This notice reflects that the definition would remain the same but would move from paragraph (g) of Section 1 of Article 6 of the SIPC bylaws to paragraph (b)(ii) of Section 3 of Article 6 of the SIPC bylaws.

In its filing with the Commission, SIPC included statements concerning the purpose of and statutory basis for the proposed bylaw changes as described below, which description has been substantially prepared by SIPC.

I. SIPC’s Statement of the Purpose of, and Statutory Basis for, SIPC Proposed Bylaw Changes Relating to SIPC Member Assessments

Pursuant to Section 3(e)(1) of SIPA, 15 U.S.C. 78ccc(e)(1),⁶ SIPC hereby submits for filing with the Commission proposed amendments to Article 6 of the SIPC Bylaws (“Bylaws”). Article 6 relates to the assessments that SIPC imposes upon its members.

As revised, Article 6 would maintain assessments at the current rate of 0.15 percent of a member’s net operating revenue from the securities business until SIPC’s unrestricted net assets reach \$5 billion.⁷ “Unrestricted net assets” are comprised primarily of the amount in the SIPC Fund at year end, minus the estimated cost to complete pending liquidation proceedings, as reflected in SIPC’s most recent audited Statement of Financial Position. Once the aforementioned condition is met, SIPC would commission a study to consider the adequacy of the SIPC Fund, and would do so every four years thereafter. The study would analyze a variety of factors, as set forth in the proposed amended Bylaw. After consideration of the study and the report thereon, and after consultation with the Commission and self-regulatory organizations, SIPC could increase or decrease, within certain limits, the appropriate assessment rate in order to maintain the Fund and effect SIPA’s purposes.

Pursuant to SIPA Section 78ddd(c)(2), SIPC has consulted with self-regulatory

⁶ For convenience, references hereinafter to provisions of SIPA shall be to the United States Code and shall omit “15 U.S.C.”

⁷ “Net operating revenues from the securities business” is “gross revenues from the securities business less interest and dividend expenses, and includes those clarifications as are set forth in the SIPC assessment forms and instructions.” SIPC Bylaw Article 6, Section 1(a)(3)(g) [*sic*].

organizations with respect to the proposed amendments. SIPC has determined that the changes are necessary and appropriate to maintain the SIPC Fund.

Background:

SIPC is a non-profit member organization created in 1970 under SIPA, for the protection of customers of member broker-dealers placed in liquidation under SIPA. With some exceptions set by statute, all registered securities brokers or dealers are members of SIPC. SIPC protects the customers of member firms in liquidation under SIPA. Among other things, SIPC advances funds to satisfy the claims of customers. Each customer is protected by SIPC up to \$500,000 against the loss of missing cash and/or securities entrusted by the customer to the broker. The \$500,000 includes a limit of up to \$250,000 where the allowed claim is for cash only. The advances by SIPC come from a “Fund” that SIPC administers. The Fund largely is comprised of assessments paid to SIPC by its members. The Fund also is used to pay the administrative expenses of a liquidation proceeding where the debtor’s general estate is insufficient, and to finance the day-to-day operations of SIPC.

The Assessment Bylaw:

Article 6 of the Bylaws now imposes a yearly assessment rate of 0.15% of net operating revenues from the member’s securities business (“NOR”) where the balance of the SIPC Fund is less than \$2.5 billion and will remain at that amount for six months or more. If the SIPC Fund has reached \$2.5 billion but SIPC’s unrestricted net asset amount is less than \$2.5 billion, then the yearly assessment rate is .15% of NOR. Once the unrestricted net assets total at least \$2.5 billion, then the assessment rate is a minimum assessment of .02% of NOR.

Currently, SIPC’s only sources of funding are its Fund and a possible Government loan. To ensure that SIPC has sufficient independent resources to carry out its purposes (thus obviating

the need to borrow from the Federal Government), SIPC has determined to keep the assessment rate at 0.15% of NOR until SIPC's unrestricted net assets total \$5 billion. This 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.

Basis and Purpose of Proposed Changes:

There is no scientific basis for determining the exact adequacy of the SIPC Fund. Nevertheless, SIPC's statutory obligation to protect customers of failed firms, and in certain cases, to pay the costs and expenses of administration of the liquidation proceeding, impose upon SIPC a duty to take a responsible approach to calculating both the size of the SIPC Fund, and the reasonableness of an assessment rate that maintains and promotes adequate funding.

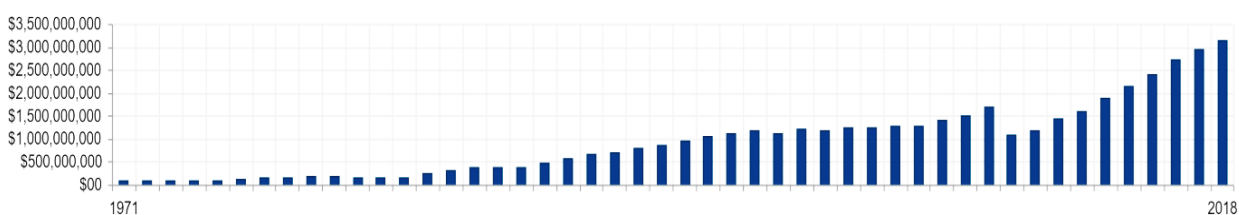
As SIPC has witnessed over the past decade, risks abound -- from a large firm failure with encumbered assets, to a Ponzi scheme with significant losses to customers, to risks presented by a cybersecurity attack or the use of digital assets. Assessing the adequacy of the Fund is especially challenging because the cost of a liquidation does not necessarily correlate with any traditional measure of financial exposure for broker-dealers. Instead, the Fund's adequacy depends largely on member firms' compliance with customer protection or net capital rules, the probability of which is challenging to quantify.

SIPC's resources must enhance investor confidence. Given the risks described above, and remaining vigilant regarding the uncertainties in an ever-changing marketplace, SIPC believes that in order for its mission of customer protection to succeed, SIPC must maintain a robust Fund.

Historical Perspective:

The initial SIPC Fund totaled \$77.6 million.⁸ In 1992, SIPC’s Board (“the Board”) raised the target balance of the SIPC Fund to \$1 billion, and the SIPC Fund reached that amount in 1996. The Board last sought to augment the size of the Fund in 2009, when, following the commencement of the liquidation proceedings of Lehman Brothers Inc. (“LBI”), and Bernard L. Madoff Investment Securities LLC (“BLMIS”), the assessment rate was revised to cause the Fund to grow to \$2.5 billion.

SIPC Fund Comparison, Inception to December 31, 2018



As the graph above reveals, before the liquidation of BLMIS in 2008, SIPC’s Fund balance had doubled roughly every ten years. In addition, during those years and until 2010, SIPC had a substantial confirmed private line of credit.⁹ Due to the high cost and/or unavailability, SIPC no longer has the private line of credit.

The Risk Landscape:

The financial crisis of 2008, and the ensuing liquidation proceedings of LBI and BLMIS, revealed clearly the need for SIPC to increase the Fund balance. Although the LBI liquidation proceeding ultimately did not require SIPC to advance funds to satisfy claims, or pay for expenses of administration, any future failure of a global enterprise and its broker-dealer affiliate

⁸ Comprised of member assessments of \$9.6 million, the transfer of \$3 million from the American Stock Exchange, Inc. trust fund, and confirmed lines of credit totaling \$65 million.

⁹ SIPC’s last credit agreement, a \$500 million, 3-yr. revolving credit facility, expired March 1, 2010.

could have a very different outcome for SIPC. For example, had funds sought by LBI been encumbered overseas, or had LBI been reducing artificially its segregated customer reserve requirement through otherwise legal complex transactions, that may have imposed significant demands on the SIPC Fund.

The liquidation proceeding of BLMIS has required SIPC to make the largest aggregate advance in its history. In statistical terms, the amount is more than 100 standard deviations greater than the amounts advanced by SIPC in all of its previous cases.¹⁰ Today, an event statistically comparable to BLMIS would require advances to customers amounting to between \$4 billion and \$5 billion.

SIPC faces risks beyond those posed by large Ponzi schemes or a credit crisis. These additional risks, many of which are hard to quantify, include, for example, technology-related failures, such as a cyberattack on a large SIPC member that restricts access by customers to their assets; or risks stemming from the delay in computing a broker-dealer's reserve requirement. For example, SEC Rule 15c3-3, 17 C.F.R. §240.15c3-3, which governs the protection of customer assets, requires a broker-dealer to compute its cash reserve requirement on a weekly, not daily, basis. Although a number of SIPC members voluntarily rebalance their cash reserves on a daily basis, a large SIPC member that does not might not have enough cash in its Rule 15c3-3(e) reserve account due to an increase in its net cash obligations following its last required reserve computation.

Another factor underscoring SIPC concerns is the potential risk to the solvency of the SIPC Fund under the Orderly Liquidation provisions of the Dodd Frank Act, Title II. Dodd-

¹⁰ In addition, the amounts advanced by SIPC in the BLMIS liquidation are more than 107 times greater than the average advance of the ten next largest SIPC cases.

Frank creates an important role for SIPC in the event of the failure of a covered, large complex securities broker-dealer that presents systemic risk. Under Dodd-Frank, SIPC is designated as trustee for the liquidation of the broker-dealer under SIPA. 12 U.S.C. §5385(A). As trustee, SIPC must determine and satisfy claims against the broker-dealer consistent with SIPA. 12 U.S.C. §5385(D). While the FDIC has expressed a preference to use Dodd-Frank to intervene at the holding company level,¹¹ the law nevertheless remains available to liquidate a systemically important broker-dealer.

Mechanism for Setting the Assessment Rate:

Once the unrestricted net asset amount is \$5 billion, SIPC would, as it often has in the past,¹² commission a study to review the adequacy of the SIPC Fund. In the ordinary course, SIPC would commission the study every four years. The study would entail consideration of such factors as the overall state of the SIPC Fund, current and projected financial market conditions and trends, historic and perceived risks and threats to the viability of the SIPC Fund, any undue burden on members, or members' customers, and other factors deemed appropriate by the SIPC Board.

Upon consideration of the results of the study and the report thereon that would issue, and after consultation with the Commission and one or more self-regulatory organizations, SIPC

¹¹ Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy, 78 Fed. Reg. 76614 (Dec. 18, 2013).

¹² At various times, the size of SIPC's Fund has been independently reviewed. *See, e.g.,* GAO Report, *The Regulatory Framework Has Minimized SIPC's Losses*, September 1992; *Review of SIPC Risk Profile and Practices*, Fitch Risk Management, 2003; *Loss Modeling and Capital Reserve Adequacy Study*, Algorithmics Inc., 2008; *Task Force Recommendation Analysis: Methodology and Summary of Results*, Opera Solutions LLC, 2013.

would set the appropriate assessment rate necessary to maintain the Fund and satisfy SIPA's purposes.

Other provisions of SIPC Bylaw Article 6 are unchanged such as the rate when the Fund is less than \$150 million, or less than \$100 million, or the circumstances under which the rate imposed can be more than ½ of 1% of gross revenues from the securities business but not more than 1% thereof.¹³ These provisions largely track the requirements under SIPA Sections 78ddd(c)(3)(B) and 78ddd(d)(1)(A) and B.

Given not only the risks described above, but the risk to members that, by statute, a significant event could cause assessment rates immediately to jump to at least 0.50% of gross revenues from the securities business and possibly be as high as 1%, SIPC submits that growing the Fund at a consistent pace lessens any negative impact on members, with the attendant benefit of reaching \$5 billion sooner. Barring unforeseen sizeable expenditures, SIPC estimates that at the current yearly assessment rate of .15% of NOR, SIPC's unrestricted net assets, as reflected in SIPC's audited Statement of Financial Position, would be \$5 billion by no later than December 31, 2026. If SIPC did nothing to address the adequacy of the Fund or the assessment rate, then at a rate of 0.02% per annum, which would be the assessment under the current version of the Assessment Bylaw, the \$5 billion balance would not be reached until the year 2040.

Impact on Members:

Adopting the modifications proposed by SIPC should have a limited impact on member firms. As the chart below reveals, based on 2018 data, SIPC staff estimates that two-thirds of the total difference in annual assessments under the proposed assessment rate structure would be

¹³ "Gross revenues from the securities business" is defined in SIPA Section 78lll(9).

paid by only 30 members for which the difference in the assessment payment would amount, on average, only to .091% of their total revenue.

**ESTIMATED IMPACT OF APPLYING A NEW ASSESSMENT RATE OF 15BPS
INSTEAD OF 2BPS (BASED ON FY 2018)**

<u>Difference in assessments</u> <u>0.15%-0.02%</u>	<u>Number</u> <u>of BDs</u>	<u>% of BDs</u>	<u>Difference Assessments 0.15%-0.02%</u>		<u>Average %</u> <u>Total Revenue</u>
			<u>Amount</u>	<u>% Total</u>	
>\$2,000,000	30	0.84%	\$172,316,807	66.92%	0.091%
\$2,000,000-\$1,500,000	2	0.06%	\$3,572,213	1.39%	0.059%
\$1,499,000-\$1,000,000	5	0.14%	\$6,485,442	2.52%	0.069%
\$999,999-\$500,000	32	0.90%	\$23,444,971	9.10%	0.092%
\$499,999-\$100,000	123	3.46%	\$26,752,835	10.39%	0.092%
\$2,000,000-\$100,000	162	4.56%	\$60,255,460	23.40%	
\$99,999-\$50,000	113	3.18%	\$7,808,062	3.03%	0.093%
\$49,999-\$25,000	181	5.09%	\$6,441,463	2.50%	0.105%
\$24,999-\$10,000	363	10.21%	\$5,650,161	2.19%	0.106%
\$9,999-\$5,000	360	10.12%	\$2,536,530	0.99%	0.108%
\$4,999-\$2,500	385	10.83%	\$1,399,645	0.54%	0.106%
\$99,999-\$2,500	1,402	39.43%	\$23,835,861	9.26%	
\$2,499-\$2,000	110	3.09%	\$245,514	0.10%	0.108%
\$1,999-\$1,000	343	9.65%	\$495,237	0.19%	0.104%
\$999-\$500	313	8.80%	\$228,636	0.09%	0.085%
\$499-\$100	432	12.15%	\$116,247	0.05%	0.101%
\$99-\$1	330	9.28%	\$11,807	0.00%	0.078%
<\$1	434	12.20%	\$4	0.00%	
<\$2,500	1,962	55.17%	\$1,097,445	0.43%	
	<u>3,556</u>	<u>100.00%</u>	<u>\$257,505,573</u>	<u>100.00%</u>	

In the above chart, column 1 refers to the difference in amount that a broker-dealer would pay as a result of being assessed at a rate of .15% instead of .02%. Column 2 is the number of broker-dealers impacted at that amount. Column 3 is the percentage that the broker-dealers at a certain level represent relative to the total number of broker-dealers. Column 4 is the total

additional amount paid by all broker-dealers at a given level. Column 5 is the percentage that the payments reflect relative to all payments. Column 6 is the percentage that the payments represent, on average, relative to the broker-dealers' revenue.

Thus, an assessment rate of .15%, as opposed to .02%, would cause the largest 30 SIPC members to pay approximately \$172 million more out of their approximately \$213 billion in revenue. This increase amounts to approximately 8/100 of 1% of such members' revenue, and represents 2/3 of the total impact on all members. More than half of SIPC members would see an increase of less than \$2,500 in the amount of their annual assessment, with more than 20% of members paying a difference of less than \$100. In other words, the impact of modifying the assessment structure on both the total assessment burden, and the distribution of the assessment burden, among individual broker-dealers, would be comparatively limited.

Proposed Technical Changes:

Clarification of Role of Collection Agent:

In addition to the above, SIPC proposes to amend that portion of the Assessment Bylaw relating to Collection of General Assessments (SIPC Bylaw Article 6, Section 1(c)).

Under SIPA Section 78iii(a), each self-regulatory organization ("SRO") may act as the collection agent for SIPC to collect assessments payable by members for which the SRO is the examining authority. However, SIPA does not mandate that SIPC use a collection agent to collect assessments, and SIPA does not restrict collection exclusively to collection agents. *See, e.g.,* SIPA Section 78ddd(c)(1) ("Each member of SIPC shall pay to SIPC, *or* the collection agent for SIPC[emphasis added]"). Furthermore, under SIPA Section 78ccc(b)(8), since SIPC has the power to "do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to SIPC," SIPC

has the general authority directly to collect assessments. Indeed, for more than 20 years – since the mid-1990s – members have paid assessments directly to SIPC. Where members have failed to pay their assessments, SIPC has referred the delinquency to Commission staff and currently brings the matter to the attention of FINRA for collection.

In keeping with current practice, and in light of technological developments and capabilities that have continued to improve considerably, the proposed bylaw removes the provision that requires members to pay assessments to collection agents. The proposed Bylaw amendment re-letters the provisions that follow current Bylaw Article 6, Section 1(c). The re-lettered provisions include current Section 1(d) of Bylaw Article 6 (Report by Collection Agents). Section 1(d) requires the SROs to report in writing to SIPC as to any member from which the SRO has or has not been successful in collecting payment. In this manner, SIPC can stay informed as to any member that continues to be delinquent and refer the member, as needed, to the Commission for further action under SIPA Section 78jjj(a).

Elimination of Interest Payment Period on Past-Due Payments:

Currently, the SIPC Bylaw provides that if a member's assessment payment has not been received within 15 days of the due date, 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 is also presently working on the development of a portal through which, among other things, members can file assessment forms. The creation by SIPC of the means by which members can make immediate payment obviates the need for a grace period.

Conclusion

Given the many risks that have arisen in the past two decades, and the potential risks SIPC continues to face, SIPC must be prudent in determining what constitutes a sufficient level of funding. Indeed, maintaining the adequacy of the SIPC Fund is in everyone's interest – it enhances investor protection. While SIPC could raise the assessment on an ad hoc basis as the situation warrants, it believes that the approach set forth herein is the better course of action, as it promotes greater stability and predictability for both investors and member firms.

II. Need for Public Comment

Section 3(e)(1) of SIPA provides that the SIPC Board must file a copy of any proposed bylaw change with the Commission, accompanied by a concise general statement of the basis and purpose of the proposed bylaw change.¹⁴ The proposed bylaw change will become effective thirty days after the date of filing with the Commission or upon such later date as SIPC may designate or such earlier date as the Commission may determine unless: (A) the Commission, by notice to SIPC setting forth the reasons for such action, disapproves the proposed bylaw change as being contrary to the public interest or contrary to the purposes of SIPA; or (B) the Commission finds that the proposed bylaw change involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying SIPC in writing of such finding, require that the procedures for SIPC proposed rule changes in section 3(e)(2) of SIPA be followed with respect to the proposed bylaw change.¹⁵

The SIPC Fund, which is built from assessments on its members and the interest earned on the Fund, is used for the protection of customers of members liquidated under SIPA to maintain investor confidence in the securities markets. In light of this fact and that the bylaw

¹⁴ 15 U.S.C. 78ccc(e)(1).

¹⁵ 15 U.S.C. 78ccc(e)(1).

change provides for a modified calculation of the assessment rate and a change to collection practices, the Commission finds, pursuant to section 3(e)(1)(B) of SIPA,¹⁶ that the proposed bylaw change involves a matter of such significant public interest that public comment should be obtained and is requiring that the procedures applicable to SIPC proposed rule changes in section 3(e)(2) of SIPA¹⁷ be followed. As required by section 3(e)(1)(B) of SIPA,¹⁸ the Commission has notified SIPC of this finding in writing.

III. Date of Effectiveness of the Proposed Bylaw Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register*, or within such longer period (A) 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 (B) as to which SIPC consents, the Commission shall: (i) by order approve such proposed bylaw changes; or (ii) institute proceedings to determine whether such proposed bylaw changes should be disapproved.¹⁹

IV. Text of Proposed Bylaw Change

The text of the proposed bylaw changes is provided below. Proposed new language is in italics; proposed deletions are in brackets.

ARTICLE 6

ASSESSMENTS

Section 1. General

¹⁶ 15 U.S.C. 78ccc(e)(1)(B).

¹⁷ 15 U.S.C. 78ccc(e)(2).

¹⁸ 15 U.S.C. 78ccc(e)(1)(B).

¹⁹ 15 U.S.C. 78ccc(e)(2)(B).

(a) Amount of Assessment

(1) The amount of each member's assessment for the member's fiscal year shall be the product of the assessment rate established by SIPC for that fiscal year and either the member's gross [or net]revenues *or net operating revenues* from the securities business, as follows:

(A) [The assessment rate shall be one-fourth (¼) of one (1) percent per annum of net operating revenues from the member's securities business for each calendar year or part thereof unless SIPC determines that the balance of the SIPC Fund, as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit,] *If at any time SIPC determines that SIPC's unrestricted net assets are:*

(i) less than \$5.0 billion but not less than \$2.5 billion, and are reasonably likely to remain less than \$5.0 billion but not less than \$2.5 billion, the amount of each member's assessment shall be 0.15 percent per annum of net operating revenues from the member's securities business for each calendar year or part thereof.[has aggregated a balance of \$2.5 billion, and]

(ii) less than \$2.5 billion, the amount of each member's assessment shall be one-fourth (1/4) of one (1) percent per annum of net operating revenues from the member's securities business for each calendar year or part thereof. [will remain at or above \$2.5 billion for six months or more.]

(B) *Notwithstanding anything herein to the contrary, if at any time SIPC determines that the balance of the SIPC Fund aggregates or is reasonably likely to aggregate:*

(i) less than \$150,000,000 – the amount of each member's assessment shall be at an amount to be determined by SIPC, but in no case shall the amount of each member's assessment

be less than an assessment rate of one-fourth ($\frac{1}{4}$) of one (1) percent per annum of such member's gross revenues from the securities business.

(ii) less than \$100,000,000 – the amount of each member's assessment shall be at an amount to be determined by SIPC, but in no case shall the amount of each member's assessment be less than an assessment rate of one-half ($\frac{1}{2}$) of one (1) percent per annum of such member's gross revenues from the securities business.

(iii) The amount of each member's assessment shall not exceed one-half ($\frac{1}{2}$) of one (1) percent per annum of such member's gross revenues from the securities business, unless SIPC determines that a rate in excess of one-half ($\frac{1}{2}$) of one (1) percent during any twelve (12) month period will not have a material adverse effect on the financial condition of its members or their customers. No assessment made pursuant to this section 1(a)(1) shall require payments during any such period that exceed in the aggregate one (1) percent of any member's gross revenues from the securities business for such period.

[Notwithstanding the provisions of Section 1(a)(1)(A) herein, if SIPC determines that the balance of the SIPC Fund, as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit, (i) has aggregated \$2.5 billion, and (ii) will remain at or above \$2.5 billion for six months or more, but SIPC's unrestricted net assets, as reflected in SIPC's most recent audited Statement of Financial Position, are less than \$2.5 billion, the assessment rate shall be 0.15 percent per annum of net operating revenues from the member's securities business for each calendar year or part thereof.]

(C) SIPC shall commission a study ("Study") every four years to examine the adequacy of the balance of SIPC's unrestricted net assets and the SIPC Fund and the appropriate assessment rate that is necessary to fulfill the purposes of the Act. The Study will examine the

overall state of SIPC's unrestricted net assets and Fund balances, current and projected financial market conditions and trends, historic and perceived risks and threats to the viability of SIPC's unrestricted net assets and Fund, any undue burden on members or members' customers, and such other factors as the Board determines. The Study shall result in a report ("Report") to be furnished to SIPC. The first Study shall be commissioned when SIPC reasonably anticipates that SIPC's unrestricted net assets have reached a total of \$5.0 billion. [If SIPC determines that the balance of the SIPC Fund, as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit, has aggregated \$2.5 billion or more, and will remain at or above \$2.5 billion for six months or more, and SIPC's unrestricted net assets, as reflected in SIPC's most recent audited Statement of Financial Position, are at or above \$2.5 billion, members shall pay a minimum assessment, which shall be 0.02 percent of the net operating revenues from the securities business for each calendar year or part thereof.]

(D) Without limitation of SIPC's authority under 15 U.S.C. §§ 78ccc and 78ddd to set assessments, if SIPC determines that SIPC's unrestricted net assets are \$5.0 billion or more and are reasonably likely to remain above \$5.0 billion, and after review of the information contained in the last Report at such time, and after consultation with the Securities and Exchange Commission and self-regulatory organizations, SIPC may not more than once in any four-year period, increase or decrease the assessment rate by up to, but not more than, twenty-five percent (25%) of the rate in effect at that time. [Anything to the contrary herein notwithstanding, if at any time SIPC determines that the balance of the SIPC Fund, as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit, aggregates or is reasonably likely to aggregate:

(i) less than \$2.5 billion and will likely remain less than \$2.5 billion for a period of six (6) months or more – the amount of each member’s assessment shall be at an assessment rate of one-fourth ($\frac{1}{4}$) of one (1) percent per annum of net operating revenue.

(ii) less than \$150,000,000 – the amount of each member’s assessment shall be at an amount to be determined by SIPC, but in no case shall the amount of each member’s assessment be less than an assessment rate of one-fourth ($\frac{1}{4}$) of one (1) percent per annum of such member’s gross revenues from the securities business.

(iii) less than \$100,000,000 – the amount of each member’s assessment shall be at an amount to be determined by SIPC, but in no case shall the amount of each member’s assessment be less than an assessment rate of one-half ($\frac{1}{2}$) of one (1) percent per annum of such member’s gross revenues from the securities business.

(iv) The amount of each member’s assessment shall not exceed one-half ($\frac{1}{2}$) of one (1) percent per annum of such member’s gross revenues from the securities business, unless SIPC determines that a rate in excess of one-half ($\frac{1}{2}$) of one (1) percent during any twelve (12) month period will not have a material adverse effect on the financial condition of its members or their customers. No assessment made pursuant to this section 1(a)(1) shall require payments during any such period that exceed in the aggregate one (1) percent of any member’s gross revenues from the securities business for such period.]

(E) Any minimum assessment imposed upon each member of SIPC shall be 0.02 percent of the net operating revenues from the securities business of such member for each calendar year or part thereof.

(2) Any change in assessments made in accordance with Section 1(a)(1) herein shall commence on the first day of the year following the date on which SIPC announces its

determination, or on such other date if the exigency of the circumstances so warrants in SIPC's determination, and continue until such time as SIPC provides otherwise.

(3) Commencing on the first day of the month following the date on which SIPC borrows moneys pursuant to Section 4(f) or Section 4(g) of the Act, and continuing while any such borrowing is outstanding and until such further time as SIPC provides otherwise, the amount of each member's assessment shall be at an assessment rate of not less than one-half ($\frac{1}{2}$) of one (1) percent per annum of such member's gross revenues from the securities business.

(b) Payments. Assessments shall be payable at such times and in such manner as may be determined by SIPC's Vice President - Finance with the approval of the Chairman.

[(c) Collection of General Assessments. Each member of the Corporation who is a member of a self-regulatory organization shall pay assessments to its collection agent. In the case of members who are not members of any self-regulatory organization, assessments shall be paid directly to the Corporation.]

[(d)](c) Report by Collection Agents. Within 45 days after each due date, each self-regulatory organization *that acts* as [which is the] collection agent *for SIPC* shall submit a written report to *SIPC* [the Corporation] as to any entity [for whom it acts as collection agent] whose filing or assessment payment has not been received.

[(e)](d) Interest on Assessments. If all or any part of an assessment payable under Section 4 of the Act has not been *timely* received [by the collection agent within 15 days after the due date thereof], the member shall pay, in addition to the amount of the assessment, interest at the rate of 20% per annum on the unpaid portion of the assessment for each day it has been overdue. If any broker or dealer has incorrectly filed a claim for exclusion from membership in the Corporation, such broker or dealer shall pay, in addition to assessments due, interest at the rate of

20% per annum on the unpaid assessment for each day it has not been paid since the date on which it should have been paid.

[(f) Gross Revenues. The term "gross revenues from the securities business" includes the revenues in the definition of gross revenues from the securities business set forth in the applicable sections of the Act.

(g) Net Operating Revenues. The term "net operating revenues from the securities business" means gross revenues from the securities business less interest and dividend expenses, and includes those clarifications as are set forth in the SIPC assessment forms and instructions.]

Section 2. Overpayments

If the final annual reconciliation filed by a terminated member reflects an assessment overpayment carried forward that exceeds \$150.00, SIPC may refund such excess to the member upon receipt of the member's written request therefor and after [the member's]SIPC [collection agent]has confirmed [to SIPC]that all of the member's SIPC assessment form filings and payments and reports required by SEC Rule 17a-5 covering periods through the termination date have been reviewed and accepted.

Section 3. Interpretation of Terms

(a) For purposes of *calculating assessments*[this article]:

[(a)](i) The term "securities in trading accounts" shall mean securities held for sale in the ordinary course of business and not identified as having been held for investment.

[(b)](ii) The term "securities in investment accounts" shall mean securities that are clearly identified as having been acquired for investment in accordance with provisions of the Internal Revenue Code applicable to dealers in securities.

[(c)](iii) The term "fees and other income from such other categories of the securities business" shall mean all revenue related either directly or indirectly to the securities business except revenue included in Section 16(9)(A)-(K) and revenue specifically excepted in Section 4(c)(3)(C).

(b) For purposes of this Article:

(i) Gross Revenues. The term "gross revenues from the securities business" includes the revenues in the definition of gross revenues from the securities business set forth in the applicable sections of the Act.

(ii) Net Operating Revenues. The term "net operating revenues from the securities business" means gross revenues from the securities business less interest and dividend expenses, and includes those clarifications as are set forth in the SIPC assessment forms and instructions.

(iii) SIPC Fund or Fund. The term "SIPC Fund" or "Fund" is as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit.

(iv) SIPC's unrestricted net assets. The term "SIPC's unrestricted net assets" means the lesser of SIPC's unrestricted net assets as reflected in SIPC's most recent audited Statement of Financial Position or reasonably expected by SIPC to be reflected in its next audited Statement of Financial Position.

V. Solicitation of Comments

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 (<http://www.sec.gov/rules/other.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SIPC-2019-02 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-2019-02. 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 the proposed bylaw changes that are filed with the Commission, and all written communications relating to the proposed bylaw changes 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Commission. 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.

All submissions should refer to File Number SIPC-2019-02, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(f)(2)(i); 17 CFR 200.30-3(f)(3).