

ment is appropriate, then the standard maximum cash advance amount shall be an amount equal to—

- (A) \$250,000 multiplied by—
- (B) the 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 2010.

The index values used in calculations under this paragraph shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

(2) Rounding

If the standard maximum cash advance amount determined under paragraph (1) for any period is not a multiple of \$10,000, the amount so determined shall be rounded down to the nearest \$10,000.

(3) Publication and report to the Congress

Not later than April 5 of any calendar year in which a determination is required to be made under paragraph (1)—

- (A) the Commission shall publish in the Federal Register the standard maximum cash advance amount; and
- (B) the Board of Directors of SIPC shall submit a report to the Congress stating the standard maximum cash advance amount.

(4) Implementation period

Any adjustment to the standard maximum cash advance amount shall take effect on January 1 of the year immediately succeeding the calendar year in which such adjustment is made.

(5) Inflation adjustment considerations

In making any determination under paragraph (1) to increase the standard maximum cash advance amount, the Board of Directors of SIPC shall consider—

- (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.

(Pub. L. 91-598, §9, as added Pub. L. 95-283, §9, May 21, 1978, 92 Stat. 265; amended Pub. L. 96-433, §1, Oct. 10, 1980, 94 Stat. 1855; Pub. L. 111-203, title IX, §§929H(a), 983(a), July 21, 2010, 124 Stat. 1856, 1931.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 9 of Pub. L. 91-598 was renumbered section 13 and is classified to section 78iii of this title.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-203, §983(a), inserted “or options on commodity futures contracts” after “claim for securities”.

Pub. L. 111-203, §929H(a)(1), substituted “the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d)” for “\$100,000 for each such customer”.

Subsecs. (d), (e). Pub. L. 111-203, §929H(a)(2), added subsecs. (d) and (e).

1980—Subsec. (a). Pub. L. 96-433, §1(1), substituted in opening par. “\$500,000” for “\$100,000”.

Subsec. (a)(1). Pub. L. 96-433, §1(2), substituted “\$100,000” for “\$40,000”.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-433 effective Oct. 10, 1980, see section 5(a) of Pub. L. 96-433, set out as a note under section 78u of this title.

§ 78fff-4. Direct payment procedure

(a) Determination regarding direct payments

If SIPC determines that—

- (1) any member of SIPC (including a person who was a member within one hundred eighty days prior to such determination) has failed or is in danger of failing to meet its obligations to customers;
- (2) one or more of the conditions specified in section 78eee(b)(1) of this title exist with respect to such member;
- (3) the claim of each customer of the member is within the limits of protection provided in section 78fff-3(a) of this title;
- (4) the claims of all customers of the member aggregate less than \$250,000;
- (5) the cost to SIPC of satisfying customer claims under this section will be less than the cost under a liquidation proceeding; and
- (6) such member’s registration as a broker-dealer under section 78o(b) of this title has been terminated, or such member has consented to the use of the direct payment procedure set forth in this section,

SIPC may, in its discretion, use the direct payment procedure set forth in this section in lieu of instituting a liquidation proceeding with respect to such member.

(b) Notice

Promptly after a determination under subsection (a) that the direct payment procedure is to be used with respect to a member, SIPC shall cause notice of such direct payment procedure to be published in one or more newspapers of general circulation in a form and manner determined by SIPC, and at the same time shall cause to be mailed a copy of such notice to each person who appears, from the books and records of such member, to have been a customer of the member with an open account within the past twelve months, to the address of such person as it appears from the books and records of such member. Such notice shall state that SIPC will satisfy customer claims directly, without a liquidation proceeding, and shall set forth the form and manner in which claims may be presented. A direct payment procedure shall be deemed to commence on the date of first publication under this subsection and no claim by a customer shall

be paid or otherwise satisfied by SIPC unless received within the six-month period beginning on such date, except that SIPC shall, upon application within such period, and for cause shown, grant a reasonable, fixed extension of time for the filing of a claim by the United States, by a State or political subdivision thereof, or by an infant or incompetent person without a guardian.

(c) Payments to customers

SIPC shall promptly satisfy all obligations of the member to each of its customers relating to, or net equity claims based upon, securities or cash by the delivery of securities or the effecting of payments to such customer (subject to the provisions of section 78fff-2(d) of this title and section 78fff-3(a) of this title insofar as such obligations are ascertainable from the books and records of the member or are otherwise established to the satisfaction of SIPC. For purposes of distributing securities to customers, all securities shall be valued as of the close of business on the date of publication under subsection (b). Any payment or delivery of securities pursuant to this section may be conditioned upon the execution and delivery, in a form to be determined by SIPC, of appropriate receipts, supporting affidavits, releases, and assignments. To the extent moneys of SIPC are used to satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such customers against the member.

(d) Effect on claims

Except as otherwise provided in this section, nothing in this section shall limit the right of any person, including any subrogee, to establish by formal proof or otherwise such claims as such person may have against the member, including claims for the payment of money and the delivery of specific securities, without resort to monies of SIPC.

(e) Jurisdiction of Bankruptcy Courts

After SIPC has published notice of the institution of a direct payment procedure under this section, any person aggrieved by any determination of SIPC with respect to his claim under subsection (c) may, within six months following mailing by SIPC of its determination with respect to such claim, seek a final adjudication of such claim. The courts of the United States having jurisdiction over cases under title 11 shall have original and exclusive jurisdiction of any civil action for the adjudication of such claim, without regard to the citizenship of the parties or the amount in controversy. Any such action shall be brought in the judicial district where the head office of the debtor is located. Any determination of the rights of a customer under subsection (c) shall not prejudice any other right or remedy of the customer against the member.

(f) Discontinuance of direct payment procedures

If, at any time after the institution of a direct payment procedure with respect to a member, SIPC determines, in its discretion, that continuation of such direct payment procedure is not appropriate, SIPC may cease such direct pay-

ment procedure and, upon so doing, may seek a protective decree pursuant to section 78eee of this title. To the extent payments of cash, distributions of securities, or determinations with respect to the validity of a customer's claim are made under this section, such payments, distributions, and determinations shall be recognized and given full effect in the event of any subsequent liquidation proceeding. Any action brought under subsection (e) and pending at the time of the appointment of a trustee under section 78eee(b)(3) of this title shall be permanently stayed by the court at the time of such appointment, and the court shall enter an order directing the transfer or removal to it of such suit. Upon such removal or transfer the complaint in such action shall constitute the plaintiff's claim in the liquidation proceeding, if appropriate, and shall be deemed received by the trustee on the date of his appointment regardless of the date of actual transfer or removal of such action.

(g) References

For purposes of this section, any reference to the trustee in sections 78fff-1(b)(1), 78fff-2(d), 78fff-2(f), 78fff-3(a), 78lll(5) and 78lll(12) of this title shall be deemed a reference to SIPC, and any reference to the date of publication of notice under section 78fff-2(a) of this title shall be deemed a reference to the publication of notice under this section.

(Pub. L. 91-598, §10, as added Pub. L. 95-283, §9, May 21, 1978, 92 Stat. 266; amended Pub. L. 95-598, title III, §308(n), Nov. 6, 1978, 92 Stat. 2675.)

PRIOR PROVISIONS

A prior section 10 of Pub. L. 91-598 was renumbered section 14 and is classified to section 78jjj of this title.

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-598 substituted in heading “Bankruptcy Courts” for “District Courts” and in text “courts of the United States having jurisdiction over cases under title 11” for “district courts of the United States” and struck out “, without regard to the citizenship of the parties or the amount in controversy” after “adjudication of such claim”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 78ggg. SEC functions

(a) Administrative procedure

Determinations of the Commission, for purposes of making rules pursuant to section 78ccc(e)(3) and section 78iii(f) of this title shall be after appropriate notice and opportunity for a hearing, and for submission of views of interested persons in accordance with the rule-making procedures specified in section 553 of title 5, but the holding of a hearing shall not prevent adoption of any such rule or regulation upon expiration of the notice period specified in subsection (d) of such section and shall not be required to be on a record within the meaning of subchapter II of chapter 5 of such title.

(b) Enforcement of actions

In the event of the refusal of SIPC to commit its funds or otherwise to act for the protection