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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 300

[Release No. SIPA-172; File No. SIPC-2012-01]

Rules of the Securities Investor Protection Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is approving a proposed rule change filed by the Securities Investor Protection Corporation (“SIPC”). The proposed rule change amends SIPC Rule 400 (“Rule 400”), entitled “Rules Relating to Satisfaction of Customer Claims for Standardized Options,” which relates to the satisfaction of customer claims for standardized options under the Securities Investor Protection Act of 1970 (“SIPA”). Because SIPC rules have the force and effect as if promulgated by the Commission, the rules are published in Title 17 of the Code of Federal Regulations, where the rule change will be reflected.

EFFECTIVE DATE: [Insert date 30 days after the date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551-5525; Thomas K. McGowan, Deputy Associate Director, at (202) 551-5521; Sheila Dombal Swartz, Special Counsel, at (202) 551-5545; or Kimberly N. Chehardy, Special Counsel, at (202) 551-5791, Office of Financial Responsibility, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION: The Commission is approving a proposed rule change filed by SIPC, amending Rule 400, 17 CFR 300.400 under SIPA.

I. BACKGROUND

On November 7, 2012, SIPC filed a proposed rule change pursuant to section 3(e)(2)(A) of SIPA¹ with the Securities and Exchange Commission.² SIPC subsequently submitted an amendment to the proposed rule change on January 31, 2013.³ Notice of the proposed rule change was published in the Federal Register on November 5, 2013.⁴ The Commission did not receive comments in response to the notice. The Commission is approving the proposed rule change under section 3(e)(2) of SIPA.

II. PROPOSED RULE CHANGE

Rule 400 was enacted to provide clarity in the treatment of customer claims based on “Standardized Options”⁵ positions in the liquidation of broker-dealers under SIPA. Currently, Rule 400 provides for the closeout of open Standardized Options positions upon the commencement of a SIPA liquidation. Based upon the amounts realized upon closeout, the trustee calculates the value of customers’ Standardized Options positions, and credits or debits customers’ accounts by the appropriate amounts. The amendments to Rule 400 are designed to:

(1) provide trustees appointed under SIPA with greater flexibility in the treatment of

¹ 15 U.S.C. 78ccc(e)(2)(A).

² See Letter from Josephine Wang, General Counsel and Secretary, SIPC, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (Nov. 7, 2012).

³ See Letter from Josephine Wang, General Counsel and Secretary, SIPC, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (Jan. 31, 2013) (“Pursuant to discussions between SIPC and the Commission’s Division of Trading and Markets, SIPC hereby submits a partial amendment to the proposed amendments previously submitted.”). “The partial amendment makes changes only to subsection (h) of Rule 400, by inserting the phrase “a ‘security’ under section 16(14) of the Act and is” prior to the words “issued by a securities clearing agency” Id.

⁴ See Notice of Filing a Proposed Rule Change Relating to Securities Investor Protection Corporation Rule 400, Release No. SIPA-171 (Oct. 29, 2013), 78 FR 66318 (Nov. 5, 2013).

⁵ The term Standardized Options is defined in paragraph (h) of Rule 400 as “options traded on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange. 17 CFR 300.400(h).

Standardized Options upon the commencement of a SIPA liquidation proceeding; and (2) modify the definition of Standardized Options to include options issued by a Commission-registered securities clearing agency or a foreign securities clearing agency, i.e., a cleared over-the-counter option (“OTC Option”).

In light of experience and knowledge gained from the liquidation of Lehman Brothers Inc. (“Lehman”) and other SIPA proceedings, SIPC has determined that allowing SIPA trustees the flexibility, subject to SIPC approval, of transferring customers’ options positions or of liquidating their positions, would be beneficial to the investing public and consistent with the customer protection purposes of SIPA. SIPC stated that the ability to transfer Standardized Options positions to another brokerage in lieu of an automatic closeout gives SIPA trustees more flexibility in handling such customer assets after the commencement of a SIPA liquidation proceeding, and more closely approximates what the customer would expect to be in his account but for the failure of the broker-dealer.

This is particularly true where the trustee, as in the Lehman case, was able promptly to effectuate bulk transfers of customer accounts to other brokerages enabling customers to regain access to their accounts in the form in which the accounts existed pre-liquidation, with comparatively minimal disruption. In such instances, customers generally are better served by having their options positions transferred with their other securities to their accounts at their new broker-dealer. SIPC stated that proposed amendments would provide clear authority for a SIPA trustee to transfer the Standardized Options positions, with SIPC’s consent. This greater flexibility in the treatment of open positions would enhance customer protection under exigent circumstances, and potentially avoid exacerbating the turmoil or harm to customers and/or the markets that could be caused by the forced liquidation of open positions.

Under paragraph (h) of Rule 400, Standardized Options means options traded on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange. The amendments modify the definition of Standardized Options to include any other option that is a security under section 16(14) of SIPA and is issued by a registered securities clearing agency or foreign securities clearing agency.⁶ For example, the Options Clearing Corporation (“OCC”) proposed, and the Commission approved, a rule change to establish a legal and operational framework for OCC to provide central clearing for OTC Options.⁷ If OCC clears OTC Options, SIPC stated these options will be deemed Standardized Options subject to closeout or transfer in a SIPA proceeding.

Because the OTC Options are similar to exchange-traded index options, and generally would be cleared by a securities clearing agency registered under section 17A of the Securities Exchange Act of 1934 (“Exchange Act”)⁸ subject to the same basic rules and procedures used for the clearance of index options, SIPC stated there appears to be no practical basis to treat OTC Options differently under SIPA for purposes of Rule 400. Indeed, modifying the definition of Standardized Options under paragraph (h) of Rule 400 to include OTC Options would enhance the protections afforded customers in the event of a liquidation of their broker-dealer.

II. DISCUSSION AND COMMISSION ACTION

Section 3(e)(2)(A) of SIPA provides that the SIPC Board of Directors must file with the

⁶ Existing Rule 400 applies to options traded on foreign securities exchanges as well as U.S. exchanges.

⁷ See Securities Exchange Act Release No. 67835 (Sept. 12, 2012), 77 FR 57602 (Sept. 18, 2012), (SR-OCC-2012-14); see also Securities Exchange Act Release No. 68434 (Dec. 14, 2012), 77 FR 75243 (Dec. 19, 2012) (approving proposed rule change). OCC also filed, and received accelerated approval of, a proposed rule change to reflect enhancements in its system for theoretical analysis and numerical simulations as applied to longer-tenor options. Securities Exchange Act Release No. 70719 (Oct. 18, 2013), 78 FR 63548 (Oct. 24, 2013), (SR-OCC-2013-16).

⁸ 15 U.S.C. 78q-1.

Commission a copy of any proposed amendment to a SIPC rule.⁹ Section 3(e)(2)(B) of SIPA provides that within thirty-five days after the date of publication of the notice of filing of a proposed rule change, the Commission shall: (1) by order approve the proposed rule change; or (2) institute proceedings to determine whether the proposed rule change should be disapproved.¹⁰ Further, section 3(e)(2)(D) of SIPA provides that the Commission shall approve a proposed rule change if it finds that the proposed rule change is in the public interest and is consistent with the purposes of SIPA.¹¹

The Commission finds, pursuant to section 3(e)(2)(D) of SIPA, that the proposed rule change is in the public interest and consistent with the purposes of SIPA. First, as noted above, SIPC has determined that allowing SIPA trustees the flexibility, subject to SIPC approval, to transfer customers' options positions or to liquidate their positions, would be beneficial to the investing public and consistent with the customer protection purposes of SIPA. The ability to transfer Standardized Options positions to another brokerage instead of being required to close them out gives SIPA trustees more flexibility in handling customer assets after the commencement of a SIPA liquidation proceeding. Second, SIPA noted that modifying the definition of Standardized Options under paragraph (h) of Rule 400 to include OTC Options would enhance the protections afforded customers in the event of a liquidation of their broker-dealer. This modification also clarifies that – like exchange-traded options – OTC Options would be deemed Standardized Options subject to closeout or transfer in a SIPA liquidation proceeding. Accordingly, the Commission finds that the proposed SIPC rule change is in the public interest and is consistent with the purposes of the SIPA.

⁹ 15 U.S.C. 78ccc(e)(2)(A).

¹⁰ 15 U.S.C. 78ccc(e)(2)(B).

¹¹ 15 U.S.C. 78ccc(e)(2)(D).

IT IS THEREFORE ORDERED BY THE COMMISSION, pursuant to section 3(e)(2) of SIPA, that the above mentioned proposed rule change is approved. In accordance with section 3(e)(2) of SIPA, the approved rule change shall be given the force and effect as if promulgated by the Commission.

III. Statutory Authority

Pursuant to SIPA, 15 U.S.C. 78aaa et. seq., and particularly, section 3(e) (15 U.S.C. 78ccc(e)), SIPC is amending section 300.400 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 300

Brokers, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 300 – RULES OF THE SECURITIES INVESTOR PROTECTION CORPORATION

1. The authority citation for part 300 is revised to read as follows:

Authority: 15 U.S.C. 78ccc.

* * * * *

2. Section 300.400 is amended by:

- a. In paragraph (b), adding the phrase “except to the extent that the trustee, with SIPC’s consent, or SIPC as trustee, as the case may be, has arranged or is able promptly to arrange, a transfer of some or all of such positions to another SIPC member” after the phrase “accounts of customers”;

- b. In paragraph (e), adding the phrase “except to the extent that such positions have been transferred as provided in paragraph (b) of this section” after the phrase “section 7(b)(1) of the Act”; and
- c. In paragraph (h), adding the phrase “, and any other option that is a security under section 16(14) of the Act, 15 U.S.C. 78lll(14), and is issued by a securities clearing agency registered under section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q-1, or a foreign securities clearing agency” after the phrase “foreign securities exchange”.

By the Commission.

Elizabeth M. Murphy,
Secretary.

Date: January 9, 2014.

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