

cluding property excluded under section 741(4)(B) of this title, shall be apportioned between the general estate and customer property in the same proportion as the general estate of the debtor and customer property were subject to such security interest.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2614; Pub. L. 97-222, §15, July 27, 1982, 96 Stat. 238; Pub. L. 98-353, title III, §484, July 10, 1984, 98 Stat. 383; Pub. L. 109-8, title XV, §1502(a)(3), Apr. 20, 2005, 119 Stat. 216.)

HISTORICAL AND REVISION NOTES

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Section 752(a) requires the trustee to distribute customer property to customers based on the amount of their net equity claims. Customer property is to be distributed in priority to all claims except expenses of administration entitled to priority under §507(1). It is anticipated that the court will apportion such administrative claims on an equitable basis between the general estate and the customer property of the debtor.

Subsection (b)(1) indicates that in the event customer property exceeds customers net equity claims and administrative expenses, the excess pours over into the general estate. This event would occur if the value of securities increased dramatically after the order for relief but before liquidation by the trustee. Subsection (b)(2) indicates that the unpaid portion of a customer's net equity claim is entitled to share in the general estate as an unsecured claim unless subordinated by the court under proposed 11 U.S.C. 501. A net equity claim of a customer that is subordinated under section 747 is entitled to share in distribution under section 726(a)(2) unless subordinated under section 510 independently of the subordination under section 747.

Subsection (c) provides for apportionment between customer property and the general estate of any equity of the debtor in property remaining after a secured creditor liquidates a security interest. This might occur if a stockbroker hypothecates securities of his own and of his customers if the value of the hypothecated securities exceeds the debt owed to the secured party. The apportionment is to be made according to the ratio of customer property and general property of the debtor that comprised the collateral. The subsection refers to cash and securities of customers to include any customer property unlawfully converted by the stockbroker in the course of such a transaction. The apportionment is made subject to section 741(4)(B) to insure that property in a customer's account that is owed to the stockbroker will not be considered customer property. This recognizes the right of the stockbroker to withdraw money that has been erroneously placed in a customer's account or that is otherwise owing to the stockbroker.

AMENDMENTS

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

1984—Subsec. (a). Pub. L. 98-353, §484(a), substituted “customers' allowed” for “customers allowed”, “except claims of the kind” for “except claims”, and “such customer property” for “customer property”.

Subsec. (b)(2). Pub. L. 98-353, §484(b), substituted “section 726” for “section 726(a)”.

1982—Subsec. (c). Pub. L. 97-222 substituted “Any cash or security remaining after the liquidation of a security interest created under a security agreement made by the debtor, excluding property excluded under section 741(4)(B) of this title, shall be apportioned between the general estate and customer property in the same proportion as the general estate of the debtor and customer property were subject to such security interest” for “Subject to section 741(4)(B) of this title, any cash or security remaining after the liquidation of a security interest created under a security agreement

made by the debtor shall be apportioned between the general estate and customer property in the proportion that the general property of the debtor and the cash or securities of customers were subject to such security interest”.

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 this title 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 this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.

(Added Pub. L. 109-8, title IX, §907(m), Apr. 20, 2005, 119 Stat. 181.)

EFFECTIVE DATE

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

SUBCHAPTER IV—COMMODITY BROKER LIQUIDATION

§ 761. Definitions for this subchapter

In this subchapter—

- (1) “Act” means Commodity Exchange Act;
- (2) “clearing organization” means a derivatives clearing organization registered under the Act;
- (3) “Commission” means Commodity Futures Trading Commission;
- (4) “commodity contract” means—

(A) with respect to a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(B) with respect to a foreign futures commission merchant, foreign future;

(C) with respect to a leverage transaction merchant, leverage transaction;

(D) with respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on,

or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(E) with respect to a commodity options dealer, commodity option;

(F)(i) any other contract, option, agreement, or transaction that is similar to a contract, option, agreement, or transaction referred to in this paragraph; and

(ii) with respect to a futures commission merchant or a clearing organization, any other contract, option, agreement, or transaction, in each case, that is cleared by a clearing organization;

(G) any combination of the agreements or transactions referred to in this paragraph;

(H) any option to enter into an agreement or transaction referred to in this paragraph;

(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, including any guarantee or reimbursement obligation by or to a commodity broker or financial participant in connection with any agreement or transaction referred to in this paragraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;

(5) “commodity option” means agreement or transaction subject to regulation under section 4c(b) of the Act;

(6) “commodity options dealer” means person that extends credit to, or that accepts cash, a security, or other property from, a customer of such person for the purchase or sale of an interest in a commodity option;

(7) “contract market” means a registered entity;

(8) “contract of sale”, “commodity”, “derivatives clearing organization”, “future delivery”, “board of trade”, “registered entity”, and “futures commission merchant” have the meanings assigned to those terms in the Act;

(9) “customer” means—

(A) with respect to a futures commission merchant—

(i) entity for or with whom such futures commission merchant deals and that holds a claim against such futures commission merchant on account of a commodity contract made, received, acquired, or held by or through such futures commission merchant in the ordinary course of such futures commission merchant’s business as a futures commission merchant from or for

a commodity contract account of such entity; or

(ii) entity that holds a claim against such futures commission merchant arising out of—

(I) the making, liquidation, or change in the value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with such futures commission merchant for the purpose of making or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract;

(B) with respect to a foreign futures commission merchant—

(i) entity for or with whom such foreign futures commission merchant deals and that holds a claim against such foreign futures commission merchant on account of a commodity contract made, received, acquired, or held by or through such foreign futures commission merchant in the ordinary course of such foreign futures commission merchant’s business as a foreign futures commission merchant from or for the foreign futures account of such entity; or

(ii) entity that holds a claim against such foreign futures commission merchant arising out of—

(I) the making, liquidation, or change in value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with such foreign futures commission merchant for the purpose of making or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract;

(C) with respect to a leverage transaction merchant—

(i) entity for or with whom such leverage transaction merchant deals and that holds a claim against such leverage transaction merchant on account of a commodity contract engaged in by or with such leverage transaction merchant in the ordinary course of such leverage transaction merchant’s business as a leverage transaction merchant from or for the leverage account of such entity; or

(ii) entity that holds a claim against such leverage transaction merchant arising out of—

(I) the making, liquidation, or change in value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with such leverage transaction merchant for the purpose of entering into or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract;

(D) with respect to a clearing organization, clearing member of such clearing organization with whom such clearing organization deals and that holds a claim against such clearing organization on account of cash, a security, or other property received by such clearing organization to margin, guarantee, or secure a commodity contract in such clearing member's proprietary account or customers' account; or

(E) with respect to a commodity options dealer—

(i) entity for or with whom such commodity options dealer deals and that holds a claim on account of a commodity contract made, received, acquired, or held by or through such commodity options dealer in the ordinary course of such commodity options dealer's business as a commodity options dealer from or for the commodity options account of such entity; or

(ii) entity that holds a claim against such commodity options dealer arising out of—

(I) the making of, liquidation of, exercise of, or a change in value of, a commodity contract of a kind specified in clause (i) of this subparagraph; or

(II) a deposit or payment of cash, a security, or other property with such commodity options dealer for the purpose of making, exercising, or margining such a commodity contract;

(10) "customer property" means cash, a security, or other property, or proceeds of such cash, security, or property, received, acquired, or held by or for the account of the debtor, from or for the account of a customer—

(A) including—

(i) property received, acquired, or held to margin, guarantee, secure, purchase, or sell a commodity contract;

(ii) profits or contractual or other rights accruing to a customer as a result of a commodity contract;

(iii) an open commodity contract;

(iv) specifically identifiable customer property;

(v) warehouse receipt or other document held by the debtor evidencing ownership of or title to property to be delivered to fulfill a commodity contract from or for the account of a customer;

(vi) cash, a security, or other property received by the debtor as payment for a commodity to be delivered to fulfill a commodity contract from or for the account of a customer;

(vii) a security held as property of the debtor to the extent such security is necessary to meet a net equity claim based on a security of the same class and series of an issuer;

(viii) property that was unlawfully converted from and that is the lawful property of the estate; and

(ix) other property of the debtor that any applicable law, rule, or regulation requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not

significantly increase customer property; but

(B) not including property to the extent that a customer does not have a claim against the debtor based on such property;

(11) "foreign future" means contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade outside the United States;

(12) "foreign futures commission merchant" means entity engaged in soliciting or accepting orders for the purchase or sale of a foreign future or that, in connection with such a solicitation or acceptance, accepts cash, a security, or other property, or extends credit to margin, guarantee, or secure any trade or contract that results from such a solicitation or acceptance;

(13) "leverage transaction" means agreement that is subject to regulation under section 19 of the Commodity Exchange Act, and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract;

(14) "leverage transaction merchant" means person in the business of engaging in leverage transactions;

(15) "margin payment" means payment or deposit of cash, a security, or other property, that is commonly known to the commodities trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, settlement payments, variation payments, daily settlement payments, and final settlement payments made as adjustments to settlement prices;

(16) "member property" means customer property received, acquired, or held by or for the account of a debtor that is a clearing organization, from or for the proprietary account of a customer that is a clearing member of the debtor; and

(17) "net equity" means, subject to such rules and regulations as the Commission promulgates under the Act, with respect to the aggregate of all of a customer's accounts that such customer has in the same capacity—

(A) the balance remaining in such customer's accounts immediately after—

(i) all commodity contracts of such customer have been transferred, liquidated, or become identified for delivery; and

(ii) all obligations of such customer in such capacity to the debtor have been offset; plus

(B) the value, as of the date of return under section 766 of this title, of any specifically identifiable customer property actually returned to such customer before the date specified in subparagraph (A) of this paragraph; plus

(C) the value, as of the date of transfer, of—

(i) any commodity contract to which such customer is entitled that is transferred to another person under section 766 of this title; and

(ii) any cash, security, or other property of such customer transferred to such other

person under section 766 of this title to margin or secure such transferred commodity contract.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2615; Pub. L. 97-222, § 16, July 27, 1982, 96 Stat. 238; Pub. L. 98-353, title III, § 485, July 10, 1984, 98 Stat. 383; Pub. L. 103-394, title V, § 501(d)(29), Oct. 22, 1994, 108 Stat. 4146; Pub. L. 106-554, § 1(a)(5) [title I, § 112(c)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A-395; Pub. L. 109-8, title IX, § 907(a)(3), Apr. 20, 2005, 119 Stat. 174; Pub. L. 111-203, title VII, § 724(b), July 21, 2010, 124 Stat. 1684.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Subchapter IV of chapter 7 represents a compromise between similar chapters in the House bill and Senate amendment. Section 761(2) of the House amendment defines “clearing organization” to cover an organization that clears commodity contracts on a contract market or a board of trade; the expansion of the definition is intended to include clearing organizations that clear commodity options. Section 761(4) of the House amendment adopts the term “commodity contract” as used in section 761(5) of the Senate amendment but with the more precise substantive definitions contained in section 761(8) of the House bill. The definition is modified to insert “board of trade” to cover commodity options. Section 761(5) of the House amendment adopts the definition contained in section 761(6) of the Senate amendment in preference to the definition contained in section 761(4) of the House bill which erroneously included onions. Section 761(9) of the House amendment represents a compromise between similar provisions contained in section 761(10) of the Senate amendment and section 761(9) of the House bill. The compromise adopts the substance contained in the House bill and adopts the terminology of “commodity contract” in lieu of “contractual commitment” as suggested in the Senate amendment. Section 761(10) of the House amendment represents a compromise between similar sections in the House bill and Senate amendment regarding the definition of “customer property.” The definition of “distribution share” contained in section 761(12) of the Senate amendment is deleted as unnecessary. Section 761(12) of the House amendment adopts a definition of “foreign futures commission merchant” similar to the definition contained in section 761(14) of the Senate amendment. The definition is modified to cover either an entity engaged in soliciting orders or the purchase or sale of a foreign future, or an entity that accepts cash, a security, or other property for credit in connection with such a solicitation or acceptance. Section 761(13) of the House amendment adopts a definition of “leverage transaction” identical to the definition contained in section 761(15) of the Senate amendment. Section 761(15) of the House amendment adopts the definition of “margin payment” contained in section 761(17) of the Senate amendment. Section 761(17) of the House amendment adopts a definition of “net equity” derived from section 761(15) of the House bill.

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Paragraph (1) defines “Act” to mean the Commodity Exchange Act [7 U.S.C. 1 et seq.].

Paragraph (2) defines “clearing organization” to mean an organization that clears (i.e., matches purchases and sales) commodity futures contracts made on or subject to the rules of a contract market or commodity options transactions made on or subject to the rules of a commodity option exchange. Although commodity option trading on exchanges is currently prohibited, it is anticipated that CFTC may permit such trading in the future.

Paragraphs (3) and (4) define terms “Commission” and “commodity futures contract”.

Paragraph (5) [enacted as (4)] defines “commodity contract” to mean a commodity futures contract

(§761(4)), a commodity option (§761(6)), or a leverage contract (§761(15)).

Paragraph (b) [probably should be “(6)” which was enacted as (5)] defines “commodity option” by reference to section 4c(b) of the Commodity Exchange Act [7 U.S.C. 6c(b)].

Paragraphs (7), (8), and (9) [enacted as (6), (7), and (8)] define “commodity options dealer,” “contract market,” “contract of sale,” “commodity,” “future delivery,” “board of trade,” and “futures commission merchant.”

Paragraph (10) [enacted as (9)] defines the term “customer” to mean with respect to a futures commission merchant or a foreign futures commission merchant, the entity for whom the debtor carries a commodity futures contract or foreign future, or with whom such a contract is carried (such as another commodity broker), or from whom the debtor has received, acquired, or holds cash, securities, or other property arising out of or connected with specified transactions involving commodity futures contracts or foreign futures. This section also defines “customer” in the context of leverage transaction merchants, clearing organizations, and commodity options dealers. Persons associated with a commodity broker, such as its employees, officers, or partners, may be customers under this definition.

The definition of “customer” serves to isolate that class of persons entitled to the protection subchapter IV provides to customers. In addition, section 101(5) defines “commodity broker” to mean a futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, with respect to which there is a customer. Accordingly, the definition of customer also serves to designate those entities which must utilize chapter 7 and are precluded from reorganizing under chapter 11.

Paragraph (11) [enacted as (10)] defines “customer property” to mean virtually all property or proceeds thereof, received, acquired, or held by or for the account of the debtor for a customer arising out of or in connection with a transaction involving a commodity contract.

Paragraph (12) defines “distribution share” to mean the amount to which a customer is entitled under section 765(a).

Paragraphs (13), (14), (15), and (16) [enacted as (11), (12), (13), and (14)] define “foreign future,” “foreign futures commission merchant,” “leverage transaction,” and “leverage transaction merchant.”

Paragraph (17) [enacted as (15)] defines “margin payment” to mean a payment or deposit commonly known to the commodities trade as original margin, initial margin, or variation margin.

Paragraph (18) [enacted as (16)] defines “member property.”

Paragraph (19) [enacted as (17)] defines “net equity” to be the sum of (A) the value of all customer property remaining in a customer’s account immediately after all commodity contracts of such customer have been transferred, liquidated, or become identified for delivery and all obligations of such customer to the debtor have been offset (such as margin payments, whether or not called, and brokerage commissions) plus (B) the value of specifically identifiable customer property previously returned to the customer by the trustee, plus (C) if the trustee has transferred any commodity contract to which the customer is entitled or any margin or security for such contract, the value of such contract and margin or security. Net equity, therefore, will be the total amount of customer property to which a customer is entitled as of the date of the filing of the bankruptcy petition, although valued at subsequent dates. The Commission is given authority to promulgate rules and regulations to further refine this definition.

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Paragraph (8) [enacted as (4)] is a dynamic definition of “contractual commitment”. The definition will vary

depending on the character of the debtor in each case. If the debtor is a futures commission merchant or a clearing organization, then subparagraphs (A) and (D) indicate that the definition means a contract of sale of a commodity for future delivery on a contract market. If the debtor is a foreign futures commission merchant, a leverage transaction merchant, or a commodity options dealer, then subparagraphs (B), (C), and (E) indicate that the definition means foreign future, leverage transaction, or commodity option, respectively.

Paragraph (9) defines “customer” in a similar style. It is anticipated that a debtor with multifaceted characteristics will have separate estates for each different kind of customer. Thus, a debtor that is a leverage transaction merchant and a commodity options dealer would have separate estates for the leverage transaction customers and for the options customers, and a general estate for other creditors. Customers for each kind of commodity broker, except the clearing organization, arise from either of two relationships. In subparagraphs (A), (B), (C), and (E), clause (i) treats with customers to the extent of contractual commitments with the debtor in either a broker or a dealer relationship. Clause (ii) treats with customers to the extent of proceeds from contractual commitments or deposits for the purpose of making contractual commitments. The customer of the clearing organization is a member with a proprietary or customers’ account.

Paragraph (10) defines “customer property” to include all property in customer accounts and property that should have been in those accounts but was diverted through conversion or mistake. Clause (i) refers to customer property not properly segregated by the debtor or customer property converted and then recovered so as to become property of the estate. Clause (vii) is intended to exclude property that would cost more to recover from a third party than the value of the property itself. Subparagraph (B) excludes property in a customer’s account that belongs to the commodity broker, such as a contract placed in the account by error, or cash due the broker for a margin payment that the broker has made.

Paragraph (15) [enacted as (17)] defines “net equity” to include the value of all contractual commitments at the time of liquidation or transfer less any obligations owed by the customer to the debtor, such as brokerage fees. In addition, the term includes the value of any specifically identifiable property as of the date of return to the customer and the value of any customer property transferred to another commodity broker as of the date of transfer. This definition places the risk of market fluctuations on the customer until commitments leave the estate.

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in pars. (1), (2), (8), and (17), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. Sections 4c(b) and 19 of the Act are classified to sections 6c(b) and 23, respectively, of Title 7. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

AMENDMENTS

2010—Par. (4)(F). Pub. L. 111-203, §724(b)(1), added subpar. (F) and struck out former subpar. (F) which read as follows: “any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph.”

Par. (9)(A)(i). Pub. L. 111-203, §724(b)(2), substituted “a commodity contract account” for “the commodity futures account”.

2005—Par. (4)(F) to (J). Pub. L. 109-8 added subpars. (F) to (J).

2000—Par. (2). Pub. L. 106-554, §1(a)(5) [title I, §112(c)(6)(A)], amended par. (2) generally. Prior to amendment, par. (2) read as follows: “‘clearing organization’ means organization that clears commodity contracts made on, or subject to the rules of, a contract market or board of trade;”.

Par. (7). Pub. L. 106-554, §1(a)(5) [title I, §112(c)(6)(B)], amended par. (7) generally. Prior to amendment, par. (7) read as follows: “‘contract market’ means board of trade designated as a contract market by the Commission under the Act;”.

Par. (8). Pub. L. 106-554, §1(a)(5) [title I, §112(c)(6)(C)], amended par. (8) generally. Prior to amendment, par. (8) read as follows: “‘contract of sale’, ‘commodity’, ‘future delivery’, ‘board of trade’, and ‘futures commission merchant’ have the meanings assigned to those terms in the Act;”.

1994—Par. (1). Pub. L. 103-394, §501(d)(29)(A), struck out “(7 U.S.C. 1 et seq.)” after “Act”.

Par. (5). Pub. L. 103-394, §501(d)(29)(B), struck out “(7 U.S.C. 6c(b))” after “Act”.

Par. (13). Pub. L. 103-394, §501(d)(29)(C), struck out “(7 U.S.C. 23)” after “Act”.

1984—Par. (10)(A)(viii). Pub. L. 98-353 substituted “from and that is the lawful property” for “and that is property”.

1982—Par. (2). Pub. L. 97-222, §16(1), inserted “made” after “commodity contracts”.

Par. (4). Pub. L. 97-222, §16(2), substituted “with respect to” for “if the debtor is” wherever appearing, and substituted “cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization” for “cleared by the debtor” in subpar. (D).

Par. (9). Pub. L. 97-222, §16(3), substituted “with respect to” for “if the debtor is” wherever appearing, in subpar. (A) substituted “such futures commission merchant” for “the debtor” wherever appearing and “such futures commission merchant’s” for “the debtor’s”, in subpar. (B) substituted “such foreign futures commission merchant” for “the debtor” wherever appearing and “such foreign futures commission merchant’s” for “the debtor’s”, in subpar. (C) substituted “such leverage transaction merchant” for “the debtor” wherever appearing and “such leverage transaction merchant’s” for “the debtor’s”, inserted “or” after the semicolon in cl. (i), and substituted “holds” for “hold” in cl. (ii), in subpar. (D) substituted “such clearing organization” for “the debtor” wherever appearing, and in subpar. (E) substituted “such commodity options dealer” for “the debtor” wherever appearing and “such commodity options dealer’s” for “the debtor’s”.

Par. (10). Pub. L. 97-222, §16(4), struck out “at any time” after “security, or property,” in provisions preceding subpar. (A).

Par. (12). Pub. L. 97-222, §16(5), inserted a comma after “property” and struck out the comma after “credit”.

Par. (13). Pub. L. 97-222, §16(6), substituted “section 19 of the Commodity Exchange Act (7 U.S.C. 23)” for “section 217 of the Commodity Futures Trading Commission Act of 1974 (7 U.S.C. 15a)”.

Par. (14). Pub. L. 97-222, §16(7), struck out “that is engaged” after “means person”.

Par. (15). Pub. L. 97-222, §16(8), substituted “mark-to-market payments, settlement payments, variation payments, daily settlement payments, and final settlement payments made as adjustments to settlement prices” for “a daily variation settlement payment”.

Par. (16). Pub. L. 97-222, §16(9), struck out “at any time” after “customer property”.

Par. (17). Pub. L. 97-222, §16(10), in provisions preceding subpar. (A) substituted “has” for “holds”, in subpar. (A) inserted “the” after “(A)” in provisions preceding cl. (i), and “in such capacity” after “customer” in cl. (ii).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of Title 7, Agriculture.

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 this title 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 this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 762. Notice to the Commission and right to be heard

(a) The clerk shall give the notice required by section 342 of this title to the Commission.

(b) The Commission may raise and may appear and be heard on any issue in a case under this chapter.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2618.)

HISTORICAL AND REVISION NOTES

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Section 762 provides that the Commission shall be given such notice as is appropriate of an order for relief in a bankruptcy case and that the Commission may raise and may appear and may be heard on any issue in case involving a commodity broker liquidation.

§ 763. Treatment of accounts

(a) Accounts held by the debtor for a particular customer in separate capacities shall be treated as accounts of separate customers.

(b) A member of a clearing organization shall be deemed to hold such member's proprietary account in a separate capacity from such member's customers' account.

(c) The net equity in a customer's account may not be offset against the net equity in the account of any other customer.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2618; Pub. L. 98-353, title III, § 486, July 10, 1984, 98 Stat. 383.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

Section 763 provides for separate treatment of accounts held in separate capacities. A deficit in one account held for a customer may not be offset against the net equity in another account held by the same customer in a separate capacity or held by another customer.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 substituted “by the debtor for” for “by” and “treated as” for “deemed to be”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 764. Voidable transfers

(a) Except as otherwise provided in this section, any transfer by the debtor of property

that, but for such transfer, would have been customer property, may be avoided by the trustee, and such property shall be treated as customer property, if and to the extent that the trustee avoids such transfer under section 544, 545, 547, 548, 549, or 724(a) of this title. For the purpose of such sections, the property so transferred shall be deemed to have been property of the debtor, and, if such transfer was made to a customer or for a customer's benefit, such customer shall be deemed, for the purposes of this section, to have been a creditor.

(b) Notwithstanding sections 544, 545, 547, 548, 549, and 724(a) of this title, the trustee may not avoid a transfer made before seven days after the order for relief, if such transfer is approved by the Commission by rule or order, either before or after such transfer, and if such transfer is—

(1) a transfer of a commodity contract entered into or carried by or through the debtor on behalf of a customer, and of any cash, securities, or other property margining or securing such commodity contract; or

(2) the liquidation of a commodity contract entered into or carried by or through the debtor on behalf of a customer.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2618; Pub. L. 97-222, §17, July 27, 1982, 96 Stat. 240; Pub. L. 98-353, title III, §487, July 10, 1984, 98 Stat. 383; Pub. L. 111-16, §2(9), May 7, 2009, 123 Stat. 1607.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 764 of the House amendment is derived from the House bill.

SENATE REPORT NO. 95-989

Section 764 permits the trustee to void any transfer of property that, except for such transfer, would have been customer property, to the extent permitted under section 544, 545, 547, 548, 549, or 724(a).

HOUSE REPORT NO. 95-595

Section 764 indicates the extent to which the avoiding powers may be used by the trustee under subchapter IV of chapter 7. If property recovered would have been customer property if never transferred, then subsection (a) indicates that it will be so treated when recovered.

Subsection (b) prohibits avoiding any transaction that occurs before or within five days after the petition if the transaction is approved by the Commission and concerns an open contractual commitment. This enables the Commission to exercise its discretion to protect the integrity of the market by insuring that transactions cleared with other brokers will not be undone on a preference or a fraudulent transfer theory.

Subsection (c) insulates variation margin payments and other deposits from the avoiding powers except to the extent of actual fraud under section 548(a)(1). This facilitates prepetition transfers and protects the ordinary course of business in the market.

AMENDMENTS

2009—Subsec. (b). Pub. L. 111-16 substituted “seven days” for “five days” in introductory provisions.

1984—Subsec. (a). Pub. L. 98-353 substituted “any transfer by the debtor” for “any transfer”.

1982—Subsec. (a). Pub. L. 97-222, §17(a), substituted “but” for “except”, inserted “such property” after “trustee, and”, and substituted “shall be” for “is” wherever appearing.

Subsec. (b). Pub. L. 97-222, §17(b), substituted “order for relief” for “date of the filing of the petition”.