

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) of this section 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) of this section. 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 moneys 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) of this section 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) of this section 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 continuance of such direct payment procedure is not appropriate, SIPC may cease such direct payment 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) of this section 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 of customers of any member of SIPC, the Commission may apply to the district court of the United States in which the principal office of SIPC is located for an order requiring SIPC to discharge its obligations under this chapter and for such other relief as the court may deem appropriate to carry out the purposes of this chapter.

(c) Examinations and reports

(1) Examination of SIPC, etc.

The Commission may make such examinations and inspections of SIPC and require SIPC to furnish it with such reports and records or copies thereof as the Commission may consider necessary or appropriate in the public interest or to effectuate the purposes of this chapter.

(2) Reports from SIPC

As soon as practicable after the close of each fiscal year, SIPC shall submit to the Commission a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this chapter, during such fiscal year. Such report shall include financial statements setting forth the financial position of SIPC at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The financial statements so included shall be examined by an independent public accountant or firm of independent public accountants, selected by SIPC and satisfactory to the Commission, and shall be accompanied by the report thereon of such accountant or firm. The Commission shall transmit such report to the President and the Congress with such comment thereon as the Commission may deem appropriate.

(Pub. L. 91-598, §11, formerly §7, Dec. 30, 1970, 84 Stat. 1652, 1653; renumbered §11 and amended Pub. L. 95-283, §§9, 10, May 21, 1978, 92 Stat. 260, 268.)

REFERENCES IN TEXT

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

Section is comprised of section 11 of Pub. L. 91-598. Subsec. (d) of section 11 of Pub. L. 91-598 amended section 78o of this title.

PRIOR PROVISIONS

A prior section 11 of Pub. L. 91-598 was renumbered section 15 and is classified to section 78kkk of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-283 substituted “pursuant to section 78ccc(e)(3) and section 78iii(f) of this title” for “or regulations pursuant to section 78ccc(e) and 78iii(f) of this title”.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(2) of this section relating to submittal of annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 191 of House Document No. 103-7.

§ 78hhh. Examining authority functions

Each member of SIPC shall file with such member's examining authority, or collection agent if a collection agent has been designated pursuant to section 78iii(a) of this title, such information (including reports of, and information