

amount that must be deposited in such separate account or accounts must be no less than the greater of (1) the foreign futures and foreign options secured amount required by paragraph a-1 above plus the amount that would be required to be on deposit if all such customers (including non-U.S. customers) were subject to such requirement, or (2) the foreign futures and foreign options secured amount required by paragraph a-1 above plus the amount required to be held in a separate account or accounts for or on behalf of such non-U.S. customers pursuant to any applicable law, rule, regulation or order, or any rule of any self-regulatory organization;

(4) Maintains the separate account or accounts referred to in paragraph a-1 above under an account name that clearly identifies them as such, with any of the following depositories:

(a) Another person registered with the Commission as an FCM or a firm exempted from FCM registration pursuant to CFTC rule 30.10;

(b) The clearing organization of any foreign board of trade;

(c) Any member and/or clearing member of such foreign board of trade; or

(d) A bank or trust company which any of the depositories identified in (a)-(c) above may use consistent with the applicable laws and rules of the jurisdiction in which the depository is located; and

(5) The separate account or accounts referred to in paragraph a-1 may be deemed located at a good secured amount depository only if the member obtains and retains in its files for the period required by applicable law and IMRO rules a written acknowledgement from such separate account depository that:

(a) It was informed that such money, securities or property are held for or on behalf of customers of the member; and

(b) It will ensure that such money, securities or property will be held and treated at all times in accordance with the provisions of this paragraph; and, *provided further*, that the member assures itself that such separate account depository will not pass on such money, securities or property to any other depository unless the member has assured itself that all such other separate account depositories will treat such funds in a manner consistent with the procedures described in paragraph a hereof;<sup>7</sup> or

<sup>7</sup>This proviso is intended to clarify that the originating member makes reasonable inquiries and understands prior to the initiation of a trade the conditions under which its customers' funds will be held at all subsequent depositories, so that it may determine whether a particular intermediary or clearing house is a good separate account depository for purposes of this Order or must alternatively set aside funds in the manner set forth in paragraph b. The member would be expected to discuss with its immediate intermediary broker whether funds would be transferred to any subsequent depositories and determine the conditions under which such funds would be treated. Compliance with this proviso would be satisfied by the member obtaining relevant information or assurances from appropriate sources such as, for example, the immediate intermediary broker, exchanges or clearinghouses, exchange regulators, banks, attorneys or other relevant references, including regulatory sources.

b. Sets aside funds constituting the entire secured amount requirement in a separate account as set forth in Commission rule 30.7, 17 C.F.R. 30.7 (1996), and treats those funds in the manner described by that rule; or

c. Complies with the terms and procedures of paragraph a or b, except that the amount required to be segregated under IMRO rules and United Kingdom laws may be substituted for the secured amount requirement as set forth in such paragraphs.<sup>8</sup>

The rule 30.10 relief already granted to IMRO also is contingent upon IMRO and IMRO members' continued compliance with the Original Order and the enumerated conditions above.

Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular member, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific member, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. If necessary, provisions will be made for servicing existing client positions.

#### List of Subjects in 17 CFR Part 30

Commodity Futures, Commodity Options, Foreign Futures.

This Supplemental Order is intended to clarify that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under rule 30.7(c) or a firm exempted from registration as an FCM under CFTC rule 30.10, will receive equivalent protection at all intermediaries and exchange clearing organizations. Thus, for example, an exchange that does not segregate customer from firm obligations and firms which trade on such exchanges and which do not arrange to comply otherwise with any of the procedures described herein would not be deemed an acceptable separate account. Specifically, such exchange or firms could not provide a valid and binding acknowledgement to a rule 30.10 exempted firm.

This provision is not necessarily intended to create a duty on a rule 30.10 firm that it audit intermediaries it uses for continued compliance with the undertakings it has obtained based on discussions with those relevant intermediaries. It is intended to make clear that firms seeking the benefit of the Commission's 30.10 relief must undertake a due diligence inquiry before customer funds are transferred to another intermediary and must take appropriate action (*i.e.*, set aside funds) in the event that such firms become aware of facts leading them to conclude that customer funds are not being handled consistent with the requirements of Commission rules or this Order by any subsequent intermediary or clearing house.

<sup>8</sup> Any United Kingdom laws or regulations or IMRO rules which permit an IMRO member firm to obtain from its customers a waiver, acknowledgement or similar document in which such customer effectively waives the right to segregation protection would be inconsistent with compliance with paragraphs a, b, and c.

Accordingly, 17 CFR Part 30 is amended as set forth below:

### PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix C to Part 30 is amended by adding the following citation to the existing entry for the Investment Management Regulatory Organisation to read as follows:

Appendix C—Foreign Petitioners  
Granted Relief From the Application of  
Certain Part 30 Rules Pursuant to Rule  
30.10

\* \* \* \* \*

FR date and citation, March 7, 1997, 62 FR.

Issued in Washington, D.C. on March 3, 1997.

Jean Webb,

*Secretary of the Commission.*

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### SECURITIES AND EXCHANGE COMMISSION

#### 17 CFR Part 300

[Release No. SIPA-163; File No. SIPC-96-1]

#### Rules of the Securities Investor Protection Corporation

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Order approving a proposed rule change of the Securities Investor Protection Corporation.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is approving a rule change submitted by the Securities Investor Protection Corporation ("SIPC") as required by Section 3(e)(2) of the Securities Investor Protection Act of 1970 ("SIPA"). SIPC's proposed rule change amends two Series 300 SIPC Rules relating to the closeout and completion of contracts for the purchase or sale of securities made by debtors in liquidation under SIPA. Because SIPC rules have the force and effect as if promulgated by the Commission, those rules are published in Title 17 of the Code of Federal Regulations ("CFR").

**EFFECTIVE DATE:** April 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Macchiaroli, Associate Director, 202/942-0131, Peter R.

Geraghty, Assistant Director 202/942-0177, or Louis A. Randazzo, Special Counsel, 202/942-0191, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

Pursuant to Section 3(e)(2) of SIPA,<sup>1</sup> on October 10, 1996, SIPC<sup>2</sup> filed with the Commission a proposed rule change (File No. SIPC-96-1). The proposed rule change amends SIPC Rules 300<sup>3</sup> and 301<sup>4</sup> which relate to the closeout and completion of contracts for the purchase or sale of securities made by debtors in liquidation under SIPA, to make them consistent with Commission Rule 15c6-1<sup>5</sup> under the Securities Exchange Act of 1934 ("Act"), which established three business days as the standard settlement cycle for most securities transactions.

##### II. Proposed Rule Change

SIPC Rules 300 and 301 set forth SIPC's requirements and procedures for closing out or completing open contractual commitments for the purchase or sale of securities between a SIPC member broker-dealer undergoing liquidation ("debtor") and other broker-dealers. Currently, under SIPC Rule 301, an open contractual commitment made between a debtor and another broker-dealer in the ordinary course of the debtor's business may be closed out or completed if, among other things, the open contractual commitment (1) had a settlement date on or within 30 calendar days prior to the filing date (*i.e.*, the date SIPC files an application for a protective decree) and the respective obligations of the parties remain outstanding on the filing date or had a settlement date which occurs on or within five business days subsequent to the filing date and (2) had a trade date on or within five business days prior to such settlement date. Rule 300 currently defines open contractual commitments as a failed to receive or a failed to deliver which (1) had a settlement date prior to the filing date and the respective obligations of the parties remained outstanding on the filing date or (2) had a settlement date which occurs on or within five business days subsequent to the filing date.

In June of 1995, Commission Rule 15c6-1 became effective, which

established three business days as the standard settlement timeframe for most securities transactions.<sup>6</sup> Because Rules 300 and 301 currently refer to a five business day settlement timeframe, SIPC is amending Rules 300 and 301 by replacing the five business day references with three business days. This will make SIPC Rules 300 and 301 consistent with the three business day settlement period in Commission Rule 15c6-1. In addition, SIPC is making a technical amendment to Rule 300(a),<sup>7</sup> which will replace the reference to section 16(8) of SIPA<sup>8</sup> with section 16(7) of SIPA.<sup>9</sup> This technical correction will conform a statutory citation in Rule 300 to the correct section of SIPA.

Notice of the proposed rule change was published in the Federal Register on November 1, 1996.<sup>10</sup> No comments were received.<sup>11</sup>

##### III. Discussion and Commission Action

For the reasons discussed below, the Commission believes that the amendments are consistent with Sectopms 3(e)(2)(D)<sup>12</sup> and 8(e)<sup>13</sup> of SIPA. Section 3(e)(2)(D) of SIPA requires SIPC rule changes to be in the public interest and consistent with the purposes of SIPA. Section 8(e) requires that SIPC adopt rules with respect to the closeout of contracts with a debtor for the purchase or sale of securities in the ordinary course of its business. Specifically, the commission believes that the proposed amendments make SIPC Rules 300 and 301 consistent with Commission Rule 15c6-1. In addition, the Commission believes that the amendments will ensure that SIPC's rules close off stale transactions from

<sup>6</sup> Specifically, Rule 15c6-1 provides, among other things, that a broker-dealer shall not effect or enter into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction. Rule 15c6-1 does not apply to an exempted security, municipal security (Municipal Securities Rulemaking Board rules required municipal securities to clear three business days after the date of the contract), commercial paper, bankers' acceptance, commercial bill, or government security. Prior to the effective date of Rule 15c6-1, the settlement cycle for securities transactions was five business days. See securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (October 13, 1993).

<sup>7</sup> 17 CFR 300.300(a) (1996).

<sup>8</sup> 16 U.S.C. 7811l(8) (1995).

<sup>9</sup> 15 U.S.C. 7811l(7) (1995).

<sup>10</sup> See Release No. SIPA-160 (October 25, 1996), 61 FR 56485 (November 1, 1996).

<sup>11</sup> SIPC consented to an extension of the Commission's action date for the proposed rule change. See Letter from Kevin H. Bell, Assistant General Counsel, SIPC, to Louis A. Randazzo, Special Counsel, SEC, dated November 25, 1996.

<sup>12</sup> 15 U.S.C. 78ccc(e)(2)(D) (1995).

<sup>13</sup> 15 U.S.C. 78fff-2(e) (1995).

being completed, other than as a possible claim against the debtor's estate, while at the same time ensuring that current securities transactions with the standard three business day settlement period are completed. Finally, SIPC would retain the ability to closeout open contractual commitments that are not covered by SIPC rules. For example, pursuant to SIPC Rule 306,<sup>14</sup> SIPC has discretion, after consulting with the Commission, to direct the closeout or completion of an open contractual commitment, irrespective of whether it is covered by Rules 300 or 301.

Accordingly, the Commission finds that the proposed SIPC rule amendments are in the public interest and are consistent with the purposes of the SIPA.

*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 force and effect as if promulgated by the Commission.

##### IV. List of Subjects in 17 CFR Part 300

Brokers, Securities, Securities Investor Protection Corporation.

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 continues to read as follows:

Authority: Section 3, 84 Stat. 1636, as amended; 15 U.S.C. 78ccc.

##### § 300.300 [Amended]

2. Section 300.300(a) is amended by removing the reference to "section 16(8)" and in its place adding "section 16(7)," and in § 300.300(c) removing the reference to "five business days" and in its place adding "three business days".

##### § 300.301 [Amended]

3. Sections 300.301 (a)(2)(i) and (a)(2)(ii) are amended by removing the references to "five business days" and in their place adding "three business days".

By the Commission.

Dated: March 3, 1997.

Margaret H. McFarland,

Deputy Secretary.

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<sup>14</sup> 17 CFR 300.306 (1996).

<sup>1</sup> 15 U.S.C. 78ccc(e)(2) (1995).

<sup>2</sup> SIPC is a non-profit membership corporation providing certain protection to customers of member broker-dealers that experience financial difficulty.

<sup>3</sup> 17 CFR 300.300 (1996).

<sup>4</sup> 17 CFR 300.301 (1996).

<sup>5</sup> 17 CFR 240.15c6-1 (1996).