

(D) Grounds for approval or disapproval

The Commission shall approve a proposed rule change if it finds that such proposed rule change is in the public interest and is consistent with the purposes of this chapter, and any proposed rule change so approved shall be given force and effect as if promulgated by the Commission. The Commission shall disapprove a proposed rule change if it does not make the finding referred to in the preceding sentence. The Commission shall not approve any proposed rule change prior to thirty days after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(E) Exception

Notwithstanding any other provision of this paragraph, a proposed rule change may take effect—

- (i) upon the date of filing with the Commission, if such proposed rule change is designated by SIPC as relating solely to matters which the Commission, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or
- (ii) upon such date as the Commission shall for good cause determine. Any proposed rule change which takes effect under this clause shall be filed promptly thereafter and reviewed in accordance with the provisions of subparagraph (A).

At any time within sixty days after the date of filing of any rule change which has taken effect pursuant to this subparagraph, the Commission may summarily abrogate such rule change and require that it be refiled and reviewed in accordance with the provisions of this paragraph, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter. Any action of the Commission pursuant to the preceding sentence shall not affect the validity or force of a rule change during the period it was in effect and shall not be reviewable under section 78y of this title or deemed to be final agency action for purposes of section 704 of title 5.

(3) Action required by Commission

The Commission may, by such rules as it determines to be necessary or appropriate in the public interest or to carry out the purposes of this chapter, require SIPC to adopt, amend, or repeal any SIPC bylaw or rule, whenever adopted.

(Pub. L. 91-598, §3, Dec. 30, 1970, 84 Stat. 1637; Pub. L. 95-283, §§2-5, May 21, 1978, 92 Stat. 249-251; Pub. L. 106-554, §1(a)(5) [title II, §203(d)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-424.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c) and (e), 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.

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a)(1)(B), is Pub. L. 87-569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

AMENDMENTS

2000—Subsec. (a)(2)(A)(iii). Pub. L. 106-554 added cl. (iii).

1978—Subsec. (a). Pub. L. 95-283, §2(a), substituted "Creation and membership" for "Creation" in heading, redesignated introductory text and cls. (1) and (3) as par. (1), and added par. 2 which incorporated provisions formerly contained in cl. (2) as par. (2)(A).

Subsec. (b). Pub. L. 95-283, §3, in par. (1) substituted "State, Federal, or other court" for "court, State, or Federal", in par. (3) substituted provisions relating to adoption, etc., of bylaws by the Board of Directors, for provisions relating to adoption, etc., of bylaws and rules by the Board of Directors, added par. (4), and redesignated former pars. (4) to (8) as (5) to (9), respectively.

Subsec. (c)(2)(C)(ii). Pub. L. 95-283, §4(a), substituted "a broker or dealer or associated with a member of a national securities exchange, within the meaning of section 78c(a)(18) or section 78c(a)(21), respectively, of this title, or similarly associated with any self-regulatory organization or other securities industry group," for "any broker or dealer, within the meaning of paragraph (18) of section 78c(a) of this title, or similarly associated with a national securities exchange or other securities industry group".

Subsec. (c)(5). Pub. L. 95-283, §4(b), substituted "Compensation" for "Compensation, etc." in heading, and in text struck out provisions relating to determinations of dollar volume of trading on exchanges.

Subsec. (e). Pub. L. 95-283, §5, inserted "and rules" after "Bylaws" in heading, and in text substituted provisions relating to procedures applicable to proposed changes in the bylaws and rules of SIPC and required action by the Commission with respect to any SIPC bylaw or rule, for provisions relating to procedures applicable to adoption of initial bylaws and rules of SIPC and any alteration, supplement, repeal, or addition, effective date of any such bylaw or rule, and required action by the Commission with respect to any SIPC bylaw or rule.

Subsec. (f). Pub. L. 95-283, §2(b), struck out subsec. (f) which set forth qualifications for other members of SIPC.

§ 78ddd. SIPC Fund**(a) In general****(1) Establishment of fund**

SIPC shall establish a "SIPC Fund" (hereinafter in this chapter referred to as the "fund"). All amounts received by SIPC (other than amounts paid directly to any lender pursuant to any pledge securing a borrowing by SIPC) shall be deposited in the fund, and all expenditures made by SIPC shall be made out of the fund.

(2) Balance of the fund

Except as otherwise provided in this section, the balance of the fund at any time shall consist of the aggregate at such time of the following items:

(A) Cash on hand or on deposit.

(B) Amounts invested in United States Government or agency securities.

(C) Such confirmed lines of credit as SIPC may from time to time maintain, other than those maintained pursuant to paragraph (4).

(3) Confirmed lines of credit

For purposes of this section, the amount of confirmed lines of credit as of any time is the

aggregate amount which SIPC at such time has the right to borrow from banks and other financial institutions under confirmed lines of credit or other written agreements which provide that moneys so borrowed are to be repayable by SIPC not less than one year from the time of such borrowings (including, for purposes of determining when such moneys are repayable, all rights of extension, refunding, or renewal at the election of SIPC).

(4) Other lines

SIPC may maintain such other confirmed lines of credit as it considers necessary or appropriate, and such other confirmed lines of credit shall not be included in the balance of the fund, but amounts received from such lines of credit may be disbursed by SIPC under this chapter as though such amounts were part of the fund.

(b) Initial required balance for fund

Within one hundred and twenty days from December 30, 1970, the balance of the fund shall aggregate not less than \$75,000,000, less any amounts expended from the fund within that period.

(c) Assessments

(1) Initial assessments

Each member of SIPC shall pay to SIPC, or the collection agent for SIPC specified in section 78iii(a) of this title, on or before the one hundred and twentieth day following December 30, 1970, an assessment equal to one-eighth of 1 per centum of the gross revenues from the securities business of such member during the calendar year 1969, or if the Commission shall determine that, for purposes of assessment pursuant to this paragraph, a lesser percentage of gross revenues from the securities business is appropriate for any class or classes of members (taking into account relevant factors, including but not limited to types of business done and nature of securities sold), such lesser percentages as the Commission, by rule or regulation, shall establish for such class or classes, but in no event less than one sixteenth of 1 per centum for any such class. In no event shall any assessment upon a member pursuant to this paragraph be less than \$150.

(2) General assessment authority

SIPC shall, by bylaw, impose upon its members such assessments as, after consultation with self-regulatory organizations, SIPC may deem necessary and appropriate to establish and maintain the fund and to repay any borrowings by SIPC. Any assessments so made shall be in conformity with contractual obligations made by SIPC in connection with any borrowing incurred by SIPC. Subject to paragraph (3) and subsection (d)(1)(A), any such assessment upon the members, or any one or more classes thereof, may, in whole or in part, be based upon or measured by (A) the amount of their gross revenues from the securities business, or (B) all or any of the following factors: the amount or composition of their gross revenues from the securities business, the number or dollar volume of transactions ef-

fectured by them, the number of customer accounts maintained by them or the amounts of cash and securities in such accounts, their net capital, the nature of their activities (whether in the securities business or otherwise) and the consequent risks, or other relevant factors.

(3) Limitations

Notwithstanding any other provision of this chapter—

(A) no assessment shall be made upon a member otherwise than pursuant to paragraph (1) or (2) of this subsection,

(B) an assessment may be made under paragraph (2) of this subsection at a rate in excess of one-half of one per centum during any twelve-month period if SIPC determines, in accordance with a bylaw, that such rate of assessment during such period will not have a material adverse effect on the financial condition of its members or their customers, except that no assessments shall be made pursuant to such paragraph upon a member which require payments during any such period which exceed in the aggregate one per centum of such member's gross revenues from the securities business for such period, and

(C) no assessment shall include any charge based upon the member's activities (i) in the distribution of shares of registered open end investment companies or unit investment trusts, (ii) in the sale of variable annuities, (iii) in the business of insurance, or (iv) in the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts.

(d) Requirements respecting assessments and lines of credit

(1) Assessments

(A) ½ of 1 percent assessment

Subject to subsection (c)(3), SIPC shall impose upon each of its members an assessment at a rate of not less than one-half of 1 per centum per annum of the gross revenues from the securities business of such member—

(i) until the balance of the fund aggregates not less than \$150,000,000 (or such other amount as the Commission may determine in the public interest),

(ii) during any period when there is outstanding borrowing by SIPC pursuant to subsection (f) or subsection (g) of this section, and

(iii) whenever the balance of the fund (exclusive of confirmed lines of credit) is below \$100,000,000 (or such other amount as the Commission may determine in the public interest).

(B) ¼ of 1 percent assessment

During any period during which—

(i) the balance of the fund (exclusive of confirmed lines of credit) aggregates less than \$150,000,000 (or such other amount as the Commission has determined under paragraph (2)(B)), or

- (ii) SIPC is required under paragraph (2)(B) to phase out of the fund all confirmed lines of credit,

SIPC shall endeavor to make assessments in such a manner that the aggregate assessments payable by its members during such period shall not be less than one-fourth of 1 per centum per annum of the aggregate gross revenues from the securities business for such members during such period.

(C) Minimum assessment

The minimum assessment imposed upon each member of SIPC shall be \$25 per annum through the year ending December 31, 1979, and thereafter shall be the amount from time to time set by SIPC bylaw, but in no event shall the minimum assessment be greater than 0.02 percent of the gross revenues from the securities business of such member of SIPC.

(2) Lines of credit

(A) \$50,000,000 limit after 1973

After December 31, 1973, confirmed lines of credit shall not constitute more than \$50,000,000 of the balance of the fund.

(B) Phaseout requirement

When the balance of the fund aggregates \$150,000,000 (or such other amount as the Commission may determine in the public interest) SIPC shall phase out of the fund all confirmed lines of credit.

(e) Prior trusts; overpayments and underpayments

(1) Prior trusts

There may be contributed and transferred at any time to SIPC any funds held by any trust established by a self-regulatory organization prior to January 1, 1970, and the amounts so contributed and transferred shall be applied, as may be determined by SIPC with approval of the Commission, as a reduction in the amounts payable pursuant to assessments made or to be made by SIPC upon members of such self-regulatory organization pursuant to subsection (c)(2). No such reduction shall be made at any time when there is outstanding any borrowing by SIPC pursuant to subsection (g) of this section or any borrowings under confirmed lines of credit.

(2) Overpayments

To the extent that any payment by a member exceeds the maximum rate permitted by subsection (c) of this section, the excess shall be recoverable only against future payments by such member, except as otherwise provided by SIPC bylaw.

(3) Underpayments

If a member fails to pay when due all or any part of an assessment made upon such member, the unpaid portion thereof shall bear interest at such rate as may be determined by SIPC bylaw and, in addition to such interest, SIPC may impose such penalty charge as may be determined by SIPC bylaw. Any such penalty charge imposed upon a SIPC member shall not exceed 25 per centum of any unpaid

portion of the assessment. SIPC may waive such penalty charge in whole or in part in circumstances where it considers such waiver appropriate.

(f) Borrowing authority

SIPC shall have the power to borrow moneys and to evidence such borrowed moneys by the issuance of bonds, notes, or other evidences of indebtedness, all upon such terms and conditions as the Board of Directors may determine in the case of a borrowing other than pursuant to subsection (g) of this section, or as may be prescribed by the Commission in the case of a borrowing pursuant to subsection (g). The interest payable on a borrowing pursuant to subsection (g) shall be equal to the interest payable on the related notes or other obligations issued by the Commission to the Secretary of the Treasury. To secure the payment of the principal of, and interest and premium, if any, on, all bonds, notes, or other evidences of indebtedness so issued, SIPC may make agreements with respect to the amount of future assessments to be made upon members and may pledge all or any part of the assets of SIPC and of the assessments made or to be made upon members. Any such pledge of future assessments shall (subject to any prior pledge) be valid and binding from the time that it is made, and the assessments so pledged and thereafter received by SIPC, or any collection agent for SIPC, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind against SIPC or such collection agent whether pursuant to this chapter, in tort, contract or otherwise, irrespective of whether such parties have notice thereof. During any period when a borrowing by SIPC pursuant to subsection (g) of this section is outstanding, no pledge of any assessment upon a member to secure any bonds, notes, or other evidences of indebtedness issued other than pursuant to subsection (g) of this section shall be effective as to the excess of the payments under the assessment on such member during any twelve-month period over one-fourth of 1 per centum of such member's gross revenues from the securities business for such period. Neither the instrument by which a pledge is authorized or created, nor any statement or other document relative thereto, need be filed or recorded in any State or other jurisdiction. The Commission may by rule or regulation provide for the filing of any instrument by which a pledge or borrowing is authorized or created, but the failure to make or any defect in any such filing shall not affect the validity of such pledge or borrowing.

(g) SEC loans to SIPC

In the event that the fund is or may reasonably appear to be insufficient for the purposes of this chapter, the Commission is authorized to make loans to SIPC. At the time of application for, and as a condition to, any such loan, SIPC shall file with the Commission a statement with respect to the anticipated use of the proceeds of the loan. If the Commission determines that such loan is necessary for the protection of customers of brokers or dealers and the mainte-

nance of confidence in the United States securities markets and the SIPC has submitted a plan which provides as reasonable an assurance of prompt repayment as may be feasible under the circumstances, then the Commission shall so certify to the Secretary of the Treasury, and issue notes or other obligations to the Secretary of the Treasury pursuant to subsection (h). If the Commission determines that the amount or time for payment of the assessments pursuant to such plan would not satisfactorily provide for the repayment of such loan, it may, by rules and regulations, impose upon the purchasers of equity securities in transactions on national securities exchanges and in the over-the-counter markets a transaction fee in such amount as at any time or from time to time it may determine to be appropriate, but not exceeding one-fiftieth of 1 per centum of the purchase price of the securities. No such fee shall be imposed on a transaction (as defined by rules or regulations of the Commission) of less than \$5,000. For the purposes of the next preceding sentence, (1) the fee shall be based upon the total dollar amount of each purchase; (2) the fee shall not apply to any purchase on a national securities exchange or in an over-the-counter market by or for the account of a broker or dealer registered under section 78o(b) of this title unless such purchase is for an investment account of such broker or dealer (and for this purpose any transfer from a trading account to an investment account shall be deemed a purchase at fair market value); and (3) the Commission may, by rule, exempt any transaction in the over-the-counter markets or on any national securities exchange where necessary to provide for the assessment of fees on purchasers in transactions in such markets and exchanges on a comparable basis. Such fee shall be collected by the broker or dealer effecting the transaction for or with the purchaser, or by such other person as provided by the Commission by rule, and shall be paid to SIPC in the same manner as assessments imposed pursuant to subsection (c) but without regard to the limits on such assessments, or in such other manner as the Commission may by rule provide.

(h) SEC notes issued to Treasury

To enable the Commission to make loans under subsection (g), the Commission is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed \$2,500,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may reduce the interest rate if he determines such reduction to be in the national interest. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction

the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(i) Consolidated group

Except as otherwise provided by SIPC bylaw, gross revenues from the securities business of a member of SIPC shall be computed on a consolidated basis for such member and all its subsidiaries (other than the foreign subsidiaries of such member), and the operations of a member of SIPC shall include those of any business to which such member has succeeded.

(Pub. L. 91-598, § 4, Dec. 30, 1970, 84 Stat. 1639; Pub. L. 95-283, § 6, May 21, 1978, 92 Stat. 253; Pub. L. 111-203, title IX, §§ 929C, 929V(a), July 21, 2010, 124 Stat. 1852, 1868.)

REFERENCES IN TEXT

This chapter, referred to in subssecs. (a)(1), (4), (c)(3), (g), and (i)(1), 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.

CODIFICATION

In subsec. (h), "chapter 31 of title 31" and "that chapter" substituted for "the Second Liberty Bond Act, as amended" and "that Act, as amended," respectively, on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2010—Subsec. (d)(1)(C). Pub. L. 111-203, § 929V(a), substituted "0.02 percent of the gross revenues from the securities business of such member of SIPC" for "\$150 per annum".

Subsec. (h). Pub. L. 111-203, § 929C, substituted "\$2,500,000,000" for "\$1,000,000,000" in first sentence.

1978—Subsec. (a). Pub. L. 95-283, § 6(a), in par. (2) substituted "Except as otherwise provided in this section, the" for "The", in par. (2)(C) inserted provisions for inapplicability to other lines of credit, and added par. (4).

Subsec. (c). Pub. L. 95-283, § 6(b), in par. (2) struck out "or rule" after "bylaw", and in par. (3) struck out reference to section 78ccc(f) of this title in introductory text and "or rule" after "bylaw" in subpar. (B).

Subsec. (d)(1)(C). Pub. L. 95-283, § 6(c), added subpar. (C).

Subsec. (e). Pub. L. 95-283, § 6(d), in par. (2) substituted "be recoverable only against future payments by such member, except as otherwise provided by SIPC bylaw" for "not be recoverable except against future payments by such member in accordance with a bylaw or rule of SIPC", and in par. (3) substituted provisions authorizing interest and penalty charges to be imposed by SIPC bylaw and amount of penalty charge, for provisions authorizing interest to be imposed by SIPC bylaw or rule.

Subsec. (f). Pub. L. 95-283, § 6(e), struck out "examining authority as" before "collection agent for SIPC, shall immediately be subject".

Subsec. (g). Pub. L. 95-283, § 6(f), redesignated cls. (A) to (C) as (1) to (3), respectively, and, as so redesignated, in cl. (2) struck out applicability to a member of a national securities exchange and in cl. (3) substituted provisions relating to exemptions by rule of transactions

in the over-the-counter market or on any national securities exchange, for provisions relating to exemptions by rules and regulations of transactions in the over-the-counter market, and inserted provisions authorizing the collection of fees by such other persons as designated by the Commission by rule for such purpose, and provisions relating to limits on manner of payment of fees.

Subsec. (i). Pub. L. 95-283, §6(g), substituted “Consolidated group” for “‘Gross revenues’ defined” in heading, redesignated par. (2) as entire section and, as so redesignated, substituted provisions relating to computations by a member, for provisions relating to computations by a broker or dealer. Pars. (1) and (3), which generally defined term “gross revenues” and authorized the SIPC to define all other terms used in this subsec., respectively, were struck out.

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.

§ 78eee. Protection of customers

(a) Determination of need of protection

(1) Notice to SIPC

If the Commission or any self-regulatory organization is aware of facts which lead it to believe that any broker or dealer subject to its regulation is in or is approaching financial difficulty, it shall immediately notify SIPC, and, if such notification is by a self-regulatory organization, the Commission.

(2) Action by self-regulatory organization

If a self-regulatory organization has given notice to SIPC pursuant to subsection (a)(1) with respect to a broker or dealer, and such broker or dealer undertakes to liquidate or reduce its business either pursuant to the direction of a self-regulatory organization or voluntarily, such self-regulatory organization may render such assistance or oversight to such broker or dealer as it considers appropriate to protect the interests of customers of such broker or dealer. The assistance or oversight by a self-regulatory organization shall not be deemed the assumption or adoption by such self-regulatory organization of any obligation or liability to customers, other creditors, shareholders, or partners of the broker or dealer, and shall not prevent or act as a bar to any action by SIPC.

(3) Action by SIPC

(A) In general

SIPC may, upon notice to a member of SIPC, file an application for a protective decree with any court of competent jurisdiction specified in section 78u(e) or 78aa of this title, except that no such application shall be filed with respect to a member, the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 78fff-3 of this title, if SIPC determines that—

(A)¹ the member (including any 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; and

(B)² one or more of the conditions specified in subsection (b)(1) exist with respect to such member.

(B) Consent required

No member of SIPC that has a customer may enter into an insolvency, receivership, or bankruptcy proceeding, under Federal or State law, without the specific consent of SIPC, except as provided in title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5381 et seq.].

(4) Effect of other pending actions

An application with respect to a member of SIPC filed with a court under paragraph (3)—

(A) may, with the consent of the Commission, be combined with any action brought by the Commission, including an action by the Commission for a temporary receiver pending an appointment of a trustee under subsection (b)(3); and

(B) may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding or any proceeding to reorganize, conserve, or liquidate such member or its property, or any proceeding to enforce a lien against property of such member.

(b) Court action

(1) Issuance of protective decree

Upon receipt of an application by SIPC under subsection (a)(3), the court shall forthwith issue a protective decree if the debtor consents thereto, if the debtor fails to contest such application, or if the court finds that such debtor—

(A) is insolvent within the meaning of section 101 of title 11, or is unable to meet its obligations as they mature;

(B) is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;

(C) is not in compliance with applicable requirements under the 1934 Act [15 U.S.C. 78a et seq.] or rules of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers’ securities; or

(D) is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.

Unless the debtor consents to the issuance of a protective decree, the application shall be heard three business days after the date on which it is filed, or at such other time as the court shall determine, taking into consideration the urgency which the circumstances require.

¹ So in original. Probably should be “(i)”.

² So in original. Probably should be “(ii)”.