SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA-181; File No. SIPC-2019-01]

June 9, 2020

Securities Investor Protection Corporation; Order Approving Proposed Bylaw Change, as Revised by Amendment No. 1, Relating to SIPC Board Compensation

Pursuant to Section 3(e)(1) of the Securities Investor Protection Act of 1970 ("SIPA"),[1] the Securities Investor Protection Corporation ("SIPC") filed with the Securities and Exchange Commission ("Commission") on October 8, 2019 proposed bylaw changes relating to the compensation of SIPC's Board of Directors ("SIPC Board"). On October 24, 2019, SIPC consented to a 90-day extension of time before the proposed bylaw change would take effect pursuant to Section 3(e)(1) of SIPA.[2] On November 19, 2019, SIPC filed a revised version of the proposed bylaw change (the "proposed bylaw change"). The proposed bylaw change replaced and superseded the original filing in its entirety. On December 10, 2019, SIPC consented to a 90-day extension of time before the proposed bylaw change would take effect pursuant to Section 3(e)(1) of SIPA.[3] Pursuant to Section 3(e)(1)(B) of SIPA, the Commission found that the proposed bylaw change involved a matter of such significant public interest that public comment should be obtained.[4] Consequently, pursuant to Section 3(e)(2)(A) of SIPA,[5] notice soliciting comment on the proposed bylaw change was published in the *Federal Register*

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1 *See* 15 U.S.C. 78ccc(e)(1).

2 *See id.*

3 *See id.*

4 *See* 15 U.S.C. 78ccc(e)(1)(B).

5 *See* 15 U.S.C. 78ccc(e)(2)(A).

on January 30, 2020.[6] On February 24, 2020, SIPC consented to an extension until May 14, 2020, and on April 1, 2020, SIPC consented to an additional extension until June 15, 2020, for the Commission to approve or institute proceedings to determine whether the proposed bylaw change should be disapproved.[7] The Commission received one comment regarding the proposed bylaw change.[8] For the reasons described below, the Commission finds that the proposed bylaw change is in the public interest and is consistent with the purposes of SIPA.[9] Therefore, this order approves the proposed bylaw change under Section 3(e)(2) of SIPA.[10]

I. Description of the Proposed Bylaw Change

A. Background

Under SIPA, the SIPC Board shall consist of seven members: five private sector directors and two public sector directors.[11] The five private sector directors are appointed by the President of the United States and confirmed by the Senate. Of the five private sector directors, three must be associated with, and representative of, the securities industry, and two must not be associated with the securities industry. SIPA provides that one of the public sector directors must be an officer or employee of the Department of the Treasury and the other must be an officer or employee of the Federal Reserve Board. Only directors from outside of the securities industry

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6 *See* Securities Investor Protection Corporation; Notice of Filing of Proposed Bylaw Change, as Revised by Amendment No. 1, Relating to SIPC Board Compensation; Correction, Release No. SIPA-180A (Jan. 24, 2020), 85 FR 5513 (Jan. 30, 2020) ("Notice").

7 *See* 15 U.S.C. 78ccc(e)(2)(B).

8 *See* E-mail from Martha C. Chemas, Esq., dated February 5, 2020 ("Chemas Email"). The comment on the proposed bylaw change is available at https://www.sec.gov/comments/sipc-2019-01/sipc201901.htm.

9 *See* 15 U.S.C. 78ccc(e)(2)(D).

10 *See* 15 U.S.C. 78ccc(e)(2).

11 *See* 15 U.S.C. 78ccc(c).

can serve as Chairperson and Vice Chairperson of the SIPC Board.

Under SIPA, all matters relating to director compensation are governed by the SIPC Bylaws.[12] The private sector directors are entitled to receive an honorarium, which is paid from the SIPC Fund.[13] Since 1994, when the position of Chairperson ceased to be a full-time position, the honoraria paid to the private sector directors have been increased once (in 2006). The following chart shows the honoraria for the Chairperson, Vice Chairperson, and other private sector directors from 1994 to 2006 and from 2006 to the present.

Bylaw Date	Bylaw	Chairperson	Vice Chairperson	Industry Directors
1994-2006	Art. 2, §6	$1,000/meeting $500/day for official business + expenses	$500/meeting $500/day for official business + expenses	Expenses only
2006-Present	Art. 2, §6	$15,000 honorarium + expenses	$6,250 honorarium + expenses	$6,250 honorarium + expenses

B. The Proposed Bylaw Change

SIPC proposes to modify Section 6 of Article 2 of the SIPC Bylaws to: (1) raise the Chairperson's yearly honorarium from $15,000 to $28,000; (2) raise the other private sector directors' yearly honorarium from $6,250 to $12,000; (3) authorize a $28,000 yearly honorarium for a Vice Chairperson who temporarily serves as acting Chairperson for a continuous twelve month period while the position of Chairperson remains vacant; and (4) authorize a $28,000 yearly honorarium for a private sector director to whom the SIPC Board delegates authority to perform certain functions of the Chairperson and who performs those functions for a continuous twelve month period while the positions of Chairperson and Vice Chairperson remain vacant. SIPC justified its proposed bylaw change by describing the enhanced responsibilities and risk

12 *See* 15 U.S.C. 78ccc(c)(5).

13 All expenditures from SIPC are required to be made out of the SIPC Fund. *See* 15 U.S.C. 78ddd(a)(1).

assumed by members of the SIPC Board. SIPC explained the level of time commitment required of directors and noted the need to attract and retain qualified directors.[14]

In addition, SIPC explained that the SIPC Board, through its public sector directors (who do not receive an honorarium), commissioned Korn/Ferry International ("Korn/Ferry"), a global management and executive consulting firm, to provide recommendations with respect to compensation for SIPC Board members.[15] Independent of the Korn/Ferry study, the public sector directors formulated a separate approach to the matter, using the *per diem* pay of a Senior Executive Service ("SES") government employee as a benchmark. Using this measure, the public sector directors concluded that the private sector directors should receive an honorarium of $12,000 per year. Applying the current ratio of Chair versus non-Chair honoraria, the public sector directors concluded that the honorarium of the Chair should be $28,000. SIPC proposed that the bylaw change, if approved, would take effect six months from the date of approval or non-disapproval by the Commission.[16]

II. Comments Received

The Commission received one comment on the proposed bylaw change.[17] The

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14 SIPC's full rationale for why the honoraria should be increased is set forth in its narrative accompanying the proposed bylaw changes. *See Notice,* 85 FR at 5513-5515.

15 Based upon a study of director compensation of a peer group of 23 organizations comparable to SIPC, Korn/Ferry recommended that: (1) director compensation consist of an annual retainer paid quarterly and ranging between $30,000 and $50,000; (2) the Vice Chair receive an additional amount of $3,000 to $5,000 per year; and (3) the Chair receive an additional $10,000 to $15,000 per year. By comparison, SIPC proposes that: (1) private directors receive $12,000 a year; and (2) the Chair receives an additional amount of $14,000 more than other directors.

16 Although the proposed bylaw change references May 6, 2020 as the date the quarterly installments of the honoraria begin, the proposed bylaw change, including the increases in Board honoraria, takes effect six months after the Commission's approval.

17 *See* Chemas Email.

commenter – an individual – supported it.

III. Commission Findings

Section 3(e) of SIPA sets forth the procedures for addressing proposed SIPC rules and bylaws.[18] Pursuant to Section 3(e)(1)(B) of SIPA, the Commission found that the proposed bylaw changes involved a matter of such significant public interest that public comment should be obtained and required that the procedures applicable to SIPC proposed rule changes in section 3(e)(2) of SIPA be followed.[19] Section 3(e)(2) of SIPA sets forth the procedures for proposed rule changes and provides that the Commission shall approve a proposed rule change if it finds the change is in the public interest and is consistent with the purposes of SIPA. As discussed below, 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 the purposes of SIPA.[20]

As noted above, the SIPC Board's honoraria have not increased since 2006. However, SIPC states that the responsibility of the SIPC Board members has increased since the 2008 financial crisis. For example, since 2006, SIPC has been responsible for three major SIPA liquidations: Bernard L. Madoff Investment Securities LLC; Lehman Brothers, Inc.; and MF Global Inc. Moreover, Congress designated SIPC to serve as trustee in the orderly liquidation of certain systemically important broker-dealers in the Dodd-Frank Wall Street Reform and Customer Protection Act of 2010.[21] SIPC reports that these additional responsibilities have coincided with an increase in the time commitment for the role, including travel to attend SIPC Board meetings. In addition, SIPC Board members have been sued in their capacity as Board

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[18] *See* 15 U.S.C. 78ccc(e).

[19] *See Notice*, 85 FR 5513.

[20] *See* 15 U.S.C. 78ccc(e)(2)(D).

[21] *See* 12 U.S.C. 5385(a)(1).

members.[22] Finally, the Commission believes it is important to SIPC's customer protection mission to recruit well-qualified individuals to serve on the SIPC Board. SIPC directors should serve the public interest and carry out its mission of protecting investors.

The Commission also believes that the proposed increases in the honoraria are reasonable. In particular, the amount of the proposed honoraria for the private sector directors that do not serve as Chair ($12,000 annually) is in line with the maximum compensation paid to an SES government employee, after pro rating for the estimated number of days worked per year.[23] Using the SES government employee salary as a benchmark is appropriate given the similarity in the seniority and public mission of both SES government employees and SIPC Board members. The proposed increase in the Chairperson's, acting Chairperson's, or the SIPC Board-delegated Chairperson's honorarium from $15,000 to $28,000 maintains the same approximate ratio between the current private sector directors' honoraria and that of the Chairperson, acting Chairperson, or the SIPC Board-delegated Chairperson.

For these reasons, the Commission finds, pursuant to Section 3(e)(2)(D) of SIPA, that it is in the public interest and is consistent with the purposes of SIPA to increase the honoraria of the private sector directors to account for the increased responsibilities and time commitments

[22] *See, e.g.*, *Canavan v. Harbeck*, Case No. 2:10-cv-00954-FSH-PS (D.N.J. 2010).

[23] The maximum SES salary in 2019 was $192,300. *See* Salary Table No. 2019-ES: Rates of Basic Pay for Members of the Senior Executive Service (SES), available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/ES.pdf (effective January 2019). When pro rating that salary for 16 days of service a year on the SIPC Board, the equivalent amount earned equals $12,307 (i.e., $192,300 * 16 days / 250-day work year). Therefore, the proposed honoraria of $12,000 approximates a pro-rated version the current maximum SES salary.

associated with the positions and the potential legal risk the private sector directors face, as well as to provide an incentive to recruit well-qualified directors.[24]

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 3(e)(2) of SIPA, that the proposed bylaw change (SIPA 2019-01) is approved.[25]

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

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24 *See* 15 U.S.C. 78ccc(e)(2)(D).

25 *See* 15 U.S.C. 78ccc(e)(2).