

curities 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) of this section 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) of this section, 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 subsecs. (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) of this section 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) of this section 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) of this section; 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) of this section, 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.

(2) Jurisdiction and powers of court

(A) Exclusive jurisdiction

Upon the filing of an application with a court for a protective decree with respect to a debtor, such court—

(i) shall have exclusive jurisdiction of such debtor and its property wherever located (including property located outside the territorial limits of such court and property held by any other person as security for a debt or subject to a lien);

(ii) shall have exclusive jurisdiction of any suit against the trustee with respect to a liquidation proceeding; and

(iii) except as inconsistent with the provisions of this chapter, shall have the jurisdiction, powers, and duties conferred upon a court of the United States having jurisdiction over cases under title 11, together with such other jurisdiction, powers, and duties as are prescribed by this chapter.

(B) Stay of pending actions

Pending the issuance of a protective decree under paragraph (1), the court with which an application has been filed—

(i) shall stay any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the debtor or its property and any other suit against any re-

¹ So in original. Probably should be "(i)".

² So in original. Probably should be "(ii)".

ceiver, conservator, or trustee of the debtor or its property, and shall continue such stay upon appointment of a trustee pursuant to paragraph (3);

(ii) may stay any proceeding to enforce a lien against property of the debtor or any other suit against the debtor, including a suit by stockholders of the debtor which interferes with prosecution by the trustee of claims against former directors, officers, or employees of the debtor, and may continue such stay upon appointment of a trustee pursuant to paragraph (3);

(iii) may stay enforcement of, and upon appointment of a trustee pursuant to paragraph (3), may continue the stay for such period of time as may be appropriate, but shall not abrogate any right of setoff, except to the extent such right may be affected under section 553 of title 11, and shall not abrogate the right to enforce a valid, nonpreferential lien or pledge against the property of the debtor; and

(iv) may appoint a temporary receiver.

(C) Exception from stay

(i) Notwithstanding section 362 of title 11, neither the filing of an application under subsection (a)(3) of this section nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101, 741, and 761 of title 11, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

(iii) As used in this subparagraph, the term “contractual right” includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act [7 U.S.C. 1 et seq.]), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), or in a resolution of the governing board thereof, and a right, whether or

not in writing, arising under common law, under law merchant, or by reason of normal business practice.

(3) Appointment of trustee and attorney

If the court issues a protective decree under paragraph (1), such court shall forthwith appoint, as trustee for the liquidation of the business of the debtor and as attorney for the trustee, such persons as SIPC, in its sole discretion, specifies. The persons appointed as trustee and as attorney for the trustee may be associated with the same firm. SIPC may, in its sole discretion, specify itself or one of its employees as trustee in any case in which SIPC has determined that the liabilities of the debtor to unsecured general creditors and to subordinated lenders appear to aggregate less than \$750,000 and that there appear to be fewer than five hundred customers of such debtor. No person may be appointed to serve as trustee or attorney for the trustee if such person is not disinterested within the meaning of paragraph (6), except that for any specified purpose other than to represent a trustee in conducting a liquidation proceeding, the trustee may, with the approval of SIPC and the court, employ an attorney who is not disinterested. A trustee appointed under this paragraph shall qualify by filing a bond in the manner prescribed by section 322 of title 11, except that neither SIPC nor any employee of SIPC shall be required to file a bond when appointed as trustee.

(4) Removal to bankruptcy court

Upon the issuance of a protective decree and appointment of a trustee, or a trustee and counsel, under this section, the court shall forthwith order the removal of the entire liquidation proceeding to the court of the United States in the same judicial district having jurisdiction over cases under title 11. The latter court shall thereupon have all of the jurisdiction, powers, and duties conferred by this chapter upon the court to which application for the issuance of the protective decree was made.

(5) Compensation for services and reimbursement of expenses

(A) Allowances in general

The court shall grant reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred (hereinafter in this paragraph referred to as “allowances”) by a trustee, and by the attorney for such a trustee, in connection with a liquidation proceeding. No allowances (other than reimbursement for proper costs and expenses incurred) shall be granted to SIPC or any employee of SIPC for serving as trustee. Allowances may be granted on an interim basis during the course of the liquidation proceeding at such times and in such amounts as the court considers appropriate.

(B) Application for allowances

Any person seeking allowances shall file with the court an application which complies in form and content with the provisions

of title 11 governing applications for allowances under such title. A copy of such application shall be served upon SIPC when filed. The court shall fix a time for a hearing on such application, and notice of such hearing shall be given to the applicant, the trustee, the debtor, the creditors, SIPC, and such other persons as the court may designate, except that notice need not be given to customers whose claims have been or will be satisfied in full or to creditors who cannot reasonably be expected to receive any distribution during the course of the liquidation proceeding.

(C) Recommendations of SIPC and awarding of allowances

Whenever an application for allowances is filed pursuant to subparagraph (B), SIPC shall file its recommendation with respect to such allowances with the court prior to the hearing on such application and shall, if it so requests, be allowed a reasonable time after such hearing within which to file a further recommendation. In any case in which such allowances are to be paid by SIPC without reasonable expectation of recoupment thereof as provided in this chapter and there is no difference between the amounts requested and the amounts recommended by SIPC, the court shall award the amounts recommended by SIPC. In determining the amount of allowances in all other cases, the court shall give due consideration to the nature, extent, and value of the services rendered, and shall place considerable reliance on the recommendation of SIPC.

(D) Applicable restrictions

The restrictions on sharing of compensation set forth in section 504 of title 11 shall apply to allowances.

(E) Charge against estate

Allowances granted by the court, including interim allowances, shall be charged against the general estate of the debtor as a cost and expense of administration. If the general estate is insufficient to pay allowances in whole or in part, SIPC shall advance such funds as are necessary for such payment.

(6) Disinterestedness

(A) Standards

For purposes of paragraph (3), a person shall not be deemed disinterested if—

(i) such person is a creditor (including a customer), stockholder, or partner of the debtor;

(ii) such person is or was an underwriter of any of the outstanding securities of the debtor or within five years prior to the filing date was the underwriter of any securities of the debtor;

(iii) such person is, or was within two years prior to the filing date, a director, partner, officer, or employee of the debtor or such an underwriter, or an attorney for the debtor or such an underwriter; or

(iv) it appears that such person has, by reason of any other direct or indirect relationship to, connection with, or interest in

the debtor or such an underwriter, or for any other reason, an interest materially adverse to the interests of any class of creditors (including customers) or stockholders,

except that SIPC shall in all cases be deemed disinterested, and an employee of SIPC shall be deemed disinterested if such employee would, except for his association with SIPC, meet the standards set forth in this subparagraph.

(B) Hearing

The court shall fix a time for a hearing on disinterestedness, to be held promptly after the appointment of a trustee. Notice of such hearing shall be mailed at least ten days prior thereto to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the past twelve months, to the address of such person as it appears from the books and records of the debtor, and to the creditors and stockholders of the debtor, to SIPC, and to such other persons as the court may designate. The court may, in its discretion, also require that notice be given by publication in such newspaper or newspapers of general circulation as it may designate. At such hearing, at any adjournment thereof, or upon application, the court shall hear objections to the retention in office of a trustee or attorney for a trustee on the grounds that such person is not disinterested.

(c) SEC participation in proceedings

The Commission may, on its own motion, file notice of its appearance in any proceeding under this chapter and may thereafter participate as a party.

(d) SIPC participation

SIPC shall be deemed to be a party in interest as to all matters arising in a liquidation proceeding, with the right to be heard on all such matters, and shall be deemed to have intervened with respect to all such matters with the same force and effect as if a petition for such purpose had been allowed by the court.

(Pub. L. 91-598, § 5, Dec. 30, 1970, 84 Stat. 1644; Pub. L. 95-283, § 7, May 21, 1978, 92 Stat. 254; Pub. L. 95-598, title III, § 308(a)-(f), Nov. 6, 1978, 92 Stat. 2674; Pub. L. 109-8, title IX, § 911, Apr. 20, 2005, 119 Stat. 185; Pub. L. 109-390, § 5(c), Dec. 12, 2006, 120 Stat. 2698; Pub. L. 111-203, title IX, § 929H(b), July 21, 2010, 124 Stat. 1857.)

REFERENCES IN TEXT

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (a)(3)(B), is Pub. L. 111-203, July 21, 2010, 124 Stat. 1376. Title II of the Act is classified principally to subchapter II (§ 5381 et seq.) of chapter 53 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

The 1934 Act, referred to in subsec. (b)(1)(C), means act June 6, 1934, ch. 404, 48 Stat. 881, known as the Securities Exchange Act of 1934, which is classified principally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

This chapter, referred to in subsecs. (b)(2)(A)(iii), (5)(C), 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.

The Commodity Exchange Act, referred to in subsec. (b)(2)(C)(iii), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (b)(2)(C)(iii), is Pub. L. 102-242, Dec. 19, 1991, 105 Stat. 2236. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111-203 designated existing provisions as subpar. (A) relating to general rule, inserted heading, substituted “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—” for “If SIPC determines that—”, in subpar. (A) relating to failure to meet obligations, substituted “the member” for “any member of SIPC”, in subpar. (B) relating to conditions, substituted period for comma at end, added subpar. (B) relating to consent requirement, and struck out concluding provisions which read as follows: “SIPC may, upon notice to such member, 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.”

2006—Subsec. (b)(2)(C)(iii). Pub. L. 109-390 inserted “a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991),” after “rule or bylaw of” and substituted “a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act),” for “or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market”.

2005—Subsec. (b)(2)(C). Pub. L. 109-8 added subpar. (C).

1978—Subsec. (a). Pub. L. 95-283, §7(a), added par. (2), redesignated former par. (2) as (3) and, as so redesignated, revised format of provisions by setting out cls. (A) and (B) and inserted provisions relating to any person who was a member within 180 days prior to such determination and provisions relating to claims filed under section 78fff-3 of this title, and redesignated former par. (3) as (4) and, as so redesignated, substituted “with respect to a member of SIPC filed with a court under paragraph (3)” for “under paragraph (2)” in introductory text and inserted “may,” before “with the” in cl. (A).

Subsec. (b)(1)(A). Pub. L. 95-598, §308(a)(1), substituted “section 101 of title 11” for “the Bankruptcy Act”.

Subsec. (b)(1)(B) to (E). Pub. L. 95-598, §308(a)(2), (3), redesignated subpars. (C) to (E) as subpars. (B) to (D), respectively. Former subpar. (B), which provided for issuance of protective decree where court found that debtor had committed act of bankruptcy within meaning of Bankruptcy Act, was struck out.

Subsec. (b)(2)(A)(iii). Pub. L. 95-598, §308(b), substituted “the United States having jurisdiction over cases under title 11” for “bankruptcy by the Bankruptcy Act”.

Subsec. (b)(2)(B)(iii). Pub. L. 95-598, §308(c), substituted “any right of setoff, except to the extent such right may be affected under section 553 of title 11, and shall not abrogate” for “the right of setoff provided in section 68 of the Bankruptcy Act”.

Subsec. (b)(3). Pub. L. 95-598, §308(d), substituted “section 322 of title 11” for “the applicable provisions of the Bankruptcy Act”.

Subsec. (b)(4). Pub. L. 95-598, §308(e), substituted provisions relating to removal of proceeding to Bankruptcy Court for provisions relating to reference of proceeding to referee in bankruptcy.

Subsec. (b)(5)(B). Pub. L. 95-598, §308(f)(1), (2), (5), redesignated subpar. (C) as (B) and substituted “title 11 governing applications for allowances under such title” for “the Bankruptcy Act governing applications for allowances under such Act”. Former subpar. (B), which covered allowances to a referee in bankruptcy or special master, was struck out.

Subsec. (b)(5)(C). Pub. L. 95-598, §308(f)(2), (3), (5), redesignated subpar. (D) as (C) and substituted “subparagraph (B)” for “subparagraph (C)”. Former subpar. (C) redesignated (B).

Subsec. (b)(5)(D). Pub. L. 95-598, §308(f)(2), (4), (5), redesignated subpar. (E) as (D) and substituted “Section 504 of title 11” for “the Bankruptcy Act”. Former subpar. (D) redesignated (C).

Subsec. (b)(5)(E), (F). Pub. L. 95-598, §308(f)(5), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Subsec. (b). Pub. L. 95-283, §7(b), in par. (1) inserted “protective” after “of” in heading and substituted provisions relating to issuance of protective decrees, for provisions relating to specific findings necessary for issuance of a decree and uncontested, etc., applications, in par. (2) substituted “Jurisdiction and powers of court” for “Exclusive jurisdiction over debtor” in heading and substituted provisions setting forth jurisdiction and powers of court with respect to exclusivity of such jurisdiction, for provisions relating to exclusive jurisdiction over the debtor, in par. (3) inserted “and attorney” after “trustee” in heading and substituted provisions relating to appointment of trustee and attorney, for provisions relating to appointment of trustee, in par. (4) substituted “Reference to referee in bankruptcy” for “Debtor and filing date defined” in heading and substituted provisions relating to reference to referee in bankruptcy, for provisions defining terms “debtor” and “filing date”, and added pars. (5) and (6).

Subsec. (d). Pub. L. 95-283, §7(c), added subsec. (d).

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 2006 AMENDMENT

Amendment by Pub. L. 109-390 not applicable to any cases commenced under Title 11, Bankruptcy, or to appointments made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109-390, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of Title 11.

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.

§ 78fff. General provisions of a liquidation proceeding

(a) Purposes

The purposes of a liquidation proceeding under this chapter shall be—

(1) as promptly as possible after the appointment of a trustee in such liquidation proceeding, and in accordance with the provisions of this chapter—

(A) to deliver customer name securities to or on behalf of the customers of the debtor entitled thereto as provided in section 78fff-2(c)(2) of this title; and

(B) to distribute customer property and (in advance thereof or concurrently therewith) otherwise satisfy net equity claims of customers to the extent provided in this section;

(2) to sell or transfer offices and other productive units of the business of the debtor;

(3) to enforce rights of subrogation as provided in this chapter; and

(4) to liquidate the business of the debtor.

(b) Application of title 11

To the extent consistent with the provisions of this chapter, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11. For the purposes of applying such title in carrying out this section, a reference in such title to the date of the filing of the petition shall be deemed to be a reference to the filing date under this chapter.

(c) Determination of customer status

In a liquidation proceeding under this chapter, whenever a person has acted with respect to cash or securities with the debtor after the filing date and in a manner which would have given him the status of a customer with respect to such cash or securities had the action occurred prior to the filing date, and the trustee is satisfied that such action was taken by the customer in good faith and prior to the appointment of the trustee, the date on which such action was taken shall be deemed to be the filing date for purposes of determining the net equity of such customer with respect to such cash or securities.

(d) Apportionment

In a liquidation proceeding under this chapter, any cash or securities remaining after the liquidation of a lien or pledge made by a debtor shall be apportioned between his general estate and customer property in the proportion in which the general property of the debtor and the cash and securities of the customers of such debtor contributed to such lien or pledge. Securities apportioned to the general estate under this subsection shall be subject to the provisions of section 78fff(5)(A) of this title.

(e) Costs and expenses of administration

All costs and expenses of administration of the estate of the debtor and of the liquidation proceeding shall be borne by the general estate of the debtor to the extent it is sufficient therefor, and the priorities of distribution from the gen-

eral estate shall be as provided in section 726 of title 11. Costs and expenses of administration shall include payments pursuant to section 78fff-2(e) of this title and section 78fff-3(c)(1) of this title (to the extent such payments recovered securities which were apportioned to the general estate pursuant to subsection (d) of this section) and costs and expenses of SIPC employees utilized by the trustee pursuant to section 78fff-1(a)(2) of this title. All funds advanced by SIPC to a trustee for such costs and expenses of administration shall be recouped from the general estate under section 507(a)(2) of title 11.

(Pub. L. 91-598, § 6, Dec. 30, 1970, 84 Stat. 1646; Pub. L. 95-283, § 8, May 21, 1978, 92 Stat. 259; Pub. L. 95-598, title III, § 308(g), (h), Nov. 6, 1978, 92 Stat. 2675; Pub. L. 109-8, title XV, § 1502(b), Apr. 20, 2005, 119 Stat. 217.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (3), (b), (c), and (d), 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.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109-8 substituted "507(a)(2)" for "507(a)(1)".

1978—Pub. L. 95-283 substituted "General provisions of a liquidation proceeding" for "Liquidation proceedings" in section catchline.

Subsec. (a). Pub. L. 95-283 in heading substituted "Purposes" for "General purposes of liquidation proceeding", in introductory text substituted provisions relating to purposes of liquidation proceedings under this chapter, for provisions relating to purposes of any proceeding in which a trustee has been appointed under section 78eee(b)(3) of this title, in par. (1) substituted provisions requiring execution of authorities to deliver customer name securities and distribute customer property in accordance with this chapter, for provisions requiring execution of authorities to return specifically identifiable property and distribute the single and separate fund in accordance with this section, and in par. (2) substituted provisions authorizing sale, etc., of productive units of the debtor, for provisions authorizing operation of the business of the debtor.

Subsec. (b). Pub. L. 95-598, § 308(g), in heading substituted "title 11" for "Bankruptcy Act" and in text "under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11. For the purposes of applying such title in carrying out this section, a reference in such title to the date of the filing of the petition shall be deemed to be a reference to the filing date under this chapter." for "under, the Bankruptcy Act. For purposes of applying the Bankruptcy Act to this chapter, any reference in the Bankruptcy Act to the date of commencement of proceedings under the Bankruptcy Act shall be deemed to be a reference to the filing date under this chapter."

Pub. L. 95-283 in heading substituted "Application of Bankruptcy Act" for "Powers and Duties of Trustee", and in text substituted provisions relating to applicability of Bankruptcy Act to liquidation proceedings, for provisions relating to the powers and duties of trustees. See section 78fff-1 of this title.

Subsec. (c). Pub. L. 95-283 in heading substituted "Determination of customer status" for "Application of Bankruptcy Act", and in text substituted provisions relating to determination of status of a customer with respect to cash or securities, for provisions setting forth general and special provisions of the Bankruptcy Act applicable to liquidation proceedings, and defining terms for purposes of such applicability and the provisions of this section. See subsec. (b) of this section and section 78fff-2(c) of this title.

Subsec. (d). Pub. L. 95-283 in heading substituted "Apportionment" for "Completion of open contractual